

**A Compilation of
UN Treaty Body
Jurisprudence,
Special Procedures
of the Human Rights
Council, and
the Advice of
the Expert Mechanism
on the Rights of
Indigenous Peoples**

Compiled and Edited by FERGUS MACKAY

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IX 2020
2021
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The Indigenous Peoples Rights International (IPRI) is a global Indigenous Peoples' organization established in 2019 in response to the grave situation of Indigenous Peoples who are increasingly being criminalized, killed, disappeared, and subjected to the worst forms of violence.

We are leading the Global Initiative to Address and Prevent Criminalization, Violence, and Impunity Against Indigenous Peoples—an Indigenous-led global effort to strengthen coordination, solidarity, and actions to prevent, respond to, and reduce acts of criminalization, violence, and impunity against Indigenous Peoples; and to provide better protection and access to justice for victims not only as individuals but as collectives or communities.

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Preface

This document contains Volume IX of the compilation of United Nations human rights bodies' jurisprudence pertaining to indigenous peoples.¹ It covers the period of 2020-2022. This volume is three years-long, rather than two years-long as was the case with most other volumes. This is due to the severe disruption caused by the Covid 19 pandemic, which saw some UN committee's barely function for over a year. It also contains the advice of the Expert Mechanism on the Rights of Indigenous Peoples and the observations and recommendations of selected 'Special Procedures' of the Human Rights Council (e.g., Special Rapporteurs, Independent Experts and Working Groups).

This period is especially noteworthy for the case law of the various UN Committees, almost all of which positively addresses indigenous peoples' rights, including in relation to the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP").² Some of these are noted below, they excerpted in the relevant sections, and links are provided to the full decisions. These decisions expand (and perhaps also concretize) the approach of reading the various binding UN human rights treaties conjunctively with the UNDRIP. This provides further support for the view that much of the UNDRIP restates existing law and, therefore, it should be seen as much more than a merely aspirational instrument.³ This is also evident in other aspects of the treaty bodies' work. CEDAW's General Recommendation No. 39, for instance, unambiguously states that the "Committee considers UNDRIP an authoritative framework to interpret state party and core obligations under CEDAW. All of the rights recognized in UNDRIP are relevant to Indigenous Women, both as members of their peoples and communities and as individual Indigenous Women, and ultimately in relation to the guarantees against discrimination in CEDAW itself."⁴

¹ Volumes I-VIII (1993-2019), are available at: <https://www.forestpeoples.org/en/work-themes/law-policy/guides-human-rights-mechanisms>.

² See e.g., *Yaku Pérez Guartambel v. Ecuador*, CERD/C/106/D/61/2017, (26 July 2022), para. 4.5; *Anne Nourgam v. Finland*, CERD/C/106/D/59/2016 (2 June 2022), para. 9.10-9.12; *Lars-Anders Ågren et al. v. Sweden*, CERD/C/102/D/54/2013 (18 December 2020), para. 1.5, 6.5; *Matson et al v. Canada*, CEDAW/C/81/D/68/2014 (11 March 2022), para. 18.4; *Campo Agua'ë, of the Ava Guaraní People v. Paraguay*, CCPR/C/132/D/2552/2015 (12 October 2021), para. 8.3, 8.6; and *Daniel Billy et al v. Australia*, CCPR/C/135/D/3624/2019 (22 September 2022), para. 8.13 (ruling that "article 27 of the Covenant, interpreted in the light of the [UNDRIP], enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity).

³ Cf. *The impact of toxic substances on the human rights of indigenous peoples*, A/77/183 (2022), para. 63 (opining that "In the case of the Ava Guaraní indigenous people of Campo Agua'e in eastern Paraguay, the Human Rights Committee recognized that the failure to prevent pesticide contamination of indigenous lands and territories is also an attack against indigenous culture and traditions. In reaching its decision, the Committee relied on the [UNDRIP] to interpret the International Covenant on Civil and Political Rights, which gives further normative strength to said Declaration").

⁴ CEDAW/C/GC/39 (31 October 2022), para. 13. See also *General comment No. 26 on Land and Economic, Social and Cultural Rights*, E/C.12/GC/26 (22 December 2022), para. 60 (stating that, as provided for "in Art. 28 of UNDRIP, restitution of land is for indigenous peoples often the primary remedy").

The Committee on the Elimination of Racial Discrimination (“CERD”) maintained its consistent practice of adopting detailed observations and recommendations on indigenous peoples’ rights, including under its early warning and urgent action procedure and in relation to the UNDRIP. In its review of the USA, for instance, it recommended that the State “Guarantee, in law and in practice, the principle of free, prior and informed consent in accordance with the [UNDRIP].”⁵ It also adopted three formal decisions on indigenous peoples’ rights (against Ecuador, Sweden and Finland), pursuant to its jurisdiction to receive complaints (see ICERD, art. 14). Echoing its decision in *Ågren et al. v. Sweden* (2020), CERD reaffirmed that it “adheres to the human rights-based approach of free, prior and informed consent as a norm stemming from the prohibition of racial discrimination, which is the main underlying cause of most discrimination suffered by indigenous peoples.”⁶ In *Pérez Guartambel v. Ecuador*, a case concerning lack of recognition of an indigenous law marriage, CERD explained that “self-determination is linked to the effective realization of the rights of indigenous peoples, specifically their right to maintain and develop their own political, judicial, cultural, social and economic institutions.”⁷ It also held that “to ignore the inherent right of indigenous peoples to their traditional territories – which is grounded in indigenous customary law – constitutes a form of discrimination as it results in nullifying or impairing the recognition, enjoyment or exercise by indigenous peoples, on an equal footing, of the property rights tied to their identity.”⁸

In addition to emphasizing various substantive obligations, the case law of the Human Rights Committee again highlighted “that measures are required to ensure the effective participation of indigenous peoples in decisions that affect them. In particular, it is of fundamental importance that measures that compromise or interfere with the economic activities of cultural value to an indigenous community have been subjected to the free, prior and informed consent of the members of the community...”⁹ That case is also noteworthy because it affirms that, in the case of indigenous people, the concept of “home” in ICCPR, article 17 is understood in light of indigenous peoples’ multiple relations with traditional territories and their ways of life.¹⁰ It also adopted this approach in a case against Australia concerning the impacts of climate change on Torres Straits

⁵ CERD/C/USA/CO/10-12, 21 September 2022, para. 50. See also CERD/C/THA/CO/4-8, 10 February 2022, para. 26(a) (recommending that Thailand “Affirm in its legislation the status and the rights of indigenous peoples, in line with the United Nations Declaration on the Rights of Indigenous Peoples;”) and para. 28(e).

⁶ *Anne Nourgam v. Finland*, CERD/C/106/D/59/2016 (2 June 2022), para. 9.4.

⁷ *Yaku Pérez Guartambel v. Ecuador*, CERD/C/106/D/61/2017, (26 July 2022), para. 4.6.

⁸ *Id.*, para. 4.7. See also *Lars-Anders Ågren et al. v. Sweden*, CERD/C/102/D/54/2013 (18 December 2020), para. 6.7 (recommending also, at para. 8, that Sweden “provide an effective remedy to the Vapsten Sami reindeer herding community by effectively revising the mining concessions after an adequate process of free, prior and informed consent. The Committee also recommends that the State party amend its legislation to reflect the status of the Sami as indigenous people in national legislation regarding land and resources and to enshrine the international standard of free, prior and informed consent”).

⁹ *Campo Agua’ë, of the Ava Guaraní People v. Paraguay*, CCPR/C/132/D/2552/2015 (12 October 2021), para. 8.7.

¹⁰ *Id.* 8.2-8.4. See also *Francis Hopu and Tepoaitu Bessert v. France*, CCPR/C/60/D/549/1993/Rev.1. (1997), para. 10.3 (“... cultural traditions should be taken into account when defining the term ‘family’ in a specific situation. ... The Committee therefore concludes that the construction of a hotel complex on the authors’ ancestral burial grounds did interfere with their right to family and privacy”).

islanders.¹¹ While a violation of the right to self-determination appears to be likely in this case, it was not argued before the Committee, alone or conjunctively. The Committee did refer to and find a violation of the minority rights protected by Article 27,¹² deciding that Australia's "failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the authors' right to enjoy their minority culture."¹³ Some members of the Committee also opined that the facts of this case support the conclusion that a violation of the right to life with dignity had occurred.

The Committee on Economic, Social and Cultural Rights made repeated reference to Article 1 of the Covenant in relation to land and resource rights and routinely highlighted that FPIC is a fundamental guarantee derived from the right to self-determination. It also adopted a General Comment on Land and economic, social and cultural rights ("GC26") in October 2022.¹⁴ It affirms that land is "closely linked to the right to self-determination" and that "Indigenous peoples can only freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends if they have land or territory in which they can exercise their self-determination."¹⁵ Further, "according to their right to internal self-determination, the collective ownership of lands, territories and resources of indigenous peoples shall be respected, which implies that these lands and territories shall be demarcated and protected by State parties."¹⁶ States are also required to "recognize the social, cultural, spiritual, economic, environmental, and political value of land for communities with customary tenure systems and shall respect existing forms of self-governance of land."¹⁷ GC26 further explains that "States shall avoid those policies for mitigating climate change, such as efforts for carbon sequestration through massive reforestation or protection of existing

¹¹ *Daniel Billy et al v. Australia*, CCPR/C/135/D/3624/2019 (22 September 2022), para. 8.9 – 8.12 (explaining, at para. 8.12, "that when climate change impacts – including environmental degradation on traditional [indigenous] lands in communities where subsistence is highly dependent on available natural resources and where alternative means of subsistence and humanitarian aid are unavailable – have direct repercussions on the right to one's home, and the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause, then the degradation of the environment may adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home").

¹² *Id.*, para. 8.14 (noting that "the authors' claim that those impacts have eroded their traditional lands and natural resources that they use for traditional fishing and farming and for cultural ceremonies that can only be performed on the islands. The Committee notes their claim that the health of their land and the surrounding seas are closely linked to their cultural integrity [and] that the State party has not refuted the authors' arguments that they could not practice their culture on mainland Australia, where they would not have land that would allow them to maintain their traditional way of life").

¹³ *Id.* (also requiring the following remedies, at para. 11: "the State party is obligated, inter alia, to provide adequate compensation, to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State party is also under an obligation to take steps to prevent similar violations in the future").

¹⁴ *General comment No. 26 on Land and Economic, Social and Cultural Rights*, E/C.12/GC/26, 22 December 2022.

¹⁵ *Id.* para. 11.

¹⁶ *Id.* (see also, para. 19, stating that "Respect for indigenous peoples' self-determination and their customary land tenure system necessitates recognition of their collective ownership of lands, territories and resources").

¹⁷ *Id.* para. 35.

forests, which lead to different forms of land grabbing, affecting especially [indigenous] land and territories....”¹⁸

CEDAW continued to explicitly acknowledge the various and “multiple forms” of discrimination faced by indigenous women, as did CERD. During its 79th session, CEDAW held a day of general discussion on the rights of indigenous women and girls.¹⁹ The purpose was to support the elaboration of a General Recommendation.²⁰ Adopted in late 2022, General Recommendation No. 39 is a long-overdue and detailed treatment of the rights of indigenous women and girls, both as individuals and as part of their communities and peoples.²¹ CEDAW also adopted a decision in a case filed pursuant to its Optional Protocol, ruling that Canada’s *Indian Act* contains sex/gender discrimination.²² This decision is also important because it affirms that “indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. It is essential to combating and preventing forced assimilation; indeed, according to article 8 of the Declaration, indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture....”²³ It explained also that “failure to consult indigenous peoples and indigenous women whenever their rights may be affected constitutes a form of discrimination” and that “the obligation to obtain free, prior and informed consent has been qualified as a general principle of international law.”²⁴

The Committee on the Rights of the Child (“CRC”) continued to call on states to “establish and implement regulations to ensure that the business sector” complies with human rights, often with an explicit reference to the rights of the indigenous child. It continued to include a heading on “Environmental health” in its concluding

¹⁸ *Id.* para. 56 (stating also, at para. 58, that “climate change mitigation and adaptation measures must include a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment.... They shall also respect the free, prior, and informed consent (FPIC) of indigenous peoples”).

¹⁹ See also <https://media.un.org/en/asset/k1n/k1n5bnzn7v> and; <https://media.un.org/en/asset/k1s/k1sqdiud6h>.

²⁰ See https://www.ohchr.org/Documents/HRBodies/CEDAW/CN_IndigenousWomen_EN.docx. For additional documentation, including submissions made by indigenous peoples and states, see <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DGDRightsIndigenousWomenAndGirls.aspx>.

²¹ *E.g.*, para. 6. (stating that “The prohibition of discrimination under articles 1 and 2 must be strictly applied to ensure the rights of Indigenous Women and Girls ... to self-determination, access to, and integrity of their lands, territories and resources, culture, and environment. It should also be implemented to ensure the rights of Indigenous Women and Girls to effective and equal participation in decision-making and to consultation, in and through their own representative institutions, in order to obtain their free, prior and informed consent before the adoption and implementation of legislative or administrative measures that may affect them. This set of rights forms the foundation for a holistic understanding of the individual and collective rights of Indigenous Women”).

²² See also *Sharon McIvor and Jacob Grismer v. Canada*, CCPR/C/124/D/2020/2010 (20 November 2019), para. 7.11 (where the Human Rights Committee concludes that “the continuing distinction based on sex in section 6(1)(c) of the *Indian Act* constitutes discrimination, which has affected the right of the authors to enjoy their own culture together with the other members of their group. The Committee therefore also concludes that the authors have demonstrated a violation of articles 3 and 26, read in conjunction with article 27, of the Covenant”), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CCPR%2FC%2F124%2FD%2F2020%2F2010&Lang=en.

²³ *Matson et al v. Canada*, CEDAW/C/81/D/68/2014 (11 March 2022), para. 18.4.

²⁴ *Id.* 18.11 (recommending also, at para. 20, that Canada “provide appropriate reparation” to the complainants, “including recognizing them as indigenous people with full legal capacity, without any conditions, to transmit their indigenous status and identity to their descendants; ... [and] [a]mend its legislation, after an adequate process of free, prior and informed consultation, to address fully the adverse effects of the historical gender inequality in the *Indian Act* and to enshrine the fundamental criterion of self-identification ... taking all other measures necessary to provide registration to all matrilineal descendants on an equal basis to patrilineal descendants...”).

observations, which often focuses on indigenous children/peoples, and drafted a general comment on the same subject.²⁵ In its review of Costa Rica, it recommended that indigenous children “are included in processes to seek free, prior and informed consent ... in connection with measures affecting their lives, and [that the State] ensure that development projects, hydroelectric projects, business activities, and the implementation of legislative or administrative measures, such as the establishment of protected areas, are subject to consultations and adhere to the [UNDRIP].”²⁶ It also reviewed complaints filed against Argentina, Brazil, France, Germany, Turkey²⁷ that identify human rights violations in connection with climate change. While finding the complaints inadmissible for failure to exhaust domestic remedies,²⁸ and following Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the environment and human rights, nevertheless, it explained that a complaint could be viable in relation to the impacts of climate change on human rights²⁹ and that this was also the case including where the emissions originated in another state.³⁰

CPRD adopted recommendations concerning indigenous peoples in four country reviews and one general comment. In the case of New Zealand, it recommended that the State “Develop legislative and policy frameworks that reflect the Treaty of Waitangi, the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples to ensure that Māori persons with disabilities are closely consulted and actively involved in decision-making processes and that their right to self-determination is recognized.”³¹

The Committee Against Torture continued to adopt concluding observations and recommendations addressing indigenous issues and for the first time decided cases involving indigenous issues that had been submitted under article 22 of the Convention. The first, *Paillalef v. Switzerland* (2020), concerned denial of an asylum application lodged in Switzerland by a Mapuche woman. The second, *Gallardo et al v. Mexico*, concerned the torture and ill-treatment of an indigenous educational rights activist and members of his family. In that case, the Committee recommended that Mexico provide “as full a rehabilitation as possible ... ensuring that it is respectful of his worldview as a member of the Ayuujk indigenous people; [and] ... take the steps necessary to provide guarantees of non-repetition in connection with the facts of the present complaint, including ensuring the systematic review of interrogation and arrest procedures, and the cessation of the criminalization of the defence of indigenous peoples’ rights...”³²

²⁵ Draft General comment No. 26, *Children’s rights and the environment with a special focus on climate change*, <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gc26/2022-12-05/2022-12-05-Draft-CRC-GC-26-EN.docx>.

²⁶ CRC/C/CRI/CO/5-6, 4 March 2020, para. 44(d).

²⁷ Argentina (Communication No. 104/2019); Brazil (Communication No. 105/2019); France (Communication No. 106/2019); Germany (Communication No. 107/2019); Switzerland (Communication No. 95/2019); and Turkey (Communication No. 108/2019); all decided on 22 September 2021.

²⁸ *Chiara Sacchi et al. v. Argentina*, CRC/C/88/D/104/2019, Inadmissibility, (November 2021), para. 10.18.

²⁹ See also *Daniel Billy et al v. Australia*, CCPR/C/135/D/3624/2019 (22 September 2022), para. 3.2 (stating that “The State party’s obligations under international climate change treaties constitute part of the overarching system that is relevant to the examination of its violations under the Covenant;”) and para 7.5 (“ explaining that “the extent that the authors are not seeking relief for violations of the other treaties before the Committee but rather refer to them in interpreting the State party’s obligations under the Covenant, the Committee considers that the appropriateness of such interpretations relates to the merits of the authors’ claims under the Covenant”).

³⁰ *Id.* para. 10.5-10.15.

³¹ CRPD/C/NZL/CO/2-3, 26 September 2022, para. 6(b).

³² CAT/C/72/D/992/2020 (7 February 2022), para. 9.

The Human Rights Council continued important standard setting processes in relation to the treaties on right to development and business and human rights. The former is being developed by the Expert Mechanism on the Right to Development and includes an article dedicated to indigenous peoples. Based on arts. 19 and 32(1) and (2) of the UNDRIP, the draft text provides for indigenous peoples' right to determine their own development priorities and for FPIC in relation to exploitation of resources in indigenous territories and the adoption of legislation or administrative measures.³³ The EMRIP also issued Advice on the right to land of indigenous peoples (No. 13), the rights of the indigenous child under the UNDRIP (No. 14), and on treaties, agreements and other constructive arrangements, including peace accords and reconciliation initiatives (No. 15), as well as a number of important reports (e.g., on self-determination (2021) and repatriation of ceremonial objects, human remains and intangible cultural heritage (2020)).

Twenty-seven Special Procedures of the Human Rights Council issued reports that wholly or partially³⁴ address indigenous rights and they did so often with the UNDRIP as the primary reference point.³⁵ For instance, the Special Rapporteur on violence against women explained that "Governments, financial institutions, the private sector and other non-State actors must ensure that any large infrastructure, development and natural resource extraction projects are carried out in accordance with the [UNDRIP], respecting the right to self-determination and the principle of full, free, prior and informed consent of the indigenous peoples affected by the project, on whose land and territories the project would rest or affect, or who have claims to cultural sites potentially affected by such projects."³⁶ The Special Rapporteur on the rights of indigenous peoples issued several thematic and country mission reports, including on consultation and consent and protected areas and on visits to the Congo and Costa Rica.

Finally, please be aware that the jurisprudence contained in this volume is excerpted from larger treatments of country situations so that only those sections that either directly refer to indigenous peoples or are otherwise known to be about indigenous peoples are included. Also, while we have tried to locate and include all jurisprudence from this period, this compilation may not be comprehensive. We hope that you find it a useful tool that contributes to awareness about and, ultimately, respect for the rights of indigenous peoples in practice. Footnotes in the original documents have mostly been omitted herein.

February 2023

³³ *Second revised text of the draft convention on the right to development*, A/HRC/WG.2/24/2, 30 November 2022, art. 17 (see also its preamble, "Recalling the reaffirmation of the right to development in several international declarations, resolutions and agendas, including the ... the United Nations Declaration on the Rights of Indigenous Peoples...").

³⁴ Those wholly addressing indigenous peoples include *Indigenous peoples and the right to freedom of religion or belief* (2022), *Violence against indigenous women and girls* (2022), *The impact of toxic substances on the human rights of indigenous peoples* (2022), and *Human rights to safe drinking water and sanitation of indigenous peoples* (2022).

³⁵ See e.g., *Discrimination in the context of housing*, A/76/408 (2021), para. 46 (stating that "The right to adequate housing of indigenous peoples must be understood in accordance with the principles and rights set forth in the [UNDRIP], such as the principle of self-determination and the land rights of indigenous peoples").

³⁶ *Violence against indigenous women and girls*, A/HRC/50/26 (2022), para. 78.

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**Committee
on the
Elimination
of Racial
Discrimination**

A. CONCLUDING OBSERVATIONS

1. France, CERD/C/FRA/CO/22-23, 14 December 2022 (Unoff. Transl.)

Statistics

5. The Committee takes note of the explanations provided by the State party regarding the collection of data disaggregated by racial or ethnic origin, and welcomes the efforts made to collect information on discrimination, such as the “Living Environment and Security”, “Victimization” surveys and the “Trajectories and Origins” survey. However, the Committee regrets that the tools developed for data collection are still limited and do not provide a comprehensive picture of the situation of racial discrimination faced by different ethnic groups throughout the State party, including in the Overseas Territories. The Committee notes that the lack of data disaggregated by ethnic origin is a limitation for the development and implementation of effective public policies that take into account the specific needs of different groups.
6. Recalling paragraph 5 of its previous concluding observations and its general recommendation No. 24 (1999) on article 1 of the Convention, and stressing the importance of disaggregated data in order to detect and combat racial discrimination effectively, the Committee recommends that the State party continue its efforts to develop effective tools, on the basis of the principle of self-identification and anonymity, to collect data and information on the demographic composition of its population throughout its territory, including the Overseas Territories. The Committee also recommends that the State party use these data as a basis for developing its policies to combat racial discrimination.

Indigenous peoples in the Overseas Territories

15. The Committee reiterates its concern about discrimination against indigenous peoples in the Overseas Territories and the lack of full respect for their rights, including to land and to free, prior and informed consent. The Committee is also concerned about the obstacles faced by indigenous peoples in the enjoyment of their economic, social and cultural rights, including their rights to health and education. The Committee also remains concerned about the many difficulties faced by children in French Guiana and New Caledonia in access to education, particularly as a result of the remoteness of school centers, the lack of tenured teachers and the absence of curricula that take cultural and linguistic diversity into account. Furthermore, the Committee notes with concern the negative impact of extractive activities on health and the environment, particularly in French Guiana and New Caledonia. Finally, the Committee notes with concern the negative effects of climate change on the traditional lifestyles of indigenous peoples (art. 5).
16. In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples and the recommendations contained in its previous concluding observations, the Committee recommends that the State party:
 - (a) To recognize the collective rights of indigenous peoples, in particular their right to ancestral lands, owned and used by indigenous peoples, as well as their right to resources traditionally used by them;

- (b) To intensify its efforts to ensure equal treatment with the rest of the population with regard to access to economic, social and cultural rights, including access to health and education, taking into account the specific needs of each Territory, as well as the cultural and linguistic diversity of indigenous peoples;
- (c) To ensure that indigenous peoples are consulted on any legislative or administrative measures that may affect their rights, with a view to obtaining their free, prior and informed consent, including prior to the approval of any project affecting the use of their lands or territories and other resources;
- (d) Take the necessary measures to ensure the protection of the right of indigenous peoples to own and use their lands, territories and resources, including through the necessary legal recognition and protection;
- (e) To adopt, in consultation with the indigenous peoples concerned, measures to address and mitigate the consequences of extractive activities on their health and environment, as well as measures to mitigate the effects of the climate crisis on their lands, territories and resources in order to protect their livelihoods and livelihoods.

Ratification of other instruments

35. In view of the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying international human rights instruments to which it is not yet a party, in particular those whose provisions are of direct relevance to communities that may be subject to racial discrimination, such as ... the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization. ...

2. Brazil, CERD/C/BRA/CO/18-20, 19 December 2022

Disaggregated demographic data collection

5. The Committee notes the information provided by the State party about the collection of data on the racial and ethnic composition of the population that is disaggregated to reveal their disparate social, economic, political and civil status within society. It is nevertheless concerned about gaps and weaknesses in mechanisms for coordinating, integrating and verifying data collected at the federal, state and municipal levels, *inter alia*, due to cuts to the budgets of agencies responsible for data collection. It is also concerned that current data collection methods do not accurately capture the situation of those facing intersectional discrimination, including Afro-Brazilians, indigenous peoples and Quilombolas with disabilities and/or who identify as LGBTQI+ persons (arts. 1–2).
6. The Committee recommends that the State party carry out a thorough assessment of all its mechanisms for collecting demographic data at the federal, state and municipal levels and promptly address any gaps or weaknesses in the collection, verification and integration of such data. Such an assessment should include a focus on the data collected on the situation of Afro-Brazilians, indigenous peoples and Quilombolas facing intersectional forms of discrimination, including those with disabilities and/or who identify as LGBTQI+ persons. The State party should also provide adequate funding to all State entities responsible for disaggregated data collection.

Institutional framework

9. The Committee is concerned that the State party has not yet established an independent national human rights institution compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and with a clear mandate to ensure the effective implementation of the Convention at the federal, state and municipal levels. Moreover, it is concerned that, in the absence of a national human rights institution, responsibility for implementing the State party's obligations under the Convention appears to be fragmented across a range of public bodies, many of which have, in recent years, been eliminated, defunded and/or disempowered, thereby weakening the protection and promotion of human rights and fundamental freedoms, as well as constricting the space for social dialogue between the Government and Afro-Brazilians, indigenous peoples and Quilombolas (art. 1).
10. Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention and reiterating the role that such an institution can play, the Committee recommends that the State party establish an institution, in accordance with the Paris Principles, with a clear mandate to ensure the implementation of the Convention and monitor compliance with its provisions throughout the State party. It also recommends that the State party invest in the institutional capacity of bodies responsible for human rights and racial justice and create space for social dialogue between the Government and Afro-Brazilians, indigenous peoples and Quilombolas.

Situation of Afro-Brazilian, indigenous and Quilombola women

13. The Committee notes that the disparities in the enjoyment of economic and social rights in the State party focus particular attention on the situation of Black and indigenous women, who are suffering at the intersection of structural racism, poverty and the disparate negative impact of the coronavirus disease (COVID-19) pandemic. The Committee notes that even before COVID-19 they represented the highest proportion of the population living in poverty, earning only half of the average per capita household income of the white population. The vast majority of single-parent households are headed by Black women (arts. 2 and 5).
14. The Committee recommends that, in formulating special measures, the State party should first improve the enjoyment of economic and social rights by Black and indigenous women, as encouraged in the 2030 Agenda for Sustainable Development to reach the furthest behind first.

Right to health and the impact of the COVID-19 pandemic

15. The Committee notes the adoption of the National Comprehensive Health Policy for the Afro-Brazilian Population but regrets the reports that there has been inadequate funding to implement policies and a lack of strong leadership to address long-standing disparities in health outcomes between the Black, indigenous and white populations that are legacies of the era of slavery and colonialism. The Committee is also concerned about reports of a policy to freeze additional funding for the health and education sectors. Furthermore, while noting the measures taken by the State party to respond to the COVID-19 pandemic and to prioritize vaccine distribution to indigenous communities, the Committee is deeply concerned by reports that the COVID-19 death rates of Afro-Brazilians were twice as high as among whites.

16. The Committee is particularly concerned by:
- (a) The high rate of maternal mortality among Afro-Brazilian, indigenous and Quilombola women and disproportionately high increases in the maternal mortality rate negatively affecting those women during the COVID-19 pandemic;
 - (b) The restrictive conditions under which Brazilian law permits abortions and that, when Afro-Brazilian, indigenous and Quilombola women and girls seek access to contraceptives and legal abortions, they are reportedly subjected to harassment, violence and criminalization along with the doctors and other medical staff providing those services to them;
 - ...
 - (e) High levels of violence against Afro-Brazilian, indigenous and Quilombola women, including those who identify as LGBTQI+ persons, particularly in the form of femicide, and weaknesses in the measures taken by the State, including the national plan to combat femicide....
17. The Committee recommends that the State party take all necessary measures to ensure the full and effective implementation of the National Comprehensive Health Policy for the Afro-Brazilian Population, including the provision of adequate funding and institutional structures. It should also consult with Afro-Brazilian, indigenous and Quilombola women to identify and address current policies and services that have been ineffective in eliminating health inequalities. The State party should also:
- (a) Develop and implement effective measures to protect, on an equal basis, Afro-Brazilians, indigenous peoples, Quilombolas and non-citizens from the COVID19 pandemic, as well as future public health emergencies. Such measures should be developed and implemented in consultation with the communities most affected by the COVID-19 pandemic and should, inter alia, ensure that all Afro-Brazilians, indigenous peoples, Quilombolas and non-citizens are and remain fully vaccinated, including through targeted measures that address any specific barriers to their vaccination;
 - (b) Take all effective steps to decrease maternal mortality rates among AfroBrazilian, indigenous and Quilombola women and girls;
 - (c) Ensure that all Afro-Brazilian, indigenous and Quilombola women can access legal voluntary termination of pregnancy under safe and dignified conditions without harassment or efforts to criminalize them or their medical providers;
 - (d) Ensure that Afro-Brazilian, indigenous and Quilombola women and girls can access contraceptive services, along with effective, better targeted efforts to reduce teenage pregnancies, in full consultation with representatives from the Afro-Brazilian communities;
 - (e) Increase anti-racism and human rights-based training of all health-care professionals involved in the provision of sexual and reproductive health care to AfroBrazilian, indigenous and Quilombola women, including those with disabilities and who identify as LGBTQI+ women, while also ensuring accountability and remedies for any forms of obstetric violence....

Disparities in access to education

18. The Committee remains concerned about disparities in the illiteracy levels ... These disparities increased during the COVID-19 pandemic, according to information provided by the State party, partially because many Afro-Brazilian and indigenous children lacked access to the Internet to participate in remote learning. The Committee welcomes the successful efforts to increase access to higher education among Afro-Brazilians and indigenous peoples through the promulgation, in 2012, of Law No. 12,711, an affirmative action law that has significantly increased the enrolment of Afro-Brazilians in institutions of higher education. The Committee understands that the law is currently under review, 10 years after its introduction. It does, however, note with concern reports that the quota system has been less effective at granting access to university to Afro-Brazilians and indigenous peoples who face intersectional forms of discrimination, including those with disabilities (arts. 1 and 5).
19. The Committee reiterates its recommendation that the State party:
 - (a) Adopt adequate measures to address illiteracy, including by preventing school dropouts and re-enrolling children who have dropped out during the COVID-19 pandemic;
 - (b) Support Afro-Brazilians and indigenous peoples to gain access to the Internet to facilitate online learning opportunities;
 - (c) Renew the system of quotas for places at higher educational institutions for Afro-Brazilians and indigenous peoples. The State party should also take the opportunity of the 10-year review to strengthen the quota system, including by ensuring that it facilitates access to university among Afro-Brazilians and indigenous peoples facing intersectional forms of discrimination, including those with disabilities.

Poverty, work and income

20. The Committee is concerned about the disproportionate and persistent poverty experienced by most of the Afro-Brazilian, indigenous and Quilombola communities within the State party. ...
21. The Committee welcomes the fact that extreme poverty decreased by 63 per cent between 2004 and 2014 and still further between 2019 and 2020, according to the supplementary information provided by the State party after the dialogue. It is, however, concerned that these data predate the COVID-19 pandemic, which has had a severely detrimental impact on the social and economic situation of many Afro-Brazilians, indigenous peoples and Quilombolas.
23. The Committee recommends that the State party:
 - (a) Take all necessary and effective steps to eradicate poverty among Afro-Brazilians, indigenous peoples and Quilombolas, including ensuring that effective and sufficient cash transfer programmes are in place; ...
 - (d) Take targeted measures to support Afro-Brazilians, indigenous peoples and Quilombolas who lost employment opportunities during the COVID-19 pandemic to re-enter the workforce; ...
 - (f) Invest in other programmes to increase the numbers of Afro-Brazilian and indigenous women and men that can enter secure and better remunerated forms of work.

Discrimination and segregation in housing

24. ... The Committee notes the measures to address discrimination and segregation in housing in the State party but is concerned that, according to the State party's periodic reports, they have not been sufficient. It is concerned that housing programmes in the State party have assigned support on the basis of income criteria, which exclude the income levels of people in the favelas and totally disregard the realities of racism as a determinant of housing and neighbourhood choices for Black and indigenous peoples (arts. 3 and 5).
25. The Committee recommends that the State party, in collaboration with Black and indigenous leadership groups, take all necessary and effective measures to fully assess and target the complex dynamics of racism and classism that lead to racially segregated and grossly inferior housing....

Political representation

26. The Committee is concerned by:
 - (a) The very low rate of political representation of Afro-Brazilians, indigenous peoples and Quilombolas within the State party's political institutions, including the two houses of the National Congress, vis-à-vis their respective shares of the overall population; ...
 - (c) The lack of information about whether the scope of measures to ensure political representation include indigenous peoples and Quilombolas;
 - (d) The low level of political representation of Afro-Brazilian, indigenous and Quilombola women....
27. The Committee recommends that the State party take all effective measures to substantially increase the levels of political representation among Afro-Brazilians, indigenous peoples and Quilombolas, including by:
 - (a) Identifying and addressing all obstacles to political representation of these groups within relevant institutions, including the National Congress and bodies at the state and municipal levels;
 - (b) Carrying out a review of the current measures in place, and developing and implementing proposals, in consultation with representatives from Afro-Brazilian, indigenous and Quilombola communities, for more effective mechanisms to guarantee adequate political representation....

Special measures

28. The Committee notes the information provided by the State party about special measures in the legislature, judiciary and public service sectors but is concerned by a lack of clarity about their scope, status and/or efficacy (arts. 2 and 4–5).
29. The Committee recommends that the State party adopt and strengthen the use of special measures across all relevant public and private bodies to eliminate significant and persistent disparities in the enjoyment of human rights and fundamental freedoms between white Brazilians and Afro-Brazilians, indigenous peoples and Quilombolas. The Committee recalls that, in accordance with its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, federal authorities are responsible for designing a framework for the consistent application of special measures in all parts of the State party and that these measures should be designed and implemented on the basis of prior consultation with, and the active participation of, affected communities.

Human rights defenders

45. The Committee is concerned by reports of threats, harassment, violent attacks and killings against Afro-Brazilian, indigenous and Quilombola human rights defenders, including women. It notes with concern that the Special Rapporteur on the situation of human rights defenders named Brazil as the second most dangerous country in the world for defenders between 2015 and 2019. It is concerned by the absence of specific legislation to protect human rights defenders and that the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists has been allocated inadequate budgetary resources and has not been able to provide meaningful protection to Afro-Brazilian, indigenous and Quilombola human rights defenders facing threats. The Committee is also concerned by the abuse of counter-terrorism law to criminalize human rights defenders, draft legislation that would further extend counter-terrorism legal frameworks in ways that would create potential for abuse and the pervasive impunity for threats, harassment, violent attacks and killings against Afro-Brazilian, indigenous and Quilombola human rights defenders (arts. 5–6).
46. The Committee recommends that the State party take all necessary steps to prevent, investigate and punish accordingly all forms of threats, harassment, violent attacks and killings against Afro-Brazilian, indigenous and Quilombola human rights defenders. The State party should promulgate specific legislation to protect human rights defenders, provide additional funding for the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists and consult with affected groups on how the Programme can effectively meet the needs of Afro-Brazilian, indigenous and Quilombola human rights defenders. The State party should also take comprehensive and effective measures to ensure that counter-terrorism laws do not criminalize the work of human rights defenders and address impunity for threats, harassment, violent attacks and killings through timely and thorough criminal investigations, as well as the provision of remedies to victims.

Development, environment, business and human rights

47. The Committee is concerned by reports of repeated, varied and growing invasions of indigenous and Quilombola lands, by multiple actors, including businesses, taking part in mining activities, deforestation and logging, both legal and illegal. It is deeply concerned that such activities are taking place without the free, informed and prior consent of indigenous and Quilombola communities. It is also concerned that the environmental destruction caused by these invasions and the subsequent extraction of natural resources exposes indigenous and Quilombola communities to significant health hazards, such as mercury poisoning and exposure to infectious diseases, and undermines the right to access a clean, healthy and sustainable environment for all. The Committee is concerned by reports of retrogression in national environmental regulations, as well as the abandonment of the Action Plan to Prevent and Control Deforestation in the Amazon. It regrets the lack of information provided about a national plan on business and human rights with the participation of representatives from affected communities (art. 5).
48. The Committee recommends that the State party:
- (a) Take all necessary measures to protect the land of indigenous and Quilombola communities, including through decisive steps to end illegal logging, deforestation and mining;

- (b) Rigorously uphold the principle of free, informed and prior consent, as established by article 16 of the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), in all projects affecting indigenous and Quilombola communities and their lands;
- (c) Protect and promote the right to a clean, healthy and sustainable environment, including through preventing and mitigating the effects of environmental destruction, resulting from extractive activities taking place within indigenous and Quilombola lands;
- (d) Stop retrogression within the legal and policy frameworks regulating the environment and deforestation;
- (e) Develop and effectively implement a national plan on business and human rights with the participation of civil society, particularly organizations representing the most affected groups.

Indigenous and Quilombola communities

49. The Committee is concerned about:

- (a) Violence against indigenous and Quilombola communities, including killings, often taking place in the context of the defence of their lands and/or as a result of their work as indigenous human rights defenders;
- (b) Indigenous and Quilombola women being subjected to endemic levels of violence, including threats, harassment, sexual violence and femicide;
- (c) Pervasive impunity for serious violence against indigenous and Quilombola communities;
- (d) The significant institutional weakening of the National Indian Foundation in recent years, including through significant budget cuts;
- (e) National laws and policies not reflecting the diversity of indigenous and Quilombola communities (arts. 5–6).

50. The Committee recommends that the State party:

- (a) Take steps to prevent and address the root causes of violence against indigenous peoples and Quilombolas, including women, in full consultation with indigenous and Quilombola communities and women;
- (b) Carry out timely and effective investigations into all incidents of violence against indigenous peoples and Quilombolas, including human rights defenders and women, ensuring accountability among perpetrators and the provision of remedies to victims;
- (c) Develop policies and law that fully reflect the needs of the State party's diverse range of indigenous peoples and Quilombolas in consultation with representatives from these communities;
- (d) Ensure that the National Indian Foundation can effectively fulfil its mandate, including through the provision of adequate funding.

Legal protection of indigenous and Quilombola land

51. The Committee is concerned that, despite the State party's declared objective in 2004 to complete the process of indigenous and Quilombola land demarcation by 2007, progress has stalled, with no new land demarcations having taken place since 2016. The Committee takes note of the information provided by the State

party, during the dialogue, about the impact of the COVID-19 pandemic on the process, but is nevertheless concerned, particularly as land demarcation stalled several years prior to the emergence of the pandemic and reports suggest that the budget for the demarcation process was subject to presidential veto in 2022. The Committee is also deeply concerned about the application and institutionalization of the Temporal Landmark thesis, whereby only land occupied by indigenous peoples at the time of the passing of the Constitution in 1988 is considered eligible for demarcation. The Committee is further concerned by reports that, in the context of stalling indigenous and Quilombola land demarcation, the judiciary are using the “security suspension mechanism” to authorize projects on indigenous lands, without the free, informed and prior consent of those affected. Moreover, the Committee is concerned by reports of legislative proposals developed without consultation with indigenous and Quilombola communities, such as Bill 191/2020, which would allow for the economic exploitation of natural resources on indigenous lands and a weakening of environmental regulatory frameworks.

52. The Committee is concerned about the impact of the lack of effective legal protection on the rights of the Munduruku and Yanomami communities who have reportedly been subjected to grave violations of their human rights, resulting in the Inter-American Commission on Human Rights issuing precautionary measures. The Committee is also concerned that the Inter-American Commission on Human Rights submitted to the InterAmerican Court of Human Rights the case of the Quilombola communities of Alcântara, regarding the infringement of the collective property of 152 communities, due to the failure to issue land titles, the installation of an aerospace base without due consultation and prior consent, the expropriation of their lands and territories and the lack of judicial remedies for the situation (arts. 5–6).
53. Recalling its previous concluding observations and its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party recommence and expedite the process of demarcating indigenous and Quilombola lands, including by ensuring that adequate budgetary resources are assigned to this work. It urges the State party to reject and end the application and institutionalization of the Temporal Landmark thesis. The State party should also reject and suspend use of the “security suspension mechanism” and rigorously apply the principle of free, informed and prior consent, in accordance with article 16 of the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), in legal proceedings for all projects affecting indigenous and Quilombola land. The State party should also immediately halt and redress any retrogression within the national legal framework to protect indigenous and Quilombola land. The State party should also take all necessary steps to fully protect the land rights of the Munduruku, Yanomami and Alcântara communities, including full compliance with relevant precautionary measures issued by the Inter-American Commission on Human Rights. The State party should also provide remedies, including guarantees of non-repetition, for all human rights violations resulting from the lack of effective legal protection of indigenous and Quilombola land.

Efforts to combat racial prejudices, increase understanding and address legacies of historical injustices

58. The Committee notes that racism in Brazil is structural, intersectional and multilayered throughout all institutions of economic, social, cultural, and political life, and is an inheritance from the formation of the Brazilian State based on the conquest of indigenous peoples and an estimated 5 million enslaved Africans. The

Committee welcomes the recognition by the State party of the country's history of colonialism and slavery, but notes with concern the lack of information about any broad-based initiatives to provide redress for the legacies of the past, which continues to fuel multiple forms of racism and racial discrimination in the State party, undermining the full enjoyment of all human rights and fundamental freedoms on an equal basis by all Brazilians.

...

60. Recalling the importance of education in combating prejudices that lead to racial discrimination and promoting understanding, tolerance and friendship among all groups in society, as established in article 7 of the Convention, and the importance of addressing structural racism lurking within all institutions of society, the Committee recommends that the State party:
- (a) Develop and implement, in consultation with Afro-Brazilians and indigenous peoples, guidelines to combat institutional racism within all public institutions;
 - (b) Implement mandatory training for all public servants on intergroup relations and the fight against institutional racism within the public administration and establish indicators to measure the extent to which officials implement those guidelines; ...
 - (e) Engage in discussions with representatives of the Afro-Brazilian, indigenous and Quilombola communities leading to the establishment of a national commission to study and develop proposals for reparations as redress for historical injustices.

Paragraphs of particular importance

69. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 16 (b)–(c) and (e)–(f) (right to health and the impact of the COVID-19 pandemic), 22 (poverty, work and income), 26 (c) (political violence), 32 (racially motivated homicides), 45 (human rights defenders), 47 (development, environment, business and human rights), 49 (indigenous and Quilombola communities), 52 (legal protection of indigenous and Quilombola land) and 59 (e) (reparations) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

3. Botswana, CERD/C/BWA/CO/17-22, 14 December 2022

Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party since the consideration of the previous report: ... (d) The Remote Areas Development Programme and its Affirmative Action Framework for Remote Area Communities, in 2014; (e) The law establishing Legal Aid Botswana, in 2013; (f) The law on traditional chieftainship, the Bogosi Act, in 2008....

Statistics

4. Despite the data provided by the State party with regard to the number of languages spoken in Botswana and the explanations provided in the State party's report of the reasons that prevent it collecting data referring to the ethnicity of persons constituting its population, the Committee regrets the persistent absence of comprehensive statistics on the ethnic composition of the population.

5. The Committee recommends that the State party pursue efforts to develop and apply alternative methods and tools, such as surveys, to collect data and information in line with the principles of self-identification and anonymity that would enable an accurate assessment of progress towards the equal enjoyment by all groups without discrimination of the rights protected under the Convention and provide the Committee with the relevant information in its next periodic report.

Measures to address inequalities

10. The Committee takes note of the State party's measures aimed at poverty reduction and access to basic social services in remote areas. The Committee notes that, among the thematic groups responsible for implementing these plans, the Thematic Working Group on Governance, Safety and Security deals directly with issues related to racial discrimination. However, due to the lack of details provided, the Committee remains concerned about the concrete impact of these plans on disadvantaged or remote communities (arts. 2 and 5).
11. While noting the State party's efforts to improve the livelihoods of disadvantaged groups, the Committee recalls its general recommendation No. 32 (2009) and recommends that the State party take all special measures necessary to address the existing structural discrimination faced by all ethnic groups in the enjoyment of their rights, in conformity with articles 1 (4), 2 (2) and 5 of the Convention. The Committee also recommends that the State party give due consideration to the Convention in implementing the above-mentioned strategies and in evaluating their impact on the targeted communities, in particular as regards the Basarwa/San, the Basubiya, the Bayeyi, the Mbukushu, the Ovambo, the Herero and the Kalanga.

Lands, territories and national resources

20. The Committee notes with concern that the information contained in the alternative reports differs from the information provided by the State party regarding the implementation of the High Court's decision regarding the Central Kalahari Game Reserve. In particular, those groups who were not party to the Roy Sesana and others v. Attorney General case have not been allowed to return to the Reserve to settle there. Furthermore, those who are allowed to return must obtain a permit in advance and encounter difficulties in resuming and conducting their traditional activities. Contrary to the State party's assertions that the Central Kalahari Game Reserve is not intended for human habitation, reports from United Nations mandate holders indicate that the Reserve was originally created in 1961 to enable the San peoples, ancestral inhabitants of the Kalahari Desert, to live there according to their hunting and gathering traditions while respecting wildlife. In these reports, the mandate holders also underline that the aim of the restrictive execution of the High Court's decision, and particularly the removal of the children from the Reserve at the age of 18, is for there to be no more inhabitants after the death of the elders (art. 5).
21. The Committee urges the State party to fully implement the High Court's decision in Roy Sesana and others v. Attorney General, by allowing all ethnic groups originating from the Central Kalahari Game Reserve to return and settle there unconditionally. The Committee also recommends that the State party provide them with effective access to basic social services and enable them to resume their traditional activities without hindrance.
22. The Committee is concerned about the impact of the inclusion of several sites in the country on the World Heritage List on the conditions of life of the inhabitants of those sites, including those of the Okavango Delta and Mount Tsodilo (art. 5).

23. The Committee recommends that the State party ensure that the way of life and the traditional structures of groups living on World Heritage sites are not adversely affected by the inclusion of such sites on the World Heritage List.
24. The Committee takes note of the amendment of the Tribal Land Act and of the fact that, according to the declarations of the State party's delegation, any citizen of Botswana is eligible, without distinction on the basis of ethnic origin, to acquire land anywhere in the country. However, the Committee remains concerned about the different statuses of lands belonging to different groups and the lack of collective demarcation and complaints procedures for indigenous peoples (art. 5).
25. The Committee recommends that the State party ensure full and complete equality between different groups regarding access to and ownership of land, as well as legal or judicial procedures relating thereto. The Committee also recommends that the State party organize awareness-raising campaigns among minority groups regarding administrative and legal procedures related to the allocation of lands.
26. The Committee notes the initiation of several mining exploration projects, notably in the Okavango Delta and the Central Kalahari Game Reserve, in which an exploration company has been authorized to mine for several decades, employing about 1,200 workers. While taking note of the State party's statement that the populations affected by these projects have been consulted, the Committee is concerned about the impact of these projects on the way of life and traditional structures of such ethnic groups (art. 5).
27. The Committee recommends that the State party protect the areas of cultural significance of the communities affected by projects carried out by extractive and manufacturing industries. The Committee also recommends that the State party take appropriate measures to prevent the adverse effects of economic activities on the rights and ways of life of minority groups and indigenous peoples. Furthermore, the Committee invites the State party to update the Committee on the adoption and implementation of the planned law on community-based national resources management.

Minorities in political and public affairs

28. The Committee notes that sections 77–79 of the Constitution concerning the representation of tribes in the House of Chiefs have been revised and that the Bogosi Act has replaced the previous Chieftainship Act (1933). However, the Committee remains concerned that a limited number of non-Tswana tribes have been admitted into the House of Chiefs. The Committee is also concerned that Tswana chiefs are “appointed” as ex officio members with the status of paramount chiefs whereas the non-Tswana chiefs must be elected, not according to their customs, but within regional electoral colleges, and occupy subordinate positions within the House of Chiefs (art. 5).
29. The Committee recommends that the State party ensure that non-Tswana tribes be admitted to the House of Chiefs in an inclusive manner and according to their own decision-making mechanisms. The Committee also recommends that the chiefs of tribes be treated within the House of Chiefs on an equal footing. The Committee further recommends that the State party intensify efforts to ensure equal opportunities for ethnic minorities to be represented at all levels of government, at the national and local levels. Furthermore, the Committee requests that the State party provide updated statistics in its next periodic report on the representation of minority groups in decision-making positions and in representative institutions.

30. The Committee notes that the Bogosi Act provides that, after consultation with a tribal community in its Kgotla, the Government recognizes that community as a tribe. The Committee regrets that this provision concerns only non-Tswana tribes and that the State party has not provided information on the number of communities recognized as tribes since the entry into force of the Bogosi Act in 2008, nor has the State party given any explanation on the blocking of the installation of Chief Wayeyi in Gumare and Chief Basubiya in Chobe (art. 5).
31. The Committee recommends that the State party ensure the full application of the Bogosi Act by treating all tribes on an equal footing in terms of recognition and respect for the rituals and cultural practices specific to each tribe.

Language of ethnic minorities

32. While welcoming the State party's decision to provide education in minority languages at the primary level as of 2023, the Committee remains concerned that such a decision concerns only 13 of the languages spoken in the State party (arts. 1–7).
33. The Committee recommends that the State party consider the generalization of mother tongue education, at least in regions inhabited traditionally or in substantial numbers by persons belonging to non-Tswana tribes, and ensure that the representatives of the groups concerned are consulted for the purpose of including references to the history, culture and traditions of these groups in the curriculum.
34. While noting the willingness of the State party to allow greater openness of the media to the languages of disadvantaged groups, the Committee regrets the lack of information on the measures taken in this regard. In particular, the Committee remains concerned that the Communications Regulatory Authority Act (2012) does not provide for the existence of community-based radio and television stations, which would allow linguistic minorities to express themselves on their subjects of interest (art. 7).
35. The Committee invites the State party to include in its next periodic report information regarding measures aimed at taking into consideration minority languages and interests in its media policy.

4. Jamaica, CERD/C/JAM/CO/21-24, 2 December 2022

Situation of ethnic and ethno-religious groups

19. The Committee notes the State party's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples. It also notes that the State party consider[s] that there are no Indigenous Peoples in Jamaica while it recognizes Maroon and Taino as indigenous cultures to Jamaica. The Committee is concerned that this approach could marginalize communities within the State party that self-identify as Indigenous Peoples and could maintain or intensify situations of direct, indirect, multiple and intersecting forms of discrimination faced by them (art. 5).
20. Recalling its general recommendations No. 8 (1990) and No. 23 (1997) on the rights of Indigenous Peoples, the Committee recommends that the State party (a) reconsider its approach with regard to Indigenous Peoples giving due account to the principle of self-identification, and (b) engage in open and inclusive discussions with Maroon and Taino communities on this matter.
21. The Committee notes the information provided by the delegation of the State party regarding the provision of financial and logistical support to Maroon communities for their festivals and development initiatives. However, it is concerned by reports

about the negative impact of bauxite mining activities in Cockpit Country on the ecosystem, on the traditional lands of the Maroon communities that live there and on the health of the members of these communities. It is also concerned about allegations according to which affected Maroon communities have not been involved or consulted in the decision-making processes related to the bauxite mining projects (art. 5).

22. The Committee recommends that the State party adopt all measures necessary to prevent any harmful impact of mining activities on the ecosystem, the traditional lands and the health of the Maroon communities of Cockpit Country, including through the establishment of procedures and mechanisms to ensure their meaningful, effective and inclusive participation and consultation in the decisions that could affect them. It further recommends that the State party take appropriate steps to guarantee that affected communities by mining activities have access to effective legal remedies.

Ratification of other treaties

37. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries...

5. Nicaragua, CERD/C/NIC/CO/15-21, 30 August 2022 (Unoff. Transl.)

Positives

4. The Committee welcomes: (a) The adoption, in 2012, of the Law on Traditional Ancestral Medicine and its regulations; (b) The adoption of the National Plan for the Fight against Poverty and for Human Development 2022-2026 and the Strategy and Development Plan for the Caribbean Coast and Upper Wangki and Bocay; (c) The creation, in 2014, of the Institute of Natural and Traditional Medicine and Complementary Therapies (IMTC) of the Ministry of Health...
5. The Committee also welcomes the ratification by the State party of the following international instruments: ... (c) Convention 169 on Indigenous and Tribal Peoples of the International Labour Organization, on 25 August 2010...

Cooperation in the field of human rights

6. The Committee is deeply concerned that, since April 2018, when the socio-political crisis erupted, the State party has implemented arbitrary and repressive actions to close spaces for participation and dialogue at the national level. It is seriously concerned about the closure of a large number of civil society organizations working to defend human rights, including the rights of indigenous peoples and people of African descent. It is also concerned about the lack of cooperation and interaction of the State party with regional and universal systems for the protection of human rights.
7. The Committee recalls the recommendation of the Committee on Economic, Social and Cultural Rights, and urges the State party to re-establish spaces for participation and dialogue in an open and constructive manner with all actors at the national level, including representatives of civil society, representatives and leaders of indigenous peoples, Afro-descendants and human rights defenders.

The Committee recommends that the State party take the necessary measures to ensure that civil society organizations, in particular those working for the defence of human rights, can exercise their functions effectively, without arbitrary and disproportionate restrictions and without fear of reprisals. The Committee also calls upon the State party to re-establish dialogue and cooperation at the international level with regional and universal mechanisms for the protection of human rights, in particular treaty bodies.

Data collection

10. The Committee notes with concern that the State party has not conducted a National Population Census since 2005, resulting in a lack of reliable and up-to-date information on the demographic composition of the population. Furthermore, the Committee is concerned at the lack of disaggregated statistics and socio-economic indicators to assess the realization and enjoyment of the rights contained in the Convention by indigenous peoples and people of African descent and other ethnic groups in the State party.
11. The Committee reiterates its previous recommendation and urges the State party to collect and provide the Committee with reliable, up-to-date and comprehensive statistics on the demographic composition of the Nicaraguan population, as well as socio-economic indicators disaggregated by ethnicity, gender, age, regions, urban and rural areas, including the most remote areas, enabling it to develop adequate public policies and programmes in favour of sectors of the population subject to racial discrimination and in order to assess the implementation of the Convention in relation to the groups that make up society. The Committee encourages the State party, with the active participation of indigenous, Afro-descendant and other ethnic peoples, to undertake a review of the categories used for self-identification in order to be able to collect information on all ethnic groups in the State party.

Structural discrimination

16. The Committee takes note of the information provided by the State party regarding efforts to restore and revitalize the economic, social and cultural rights of indigenous peoples and people of African descent, as well as the elimination of racial discrimination, through the implementation of the Development Strategy and Plan for the Caribbean Coast and Upper Wangki and Bocay. However, it is concerned that, according to available information, indigenous peoples and Afro-descendants continue to face structural discrimination, which is reflected in poverty rates, precarious living conditions and the persistent exclusion and violence currently faced by these peoples and communities. The Committee reiterates its concern about the lack of explicit protection and legal recognition of indigenous peoples in the Pacific, Central and North. Furthermore, the Committee is seriously concerned at reports of a regression by the State party in the protection of and respect for the rights of indigenous peoples and people of African descent (arts. 2 and 5).
17. The Committee urges the State party to take urgently the necessary measures to ensure effective protection of and respect for the rights of indigenous peoples and people of African descent, in particular the Atlantic Coast area. The Committee reiterates its previous recommendation and urges the State party to ensure the recognition and effective legal protection of the indigenous peoples of the Pacific, Central and Northern Nicaragua, including through the adoption of a specific law. The Committee urges the State party to continue its efforts to effectively promote social inclusion and reduce the rates of poverty and inequality affecting members of indigenous

peoples and people of African descent, including through the adoption of special or affirmative action measures aimed at eliminating the structural discrimination they continue to face. The Committee requests the State party to provide information on the concrete results of the implementation of the Development Strategy and Plan for the Caribbean Coast and Upper Wangki and Bocay.

Access to territories

18. While noting the progress made with regard to the demarcation and titling of 23 indigenous territories and the granting of collective rights to indigenous communities, the Committee is concerned that the State party, according to the allegations received, has not carried out the phase of reorganization of indigenous territories provided for in Law 445, of the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz Rivers, which has led to attacks and illegal invasions by settlers and non-indigenous persons in indigenous territories, generating serious conflicts and violence around access to land and natural resources. The Committee further regrets that it was unable to obtain information on the demarcation and titling of land in the Creole territory of Bluefields (arts. 2 and 5).
19. The Committee urges the State party:
 - (a) Adopt the necessary measures to guarantee the protection of the rights of indigenous peoples to possess, use, develop and control their lands, territories and resources with complete security, including the implementation of an adequate process of territorial reorganization, in accordance with the provisions of Act No. 445 on the Communal Property Regime of Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the United States. Bocay, Coco, Indio and Maíz rivers;
 - (b) To continue its efforts to demarcate and title indigenous territories, in particular in the Creole territory of Bluefields; (c) Ensure legal recognition and legal protection of the collective rights of indigenous peoples to their lands and territories, in accordance with international standards.

Attacks against indigenous peoples and people of African descent

20. The Committee is deeply alarmed at the allegations received of acts of violence and attacks on life and physical integrity perpetrated against members of indigenous and Afro-descendant peoples within their territories. In particular, the Committee is seriously concerned about the numerous attacks that have been perpetrated against indigenous peoples in the Mayangna Territory in the Bosawás Biosphere Reserve area. The Committee regrets that it has no information on the investigations carried out into these acts and is seriously concerned that these acts may go unpunished (arts. 1, 2, 5 and 6).
21. The Committee recommends that the State party effectively and urgently prevent acts of violence and attempts on life against members of indigenous peoples and people of African descent, in particular in the Autonomous Regions of the Caribbean Coast. It also urges the State party to urgently take the necessary measures to ensure that all allegations of attacks on life and acts of violence against indigenous peoples and Afro-descendants are thoroughly investigated, impartially and effectively, so that those responsible are prosecuted and duly punished. The Committee requests the State party to provide in its next report detailed information on the investigations

carried out into these allegations and their findings, in particular on the attacks in the Bosawás Biosphere Reserve area.

Prior consultation

22. The Committee is concerned at the absence of effective mechanisms to guarantee the right of indigenous peoples to be consulted with a view to obtaining free, prior and informed consent on any legislative or administrative measure that may affect the effective exercise of their rights. It is also concerned about allegations that licenses are granted for the exploitation of natural resources and development projects within indigenous territories without prior consultation processes, or that they are carried out with persons not entitled to represent the affected peoples. The Committee is seriously concerned that the Grand Interoceanic Canal project affecting the territory of the Rama indigenous people and the Afro-descendant Kriol communities and the territory of the Black Creole Indigenous Community of Bluefields has not been duly consulted with the affected peoples and communities, which has also been the case with the deep-sea project in Bluefields. the forest and carbon conservation project and the BioClimate project (arts. 2 and 5).
23. The Committee recommends that the State party:
 - (a) Adopt, in consultation with indigenous peoples and people of African descent, an appropriate national mechanism to guarantee their right to be consulted with respect to any legislative or administrative measure likely to affect their rights, with a view to obtaining free, prior and informed consent, and which, in addition, takes into account the cultural characteristics and traditions of each people; including those relating to decision-making;
 - (b) Ensure that the right of indigenous peoples to be consulted with a view to obtaining free, prior and informed consent for the implementation of economic, industrial, energy, infrastructure and natural resource exploitation projects that may affect their territories and natural resources is duly respected, ensuring that such consultations are carried out in a timely manner, systematic and transparent with due representation of the affected peoples.

Impact of the exploitation of natural resources

24. The Committee is seriously concerned about the impact of the development of extractive, agro-industrial and infrastructure projects on the natural resources found in the lands and territories of indigenous peoples and Afro-descendants, which seriously affects their livelihoods and ways of life, generating food crises, forced displacement and health problems for affected communities (arts. 2 and 5).
25. Taking into account that the protection of human rights and the elimination of racial discrimination are an essential part of sustainable economic development, and recalling the role of both the State party and the private sector in this regard, the Committee urges the State party:
 - (a) Ensure that, prior to granting licences for the development of projects for the development and exploitation of natural resources in indigenous territories, as part of the prior consultation process, independent and impartial studies are carried out on the social, environmental and cultural impact that such projects may have on the traditional ways of life and subsistence of indigenous peoples and people of African descent;
 - (b) Define, in consultation with indigenous and Afro-descendant peoples whose territories and resources are affected, mitigation measures, compensation for

damages or losses suffered and sharing in the benefits obtained from such activities. Excessive use of force 26. The Committee is concerned at information received on cases of excessive use of force against members of indigenous peoples and people of African descent, including cases of deaths of indigenous and Afro-descendant persons in detention (arts. 2, 5 and 6).

27. The Committee recommends that the State party take measures to prevent excessive use of force, ill-treatment and abuse of authority against members of indigenous peoples and people of African descent, including by ensuring respect for the principle of proportionality and strict necessity in the use of force and by conducting training for law enforcement officials on the use of force; the restoration of order through treaty mechanisms and combating racial discrimination, in particular the Convention. It also recommends that the State party investigate all allegations of excessive use of force, ill-treatment and abuse by law enforcement officials against members of indigenous peoples and people of African descent, and that the perpetrators be prosecuted and punished, taking into account the seriousness of such acts.

Access to justice and discrimination in the judicial system

28. The Committee is concerned about allegations of lack of independence and persistence of discriminatory practices in the justice system that significantly affect access to justice for indigenous peoples and people of African descent. There is concern about reports of violations of due process guarantees and adequate defence of members of indigenous and Afro-descendant peoples, as well as of the practice of racial profiling of the Afro-descendant population of the Caribbean Coast in the context of the fight against drug trafficking, resulting in false accusations, arbitrary detentions and searches without a warrant (arts. 5 and 6).
29. Based on its general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the Committee recommends that the State party:
- (a) Eradicate racial discrimination within the judicial and correctional systems, including through the training of police officers, prosecutors, lawyers, defenders, judges and judicial and correctional professionals in order to raise awareness of the negative effects of racial discrimination and ensure the effective implementation of the Convention;
 - (b) Take the necessary measures to combat corruption and ensure transparency in the judicial system as a means of safeguarding the fight against racial discrimination and respect for human rights;
 - (c) Guarantee access to justice for indigenous peoples, ensuring respect for their fundamental rights and guarantees of due process, ensuring access, where necessary, to trained defenders with knowledge of indigenous languages and interpreters who can explain to them the content of judicial proceedings;
 - (d) Ensure that, in the context of the fight against drug trafficking, law enforcement officials do not carry out actions against persons of African descent solely on the basis of stigmatization and racial profiling.

Law on Autonomy and Political Participation of Indigenous and Afro-descendant Peoples

30. The Committee is concerned about the information received on the difficulties in the application of the regime of communal, territorial and regional autonomy, in particular Law 28, Statute of Autonomy of the Communities of the Caribbean Coast of Nicaragua. The Committee is concerned about reports of non-certification of legitimately elected indigenous authorities in community or territorial assemblies, which are also unknown to government institutions, and the imposition of “parallel governments” that affect the rights of autonomy and political participation of indigenous and Afro-descendant peoples of the Caribbean Coast. It is concerned that legislative reforms to ensure the effective participation of indigenous peoples’ organizations in electoral processes have not yet been adopted, in compliance with the judgment of 23 June 2005 issued by the Inter-American Court of Human Rights in the case of *Yatama v. Nicaragua*. Finally, the Committee regrets that it does not have data on the political participation of indigenous peoples and people of African descent, in particular in elected public positions and decision-making positions (arts. 2 and 5).
31. The Committee recommends that the State party ensure full compliance with Law 28, Statute of Autonomy of the Communities of the Caribbean Coast of Nicaragua and take all necessary measures to ensure that communal authorities legitimately constituted and appointed by indigenous peoples are not supplanted by parallel authorities in decision-making concerning indigenous peoples. The Committee recommends that the State party expedite the adoption of legislative reforms to ensure the effective participation of indigenous peoples’ organizations in electoral processes, in compliance with the judgement of 23 June 2005 issued by the Inter-American Court of Human Rights in the case of *Yatama v. Nicaragua*. Furthermore, the Committee urges the State party to take the necessary measures to ensure the full participation of indigenous peoples and people of African descent in public affairs, in particular indigenous and Afro-descendant women, both in decision-making positions and in representative institutions.

Right to health

32. The Committee takes note of the information provided by the State in its periodic report regarding progress in the articulation and dialogue between the traditional and conventional health systems, but is concerned about the persistent challenges to guaranteeing the full enjoyment of the right to health by indigenous peoples and people of African descent. The Committee is concerned at information on poor infrastructure, shortages of medicines, the quality and availability of health-care services in rural and remote areas where indigenous peoples mainly live. The Committee regrets that it does not have information on the impact of the implementation of the Intercultural Health Care Models in the autonomous regions of the Caribbean Coast (art. 5 (e) (iv)).
33. The Committee recommends that the State party take the necessary measures, including the allocation of the necessary resources for the effective implementation of the Intercultural Health Care Models in the autonomous regions of the Caribbean Coast and the practical application of Law 759, Law on Traditional Ancestral Medicine and the operation of the Institute of Natural Medicine. Traditional and Complementary Therapies (IMTC) of the Ministry of Health. It also recommends that the State party take the necessary steps to ensure the accessibility, availability and quality of health care, taking special account of the needs, traditions and cultural differences of indigenous and Afro-descendant peoples.

Impact of the COVID-19 pandemic and hurricanes Eta and Iota

34. The Committee regrets that reliable information is not available on the impact of the COVID-19 pandemic on indigenous peoples and people of African descent. It is also concerned about reports of lack of access to adequate official information, health services, testing and vaccination by indigenous and Afro-descendant peoples. It also regrets the lack of information on measures taken to counter the devastating effect of hurricanes Iota and Eta on the Caribbean Coast (arts. 2 and 5).
35. Taking into account the recommendation made by the Committee on Economic, Social and Cultural Rights, the Committee urges the State party to carry out, in cooperation with all relevant actors, including representatives of civil society, indigenous and Afro-descendant peoples and the scientific community, an objective assessment of the impact that the COVID-19 pandemic has had on indigenous peoples and people of African descent, in order to take appropriate necessary measures to prevent the risks of infection and provide quality health care to this population group. It also recommends adopting specific measures to meet the needs of the population on the Caribbean coast that have been affected by hurricanes Eta and Iota.

Right to education

36. The Committee is concerned at the high illiteracy rates among the indigenous population and people of African descent. The Committee is also concerned at reports of the high drop-out rate among indigenous children and the lack of availability of secondary education in indigenous communities and the lack of quality, intercultural bilingual education (art. 5).
37. The Committee recommends that the State party increase its efforts to eradicate illiteracy among indigenous peoples and people of African descent. It also urges the State party to take measures to increase enrolment and reduce drop-out rates in both primary and secondary schools among indigenous and Afro-descendant children. It also urges the State party to guarantee the availability, accessibility and quality of bilingual intercultural education for indigenous and Afro-descendant children in order to promote and preserve their cultural and linguistic identity. The Committee encourages the State party to strengthen the implementation of the Regional Autonomous Education Subsystem (SEAR) and the Septuagenal Education Plan 2014-2021.

Situation of indigenous and Afro-descendant women

38. The Committee is concerned that a large number of women are victims of racial discrimination because of their status as indigenous and Afro-descendants, and face difficulties in enjoying their rights, owing to restrictions on language, culture, economic constraints and their residence in remote locations, placing them at a disadvantage compared to the rest of the population (arts. 2 and 5).
39. The Committee recommends that the State party combat the multiple forms of discrimination faced by indigenous and Afro-descendant women, including by incorporating a gender perspective into all policies and strategies against racial discrimination. It also recommends that the State party take measures to ensure that indigenous and Afro-descendant women have access to all their rights, including education, employment and health, taking into account cultural and linguistic differences.

Situation of defenders of indigenous peoples and people of African descent

40. The Committee is seriously concerned at reports that human rights defenders, including leaders and defenders of the rights of indigenous peoples and Afro-descendants, are persecuted through acts of violence, threats, and attempts on life. Furthermore, the Committee is concerned about the misuse of criminal proceedings to criminalize defenders of the rights of indigenous peoples and Afro-descendants, such as the case of defender Amaru Ruiz (arts. 2, 5 and 6).
41. The Committee recommends that the State party:
- (a) Take measures to ensure that the persecution of human rights defenders, including leaders and defenders of the rights of indigenous and Afro-descendant peoples, ceases immediately, and to prevent all acts of violence, threats and attempts on their lives and physical integrity;
 - (b) Investigate thoroughly, impartially and effectively all allegations of attacks on life, physical integrity and liberty, as well as acts of violence, threats, harassment, intimidation, harassment and defamation committed against indigenous leaders, defenders of the rights of indigenous peoples and people of African descent;
 - (c) In consultation with affected indigenous peoples and Afro-descendant communities, design and adopt effective legislation, special measures and protection strategies, taking into account cultural, regional and gender differences that may affect indigenous and Afro-descendant peoples;
 - (d) Take the necessary measures to prevent the use of criminal law for the arbitrary criminalization of defenders of the rights of indigenous peoples.

6. United States of America, CERD/C/USA/CO/10-12, 21 September 2022

Excessive use of force by law enforcement officials

20. The Committee notes the efforts made by the State party to combat systemic racism in the context of law enforcement, including Executive Order 14074 of 25 May 2022. However, it remains concerned at the brutality and excessive or deadly use of force by law enforcement officials against members of racial and ethnic minorities, including against unarmed individuals, which has a disparate impact on people of African descent [and] indigenous peoples. ...

Peaceful assembly

22. The Committee is concerned about reports of an increase in legislative measures and initiatives at the state level that unduly restrict the right to peaceful assembly following antiracism protests in recent years, such as the Combating Public Disorder Act (HB1 2021) in Florida. The Committee is also concerned about allegations of excessive use of force by law enforcement officers and private security companies against members of racial and ethnic minorities, particularly people of African descent during anti-racism protests and indigenous peoples during protests in defence of their rights. The Committee is further concerned about allegations of harassment and surveillance by law enforcement officials, including online, against human rights defenders belonging to racial and ethnic minorities (art. 5).
23. The Committee recommends that the State party take all measures necessary to ensure the exercise of the right to peaceful assembly without any discrimination on the grounds of race, colour, descent or national or ethnic origin. The Committee also recommends that the State party investigate allegations of excessive use of force during peaceful protests and of harassment, surveillance and threats

against human rights defenders belonging to racial and ethnic minorities by law enforcement officers. The Committee further recommends that the State party develop and adopt legislation and strengthen its measures to protect human rights defenders, including those working on the rights of racial and ethnic minorities, indigenous peoples and non-citizens.

Voting rights

24. The Committee notes the measures adopted by the State party to ensure equal access to voting, such as Executive Order 14019 of 7 March 2021. However, the Committee is concerned about the increase in legislative measures and practices that effectively constrain the exercise of the right to vote, with a disproportionate impact on people of African descent, indigenous peoples, persons of Hispanic/Latino origin and other ethnic minorities. Such measures and practices include burdensome voter identification requirements, substantial restrictions on early voting, voting by mail and voting by absentee ballots, criminalization of ballot collection, district gerrymandering, limited access to language assistance other than English and felon disenfranchisement laws at the state level. ...
25. The Committee recommends that the State party: (a) Take all necessary measures, including federal legislation, to facilitate access to voting and eliminate unreasonable restrictions on the exercise of the right to vote, particularly those affecting racial and ethnic minorities and indigenous peoples....

Criminal justice system and juvenile justice system

...

27. The Committee remains concerned at the overrepresentation of racial and ethnic minorities, particularly children of African descent and indigenous children, in the juvenile justice system. It also remains concerned at the disproportionate rate at which youths from racial and ethnic minorities are prosecuted as adults and sentenced to life imprisonment without parole in some states (arts. 2, 5 and 6).
28. Recalling its general recommendation No. 31 (2005), the Committee urges the State party to take concrete and effective measures to eliminate racial disparities at all stages of the criminal justice system and of the juvenile justice system....

Impact of the COVID-19 pandemic

29. While noting the measures taken by the State party, the Committee is concerned that persons belonging to racial and ethnic minorities, indigenous peoples and non-citizens in the State party have been more vulnerable to and disproportionately affected by the COVID-19 pandemic, both in terms of infection and death rates and in terms of its socioeconomic impact (art. 5).
30. The Committee recommends that the State party develop and implement further measures to protect racial and ethnic minorities from the COVID-19 pandemic and its socioeconomic impact, in consultation with the communities most affected by the pandemic.

Education

31. The Committee welcomes the measures taken by the State party to address inequality in the education system, such as... the White House Initiative on Advancing Educational Equity, Excellence and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities. However, the Committee remains

concerned about the persistent racial and socioeconomic segregation in schools, the inequitable school funding system ... all of which disproportionately affect students belonging to racial and ethnic minorities and indigenous peoples. The Committee also remains concerned that indigenous students and students belonging to racial and ethnic minorities disproportionately receive harsher disciplinary sanctions, and are disproportionately arrested in schools for minor non-violent offences and referred to the juvenile and the criminal justice system (“school-to-prison pipeline”) (arts. 3 and 5).

32. The Committee reiterates its recommendation that the State party intensify its efforts to ensure equal access to education by, inter alia:
- (a) Developing and adopting a comprehensive plan to address socioeconomic and racial segregation in schools and communities, with concrete goals, timelines and impact assessment mechanisms;
 - (b) Taking measures to encourage states to analyse and rectify disparities in funding for public schools and reduce the disproportionate impact on low-income communities;
 - (c) Expanding federal funding for programmes and policies that promote racial integration in public schools;
 - (d) Adopting appropriate measures to address racial discrimination in the administration of student discipline, including arrests in schools that lead to referrals to the juvenile and the criminal justice system for minor non-violent offences.

Right to health

33. The Committee welcomes the adoption of the American Rescue Plan, which has facilitated access to affordable care for people with lower and moderate income, including persons belonging to racial and ethnic minorities. However, the Committee remains concerned about:
- (a) the high number of persons belonging to racial and ethnic minorities who do not have access to affordable and quality health care because they live in states that have not adopted the Medicaid expansion programme; and
 - (b) ... While noting the increase in funding, the Committee remains concerned at the lack of adequate resources provided to the Indian Health Service and the lack of medical facilities within a reasonable distance for indigenous peoples (art. 5).
34. The Committee recommends that the State party take all measures necessary, including legislation to expand coverage for existing health-care programmes, to ensure that all individuals, in particular those belonging to racial and ethnic minorities, indigenous peoples and non-citizens have effective access to affordable and adequate health-care services.

Right to food

41. The Committee is concerned at the disproportionate impact of food insecurity on racial and ethnic minorities, in particular indigenous peoples ... and particularly women and children from these communities, due to, among other factors, the disparate rates of poverty and unemployment in these communities, racial wage disparities, and legislation and practices that have a discriminatory effect on the tenure and use of land (art. 5).

42. The Committee recommends that the State party take all measures necessary to guarantee the right to adequate food and to strengthen its efforts to combat hunger and food insecurity, which disproportionately affects racial and ethnic minorities, and especially women and children, including by strengthening the institutional framework and adopting a comprehensive and rights-based national plan to end hunger. The Committee encourages the State party to take effective measures against hunger, in consultation with all relevant stakeholders, including members of the communities most affected by food insecurity, and including through the White House Conference on Hunger, Nutrition and Health, due to be held in September 2022.

Child welfare system

43. While welcoming the acknowledgement by the State party that racial disparities occur at almost every stage of the decision-making process in the child welfare system, the Committee is concerned at the disproportionate number of children belonging to racial and ethnic minorities who are removed from their families and placed in foster care, in particular children of African descent and indigenous children. It is also concerned that families belonging to racial and ethnic minorities are subjected to disproportionately high levels of surveillance and investigation and are less likely to be reunified with their children (arts. 2 and 5).

44. The Committee recommends that the State party take all appropriate measures to eliminate racial discrimination in the child welfare system, including by amending or repealing laws, policies and practices, such as the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act, that have a disparate impact on families belonging to racial and ethnic minorities. The Committee encourages the State party to hold hearings, including congressional hearings, of families who are affected by the child welfare system.

Environmental pollution and climate change

45. The Committee notes the measures taken by the State party to address the longstanding effects of pollution and climate change on disadvantaged communities, including racial and ethnic groups, such as Executive Order 14008 on “Tackling the climate crisis at home and abroad”, of 27 January 2021, and the suspension of oil and gas leases for the Arctic National Wildlife Refuge, on 1 June 2021. However, the Committee remains concerned at the disproportionate health, socioeconomic and cultural impact of climate change, natural disasters and pollution – the latter caused by extractive and manufacturing industries, such as petrochemical facilities and methanol complexes, as, for instance, in the case of “Cancer Alley” in Louisiana, and by radioactive and toxic waste – on racial and ethnic minorities and indigenous peoples. It also remains concerned at the adverse effects of economic activities by transnational corporations registered in the State party on the rights and way of life of minority groups and indigenous peoples in other countries (arts. 2 and 5).

46. The Committee reiterates its recommendation that the State party ensure that federal legislation prohibiting environmental pollution is effectively enforced at the state and local levels; clean up remaining radioactive and toxic waste, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date; and undertake prompt, independent and thorough investigations into all cases of environmentally polluting activities

affecting the rights of racial and ethnic minorities and indigenous peoples, bring those responsible to account and provide effective remedies for the victims. It also recommends that the State party consider adopting moratoriums on the authorization of new heavy industry facilities and the expansion of existing ones, such as petrochemical plants. It further recommends that the State party protect historical sites of cultural significance for these communities from harm by extractive and manufacturing industries. The Committee also reiterates its recommendation that the State party take appropriate measures to prevent situations in which the economic activities by transnational corporations registered in the State party have an adverse effect on the human rights and way of life of minority groups and indigenous peoples in other countries.

Violence against women

47. The Committee notes the measures taken by the State party to reduce the incidence of violence against women, such as Executive Order 13898 on “Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives”, of 26 November 2019. Nevertheless, the Committee remains concerned at the persistently disproportionate number of women belonging to racial and ethnic minorities, particularly indigenous women, ... who are victims of violence, including sexual violence. In the light of the Supreme Court’s ruling in *Oklahoma v. Castro-Huerta*, of 29 June 2022, the Committee reiterates its concern that indigenous women are denied the right of access to justice and reparation, as a result of factors such as the failure to prosecute perpetrators at the state and federal levels because tribes lack full jurisdiction, in particular over non-indigenous perpetrators. The Committee is further concerned at reports of a lack of adequate shelters and services for victims, including a lack of availability of post-rape care kits and trained staff at Indian Health Service facilities (arts. 5 and 6).
48. Recalling its general recommendation No. 25 (2000), the Committee reiterates its recommendation that the State party redouble its efforts to prevent and combat violence against women, particularly indigenous women, migrant women and women of African descent, and ensure that all cases of violence against women are effectively investigated, perpetrators are prosecuted and sanctioned, and victims are provided with appropriate remedies. It also recommends that the State party ensure effective access to justice for all indigenous women who are victims of violence, and access to adequate services and care, including shelters, health care and post-rape care kits. It further recommends that the State party recognize tribal jurisdiction over all offenders who commit crimes on tribal lands, and increase funding and specific training for those working within the criminal justice system.

Indigenous peoples

49. The Committee notes the steps taken by the State party with regard to the rights of indigenous peoples, including the adoption of Executive Order 13647 on “Establishing the White House Council on Native American Affairs”, of 26 June 2013, in which it was recognized that restoring tribal lands through appropriate means helped foster tribal self-determination, and the President’s Memorandum on “Tribal consultation and strengthening nation-to-nation relationships”, of 26 January 2021, which highlighted as priorities respect for tribal sovereignty and self-governance, commitment to fulfilling treaty responsibilities to tribal nations, and consultation with tribal nations. However, the Committee is concerned at:

- (a) Allegations indicating a lack of measures taken by the State party to honour the bilateral treaties that it has entered into with indigenous peoples, and lack of consultation on their implementation;
 - (b) The obstacles to the recognition of indigenous peoples, including the high costs and burdensome procedures;
 - (c) The restrictive interpretation of the principle of free, prior and informed consent, and the lack of timely and meaningful consultation with indigenous peoples;
 - (d) The negative impact of, inter alia, extractive industries, infrastructure projects, border walls and fences on indigenous peoples' rights and way of life, as exemplified by the situations that the Committee has considered under its early warning and urgent action procedure regarding the Western Shoshone, Native Hawaiian, Gwich'in and Anishinaabe indigenous peoples;
 - (e) The lack of adequate measures and funding to address crisis concerning missing and murdered indigenous peoples (arts. 5 and 6).
50. Drawing the attention of the State party to the United Nations Declaration on the Rights of Indigenous Peoples, and to the recognition by the Human Rights Council that the legacies of colonialism have a negative impact on the effective enjoyment of all human rights and that indigenous peoples were victims of colonialism and continue to be victims of its consequences, the Committee recommends that the State party:
- (a) Take further measures to honour the treaties that it has entered into with indigenous peoples, and significantly strengthen mechanisms for consultation with indigenous peoples on the implementation of these treaties, with a view also to settling disputes concerning land rights;
 - (b) Eliminate undue obstacles to the recognition of indigenous peoples;
 - (c) Guarantee, in law and in practice, the principle of free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, and the right of indigenous peoples to be consulted on any legislative or administrative measure that may affect their rights;
 - (d) Take measures to effectively protect the rights of indigenous peoples from any adverse impact of extractive industries and infrastructure projects, and specifically address the situations that the Committee has considered under its early warning and urgent action procedure;
 - (e) Take additional measures and provide adequate funding to implement statutes and policies that address the crisis concerning missing and murdered indigenous peoples.

Redress for legacies of the past

55. The Committee notes the acknowledgement by the State party's delegation during the dialogue that the displacement of Native Americans and the enslavement of Africans, and the lingering legacies thereof, are contributing factors to the racial disparities and inequities that the State party faces today. The Committee also notes initiatives at the state level to address the legacy of slavery and past wrongs..... While noting these initiatives, the Committee is concerned that the lingering legacies of colonialism and slavery continue to fuel racism and racial discrimination in the State party, undermining the full enjoyment of all human rights and fundamental freedoms by all individuals and communities in the State party (art. 5 and 6).

7. Suriname, CERD/C/SUR/CO/16-18, 21 September 2022

Positive Aspects

4. The Committee also welcomes the following legislative and institutional measures taken by the State party:
 - (a) The establishment of the Constitutional Court, in August 2019;
 - (b) Accession to the Minamata Convention on Mercury, in August 2018, aimed at protecting populations at risk, including indigenous peoples and other vulnerable populations, from the negative effects resulting from mercury pollution;
 - (c) The adoption of the act on the protection of residential and living areas of indigenous and other tribal Surinamese groups, on 22 December 2017, which prevents the Government from granting any concession (licence) in, or in the surrounding areas of, the tribal communities.

Civil society involvement

5. The Committee regrets the lack of detailed information on the consultations with, and involvement of, civil society organizations, particularly those representing indigenous and tribal peoples, during the preparation of the State party report and during the review of the State party.
6. The Committee recommends that the State party increase its efforts to involve civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, including organizations representative of the indigenous and tribal peoples, in the processes of the implementation of the concluding observations and of the preparation and review of its next periodic report, and also consult them in those processes.

Statistics

7. The Committee takes note of the data on ethnic groups in the State party, collected through the census of 2012. It also notes that the population and housing census in Suriname was delayed because the General Bureau of Statistics did not have sufficient financial and human resources, and that the census will be conducted in 2024. However, the Committee is concerned about the lack of comprehensive and updated statistics on the demographic composition of the population, disaggregated by ethnic and national origin, including on indigenous and tribal peoples, persons of African descent, migrants, asylum-seekers, refugees and stateless persons, and on the economic and social indicators of the various population and ethnic groups (arts. 1–2 and 5).
8. Recalling paragraphs 10 to 12 of its guidelines for reporting under the Convention, the Committee recommends that the State party collect, and provide to the Committee in its next report, reliable, updated and comprehensive statistical data on the demographic composition of the population, based on the principle of self-identification, including ethnic groups, indigenous and tribal peoples, and non-citizens, including refugees, asylum-seekers and stateless persons, together with socioeconomic indicators, disaggregated by ethnicity, gender and age. The Committee recommends that the State party provide the General Bureau of Statistics with adequate financial, technical and human resources to carry out the population and housing census in 2024, and that the State party continue its efforts to adopt, with the active involvement of indigenous and tribal peoples, people of African descent, ethnic groups and civil society organizations in Suriname, an

appropriate methodology for the 2024 population and housing census, including in respect of self-identification. The Committee draws the State party's attention to its general recommendation No. 4 (1973) concerning reporting by States parties under article 1 of the Convention, with regard to the demographic composition of the population.

Prohibition of racial discrimination

9. The Committee notes the information provided by the delegation during the dialogue on the intention of the State party to draft and adopt a comprehensive anti-discrimination law and on the legislative framework to prohibit racial discrimination, particularly article 8 (2) of the Constitution and articles 126 bis and 175 bis of the Penal Code. However, the Committee is concerned that the applicable national legislative framework lacks an explicit definition of racial discrimination on all the grounds enumerated in article 1 of the Convention and that it does not expressly prohibit both direct and indirect racial discrimination in the public and private spheres (arts. 1–2).
10. Recalling the relevant recommendation in its previous concluding observations, the Committee recommends that the State party prioritize the drafting and adoption of a comprehensive anti-discrimination law, within a clear time frame and with the effective and meaningful participation of and consultation with civil society organizations and members of indigenous and tribal peoples, and ensure that it includes a definition of racial discrimination in line with article 1 of the Convention and that it expressly prohibits both direct and indirect racial discrimination in the public and private spheres.

Structural discrimination

11. The Committee remains concerned about the situation of indigenous and tribal peoples, and migrants, refugees and asylum-seekers, who face persisting discrimination in accessing and enjoying their human rights. The Committee is also concerned about the lack of information on special measures taken by the State party to address the structural discrimination faced by those groups (arts. 2 and 5).
12. Recalling the relevant recommendation in its previous concluding observations and its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party take all special measures necessary to address the existing structural discrimination faced by indigenous and tribal peoples, and by refugees, asylum-seekers and migrants, in the enjoyment of their rights, in conformity with articles 1 (4) and 2 (2) of the Convention.

Complaints of racial discrimination

17. The Committee regrets the lack of data on complaints of racial discrimination, hate crimes and hate speech filed, as well as on investigations, prosecutions, convictions and sanctions imposed by domestic courts. The Committee also regrets the lack of information on the availability and accessibility of a specific judicial mechanism for addressing cases of racial discrimination and on the legal aid available for victims of racial discrimination, particularly for indigenous and tribal peoples (arts. 4 and 6).
18. The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recalls that an absence of complaints and legal action relating to racial discrimination may reveal a lack of suitable

legislation, poor awareness of the legal remedies available, a lack of trust in the judicial system, a fear of reprisals or a lack of will on the part of the authorities to prosecute the perpetrators of such acts. ...

Legislative framework on indigenous and tribal peoples

19. The Committee takes note of the information provided by the delegation during the dialogue that the draft law on the collective rights of indigenous and tribal peoples has undergone public consultations and is now before the parliament. Nevertheless, the Committee is concerned about the long delay in finalizing and adopting a legislative framework on the rights of indigenous and tribal peoples. It regrets the lack of information on measures taken to ensure effective and meaningful inclusion of opinions expressed during consultations with indigenous and tribal peoples in this drafting process (art. 5).
20. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party expedite the adoption, within a clear time frame, of the draft law on the collective rights of indigenous and tribal peoples, with the effective and meaningful participation of indigenous and tribal peoples and of the concerned civil society organizations.

Access to justice

21. The Committee remains concerned about the lack of information on measures taken by the State party to address persistent discriminatory decision-making in the judicial system, and obstacles faced by indigenous and tribal peoples in accessing domestic courts through their institutional structures, and thus in accessing justice and other remedies for addressing all infringements of their individual and collective rights, in particular in relation to the enjoyment of their rights to land, resources and property. While noting the information provided by the delegation on the measures taken to establish legal aid offices in the State party, the Committee is concerned that those offices have not yet been set up in the remote areas of the country, which hinders the access to remedies by indigenous and tribal peoples (art. 6).
22. Recalling the relevant recommendation in its previous concluding observations and its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party adopt measures, including legislative, to ensure that indigenous peoples are provided with effective remedies for all infringements of their individual and collective rights, in particular in relation to the enjoyment of their rights to land, resources and property, by facilitating their access to domestic courts through their institutional structures; and to recognize the collective legal personality of indigenous and tribal peoples. It also recommends that the State party accelerate the establishment of legal aid offices across all districts in the remote areas of the country to facilitate equal access to justice for victims of racial discrimination, including indigenous and tribal peoples.

Lands, territories and natural resources

23. The Committee takes note of the information on the adoption of the act on the protection of residential and living areas of indigenous and other tribal Surinamese groups on 22 December 2017 and of the establishment of three technical commissions by the Minister of Regional Development on natural resources and landownership by indigenous and tribal peoples. However, the Committee is concerned about:

- (a) The lack of measures taken to address pervasive and persistent discrimination that characterizes the enjoyment by indigenous and tribal peoples of their property rights in line with their traditions, customs and land tenure systems;
 - (b) The delay in developing and finalizing a legislative framework on free, prior and informed consent regarding development projects on indigenous lands and in ensuring that such consent is obtained before lands are expropriated, and about the absence of available remedies, including compensation;
 - (c) The lack of measures taken by the State party to address discrimination faced by indigenous and tribal peoples that hampers their full enjoyment of their cultural and economic rights in natural reserves established on their ancestral lands (art. 5).
24. Recalling the relevant recommendation in its previous concluding observations, the United Nations Declaration on the Rights of Indigenous Peoples, and its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:
- (a) Take measures to develop and recognize the collective rights of indigenous and tribal peoples to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the exploitation, management and conservation of the associated natural resources through their institutions in accordance with their own traditions;
 - (b) Adopt measures to ensure consultation with indigenous peoples on any projects or legislative or administrative measures that may affect their land, territories and resources and with a view to obtaining their free, prior and informed consent;
 - (c) Take measures to ensure access by indigenous peoples to effective remedies and provide them with just and fair compensation for the lands, territories and resources that they have traditionally owned or used and which have been confiscated, occupied or used without their free, prior and informed consent or which have been damaged;
 - (d) Adopt measures to guarantee that national reserves established on ancestral territories of indigenous and tribal peoples allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those communities.

Environmental contamination and its impact on health

25. The Committee notes that the State party ratified the Minamata Convention on Mercury in 2018. It also notes the existence of domestic legislation on the prohibition of the importation and use of mercury in the State party. Nevertheless, the Committee is concerned about reports of ongoing pollution – mercury and other toxics – on land and in rivers, resulting from gold mining, legal and illegal deforestation, road construction, and illegal airstrips in the interior, which has had a negative impact on the environment and on the means of subsistence and the health of indigenous and tribal peoples. It is also concerned that the penalties for using and importing mercury are based on fines and are not registered by the relevant authorities (art. 5).

26. Recalling the relevant recommendation in its previous concluding observations, the Committee recommends that the State party strengthen its efforts to implement the prohibition of the importation and usage of mercury in the country, review and amend its legislative framework to introduce adequate penalties for the use of mercury and provide statistics on complaints received, cases investigated and prosecuted, and sanctions imposed for such acts. It also recommends that the State party adopt measures to ensure that contaminated areas are cleaned and that the indigenous and tribal peoples affected are given access to clean, drinkable water and health care and are entitled to effective remedies and adequate compensation for the territories contaminated by mercury.

Judgments of the Inter-American Court of Human Rights

27. The Committee is concerned about the lack of the full implementation by the State party of the judgments of the Inter-American Court of Human Rights, specifically concerning the rights of indigenous and tribal peoples, in particular in the cases of *Moiwana Community v. Suriname* (2005), *Saramaka People v. Suriname* (2007) and *Kaliña and Lokono peoples v. Suriname* (2015) (arts. 2, 5 and 6).
28. The Committee reiterates its previous recommendations¹⁰ and urges the State party to ensure the full implementation of the judgments of the Inter-American Court of Human Rights regarding the rights of indigenous and tribal peoples.

Situation of indigenous and tribal peoples with regard to health and education

29. The Committee is concerned about reports of the limited access of those living in remote areas, most of whom belong to indigenous and tribal peoples, to adequate public services, education and health care, and particularly about:
- (a) The lack of detailed information on access to education by indigenous and tribal children, particularly with regard to attendance rate and school dropout;
 - (b) The absence of information on the implementation of programmes to adapt the educational system to the culture of indigenous and tribal peoples, including with regard to the preservation and study of their languages and cultures;
 - (c) The obstacles to access to health services, due to the inadequate and limited infrastructure, as well as the limited access by indigenous and tribal women to sexual and reproductive health services (art. 5).
30. The Committee recommends that the State party adopt measures to:
- (a) Ensure the availability of, and accessibility for the indigenous and tribal peoples on an equal footing to, adequate education and health-care services, including by enhancing the infrastructure of existing facilities and increasing the availability of schools and health-care facilities in remote areas of the country;
 - (b) Adapt the educational system to the cultures of indigenous peoples and tribal peoples and, in doing so, take into account the need to preserve their languages and cultures, and consider introducing, as appropriate, the study of their languages;
 - (c) Enhance the availability and accessibility of sexual and reproductive health services for indigenous and tribal women, by involving them in their design.

8. Cameroon, CERD/C/CMR/CO/22-23, 29 April 2022

Positive Aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:
 - (a) The adoption of the National Plan of Action for the Development of Indigenous Peoples on 9 December 2020; ...
 - (d) The establishment of the National Commission on the Promotion of Bilingualism and Multiculturalism in 2017, in accordance with Law No. 2017/13 of 23 January 2017;
 - (e) The establishment of the Inter-Sectoral Committee for the follow-up of programmes and projects involving vulnerable indigenous peoples, in accordance with Decree No. 22/A/MINAS/SG/DSN of 6 August 2013;
 - (f) The adoption of Law No. 2016/17 of 14 December 2014 on mining, which introduces obligation for prior consultation with the impacted population and ensures compensation in case of expropriation for public utility.

Statistics

4. The Committee expresses its concern about the lack of comprehensive statistics on the demographic composition of the population, disaggregated by ethnic or national origin and language spoken, including on indigenous peoples, internally displaced persons, migrants, refugees and stateless persons, and on the socioeconomic status of the different population groups. While noting the information on the preparation to carry out the fourth general population and housing census, in accordance with Law No. 2015/397 of 15 September 2015, and the information by the delegation that there are more than 250 ethnic groups in the State party, the Committee regrets the delay in conducting the census and that the census will not include data on the ethnic composition of the population (arts. 1–2 and 5).
5. Recalling paragraphs 10 to 12 of its guidelines for reporting under the Convention (CERD/C/2007/1) and its previous recommendation (CERD/C/CMR/CO/19-21, para. 6), the Committee recommends that the State party collect and provide to the Committee reliable, updated and comprehensive statistical data on the demographic composition of the population based on the principle of self-identification, including on ethnic, ethno-linguistic, ethno-religious groups and indigenous peoples, internally displaced persons, and non-citizens, including refugees, asylum seekers and stateless persons, together with socioeconomic indicators disaggregated by ethnicity, gender, age, region, and languages spoken.

Human rights defenders and civil society organizations

16. While noting reports on the recent efforts to cooperate with civil society organizations, the Committee is concerned by reports that human rights defenders, members of civil society organizations and journalists, in particular those monitoring and reporting on the rights of ethnic, ethno-linguistic, ethno-religious groups and indigenous peoples, have increasingly become targets of killings, enforced disappearance, threats, intimidation, reprisals and harassment, as a consequence of their human rights work (art. 5).
17. The Committee recommends that the State party carry out effective, thorough and impartial investigations into all reported cases of killings, enforced disappearance, threats, intimidation, reprisals and harassment of human rights defenders,

journalists and members of civil society organizations. It further recommends that the State party take measures, including legislative, to ensure that civil society organizations, human rights defenders and journalists, including those working on the rights of ethnic minorities and indigenous peoples, are able to carry out their work effectively and without fear of reprisals.

Situation of minorities and indigenous peoples

18. The Committee welcomes the adoption of the National Plan of Action for the Development of Indigenous Peoples in December 2020. However, it regrets the lack of information on the progress in finalizing the studies on national and ethnic minorities and indigenous peoples, which have been under preparation since 2013. It is also concerned about the lack of information on the preparation and adoption of the bill on the rights of indigenous peoples (arts. 1–7).
19. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples and its previous recommendation (CERD/C/CMR/CO/19-21, para. 14), the Committee recommends that the State party finalize within a clear timeframe the adoption of a comprehensive legal framework on minorities and indigenous peoples, including constitutional protection, with the effective and meaningful participation of indigenous peoples and ethnic groups as well as the civil society organizations and the Cameroon Human Rights Commission, with a view to providing for special and concrete measures for their protection.

Situation of ethnic, ethno-linguistic, ethno-religious groups and indigenous peoples in the context crises and security situation

22. The Committee is deeply concerned about the widespread violence and lack of security in the North-West and South-West regions since 2016 due to the attacks and clashes between the security forces and the armed separatist groups, as well as in the Far-North region where non-State armed groups, including the Boko Haram, carry out terrorist attacks against civilians and the reports about inter-ethnic violence in the Logone-et-Chari. While recognizing the obligation of the State party to protect every person under its jurisdiction against terrorism, , the Committee is concerned about reports that ethnic, ethno-linguistic and ethno-religious groups and indigenous peoples are subjected to grave human rights violations and abuses perpetrated by security forces under the counter-terrorism measures and by non-State armed groups, including unlawful killing, rape and other forms of genderbased violence, torture, arbitrary detention, abduction, enforced displacement and attacks and destruction of property as well as of hospitals and schools. While noting the efforts of the State party to ensure accountability for these violations and abuses, including the investigation of some incidents, the Committee is concerned about the lack of an independent and comprehensive mechanism to investigate these reports of violations and abuses and to provide victims with redress and support. While noting that death penalties are not executed, the Committee is also concerned about reports on the imposition of death penalty on members from ethnic, ethno-linguistic, ethno-religious groups under the Law No. 2014/028 of 23 December 2014 before military courts and without the provision of adequate interpretation (arts. 1–7).
23. The Committee recommends that the State party strengthen its efforts and adopt measures to achieve a peaceful solution to the crises and spread of violence, including by:

- (a) Prioritizing national reconciliation and transitional justice processes in the North-West, South-West and Far North regions, to guarantee protection of ethnic, ethno-linguistic and ethno-religious groups and indigenous groups, with the effective and meaningful participation of representatives of these ethnic groups and indigenous peoples, civil society organizations and the Cameroon Human Rights Commission;
- (b) Strengthening its efforts to ensure accountability and ending impunity, including by conducting effective, thorough and impartial investigations into reports of violations of human rights perpetrated by security forces in the context of its counterterrorism measures as well as human rights abuses perpetrated by non-State armed groups and to prosecute those responsible, punish those convicted adequately;
- (c) Taking immediate steps to provide effective medical and social support for victims, particularly women and girls victims of gender-based violence;
- (d) Adopting effective measures to ensure that counter-terrorism measures do not discriminate against ethnic, ethno-linguistic, ethno-religious groups and indigenous peoples and to guarantee detainees the right to due process and to challenge their detention and conviction under Law No. 2014/028 of 23 December 2014 on the repression of terrorist act, in line with the Committee's general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system;
- (e) Considering abolishing the death penalty.

Situation of ethnic, ethno-linguistic, ethno-religious groups and indigenous peoples

24. The Committee notes the adoption of the National Development Strategy (2020–2030). Nevertheless, it is concerned about reports that ethnic, ethno-linguistic, ethnoreligious groups and indigenous peoples are subjected to direct and indirect, multiple and intersecting forms of discrimination, restricting the enjoyment of their human rights. The Committee is particularly concerned about:
- (a) Reports on low representation of some ethnic, ethno-linguistic, ethno-religious groups and indigenous peoples in the public sectors, decision making and high-ranking positions, particularly among women belonging to these groups;
 - (b) Lack of information on the ongoing review process of the Labour Code and reports on payment of unequal wages based on ethnic origins by the private sector as well as forced labour and labour exploitation of indigenous peoples;
 - (c) Lack of information on measures to ensure the access of indigenous people and ethnic groups to adequate public services in regions impacted by violence, particularly in light of the attacks on hospitals and schools;
 - (d) Absence of updated information on the implementation of programs to adapt the educational system to the culture of indigenous peoples (arts. 1–7).
25. The Committee recommends that the State party:
- (a) Strengthen measures to ensure the effective participation of all ethnic, ethno-linguistic, ethno-religious groups and indigenous peoples in political and public life and to increase their representation, including women, in the public sectors, decision making and high-ranking positions;
 - (b) Expedite the review of the Labour Code and adopt measures to ensure the effective implementation of the prohibition of racial discrimination in

employment and to prevent, investigate and prosecute cases of forced labour of indigenous peoples;

- (c) Adopt measures to ensure the availability and accessibility of all ethnic groups and indigenous peoples on an equal footing, to education and health care services, including by enhancing the infrastructure of these facilities and increasing the availability of schools and health-care facilities, particularly in areas affected by violence and remote areas;
- (d) Strengthen its efforts in adapting the educational system to the cultures of indigenous peoples and ethnic groups and stressing inter-cultural and inter-ethnic exchange.

Land rights

- 26. While noting the information by the State party on the reform process of land ownership framework, the Committee remains concerned about the inadequate legislative framework on land ownership and compensation, which does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life, particularly as it makes the recognition of land ownership and compensation conditional on land development. The Committee is also concerned about reports that indigenous peoples are not consulted with a view of obtaining free, prior and informed consent regarding development projects on their lands and before lands are expropriated (art. 5).
- 27. Recalling its previous recommendation (CERD/C/CMR/CO/19-21, para. 17) and the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party:
 - (a) Accelerate the review of land ownership legislative framework, including the Ordinances of 1974, Law on Forests of 1994 and the Law on mining of 2016, to ensure the protection of the right of indigenous peoples to own, use, develop and control their lands, territories and resources, while ensuring their effective and meaningful participation in the review process;
 - (b) Adopt measures to ensure consultation with indigenous peoples on any projects or legislative or administrative measures that may affect their land, territories and resources and with a view to obtaining their free, prior and informed consent;
 - (c) Take measures to ensure access of indigenous peoples to effective remedies and provide them with just and fair compensation for their lands, territories and resources that they have traditionally owned or used, and which have been confiscated, occupied, used or damaged without their free, prior and informed consent;
 - (d) Adopt measures to ensure the availability and accessibility of indigenous peoples to the land administration offices and to ensure that the legal land registry procedural framework respects the customs, traditions and land tenure systems of the indigenous peoples, without discrimination;
 - (e) Adopt measures to mitigate the impact of the climate change on the lands, territories and resources of indigenous peoples with a view to protecting their customs and traditional ways of life, while preventing inter-community conflicts.

9. Thailand, CERD/C/THA/CO/4-8, 10 February 2022

Positive Aspects

3. The Committee welcomes the ratification by the State party of the following international instruments: ... (b) Discrimination (Employment and Occupation) Convention, 1958 (No. 111) of the International Labour Organization, on 13 June 2017...

Statistics

5. The Committee regrets the lack of disaggregated statistical information on the demographic composition of the population that would allow it to evaluate the enjoyment of the rights enshrined in the Convention by groups that face racial discrimination, in particular indigenous peoples, ethnic and ethno-religious groups, migrants, refugees, asylum seekers and stateless persons (arts. 1–2 and 5).
6. Recalling its reporting guidelines⁴ and its general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention, the Committee recommends that the State party collect and provide updated statistics on the demographic composition of its population based on self-identification, disaggregated by ethnic group, indigenous people, national origin and language spoken, including data on migrants, refugees, asylum seekers and stateless persons, as well as relevant socioeconomic indicators.

Intersecting and multiple forms of discrimination

13. The Committee notes with concern the reports of intersecting and multiple forms of discrimination faced by women, children, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons belonging to ethnic and ethno-religious groups or indigenous peoples, or those who are migrants, refugees or asylum seekers. The Committee notes with concern the reports of various specific barriers faced by these groups in the exercise of their civil, political, economic, social and cultural rights, in particular access to education, health care and employment (arts. 1–2 and 5).
14. The Committee recommends that the State party take all measures necessary to combat the intersecting and multiple forms of discrimination faced by women, children, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons belonging to ethnic and ethno-religious groups, indigenous peoples, or those who are migrants, refugees or asylum seekers, including by mainstreaming gender, age, disability, and sexual orientation and gender identity into its measures, including legislative and policy measures, to combat racial discrimination.

Hate speech and hate crimes

17. The Committee notes with concern that the State party's legislation does not contain provisions that expressly criminalize racist hate speech and hate crimes in accordance with article 4 of the Convention. It also notes with concern the lack of comprehensive information and data from the State party on instances of racist hate speech and hate crimes, despite reports of such instances targeting ethnic and ethno-religious groups, indigenous peoples, people of African descent, migrants, refugees and asylum seekers, among others. The Committee is also concerned about reported incidents of incitement to racial hatred and the propagation of racist stereotypes, including in the media and on the Internet and social media, especially incidents involving government officials (arts. 4 and 6–7).

18. Recalling its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention; No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention; No. 15 (1993) on article 4 of the Convention; and No. 35 (2013) on combating racist hate speech, the Committee urges the State party to: ... (d) Launch awareness-raising and educational campaigns to eliminate prejudices and negative stereotypes against ethnic and ethno-religious groups, indigenous peoples, people of African descent, migrants, refugees, asylum seekers and stateless persons....

Human rights defenders

21. The Committee expresses concern that human rights defenders, in particular those advocating for land rights, protection of the environment, and the rights of ethnic and ethno-religious groups and indigenous peoples, have increasingly become targets of killings, enforced disappearance, violence, threats, intimidation, reprisals and harassment, including judicial harassment, as a consequence of their human rights work (art. 5).
22. The Committee recommends that the State party conduct effective, prompt, thorough and impartial investigations into all incidents of killings, enforced disappearance, violence, threats, intimidation, reprisals and harassment of human rights defenders. It further recommends that the State party continue cooperating with the Office of the United Nations High Commissioner for Human Rights, and take measures necessary to ensure an open and safe space for the operation of civil society organizations, with a view to facilitating the work of human rights defenders free from all forms of intimidation, threats and reprisals.

Situation of ethnic and ethno-religious groups and indigenous peoples

25. The Committee expresses concern about the reports of direct and indirect, multiple and intersecting forms of discrimination faced by ethnic and ethno-religious groups and indigenous peoples, including the Isaan, Karen, Lahu, Malay Thai, Mani, Moken and Urak Lawoi peoples. The Committee notes with particular concern that:
- (a) Despite its formal endorsement of the United Nations Declaration on the Rights of Indigenous Peoples, the State party has not yet recognized the status and the rights of indigenous peoples, either in its legislation or in any other form;
 - (b) The access of members of certain ethnic and ethno-religious groups and indigenous peoples to public services, including health care, education and social protection, continues to be hindered, owing to administrative and language barriers and the limited availability of such services where those groups live;
 - (c) Ethnic and ethno-religious groups and indigenous peoples are disproportionately affected by high levels of poverty and face high levels of economic inequality and social exclusion;
 - (d) Despite some efforts undertaken by the State party to provide bilingual education in a number of primary schools in certain areas, some ethnic and indigenous languages in the State party are increasingly at risk of disappearance and efforts to preserve and develop the culture of some groups in order to help them maintain their cultural identity remain insufficient.
26. The Committee recommends that the State party take legislative and policy measures necessary to tackle all forms of discrimination faced by ethnic and ethno-religious groups and indigenous peoples and to ensure they have non-discriminatory

access to civil, political, economic, social and cultural rights on an equal basis with others. In particular, it recommends that the State party:

- (a) Affirm in its legislation the status and the rights of indigenous peoples, in line with the United Nations Declaration on the Rights of Indigenous Peoples;
- (b) Identify and tackle the obstacles that prevent ethnic and ethno-religious groups and indigenous peoples from accessing public services, and ensure that such services are available and accessible for all throughout the State party;
- (c) Adopt and implement policies and programmes for reducing poverty and enhancing economic equality and social inclusion, taking into account the specific needs and rights of ethnic and ethno-religious groups and indigenous peoples;
- (d) Protect and preserve the cultural identity of ethnic and ethno-religious groups and indigenous peoples by fostering an enabling environment for them in which they can preserve, develop, express and share their identities, histories, cultures, languages, traditions and customs.

Indigenous lands, territories and resources

27. The Committee notes with concern the discriminatory effect of the State party's various forestry and environment-related laws and regulations, and their implementation, on ethnic groups and indigenous peoples living in forests. It is also concerned about the lack of protection of the collective property of indigenous peoples, in particular the lack of legal certainty and guarantees with regard to the titling, delimitation, demarcation and restitution of lands and territories traditionally occupied by indigenous peoples. The Committee further expresses concern about the reports of widespread land grabbing, including by private business entities and individuals, which has resulted in social conflict and forced evictions of indigenous peoples from their lands or territories in the absence of appropriate legal protection (arts. 2 and 5).

28. The Committee recommends that the State party:

- (a) Adopt the legislative and administrative measures necessary to protect indigenous peoples' right to own, use, develop and exercise full control over their lands, territories and resources, including by way of legal recognition and protection in accordance with international standards;
- (b) Take all steps necessary, including through early warning systems and urgent action procedures, to prevent indigenous peoples from becoming the victims of illegal occupation or use of their lands and territories or illegal use of their resources, including by third parties, and to ensure protection against forced eviction from their lands and territories;
- (c) Ensure access to effective remedies with an emphasis on recuperation by indigenous peoples of their lands, territories and resources, and in situations where this is considered materially impossible by a court of law, provide just and fair compensation as well as adequate and culturally appropriate relocation options for indigenous peoples affected by evictions;
- (d) Strengthen the implementation of its national action plan on business and human rights with a view to preventing business entities from engaging in activities that adversely affect the rights of indigenous peoples, among other groups;

- (e) Ensure that indigenous peoples are consulted on projects or legislative or administrative measures that affect the land and natural resources that they own or have traditionally used, including with regard to the adoption and implementation of forestry and environment-related laws and regulations, with a view to obtaining their free, prior and informed consent, in line with the United Nations Declaration on the Rights of Indigenous Peoples.

Stateless persons

- 35. While welcoming the measures taken by the State party to facilitate birth registrations and access to citizenship for stateless persons who are eligible under the State party's legislation, the Committee notes with concern that, despite these efforts, the number of stateless persons remains very high, particularly among ethnic and ethno-religious groups, indigenous peoples, migrant workers, refugees and asylum seekers. The Committee further expresses concern about the reports of collection of DNA samples from stateless persons living in southern border provinces and remote areas as a means to prove their right to citizenship (art. 5).
- 36. Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:
 - (a) Conduct a review of its laws and regulations on access to and the transmission of citizenship in order to reduce the risk of statelessness;
 - (b) Abolish the practice of mass and discriminatory collection of DNA samples from certain groups of stateless persons as a means to prove their right to citizenship, and facilitate their access to citizenship through alternative and non-discriminatory means in line with international human rights norms and standards;
 - (c) Intensify its efforts to facilitate access to birth registration and citizenship, by putting in place measures targeted for ethnic and ethno-religious groups, indigenous peoples, migrant workers, refugees and asylum seekers, including in remote areas.

Coronavirus disease (COVID-19) and racial discrimination

- 37. While taking note of the efforts undertaken by the State party in responding to the COVID-19 pandemic, the Committee notes with concern the limited access by ethnic and ethno-religious groups, indigenous peoples, migrants, asylum seekers and refugees to health-care services, goods and facilities during the pandemic, including vaccines against COVID-19, tests, masks and disinfectants. It is also concerned that social support and financial assistance measures to alleviate the negative socioeconomic impact of the pandemic were not accessible to those without identity documents, bank accounts or residence permits, which has had a disproportionate effect on undocumented migrants and some members of ethnic and ethno-religious groups and indigenous peoples (art. 5).
- 38. The Committee recommends that the State party guarantee universal and non-discriminatory access to COVID-19-related health-care services, goods and facilities for all, including vaccines, tests, masks and disinfectants. It also recommends that the State party ensure that the specific needs of ethnic and ethno-religious groups, indigenous peoples, migrants, asylum seekers and refugees are taken into account in efforts to mitigate and recover from the socioeconomic effects of the pandemic.

Access to justice

39. While noting the information provided by the State party delegation in relation to the provision of legal aid in certain cases, including for members of ethnic groups, the Committee remains concerned about the barriers preventing ethnic and ethno-religious groups, indigenous peoples, migrants, refugees, asylum seekers and stateless persons from accessing justice, owing to the remoteness of their localities, language barriers and a limited understanding and awareness of laws and judicial processes among these groups. The Committee also regrets the lack of comprehensive information on racial discrimination complaints filed in the State party, and their outcomes (arts. 6–7).
40. Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take adequate measures to eliminate all barriers preventing the above-mentioned groups from accessing justice, and increase awareness among them of laws, judicial processes, remedies and their rights under the Convention. It also recommends that the State party provide, in its next periodic report, information and statistics on complaints of racial discrimination, on investigations, prosecutions, convictions and sanctions imposed, and on the judicial and non-judicial remedies provided to victims, disaggregated by age, sex and ethnic or national origin.

Follow-up to the present concluding observations

48. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 22 (human rights defenders) and 24 (b) and (d) (situation of ethnic and ethno-religious groups under martial law and state of emergency) and 38 (COVID-19 and racial discrimination) above.

Paragraphs of particular importance

49. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs ... 26 (situation of ethnic and ethno-religious groups and indigenous peoples), 28 (indigenous lands, territories and resources) ... above, and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

10. Denmark, CERD/C/DNK/CO/22-24, 1 February 2022

Positive aspects

3. The Committee welcomes the following policy measures taken by the State party:
 - (a) The allocation of DKr 26 million (approximately €3.5 million) over four years to initiatives targeted at vulnerable Greenlanders in Denmark, and of DKr 12.3 million (approximately €1.6 million) to the Greenlandic Houses (2019), with the aim of improving inclusion and outreach services for Greenlandic newcomers in Denmark; (b) The national strategy against bullying in Greenland, including on the grounds of nationality, ethnicity and language (2019)...

Greenland

14. While the Committee notes that a strategy against bullying was adopted by the Parliament of Greenland in 2019, the Committee is concerned by the lack of progress in Greenland to enact a law that prohibits racial discrimination in a comprehensive manner. The Committee also continues to be concerned about the absence of a competent body to deal with complaints of discrimination based on race, colour, descent, or national or ethnic origin (arts. 2 and 5).
15. The Committee recommends that Greenland introduce comprehensive anti-discrimination legislation protecting against discrimination on all grounds listed in article 1 (1) of the Convention and covering all areas of life, and that it set up a mechanism through which it can monitor hate speech and the impact of its campaign against bullying.

11. Chile, CERD/C/CHL/CO/22-23, 9 December 2021

Positive Aspects

4. The Committee further welcomes the following legislative and institutional measures taken by the State party: ... (b) Act No. 21.273, in 2020, which recognizes the Chango population as the tenth indigenous community in Chile...

Constitutional developments

8. The Committee takes note of information provided by the State party concerning the ongoing Constitutional Convention that is tasked with drafting a new Constitution, in particular in so far as the number of seats that have been reserved for members of indigenous communities and that the President of the Convention is a woman of Mapuche origin. The Committee also notes the establishment of a temporary Commission for consultation of Indigenous Peoples within the Constitutional Convention. This process presents a promising opportunity to enshrine the recognition of the Indigenous Peoples and their rights in the Constitution and to develop a constitutional framework suitable to address the claims of the Indigenous Peoples of Chile. The Committee is, however, concerned that there are no reserved seats for people of African descent and other minorities in the Constitutional Convention. It is also concerned about the insufficient funds allocated for the temporary Commission for consultation with Indigenous Peoples, which could have an impact on the reach of the consultations (art. 2, 5).
9. The Committee encourages the State party to fully address the concerns of minorities in the drafting process, including people of African descent, and to increase the allocated budget of the temporary Commission for consultation with Indigenous Peoples in order to have comprehensive consultations with all

indigenous communities and concerned parties that can be then considered by the Constitutional Convention.

Multiple and intersecting forms of discrimination

12. The Committee is concerned about the multiple forms of discrimination that Indigenous Peoples, migrants and African-descendent women face in the State party, which is reflected in their limited access to employment, education, health and migration regulations. The Committee is also concerned by information that medical treatment to Haitian and African descendent women are at times affected by stereotypes of ability to endure pain and not delivered in timely fashion (art. 2).
13. The Committee urges the State party to apply a gender perspective in all policies and strategies for combating racial discrimination in order to put an end to the multiple, intersectional discrimination faced by Indigenous Peoples, migrants and African descendent women. In addition, it recommends that the State party adopt measures based on an intercultural approach in order to guarantee access for women from minorities to education, employment and health; to train health professionals to ensure the non-discriminatory fulfilment of their obligations; and to include Kreyol-Spanish translators in hospitals and care institutions. The Committee encourages the State party to take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination. Institutional framework.
14. While appreciative of the progress made by the State party in establishing and strengthening a network of public institutions for the promotion and protection of human rights, the Committee regrets that although the draft bills aimed at creating a National Council and Councils of Indigenous Peoples (Boletín N° 10526-06), and the Ministry of Indigenous Peoples (Boletín N° 10687-06) were sent to Congress in 2016, they are not yet adopted (art. 2).
15. The Committee recommends that the State party expedite the passing of these important laws and requests that the State party provide it with information on the competences and achievements of both institutions in its next periodic report.

Racial discrimination and law enforcement

20. The Committee is concerned about the continuation of the “state of constitutional emergency” and the militarization of the conflict with the Mapuche which has already lead to the death and bodily harm of members of this community. It is also concerned about numerous reports of excessive use of force by Carabineros against members of Mapuche communities, in particular in the context of demonstrations in defence of their rights. The Committee is also concerned about reports that law enforcement officials are not always held accountable for their acts, despite the administrative measures and institutions set up to address such instances (art. 2, 4, 5).
21. The Committee urges the State party: (a) Ensure that the actions of law enforcement officials comply fully with human rights in particular during mass demonstrations, and refrain from violence against indigenous communities; (b) Investigate allegations of acts of violence committed by law enforcement officials, prosecute and punish those found guilty, with appropriate penalties, while granting adequate reparations to victims and their families; (c) Intensify and expand the human rights training provided to law enforcement and judicial officials to ensure the proper performance of their duties; (d) Design public policies in consultation with the Mapuche people that promote intercultural dialogue and foster peace in conflict zones.

Racial profiling

22. The Committee observes that there is no information from the State party on instances of racial profiling and of measures taken to combat such practices. The Committee however takes note of reports that members of the Mapuche, migrant and African descendant communities in particular are regularly subjected to racial profiling by the police and other law enforcement agencies (art. 4).
23. The Committee recommends that the State party enact regulations and implement policies to combat racial profiling taking into consideration general recommendation No. 36 (2020), on preventing and combating racial profiling.

Counter-terrorism legislation

24. The Committee remains concerned by reports that Act No. 18.314 (the Counter Terrorism Act) has been applied in a disproportionate manner to members of the Mapuche community. The Committee is further concerned by the lack of objective criteria for the application and enforcement of this law and that its invocation allows for serious measures against alleged perpetrators, in particular with regard to pre-trial detention and restrictions of due process rights (art. 6).
25. The Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/19-21, para. 14) and urges the State party to: (a) Revise the Counter-Terrorism Act so that it specifies exactly what terrorist offences it covers, and adapt it to international standards; (b) Ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts that take place in connection with the expression of social needs; (c) Monitor the application of the Counter-Terrorism Act and related practices in order to identify any discriminatory effect on indigenous peoples.

Situation of Indigenous Peoples

28. The Committee is concerned that ineffective or absent consultation with Indigenous Peoples on issues affecting land and territory has led to conflicts. The Committee notes with concern that indigenous languages are less visible in the mainstream media and that alternative media, including indigenous community radio stations used for language revitalization, are not being appropriately supported and facilitated by the government, despite the CERD previous recommendations (CERD/C/CHL/CO/19-21, para. 15). The Committee remains deeply concerned by the desecration of sacred sites such as “Marta Cayulef” in Pucón, Coñaripe (Los Ríos) and Chinay (Villarica), and the negative impact on the environment, health, and traditional ways of life of indigenous communities owing to the installation of waste disposal sites on their territories in different parts of the State party such as in Collipulli and Lautaro. Furthermore, the Committee regrets that insufficient attention has been paid, and insufficient resources have been allocated to the issue of the restitution of ancestral lands raised by the Committee (CERD/C/CHL/CO/19-21, para. 13) which continues to represent the main source of tension between the State party and Indigenous Peoples (art. 5).
29. Recalling its general recommendation No. 23 (1997) on the rights of Indigenous Peoples, the Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/19-21, para. 13, 15, 16) and urges the State party to:
 - (a) Take the necessary steps to provide Indigenous Peoples with effective protection from racial discrimination;
 - (b) Undertake environmental impact assessments on a systematic basis and fulfil its obligation to ensure that consultations are held with Indigenous Peoples

before authorizing any investment project that could negatively impact their rights to the land and resources that they possess or that they have traditionally used, with a view to obtaining their free, prior and informed consent, as established in the relevant international instruments;

- (c) Expedite the establishment of the Ministry of Indigenous Peoples and the National Council of Indigenous Peoples in accordance with international standards, and speed up the implementation of Act. No. 19.253, which sets out rules on the protection, advancement and development of Indigenous Peoples and the establishment of a historical cadastre of indigenous lands and water resources;
- (d) Allocate sufficient resources to revive indigenous languages and ensure that Indigenous Peoples have access to education and promote the involvement of indigenous teachers and adopt the necessary legislative and other measures to reduce the constraints faced by Indigenous Peoples with regard to the use of community-based media in order to promote the use of indigenous languages;
- (e) Expedite the restitution of ancestral lands and furnish effective and sufficient means of protecting Indigenous Peoples' rights to their ancestral lands and resources in accordance with the Convention, other relevant international instruments and the treaties signed by the State party with Indigenous Peoples.

Racial stereotypes of people of African descent, indigenous peoples and migrants

- 34. The Committee is concerned by reports that, in particular within educational texts, representation of indigenous peoples, migrants and people of African descent is based on stereotypes and there is a lack of diversity as students are portrayed mainly with white phenotypic features, while migrants are excessively racialized (art. 2, 5).
- 35. The Committee recommends that the State party revise and amend the curriculum with regard to ethnic stereotyping and specifically in school text books dealing with the history of Chile.

Access to justice

- 36. The Committee takes note of the State Party's measures to ensure specialized legal counsel to Indigenous Peoples involved in criminal cases; the availability of interpreters and the use of intercultural facilitators; and officials who are familiar with the indigenous language and culture of the region where they work. However, the Committee is concerned about allegations of violations of due process and instances of mistreatment in prisons, affecting several prisoners belonging to the Mapuche people, as well as lack of effective regulation that complies with the indigenous peoples' needs and allows for the possibility to practice traditions, customs and rituals. The Committee is further concerned by information about detainees being held in detention centres far from their local communities (art. 6).
- 37. The Committee, in light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, urges the State party to:
 - (a) Ensure that Indigenous Peoples have their fundamental rights and due process safeguards upheld at all times;
 - (b) Ensure that detainees are held in detention centres close to their local community;

- (c) Implement effective regulations that promote respect for the culture and traditions of Indigenous Peoples in all detention centres and prisons;
- (d) Organize trainings to sensitize law enforcement officers and prison officials on Indigenous Peoples' rights, customs, rituals and traditions.

Follow-up to the present concluding observations

45. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 19 (a) and (b) (racist hate speech and hate crimes), 29 (d) (situation of Indigenous Peoples) and 33 (d) (situation of migrants, asylum seekers and refugees) above.

Paragraphs of particular importance

46. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 17 (NHRI), 21 (law enforcement), 29 (indigenous peoples) and 35 (racial stereotypes) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

12. Cambodia, CERD/C/KHM/CO/14-17, 30 January 2020

Positive aspects

4. The Committee further welcomes the following legislative and policy measures taken by the State party: ... (e) As of May 2018, 24 indigenous communities have received communal land titles....

Statistical data

- 5. The Committee takes note of the data provided by the State party in its report and during the dialogue on certain ethnic groups. However, it regrets that the data were missing indicators such as years and were not comprehensive enough to allow an empirical basis for evaluating the equal enjoyment of rights under the Convention by ethnic groups and indigenous peoples (arts. 1 and 5).
- 6. Recalling the guidelines for reporting under the Convention (CERD/C/2007/1), the Committee recommends that, in its next periodic report, the State party provide disaggregated data on the ethnic composition of the population, including of indigenous peoples, refugees and asylum seekers, and supply statistics on the enjoyment of economic, social and cultural rights, disaggregated by ethnic group, in order to provide the Committee with an empirical basis for evaluating the equal enjoyment of rights under the Convention.

Situation of indigenous people

- 27. While welcoming the State party's recognition of and efforts to support indigenous peoples, including some improvements in the rights of indigenous children in different fields, such as education, the Committee is still concerned about challenges facing the situation of indigenous peoples, in particular about:
 - (a) The lack of detailed information, including data on the enjoyment of socioeconomic rights by the 24 indigenous groups;
 - (b) Reports that indigenous peoples continue to be affected by a lack of access to education, health care and an adequate standard of living;

- (c) The insufficient free, prior and informed consent with affected indigenous communities, while natural resource extraction, industrial and development projects continue;
 - (d) Reported intimidation and attacks against indigenous peoples as they seek to exercise their rights as it relates to communal lands;
 - (e) The current land titling process, which is too lengthy and bureaucratic and therefore prevents some indigenous groups from being able to efficiently register their collective land;
 - (f) Prolonged land disputes that reportedly leave affected indigenous individuals homeless during settlement and make indigenous lands susceptible to land grabbing for commercial purposes (arts. 2 and 5).
28. Bearing in mind its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee welcomes the Government's development of a strategic plan for the development of indigenous peoples 2020–2024, and recommends that the State party:
- (a) Provide detailed information and statistical data on the 24 indigenous groups identified in the State party;
 - (b) Take measures to ensure access to education, health care and an adequate standard of living by all indigenous peoples;
 - (c) Take measures to ensure free, prior and informed consent with indigenous communities in matters that impact them, in accordance with international standards;
 - (d) Protect indigenous peoples from attacks and intimidation from government agents and private companies as they seek to exercise their rights as it relates to communal lands;
 - (e) Simplify the procedure of land titling allowing for indigenous peoples to gain recognition and claim their land;
 - (f) Expedite the settling of land disputes and take measures to prevent the displacement of and homelessness among indigenous peoples.

Situation of minority women

29. The Committee is concerned that minority women face multiple and intersecting forms of discrimination on the basis of ethnic origin and gender, including barriers in access to employment, education, health care and justice. The Committee is concerned at reports that indigenous women are particularly vulnerable to violence (arts. 2 and 5).
30. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party eliminate all barriers faced by minority women in access to employment, education, health care and justice. To this end, it recommends that the State party incorporate a minority-women perspective in all policies and strategies. The Committee also recommends that the State party ensure that violence against ethnic-minority and indigenous women are incorporated into its national action plans and efforts to end violence against women.

Other recommendations

Paragraphs of particular importance

50. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14 (hate speech and hate crimes), 24 (situation of ethnic Vietnamese), 26 (situation of Khmer Krom), and 28 (situation of indigenous peoples) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

13. Israel, CERD/C/ISR/CO/17-19, 27 January 2020

Positive aspects

6. The Committee also welcomes the following legislative, institutional and policy measures taken by the State party: ... (c) The adoption, in 2017, under government resolution No. 2397, of the Government Plan for the Economic and Social Development of the Bedouin Population in the Negev (2017–2021)....

Complaints of racial discrimination

19. The Committee welcomes the various measures taken to facilitate the reporting of complaints for acts of racial discrimination, including the adoption of Amendment No. 22 to the Legal Aid Law, the launching of several awareness-raising campaigns, and the creation of various complaints mechanisms, including a hotline to provide information and assistance to persons affected by such acts. It is, however, concerned: ... (b) That people belonging to minority groups, in particular Palestinian and Bedouin communities ... may face obstacles in accessing justice while seeking remedies for cases of discrimination (art. 6).
20. Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party: ... (b) Increase awareness among minority groups, in particular Palestinian and Bedouin communities ... of their rights under the Convention and eliminate all barriers preventing them from accessing justice, and continue facilitating the filing of complaints for victims of racial discrimination.

Situation of the Bedouin people

28. While welcoming several measures taken to improve the situation of Bedouin people, including the adoption of the Socioeconomic Development Plan for Negev Bedouin (2017–2021), and to enhance their educational opportunities and their access to public and social services, the Committee remains concerned about house demolitions and the ongoing transfer of Bedouin communities to temporary locations, as well as the absence of meaningful participation of and consultation with Bedouin communities in the formulation of such plans affecting their access to land and property. The Committee is also concerned about the substandard living conditions in both the unrecognized villages and the recognized townships, which are characterized by limited access to adequate housing, water and sanitation facilities, electricity and public transportation (arts. 2 and 5).
29. The Committee recommends that the State party:
- (a) Ensure meaningful consultation with all concerned Bedouin communities regarding the implementation of the various plans affecting their right

to land and property and resolve the pending land ownership claims in a timely, transparent and effective manner;

- (b) Recognize their villages;
- (c) Take all necessary measures to improve their living conditions;
- (d) Stop house demolitions and the eviction of Bedouin people from their homes and ancestral lands.

Situation of minority women

32. The Committee is concerned that minority women, in particular those belonging to Palestinian, Druze, Bedouin, Circassian and Ethiopian communities, may face multiple and intersecting forms of discrimination on the basis of ethnic origin and gender, including barriers to obtaining access to employment, education, health care and justice (arts. 2 and 5).
33. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party eliminate all barriers faced by minority women, in particular those belonging to Palestinian, Druze, Bedouin, Circassian and Ethiopian communities, in obtaining access to employment, education, health care and justice. To this end, it recommends that the State party incorporate a minority women perspective into all gender-related policies and strategies.

Participation in public and political life

36. The Committee welcomes the various initiatives taken to increase the representation of persons belonging to minorities, such as the Palestinian, Druze, Bedouin, Circassian and Ethiopian communities, in the public sector, especially in government offices. It also takes note of the outreach programmes that have taken place in the judicial and law enforcement sectors to attract more professionals with minority backgrounds. However, the Committee is concerned about recent legislative changes regarding the Knesset, such as Amendment No. 62 (2014) to the Knesset Elections Law raising the threshold required for political parties and Amendment No. 44 (2016) to the Basic Law: The Knesset (Dismissal of a Knesset Member in accordance with Section 7A) (2016) regarding the establishment of a procedure to oust a sitting Knesset Member on political and ideological grounds, which could both considerably weaken the right to political participation of non-Jewish minorities (arts. 2 and 5).
37. The Committee recommends that the State party continue and step up its efforts to achieve adequate representation of minorities in the civil service, law enforcement and judicial bodies, in particular in senior positions. Furthermore, it recommends that the State party eliminate obstacles and create favourable conditions for the participation of minorities in political decision-making processes.

Rights to education, work and health

38. The Committee is concerned:
- (a) About the disproportionately high dropout rates among Bedouin students and the significant gaps in the educational achievements between Arab students and Jewish students, as well as the shortage of classrooms and kindergartens in Bedouin neighbourhoods;
 - (b) That non-Jewish minority groups, in particular Palestinian and Bedouin communities, continue to face limitations in the enjoyment of their right to work and are concentrated in low-paying sectors;

- (c) About the disproportionately poor health status of the Palestinian and Bedouin populations, including shorter life expectancy and higher rates of infant mortality compared with those of the Jewish population (art. 5).

39. The Committee recommends that the State party:

- (a) Step up its efforts to address the high dropout rates of Bedouin students and the shortage of classrooms and kindergartens in Bedouin neighbourhoods, and take effective measures to improve the quality of education provided to Arab students with a view to enhancing their academic achievements;
- (b) Intensify its efforts to increase the labour market participation of non-Jewish minority groups, in particular Palestinians and Bedouins, especially women belonging to these communities, including by providing education and training tailored to their experience and their level of job skills and by considering the establishment of special measures;
- (c) Take concrete measures to improve the health status of the Palestinian and Bedouin populations.

Settlement policies and acts of violence in the West Bank, including East Jerusalem

42. The Committee is concerned at continuing confiscation and expropriation of Palestinian land, continuing restrictions on access of Palestinians in the Occupied Palestinian Territory, including East Jerusalem, to natural resources, inter alia, agricultural land and adequate water supply. The Committee is particularly concerned:

- (a) About the discriminatory effect of planning and zoning laws and policies on Palestinians and Bedouin communities in the West Bank, the continued demolitions of buildings and structures, including water wells, and as a consequence, further displacement of Palestinians...

43. The Committee recommends that the State party:

- (a) Review planning laws and policies in the West Bank, including East Jerusalem, in consultation with the affected populations, to ensure that they are compliant with its obligations under the Convention and ensure the rights to property, access to land, housing and natural resources of Palestinian and Bedouin communities...

14. Colombia, CERD/C/COL/CO/17-19, 22 January 2020

Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party: ... (d) Decree No. 2124 of 2017, regulating the prevention and warning system for ensuring a rapid response to the presence, operations and/or activities of criminal organizations or criminal acts and conduct that jeopardize the rights of the population and the implementation of the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace; (e) Decree No. 1953 of 2014, which entered into force in 2018, recognizing the first indigenous university in Colombia, the Autonomous Indigenous Intercultural University of Cauca...

Demographic composition of the population

4. The Committee takes note of the carrying out of the 2018 national population and housing census and the participation of indigenous peoples, persons of African descent and the Roma population. ... While acknowledging the State party's efforts to rectify the figures using an estimate based on data obtained in the 2018 quality of life survey, the Committee is of the view that the data concerning this segment of the population are not accurately reflected (art. 2).
5. The Committee reiterates its recommendation to the State party and urges it to collect and provide to the Committee reliable, updated and comprehensive statistical data on the demographic composition of the population, together with socioeconomic indicators disaggregated by ethnicity, gender, age, region, and urban and rural areas, including the most remote areas. In this regard, the Committee encourages the State party to continue its efforts to adopt, with the involvement of indigenous peoples, persons of African descent and the Roma population, an appropriate methodology for the next population and housing census to ensure the collection of accurate and reliable statistical data for these population groups, and in particular the Afro-Colombian, black, Palenquera and Raizal population. It further recommends that the State party provide adequate training to officials of the National Department of Statistics responsible for conducting the population and housing census to ensure that the criterion of self-identification is appropriately applied and taken into consideration. The Committee draws the State party's attention to its general recommendation No. 4 (1973) concerning reporting by States parties with regard to the demographic composition of the population.

Impact of the armed conflict, the Peace Agreement, justice and reparation

12. The Committee is concerned about the violence that still persists following the signing of the Peace Agreement and that affects, and constitutes a serious threat to, indigenous peoples and communities of African descent. In particular, it is concerned about paramilitary incursions into territories inhabited by these population groups; the targeted killings of members of communities of African descent and indigenous peoples; the increase in massive forced internal displacement, and the lack of protection for these population groups; and the continuing recruitment of indigenous children and children of African descent by non-State armed groups. The Committee is also concerned about information to the effect that risk reports issued by early warning system of the Ombudsman's Office are not duly considered by the intersectoral commission for rapid response to early warnings and that the recommendations issued by the Ministry of the Interior concerning such reports are not properly implemented (arts. 2, 5 and 6).
13. The Committee reiterates its previous recommendation (CERD/C/COL/CO/15- 16, para. 12) and urges the State party to:
 - (a) Redouble its efforts to ensure protection for indigenous peoples and communities of African descent against the violence that still persists in the context of the armed conflict and that continues to have a disproportionate impact on these population groups, by ensuring full compliance with relevant Constitutional Court decisions;
 - (b) Ensure satisfactory protection from forced displacement, while respecting the rights, customs, traditions and culture of indigenous peoples, by ensuring full compliance with relevant Constitutional Court decisions and taking into account article 10 of the United Nations Declaration on the Rights of Indigenous Peoples and guaranteeing, where possible, the option of return;

- (c) Intensify its efforts to prevent and eliminate the recruitment of indigenous children and children of African descent by non-State armed groups and ensure the effective implementation of the measures taken for their demobilization and reintegration;
 - (d) Ensure that the risk reports issued by the early warning system are duly taken into account by the relevant authorities, particularly the intersectoral commission for rapid response to early warnings, and that the recommendations issued by the Ministry of the Interior concerning such reports are properly implemented.
14. The Committee takes note of the inclusion of a chapter on ethnic perspectives in the Peace Agreement. However, it is concerned about reports concerning the failure to implement the provisions of this chapter and the lack of guarantees for the effective participation of indigenous peoples and communities of African descent in the implementation of the Peace Agreement. It is further concerned about the lack of progress in investigating, prosecuting and sanctioning those responsible and in providing reparations for human rights violations committed against members of indigenous peoples and communities of African descent in the context of the armed conflict, including collective reparations such as those for the Coordinating Office for Displaced Women of African Descent in Resistance (arts. 2, 5 and 6).
15. The Committee recommends that the State party:
- (a) Ensure the implementation of the chapter on ethnic perspectives contained in the Peace Agreement, including by providing adequate funding, and guarantee the participation of members of indigenous peoples and communities of African descent, especially women, in the implementation of the Agreement, while respecting the traditional selection processes of indigenous peoples and communities of African descent;
 - (b) Carry out thorough and effective investigations with a view to prosecuting and punishing those responsible for human rights violations committed against members of indigenous peoples and communities of African descent affected by the armed conflict and take the necessary measures to ensure that victims receive full redress, by allocating the necessary resources.

Structural discrimination

16. The Committee is concerned about the persistent structural and historical discrimination faced by members of indigenous peoples and communities of African descent, as reflected in high levels of poverty and social exclusion, as compared with the rest of the population. It is also concerned about the impact that such discrimination has on the enjoyment of the rights set out in article 5 of the Convention, including the rights to work, health, education and political participation. In this regard, the Committee is concerned about:
- (a) obstacles to the labour inclusion of these population groups;
 - (b) the lack of availability and accessibility of health services, especially in remote rural areas, where the majority of indigenous peoples and a considerable number of persons of African descent live;
 - (c) cases of chronic malnutrition among indigenous children and deaths related to malnutrition, in particular among Wayúu, Amorúa and Sikuaní indigenous children;
 - (d) the low levels of education of these population groups, as compared with the rest of the population; and

- (e) the continuing lack of adequate representation of the Afrodescendent and indigenous populations at all levels of public administration (arts. 1, 2, 5 and 7).
17. With reference to its general recommendations No. 23 (1997) on the rights of indigenous peoples, No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party:
- (a) Ensure that indigenous peoples and persons of African descent are protected against discrimination by State agencies and public officials, as well as by any other person, group or organization;
 - (b) Effectively promote social inclusion and reduce the high rates of poverty and inequality among indigenous peoples and persons of African descent, including through the adoption of special measures designed to eliminate structural discrimination against such groups;
 - (c) Eliminate all obstacles that impede the effective enjoyment by members of indigenous peoples and communities of African descent of their economic, social and cultural rights, especially in the areas of work, health and education;
 - (d) Take the necessary steps to reduce the rates of chronic malnutrition among indigenous children and to guarantee indigenous peoples' right to adequate food;
 - (e) Adopt, in consultation with, and with the involvement of, indigenous peoples and communities of African descent, effective measures, including legislation, to ensure their full participation in public affairs in both decision-making positions and representative institutions, and ensure equality of opportunity for participation by indigenous peoples and communities of African descent at all levels of government service at both the local and national levels.

Right to prior consultation

18. The Committee is concerned that, although the right to prior consultation is formally recognized in Colombian law, legislative processes, in general, and, in particular, the granting of licences for investment, tourism, industrial fishing and mining projects, which are carried out in the territories of indigenous peoples and of communities of African descent, are reportedly conducted in the absence of prior, free and informed consultations in line with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and without the appropriate environmental precautions (arts. 2 and 5).
19. Recalling its previous recommendation (CERD/C/COL/CO/15-16, para. 22) and its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to:
- (a) Ensure the right of indigenous peoples and communities of African descent to be consulted on any project, activity, legislative or administrative measure likely to affect their rights, particularly their right to the land and natural resources that they own or have traditionally used, with a view to obtaining their free, prior and informed consent, in line with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards;
 - (b) Make certain that, as an integral part of prior consultation processes, before permits are granted, and from the design of projects, works or other activities to their implementation, impartial independent bodies carry out assessments of the potential environmental and human rights impacts of economic and natural resource development projects in the territories of indigenous peoples and communities of African descent;

- (c) Specify, in consultation with the indigenous peoples and communities of African descent whose territories and resources are affected, the mitigation measures to be put in place, the compensation for damages or losses suffered to be provided and the share in the benefits to be obtained from such activities.

Land rights and land restitution

20. The Committee is concerned about the limited progress towards the implementation of legislation on the protection, restitution and titling of indigenous and Afrodescendent territories, including Act No. 1448 of 2011, on the restitution of land for victims of the armed conflict, Act No. 70 of 1993, which recognizes the right of collective ownership of Afro-Colombians over their territories, and Decrees No. 1953 of 2014 and No. 632 of 2018. In this regard, the Committee is concerned about reports that the Land Restitution Unit has rejected 64 per cent of land restitution applications, the long delays on the part of the National Land Agency in implementing decisions of the Court requiring the titling of collective territories, and the reduction in the budgets of both entities. The Committee is also concerned about the situation currently experienced by some indigenous peoples living in protected areas, including Tayrona National Park, who face restrictions on their right to dispose freely of their lands and natural resources (arts. 2 and 5).
21. The Committee recommends that the State party:
 - (a) Redouble its efforts to ensure, facilitate and expedite, without delay, the implementation of legislation, including Act No. 70 of 1993, Act No. 1448 of 2011 and Decrees Nos. 1953 of 2014 and 632 of 2018, intended to guarantee, preserve and restore the rights of the indigenous peoples and persons of African descent to own, use, develop and exercise full control over their lands, territories and resources and protect them from any illegal encroachment;
 - (b) Ensure that the Land Restitution Unit and the National Land Agency have sufficient human, material and financial resources to guarantee the implementation of legislative measures relating to the restitution of lands, ensuring the effective participation of indigenous peoples and communities of African descent; CERD/C/COL/CO/17-19 6 GE.20-00927
 - (c) Guarantee the restitution of the lands to indigenous and Afrodescendent communities and ensure that land restitution applications are properly assessed on the basis of established legal criteria and that court decisions requiring the restitution of land are implemented without delay;
 - (d) Take the steps necessary to ensure that indigenous peoples living in protected areas, in particular Tayrona National Park, are able to dispose freely of their lands and natural resources and that they are consulted in all processes and decisions that affect them. Indigenous peoples facing extinction, living in isolation or at the initial-contact stage
22. The Committee regrets the lack of significant progress in applying Constitutional Court decisions and ethnic protection plans relating to indigenous peoples and persons of African descent that have been identified as being at risk of physical or cultural extinction or as extremely vulnerable, in particular the Awa and Uitoto people. The Committee is further concerned about the lack of effective measures for the protection of indigenous peoples in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people (arts. 2, 4, 5 and 6).

23. The Committee reiterates its previous recommendation (CERD/C/COL/CO/15-16, para. 16) and urges the State party to give full effect to the decisions of the Constitutional Court, finalize the development of ethnic protection plans for peoples that have been identified as being at risk of physical or cultural extinction and ensure their effective implementation. The Committee recommends that the State party take the necessary urgent measures to ensure the physical and cultural survival of indigenous peoples who are living in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people.

Situation of women of African descent and indigenous women

24. The Committee is concerned about the multiple forms of discrimination faced by indigenous women and women of African descent in comparison with women in the rest of the population, especially with regard to access to work, education and health services, including sexual and reproductive health services. The Committee is further concerned about the high rate of sexual violence, which disproportionately affects indigenous women and women of African descent, in particular violence in connection with the armed conflict, the lack of assistance, protection and justice for victims, and the prevalence of impunity for such crimes (arts. 2, 5 and 6).
25. In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee urges the State party to:
- (a) Step up its efforts, while giving due consideration to cultural and linguistic differences, to combat the multiple forms of discrimination faced by indigenous women and women of African descent to ensure that they have effective and adequate access to justice, work, education and health services, including reproductive health services;
 - (b) Take the necessary measures to prevent sexual violence against indigenous women and women of African descent and ensure that victims have access to appropriate assistance and effective and culturally appropriate protection mechanisms;
 - (c) Ensure the effective implementation of Act No. 1719 of 2014 on access to justice for victims of sexual violence, in particular that committed in connection with the armed conflict, and compliance with Constitutional Court decisions No. 92/08 and No. 9/15, thus guaranteeing that all cases of sexual violence are duly investigated, that the perpetrators are prosecuted and duly punished, and that victims receive comprehensive reparation.

Human rights defenders

28. The Committee is deeply concerned about the killings of, and the constant acts of violence, threats, intimidation and reprisals against, human rights defenders and leaders of indigenous peoples and communities of African descent, in particular in Cauca, including the recent killing of Cristina Bautista on 29 October. It is also concerned about the low number of investigations conducted, prosecutions brought and sanctions imposed in connection with such crimes. Furthermore, the Committee is concerned about reports concerning the lack of resources of the National Protection Unit and the ineffectiveness of the protection measures adopted by it, in particular in rural areas. The Committee is also concerned about acts of defamation against, and the criminalization of, human rights defenders, including those who are members of indigenous peoples and communities of African descent (arts. 4, 5 and 6).

29. The Committee recommends that the State party:
- (a) Take additional and effective measures to prevent acts of violence, threats, intimidation and reprisals against human rights defenders, in particular leaders of indigenous peoples and communities of African descent, and ensure that all allegations of such acts are investigated thoroughly, impartially and effectively, that those responsible, both the persons who carried out the acts and the instigators or ideologues, are prosecuted and duly punished, and that the victims or their families are provided with full reparation;
 - (b) Guarantee the effective protection of their lives and personal safety, by ensuring that protection measures are taken with the involvement of the individuals, peoples and communities concerned, taking into account their customs and culture, and that they are implemented effectively and reviewed regularly;
 - (c) Strengthen, through the allocation of adequate resources and the granting of express legal recognition, pre-existing collective protection mechanisms in the communities concerned, including the Indigenous Guard and the Cimarrona Guard;
 - (d) Ensure the effective functioning of the National Protection Unit by such means as the review and improvement of existing protection strategies, the adoption and effective implementation of collective protection measures, with differentiated measures for people living in rural areas and for women, and the allocation of sufficient human, financial and technical resources;
 - (e) Organize information and awareness-raising campaigns on the crucial work done by human rights defenders with a view to creating a climate of tolerance in which they can perform their work free from all forms of intimidation, threats and reprisals.

Access to justice and indigenous jurisdiction

30. The Committee takes note of the National Justice Houses and Civic Harmony Programme and the local justice systems strategy intended to improve the functioning of the special indigenous courts and to increase access to justice for indigenous peoples and communities of African descent. However, it remains concerned that these are not sufficient to ensure access to justice for these population groups, as they are still not available in all their territories (art. 6).
31. The Committee recommends that the State party:
- (a) Intensify its efforts to ensure access to justice for indigenous peoples and communities of African descent, by ensuring that they have access to justice throughout the territory in which they live;
 - (b) Continue making efforts to recognize, respect and strengthen the indigenous justice system, including harmonization, cooperation and coordination involving the authorities of the ordinary and indigenous systems of justice.

OTHER RECOMMENDATIONS

Follow-up to the present concluding observations

38. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 21 (a) (land rights and land restitution) and 23 (indigenous peoples facing extinction, living in isolation or at the initial-contact stage) above.

Paragraphs of particular importance

39. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11 (hate speech), 17 (structural discrimination), 19 (right to prior consultation) and 29 (protection of human rights defenders and leaders of ethnic groups) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

B. EARLY WARNING/URGENT ACTION AND FOLLOW UP PROCEDURES

1. Canada, 2 December 2022

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to the lack of consultation with First Nations (O'Chiese First Nation, Frog Lake Cree Nation, Kehewin Cree Nation, Whitefish Lake Band # 128, Cold Lake First Nation, Louis Bull Tribe, Beaver Lake Cree Nation, Ermineskin Cree Nation, Enoch Cree Nation and Onion Lake Cree Nation) with regard to the allocation of COVID-19 relief funds in the provinces of Alberta and Saskatchewan as well as (ii) the initiative to develop a Distinctions-Based Indigenous Health legislation.

According to the information received:

- The Federal Government of Canada transferred large amounts of direct COVID-19 relief funds to provinces (Alberta and Saskatchewan) based on a per capita allocation, which included in the counting the Indigenous population, but no funds were directly allocated to First Nations, who were forced to apply for funds from the provinces;
- The decision to deliver COVID-19 health assistance only through the provinces was made unilaterally by the Federal Government of Canada, without any consultation with all concerned First Nations, and at the expense of the provisions of Treaty Number Six of 1876 and the right of First Nations to develop and manage their own health systems within their territories.

The information received also alleges that:

- The Federal Government of Canada has launched a process to develop legislation on Indigenous Peoples' health (Distinctions-based Indigenous Health Legislation), without any consultation with all concerned First Nations prior to the announcement and without any regard to pre-existing treaty rights.

The Committee is concerned about the impact that the situation described could have on the rights of the above-mentioned First Nations. In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, which called upon States parties to ensure that no decisions directly relating to the rights and interests of indigenous peoples are taken without their informed consent. It further recalls its concluding observations of 2012 (CERD/C/CAN/CO/19-20, paras. 19 and 20), in which the Committee recommended that the State party, in consultation with indigenous peoples, implement and reinforce its existing programmes and policies to better realize the economic, social and cultural rights of indigenous peoples, including the right to health.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to receive a response to the above allegations before 11 April 2023. The Committee would also like to receive information on the measures adopted by the State party to ensure meaningful consultations with First Nations on the health issues addressed in this letter, in accordance with the Convention and with the United Nations Declaration on the Rights of Indigenous Peoples, in particular the principle to obtain the free, prior and informed consent of indigenous peoples before adopting and implementing legislative or administrative measures that may affect them.

2. Colombia, 2 December 2022 (Unoff. Transl.)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination continued to consider the situation of the Cañamomo Lomaprieta Indigenous Reservation in the Department of Caldas as part of its early warning and urgent action procedure.

The Committee thanks the State party for its response dated 25 October 2022 and takes note of the information provided, in particular:

- The meeting held on May 31, 2022 between the Command of the Department of Caldas with the Embera Chamí indigenous community of the Cañamomo and Lomaprieta reservations, in order to address specific aspects related to compliance with judgment T-530 of the Constitutional Court of Colombia of September 2016;
- The control and verification measures carried out by the National Police, accompanied by the Indigenous Guard and the Association of Ancestral Miners of the Cañamomo Lomaprieta Indigenous Guard (ASOMICARS), with the aim of initiating operational actions aimed at preventing the development of activities related to illegal mining.

The Committee also takes note of the information concerning the progress and difficulties encountered by the State party's authorities, in particular the National Land Agency, in carrying out activities to comply with the above-mentioned ruling of the Constitutional Court. However, the Committee remains concerned about the delay in implementing the Constitutional Court's ruling since 2016, in particular with regard to the delimitation of the lands of the Cañamomo Lomaprieta Indigenous Reservation. This delay prolongs the insecurity in the tenure of these lands and the conflict related to this situation, which has a negative impact on the exercise of the rights of the inhabitants of the Indigenous Reservation.

In this regard, the Committee reminds the State party that, in its concluding observations issued in 2020, it expressed concern about the serious delays by the National Land Agency in implementing the Court's decisions requiring the titling of collective territories (see CERD/C/COL/CO/17-19, paras. 20 and 21). In this regard, the Committee reiterates the recommendation made to the State party on that occasion that judicial decisions in favour of land restitution be implemented without delay. The Committee's present observation on the subject matter of this communication will be included in its next annual report.

3. Guatemala, 2 December 2022 (Unoff. Transl.)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination considered information received in the framework of its early warning and urgent action procedure relating to the lack of security of tenure over indigenous peoples and territories and its consequences, in particular forced evictions and violence against indigenous communities as well as the criminalization of indigenous people defending their lands.

According to the information received, there has been a significant increase in forced and violent evictions of Q'eqch'i and Poqomochí indigenous communities in the departments of Alta and Baja Verapaz and Izabal, among other cases:

- Attempted forced eviction in the community of Pancoc, municipality of Purulha (Baja Verapaz), on 27 April 2022, by the National Civil Police and members of the riot police, resulting in three injuries, including one seriously;
- Forced eviction in the community of Joventec, Cahabón, Alta Verapaz, on June 15, 2022, on which occasion members of the National Civil Police allegedly burned houses, belongings and crops of the community.
- Forced evictions in the community of Pacoc, municipality of Purulha (Baja Verapaz), between November 21 and 23, 2022, by a contingent composed of military and agents of the National Civil Police, and other nearby communities, including Dos Fuentes, Washington and El Monjón.

The information received alleges that the State party does not actively promote the protection of indigenous peoples' lands; whereas in 2020 it would have dismantled the Secretariat for Agrarian Affairs that was in charge of finding peaceful solutions to land conflicts; and that it would have reduced the staff and funding of the Office of the Special Prosecutor for Human Rights.

The information received also denounces the increase in cases of violence related to land tenure against Q'eqch'i and Poqomochí indigenous communities in the departments of Alta and Baja Verapaz, Izabal and Peten, among other cases:

- On April 5, 2022, around 150 unidentified armed individuals entered the Las Pilas Community, Alta Verapaz, surrounded the members of the community and fired shots to intimidate and evict them, and brutally assaulted one of the indigenous leaders, a situation that would have been repeated on April 8 and May 7. without an adequate and timely response from the National Civil Police;
- On April 7, 2022, around 30 armed individuals entered the community of Quejec, Alta Verapaz, and fired shots to intimidate and evict community members, burning their homes, resulting in two people being injured. It is alleged that the National Civil Police was present intermittently but that they did not remain permanently to protect the community alleging lack of personnel;
- On September 30, 2022, approximately 150 individuals armed with covered faces entered the Xeinup Community of the Maya Q'eqch'i people, municipality of El Chal, department of Peten, fired shots at the population; burned houses, crops and community animals; and assaulted and threatened to kill community members. It is alleged that the community did not receive any assistance from the State party's authorities.

The information received also refers to the increase in criminal proceedings against indigenous persons defending their lands, resources and rights, particularly in the context of the lack of security of land tenure of indigenous communities. The Committee

has also been informed that the majority of persons who have been physically assaulted or injured in the events described in the preceding paragraphs choose not to report cases to the relevant authorities for fear of criminalization against those who defend their rights, and even stop seeking medical attention in the State party's hospitals. The Committee has also been reported to the Committee of increased defamation and hate speech against indigenous individuals and communities defending their lands and rights by private actors, including private property associations and farmers' associations.

The Committee is concerned about allegations received which, if confirmed, could constitute violations of the rights of indigenous individuals and peoples. In this regard, the Committee reminds the State party of its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls in particular upon States parties to recognize and protect the rights of indigenous peoples to own, exploit, control and use their communal lands, territories and resources.

The Committee also reminds the State party that, in its concluding observations issued in 2019, it expressed concern about the lack of protection, legal certainty and guarantees for the title, delimitation, demarcation and restitution of lands and territories traditionally occupied by indigenous peoples, and about allegations of forced evictions of indigenous peoples from their territories without adequate legal protection and sometimes through excessive use of force (CERD/C/GTM/CO/16-17, paras. 21 and 22). The Committee also expressed concern that criminal proceedings are sometimes misused for the criminalization of defenders of the rights of indigenous peoples and their territories, and at smear campaigns against these defenders, including indigenous leaders (paras. 27 and 28).

Pursuant to article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee would be grateful if the State party could provide it with information on the above-mentioned allegations, by 11 April 2023. The Committee requests the State party to include in its response information on measures taken to promote dialogue-based solutions to land conflicts and to prevent evictions, violence and violations of the rights of indigenous communities, including existing mechanisms and human and financial resources allocated for this purpose; as well as to investigate and bring to justice those responsible for violent attacks, threats and extrajudicial evictions against indigenous communities and indigenous human rights defenders, whether state or non-state actors.

4. Australia, 29 August 2022

I write to inform you that in the course of its 107th session, the Committee considered additional information received under its early warning and urgent action procedure, related to the Western Australian Aboriginal Cultural Heritage Act 2021 (ACH Act), and its impact on Aboriginal peoples.

The Committee would like to thank the State party for its reply dated 14 April 2022 in response to the Committee's letter of 3 December 2021. It takes note of the information provided by your Government with regard to the allegations set out in the Committee's previous letter.

The Committee also takes note of the information regarding the mechanisms included in the ACH Act, in particular the establishment of the Aboriginal Cultural Heritage Council; the "no contracting out" clause; the power of the Western Australian Minister for Aboriginal Affairs to issue a stop activity order or a prohibition activity order to prevent harm to Aboriginal cultural heritage; and the requirement that the party

seeking to conduct an activity that will impact Aboriginal cultural heritage must consult and reach an agreement with interested Aboriginal peoples on a Management Plan.

It also notes that under the ACH Act, if the parties do not reach an agreement, the decision rests with the Minister for Aboriginal Affairs who must decide to approve or refuse the Management Plan based on an “interests of the State” test. The Committee is concerned about the discretionary power attributed to the Minister of Aboriginal Affairs, the absence of effective remedies and legal redress for Aboriginal peoples to challenge his decisions and the absence of a requirement of free, prior and informed consent of interested Aboriginal persons for the approval of the Management Plan.

Moreover, the Committee notes that the Western Australian Mining Act of 1978 requires the written consent of private landowners for the approval of mining activities on privately owned land. The Committee notes with concern that the ACH Act does not afford Aboriginal peoples a similar consent requirement. Such a difference of treatment and lesser protection provided to Aboriginal peoples under the law would fail to comply with State obligations under the Convention on the Elimination of Racial Discrimination and would need to be modified to fulfil principles of equality before the law and non-discrimination. This is particularly relevant in light of the fact that the ACH Act also regulates impacts by mining activities and, according to the information received, the majority of applications made under the former Aboriginal Heritage Act of 1972 were mining related and none of the 463 mining-related applications made since 2010 were rejected.

The Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples. It further recalls its concluding observations of 2017 (CERD/C/AUS/CO/18-20, para. 22), in which the Committee recommended the State party to ensure that the principle of free, prior and informed consent is incorporated into pertinent legislation and fully implemented in practice. The Committee further recommended the State Party to respect and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. The Committee’s final observations on this matter will be included in its next annual report.

Finally, the Committee requests the State party to submit the overdue 21st to 22nd combined periodic report as a matter of urgency and to include information on the measures adopted to review the ACH Act.

5. Canada, 29 August 2022

I would like to inform you that the Committee on the Elimination of Racial Discrimination considered additional information received under its early warning and urgent action procedure, related to the situation of Mi ‘kmaw indigenous peoples in Nova Scotia, Canada.

The Committee would like to thank the State party for its reply dated 14 March 2022 in response to the Committee’s letter of 30 April 2021. It takes note of the information provided by your Government with regard to the allegations set out in the Committee’s previous letter, including the investigations initiated and the charges laid against a number of individuals in relation to the violent acts that took place in October 2020 against Mi ‘kmaw and indigenous property.

The Committee also takes note of the appointment of a Federal Special Representative in October 2020 to gather the perspectives of indigenous and non-indigenous harvesters and to improve relationships among indigenous rights holders and non-indigenous harvesters.

The Committee further takes note that the Supreme Court of Canada affirmed the treaty rights contained in the Peace and Friendship Treaties of 1760/61, including the traditional fishing rights, in the Marshall and Marshall II decisions of 1999, and that the Government of Canada has included all Mi'kmaq First Nations in its efforts to implement this right. In this regard, the Committee takes note of the funds provided to Treaty Nations to support increased indigenous participation in commercial fisheries and the Federal Marshall Response Initiative (MRI) replaced later by the Atlantic Indigenous Commercial Fisheries Initiative (AICFI).

Likewise, the Committee takes note that the State party indicates that it will continue to remain cognizant of the Supreme Court's observation that consultations and negotiations are the best way to implement the right to fish in pursuit of a moderate livelihood. In this regard, it notes that the Government of Canada has been negotiating incremental and time-limited agreements called Rights Reconciliation Agreements with the Mi'kmaq and it has also been developing community-level Moderate Livelihood Fishing Plans and an associated Interim Moderate Livelihood Operational Framework.

At the same time, the Committee has received additional information on the situation of the Mi'kmaq indigenous peoples in Nova Scotia. In particular, it has been brought to the attention of the Committee the Report of the Standing Senate Committee on Fisheries and Oceans published in July 2022, which examines the federal government's response to the Marshall decision and the implementation of the rights of First Nation communities to fish in pursuit of a moderate livelihood.

According to this report, the rights-based fisheries that were affirmed in the Marshall decision, affecting Mi'kmaq communities and other First Nations, have yet to be fully implemented by the Government of Canada and the lack of implementation has led to rising tensions and violence. The report also collects concerns by Mi'kmaq and other First Nations and stakeholders that include, among others:

The lack of consultation with indigenous peoples before the Moderate Livelihood Fishing Plans approach was announced;

- The lack of meaningful progress in fishing rights implementation since the Marshall decision despite some initiatives adopted;
- The systemic racism within Fisheries and Oceans Canada (DFO) and the criminalization of the exercise of First Nations' rights, leading to mistrust and violence;
- That although First Nations possess some internal capacity to negotiate rights-based fisheries agreements with the Government of Canada, this capacity differs from one First Nation to another and is not comparable to the federal government's capacity;
- The lack of understanding, misunderstanding, and misinterpretations among the non-indigenous Canadian population when it comes to indigenous history, indigenous culture, the Marshall decision, other related court decisions, and treaties.

In this regard, the Committee notes that the report of the Standing Senate Committee include recommendations to the Government of Canada, in particular:

- To take steps, in cooperation with the Mi'kmaq and other First Nations to review, and amend or modify as necessary, all relevant laws, regulations, policies, and practices regarding rights-based fisheries to ensure they are in line with Canada's domestic and international obligations, including the Constitution Act, 1982 and the United Nations Declaration on the Rights of Indigenous Peoples;

- To negotiate and enter into nation-to-nation agreements with the Mi 'kmaq and other First Nations that will result in true shared decision-making;
- To introduce new legislation in Parliament, in cooperation with the Mi'kmaq, Wolastoqiyik, and Peskotomuhkati, to create a new legislative framework that will allow for the full implementation of rights-based fisheries;
- That all federal government departments and agencies immediately take effective actions to address and eliminate institutional and systemic racism in their laws, regulations, policies, and practices;
- To work in cooperation with the Mi 'kmaq and other First Nations to appoint an independent panel of experts to produce a report with specific recommendations to address the prevalence of institutional and systemic racism within Fisheries and Oceans Canada, the Royal Canadian Mounted Police and other departments and agencies responsible for the enforcement of Mi 'kmaq and other First Nations rights-based fisheries and to describe a plan to address the systemic racism identified;
- To provide the Mi'kmaq and other First Nations with the capacity (e.g., financial, legal, policy) they require to negotiate the full implementation of their rights-based fisheries with the Government of Canada;
- To develop tools, in cooperation with the Mi'kmaq and other First Nations, to engage and educate the public about rights-based fisheries, including where these rights originated, how they have been affirmed and implemented, and how they differ from other types of fisheries;
- To provide effective and ongoing education and training to employees of relevant federal departments and agencies, including Crown-Indigenous Relations and Northern Affairs Canada, Fisheries and Oceans Canada and the Royal Canadian Mounted Police, on the past and present context of Indigenous Peoples in Canada and on rights-based fisheries.

The Committee's final consideration is in accordance with the abovementioned recommendations, which are in line with the Convention, as well as with its general recommendation No. 23 (1997) on the fights of indigenous peoples and with its recommendations made to the State party in paragraphs 14 and 20 of its concluding observations of 2012 (CERD/C/CAN/CO/19-20) and paragraphs 14 and 20 (a) of its concluding observations of 2017 (CERD/C/CAN/CO/21-23). These final observations on this matter under the Early Warning and Urgent Action Procedure will be included in its next annual report.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on the situation of the Mi'kmaw indigenous peoples in Nova Scotia as part of its combined twenty-fourth and twenty-fifth periodic reports, which were due on 15 November 2021, in particular: a) the investigations initiated on the violent acts that took place in October 2020 against Mi 'kmaw and indigenous property and the results of those investigations; and b) the measures adopted to respect, protect and guarantee the rights of Mi 'kmaw peoples in relation to their fishing activities and territories, in light of the concerns and recommendations included in the abovementioned Standing Senate Committee on Fisheries and Oceans, and in accordance with the obligations of the State party under the Convention.

6. Brazil, 29 August 2022

I write to inform you that the Committee considered additional information received under its early warning and urgent action procedure, related to the impact of infrastructure projects on Xavante indigenous peoples in the State of Mato Grosso, in Brazil.

The Committee would like to thank the State party for its replies dated 15 March and 5 April 2022 in response to the Committee's letter of 25 August 2021. It takes note of the information provided by your Government with regard to the allegations set out in the Committee's previous letter, in particular that:

- The National Indian Foundation (FUNAI) has requested the National Department of Transport Infrastructure (DNIT) to reassess the Indigenous Component Study (ECI) regarding highway BR-080 project, and to complement its findings with a survey of primary data with the Xavante Peoples of the Pimentel Barbosa Indigenous Land;
- The geographical limits established Inter-ministerial Ordinance N° 60/2015 for consultation processes are flexible and, may be altered depending on the specificities of the activity and the local peculiarities of each concrete case;
- Consultations regarding the Central-West Integration Railway (FICO) project with the peoples that make up the Indigenous Lands of the Xavante and Northwest complexes of Mato Grosso are suspended; and that FUNAI will soon resume negotiations for the review of the Indigenous Component of the Environmental Impact Studies (CI-EIA) and the elaboration of the Indigenous Component of the Basic Environmental Plan (CI-PBA) for the Xavante people.

At the same time, the Committee has received additional information on the impact of infrastructure and development projects on Xavante indigenous peoples in the State of Mato Grosso. In particular, the information received alleges that:

- (a) FUNAI continues to consult only with Sangradouro and Volta Grande communities and not with all Xavante indigenous communities that could be affected by the hydropower plants along the "Rio das Mortes" river referred to in CERD previous letters of 25 August and 30 April 2021,
- (b) The rice monoculture project "Indigenous Independence" or "Agro Xavante", reportedly supported by FUNAI, would create a commercial farming cooperative inside the Sangradouro reserve; that there has not been consultations with all Xavante indigenous peoples that could be affected by this project; and that it would increase deforestation on Indigenous lands and have a detrimental impact on the traditional way of life of the Xavante peoples;
- (c) The increase of soybean plantations around Indigenous lands has significantly reduced the availability of natural resources, the areas of indigenous lands and the ability of Xavante peoples to perform traditional practices, such as hunting or preparation of medicines; and that the agrochemicals used in fertilizers and pesticides in these soybean plantations have contaminated the water and food sources of the Xavante peoples;
- (d) "Ofício Circular n° 18/2021/CGMT/DPT/Funai" of 29 December 2021, excludes non-homologated indigenous lands from FUNAI's territorial protection plans, leaving unprotected more than 282 non-homologated indigenous lands with approximately 536 indigenous communities living on them unprotected, as they are at different stages of the demarcation process.

In light of the additional allegations received, the Committee would like to request the State party to provide updated and detailed information on the impact of infrastructure and development projects on Xavante indigenous peoples, and on the above-mentioned allegations, during the presentation of its eighteenth to twentieth periodic reports, which will take place at the 10V session of the Committee (14 November to 2 December 2022).

7. Colombia, 29 August 2022 (Unoff. Transl)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination considered information received in the context of its early warning and urgent action procedure relating to the situation of the Cañamomo Lomaprieta Indigenous Reservation in the Department of Caldas.

According to the information received, the State party's authorities have not complied with judgment T-530 of the Constitutional Court of Colombia of September 2016, which ordered, among other measures: that the National Land Agency (ANT) proceed with the delimitation of the lands of the Resguardo no later than 18 months after the ruling was issued; implement the recommendations regarding the tenitorial delimitation of the interdisciplinary group of professionals that was ordered to be established; that the National Mining Agency suspend the processes of mining titles within the territory claimed by the Reservation until the ANT issues a firm decision on the extension of the territories of the Reservation; that the mayors of the municipalities of Riosucio and Supía initiate procedures aimed at closing illegal mines.

As reported to the Committee, to date, the lands of the Reservation have not been delimited; the National Mining Agency would have authorized mining activities within the tenitorio claimed by the Resguardo; and, the municipal authorities would not have complied with the closure of the illegal mines.

The information received also refers to bill^{no.} 492 of 2020 related to the bicentennial of Caldas. This project would include the creation of a "Special Temporary Commission of the Bicentennial of Riosucio" with the mandate to study, evaluate and propose structural solutions to the current situation of differences among the residents of Riosucio in Caldas, specifically including the definition of indigenous reservations. The information received alleges that this legal initiative, if approved, could undermine the process ordered by the aforementioned ruling of the Constitutional Court in favor of the Resguardo.

The Committee has also been informed that the municipal government of Riosucio has announced a proposal for a land use plan relating to zoning, authorization of urban development and intervention measures on the natural heritage of land throughout the municipality, including the lands of the Resguardo. In this regard, the information received alleges that this process has not included consultations with indigenous peoples and authorities on changes in the communities' land use planning.

The information received also indicates that some authorities of the State party have disseminated, through various media, stigmatizing speeches and incitement to racial discrimination against the population of the Resguardo, and against the indigenous authorities of Riosucio and Supía. It is also alleged that such statements have the effect of increasing tensions between the populations of the area and potentially inciting threats, racial hatred and acts of violence against the indigenous peoples of the place and the inhabitants of the Resguardo. According to the information received, this type of acts had already occurred before, which would have led the Colombian Ombudsman's Office to qualify the traditional authorities of the Resguardo as "at risk" in reports and urgent alerts issued in 2017 and 2018.

The Committee reminds the State party that, in its concluding observations issued in 2020, it expressed concern about the limited progress in the implementation of legislation relating to the protection, restitution and titling of indigenous territories; the serious delays on the part of the National Land Agency in implementing the decisions emanating from the Court requiring the titling of collective territories; as well as for the constant acts of violence, threats, intimidation and reprisals against human rights defenders and leaders of indigenous peoples (see CERD/C/COL/CO/17-19, párr. 20, 21, 28 and 29).

In examining the information received, the Committee notes that it has found no reason why the State party's authorities have not complied with judgement T-530 of September 2016 of the Constitutional Court of Colombia. However, pursuant to article 9 (I) of the Convention and rule 65 of its rules of procedure, should the State party wish to provide additional information on this situation and the above-mentioned allegations, it may forward it to the Committee until 28 October 2022.

8. Guatemala, 16 May 2022 (Unoff. Transl.)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination has considered information received in the context of its early warning and urgent action procedure relating to Bill No. 5923 "Rescue of Pre-Hispanic Heritage", which is being discussed in the Congress of the Republic of Guatemala.

According to the information received, the aforementioned bill would declare the protection of pre-Hispanic cultural heritage to be of public utility. It is alleged that such a decision would have an impact on around two thousand seven hundred and fifty-four archaeological sites of cultural, spiritual and cultural importance of the Maya indigenous peoples. The information received also alleges that the enhancement of these places would lead to the privatization of ceremonial centers and sacred places, which would affect cultural rights, freedom of movement, freedom of association, freedom of access to property, and the use and possession of these centers that are of particular relevance to the Mayan people.

The Committee has also been informed that in the process of drafting the above-mentioned bill, no consultation has been carried out with the indigenous peoples of the country, including the Maya people, and that this initiative does not have any provision regarding the right to consultation or the free, prior and informed consent of indigenous peoples who may be affected by the implementation of the Law.

At the same time, the Committee has learned that on May 11, 2022, the Board of Directors of the Congress of the Republic of Guatemala reportedly decided that this bill would not continue on the Agenda of the Forty-third Regular Session of the Plenary and that time would be given for it to be agreed upon among the different representative groups of Guatemalans, including representatives of indigenous peoples. The Committee considers that this decision constitutes an opportunity for the State party to carry out an adequate process of consultation with the indigenous peoples of Guatemala.

In this regard, the Committee requests the State party to provide detailed information on the above-mentioned allegations, as well as on the measures taken to fully and adequately guarantee the right to consultation of indigenous peoples in connection with the drafting and discussion of Bill No. 5923, including additional measures taken to consider suspending its adoption or withdrawing it until such consultations take place. In the light of the State party's obligations under the Convention, taking into consideration the Committee's general recommendation No. 23 on the rights of

indigenous peoples, and other international obligations such as those arising from ILO Convention 169.

In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to receive information on the issues identified by 15 July 2022.

9. Brazil, 29 April 2022

I write to inform you that in the course of its 106th session, the Committee considered additional information received under its early warning and urgent action procedure, related to the situation of indigenous peoples and Afro-Brazilians, in the context of COVID-19 in Brazil.

The Committee would like to thank the State party for its reply dated 18 October 2021 in response to the Committee's letter of 25 August 2021. It takes note of the information provided by your Government with regard to the allegations set out in the Committee's previous letter.

Notwithstanding, the Committee regrets that the State party has provided no information on some of the allegations set out in the Committee's previous letter. In this regard, the Committee would like to request that the State party provide updated and detailed information on the situation of indigenous peoples and Afro-Brazilians in the context of COVID-19, during the presentation of its eighteenth to twentieth periodic reports, which will take place at the 108th session of the Committee (Geneva, 14 November to 2 December 2022).

In particular, the Committee requests the State party to provide information on: a) the allegations of the lack of stock of oxygen in hospitals in regions inhabited by indigenous peoples and of adequate emergency flow of oxygen supply, which reportedly exacerbated the deaths from COVID-19 among indigenous peoples; b) the allegations of refusal by some civil registry offices to recognize the indigenous identity of the deceased, which has allegedly deepened the underreporting of indigenous deaths; c) the investigations on the incidents of police violence in the operation carried out in Complexo de Lins Vasconcelos and in the community of Jacarezinho; d) the actions taken to guarantee the full compliance with the ruling of the Supreme Court to ban police operations in communities of Rio de Janeiro during the COVID-19 pandemic.

10. Guyana, 29 April 2022

I write to inform you that in the course of its 106th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the situation of the Chinese Landing and the Wapichan indigenous peoples.

According to the information before the Committee, Guyanese authorities granted a medium-scale mining concession to Mr. W. Vieira in the titled lands of the Chinese Landing Carib indigenous community, without consulting or seeking the consent of the community. The information received indicates that the indigenous community obtained title to these lands under the former Amerindian Act of 1976, and that the title was reissued in 1991 under the State Lands Act and in 2018 pursuant to the Land registry Act.

The information further indicates that the Amerindian Act of 2006 requires medium-scale miners to sign an agreement with a village council before they begin mining activities in its lands, and that under the Mining Act mining rights could be conferred over a specified area "save and except all lands lawfully held or occupied".

It is reported that, in spite of these legal provisions, in September 2021, the High Court of the Supreme Court of the Judicature of Guyana dismissed the claim filed by the Chinese Landing indigenous community against the Guyana Geology and Mines Commission and Mr. W. Vieira concerning the mining concession, without allowing the case to proceed to trial.

It is alleged that the judicial decision has precipitated increased unwanted mining activity in the lands lawfully held by the Chinese Landing indigenous community, which would irreparably damage its traditional way of life and its environment. It is further alleged that the judicial decision has also resulted in an upsurge of a series of incidents of intimidation and assaults on residents of the community, by miners and members of the Guyanese police force.

The Committee has also received additional information related to mining projects on Marudi Mountain and its impact on Wapichan indigenous peoples. The Committee profoundly regrets the State party's lack of reply to its letters of 17 May and 14 December 2018, regarding this situation. According to the information received, on 17 November 2021, the Government of the State party concluded an agreement with the company Romanex Guyana, Aurous and the Rupununi Miners Association allowing for the expansion of mining activities at Marudi Mountain, without consulting and seeking the consent of the Wapichan indigenous peoples. It is alleged that the mining activities at Marudi Mountain, a sacred area for the Wapichan people and also critically important as several rivers originate in this zone, pose an imminent and grave threat to the cultural heritage and livelihood of the Wapichan indigenous peoples.

These allegations, if verified, could amount to a breach of the State party's duty to protect the rights of the Chinese Landing and Wapichan indigenous peoples to their lands and territories and the right to be consulted. In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decision directly relating to the rights or interests of indigenous peoples is taken without their informed consent.

Furthermore, the Committee would like to recall the recommendations made to the State party in paragraphs 15, 16, 17 and 19 of its 2006 concluding observations (CERD/C/GUY/CO/14) and reiterates its concerns and recommendations contained in the letters sent to the State party on 17 May and 14 December 2018, under its early warning and urgent action procedure.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to receive a response to the above allegations before 15 July 2022. In particular, the Committee requests the State party to provide information on the measures taken to:

- (a) Consider suspending or revoking the mining concessions that affect the lands, territories or resources of the Chinese Landing and the Wapichan indigenous peoples until free, prior and informed consent is granted by these indigenous peoples following the full and adequate discharge of the duty to consult;
- (b) Refrain from approving projects and granting mining permits or concessions within the lands of indigenous peoples, whether titled or not, without obtaining the free, prior and informed consent of the affected indigenous peoples;
- (c) Ensure that Indigenous Peoples have access to effective and prompt judicial and other remedies to seek protection for their rights;
- (d) Prevent and investigate incidents of threats and violence against residents of the Chinese Landing indigenous community by miners and by members of the Guyanese police force;

- (e) Incorporate the principle of free, prior and informed consent in domestic legislation, including by amending the Amerindian Act of 2006, with indigenous peoples' participation, and to fully and adequately guarantee the right to consultation of indigenous peoples;
- (f) Consider ratifying ILO Indigenous and Tribal Peoples Convention (No. 169).

Finally, the Committee regrets that the State party has yet to submit its reply to the List of issues prior to submission of the fifteenth and sixteenth periodic reports that are overdue since November 2021. In this regard, the Committee requests the State party to submit the overdue reply as a matter of urgency.

11. Canada, 29 April 2022

I write to inform you that in the course of its 106th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the situation of the Secwepemc and Wet'suwet'en communities, in relation to the Trans Mountain Pipeline and the Coastal Gas Link Pipeline in the Province of British Columbia.

According to the information before the Committee, the Governments of Canada and of the Province of British Columbia have escalated their use of force, surveillance, and criminalization of land defenders and peaceful protesters to intimidate, remove and forcibly evict Secwepemc and Wet'suwet'en Nations from their traditional lands, in particular by the Royal Canadian Mounted Police (RCMP), the Community-Industry Response Group (CIRG), and private security firms. The information received specifies in particular that the Tiny House Warriors, a group of Secwepemc women, have been the target of surveillance and intimidation, and that numerous Secwepemc and We'suwet'en peaceful land defenders have been victims of violent evictions and arbitrary detentions by the RCMP, the CIRG and private security personnel in several occasions since the Committee's letter to the State party, dated 24 November 2020.

The Committee recalls that in its Decision 1 (100) of 13 December 2019, it urged the State party to immediately cease forced evictions of Secwepemc and Wet'suwet'en peoples. It also urged the State party to guarantee that no force will be used against Secwepemc and Wet'suwet'en peoples, and that the Royal Canadian Mounted Police and associated security and policing services will be withdrawn from their traditional lands.

The Committee profoundly regrets and is concerned that despite its calls to the State party, the information received points rather to an increase of the above-mentioned acts against Secwepemc and Wet'suwet'en peoples.

The information received also alleges that the Governments of Canada and of the Province of British Columbia have not taken measures to engage in consultations with Secwepemc and Wet'suwet'en peoples regarding the Trans Mountain Pipeline and the Coastal Gas Link Pipeline.

The Committee regrets that the State party has not yet submitted its 21st to 23rd combined periodic report, due on 15 November 2021, in which it should have also provided information on the measures taken to address the concerns raised in the Committee's decision of 13 December 2019 and in its letter of 24 November 2020, including on the efforts undertaken to engage in negotiations and consultations with the Secwepemc and We'suwet'en communities affected by the projects mentioned above.

The Committee is concerned that the situation described above could deteriorate in detriment of the rights of Secwepemc and Wet'suwet'en peoples, in particular the rights to their lands and territories, the right to be consulted and the right to security of the person.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to provide a response to the communications indicated above, by 15 July 2022. In particular, the Committee requests the State Party to provide information on the measures taken to:

- (a) Cease the construction of the Trans Mountain Pipeline and the Coastal Gas Link pipeline, until free, prior and informed consent is obtained from, respectively, the Secwepemc people and the Wet'suwet'en people, following the full and adequate discharge of the duty to consult;
- (b) Engage in negotiations and consultations with the Secwepemc and Wet'suwet'en communities affected by the Trans Mountain Pipeline and Coastal Gas Link Pipeline and to report on the results of those negotiations and consultations;
- (c) Prevent and duly investigate the allegations of surveillance measures, practices of arbitrary detention, instances of excessive use of force against protesters, in particular those belonging to the Secwepemc and Wet'suwet'en peoples, by the RCMP, CIRG, and private security firms;
- (d) Cease the forced eviction of Secwepemc and Wet'suwet'en peoples;
- (e) Guarantee the right of peaceful assembly of indigenous peoples, including the Secwepemc and Wet'suwet'en peoples;
- (f) Review, in consultation with indigenous peoples, the legal and institutional framework with a view to ensuring that the right to consultation and to obtain free, prior and informed consent is adequately incorporated in domestic legislation in a manner which is in compliance with international human rights obligations and jurisprudence, including the Committee's general recommendation No. 23 on the rights of indigenous peoples.

Finally, the Committee requests the State party to submit the overdue 21st to 23rd combined periodic report as a matter of urgency.

12. India, 29 April 2022

I write to inform you that in the course of its 106 th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the situation of (i) Particularly Vulnerable Tribal Groups in Andaman and Nicobar Islands and (ii) Chakma and Hajong communities in Arunachal Pradesh State in India.

(i) Particularly Vulnerable Tribal Groups in Andaman and Nicobar Islands

According to the information before the Committee, the Government of India has developed two mega projects in the Andaman and Nicobar Islands – the “Holistic Development of Great Nicobar Island” and the “Sustainable Development of Little Andaman Island Vision Document” – which would have a harmful impact on five Particularly Vulnerable Tribal Groups (PVTGs) that inhabit these islands and are already on the verge of extinction (Great Andamanese, Jarawas, Onges, Shompens and Sentinelese).

The Committee has been informed that the “Holistic Development of Great Nicobar Island” project comprises four major development projects: an International Container Transshipment Terminal, a Greenfield International Airport, a Power Plant and a Township envisaging 650,000 people to inhabit the island by 2050. It has also been informed that the “Sustainable Development of Little Andaman Island Vision

Document” entails building a new greenfield coastal city in the pristine forest of the island, home to the Onge tribes.

It is also alleged that the project in Nicobar Island will impose a significant ecological pressure on the island and its surroundings and that the project in Andaman Island will require de-reserving 32% of the forest reserves and de-notifying 31% of the tribal reserves, with detrimental consequences for the PVTGs of the islands. It is further alleged that these projects violate the existing laws and policies of the State party that protects PVTGs and their habitats, i.e., the Shompen Policy of 2015, which establishes prioritization of tribal rights over large scale development projects, the Forest Conservation Act of 1980, the Andaman and Nicobar Islands Protection of Aboriginal Tribe Regulation of 1956 and the Indian Forest Act of 1927.

(ii) The situation of Chakma and Hajong in Arunachal Pradesh State

According to the information before the Committee, in August 2021, Chief Minister of Arunachal Pradesh State announced that the Chakmas and Hajongs, who were settled in the State in 1960’s, will be relocated outside the State. The information received further indicates that, in order to implement this plan, Deputy Commissioner of Changlang district of Arunachal Pradesh informed in November 2021, that a special census of Chakmas and Hajongs will be conducted for reporting to the State Government of Arunachal Pradesh.

It is alleged that such special census constitutes an act of racial discrimination and profiling directed only to these communities with a view to deporting Chakmas and Hajongs from Arunachal Pradesh State.

The information received also indicates that in 1996, the Supreme Court of India declared the Chakmas and Hajongs as citizens and directed the Government of India and the State of Arunachal Pradesh to process their citizenship applications, but that these applications were never processed (*National Human Rights Commission v. State of Arunachal Pradesh and Another*, 1996 SCC (1) 742). It further notes that in 2015, the Supreme Court again directed the Government of India and the State of Arunachal Pradesh to process the citizenship applications, but that no application has been processed (*Committee for C.R. of C.A.P. & Ors vs State of Arunachal Pradesh & Ors* [Writ Petition (Civil) No.510 of 2007]).

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to request the State party to provide a response to the allegations outlined above, by 15 July 2022. In particular, the Committee requests the State Party to provide information on:

- (a) The measures adopted to prevent any adverse and irreparable impact of the above-mentioned mega projects on the Particularly Vulnerable Tribal Groups (PVTGs) that inhabit the Andaman and Nicobar Islands, including the impact on the ecosystem, biodiversity, the livelihood and existence of these PVTGs;
- (b) The steps taken to ensure the strict observance of the existing domestic laws and policies relating to the protection of the PVTGs of Andaman and Nicobar Islands as well as the State party’s international obligations, in particular those under the ICERD;
- (c) The steps taken to prevent and halt any measures directed at deporting or relocating the Chakma and Hajong communities, including the above-mentioned special census;

- (d) The measures adopted to prevent and combat racial profiling or racial discrimination against the persons belonging to the Chakma and Hajong communities;
- (e) The implementation of the judgements of the Supreme Court of India in the cases *National Human Rights Commission v. State of Arunachal Pradesh and Another*, 1996 SCC (1) 742 and *Committee for C.R. of C.A.P. & Ors vs State of Arunachal Pradesh & Ors* [Writ Petition (Civil) No.510 of 2007].

13. Sweden, 29 April 2022

I write to inform you that in the course of its 106 th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the situation of the Sami indigenous peoples in Jokkmokk, Sweden.

According to the information before the Committee, on 22 March 2022, the Swedish Government decided to grant a mining exploitation concession to the British company Beowulf Mining and their fully-owned Swedish subsidiary Jokkmokk Iron Mines AB, at Kallak/Gállok, in the Municipality of Jokkmokk, county of Norrbotten, to the south of the Laponia World Heritage site. The information received alleges that the Swedish Government took the decision on this mining concession without consulting or seeking the free, prior and informed consent of the Sami communities which could be significantly affected by the project. It is reported that the County Administration Board, the National Heritage Board as well as the Swedish Environmental Agency and the Sami Parliament expressed strong concerns regarding the irreparable environmental damage and cultural impact this project would cause, if realised.

The information further indicates that the proposed mine site is located in an area where it will cut off the traditional migratory routes used by the reindeer, thus endangering the traditional way of life and culture of the Sami communities that inhabit the area, as they depend on reindeer husbandry for their survival. It is also reported that the UNESCO World Heritage Site Committee concluded that the impact on site is considered to be large/very large.

The Committee is aware that on February 2022, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the enjoyment of a safe, clean, healthy and sustainable environment urged the Swedish government not to issue the licence for the mine as it will generate vast amounts of pollution and toxic waste, and endanger the protected ecosystem, including reindeer migration, to the detriment of local Sami communities. Similarly, in their communication to the Swedish Government, the Special Rapporteurs recalled the State party's international obligations concerning the protection of the rights of indigenous peoples, including those under the Convention on the Elimination of All Forms of Racial Discrimination. The Committee notes the Swedish Government's reply of 4 April 2022 to the communication sent by the Special Rapporteurs.

However, according to the allegations received, before the decision on the concession was adopted, the Swedish Government announced pursuing the consideration of the project despite the Special Rapporteurs' communication. Furthermore, it is reported that in the assessment of the matter, the Government did not take into account the concerns expressed by the Special Rapporteurs, including on the lack of consultation with Sami communities. Paragraph 32 of the Swedish Government's reply to the communication by the Special Rapporteurs seems to confirm this allegation.

With regard to the decision to grant the concession, the information received notes that, in balancing the interest of mining and the interest of reindeer herding, the Swedish Government concluded that the socioeconomic benefits of the mine outweigh the disadvantages of environmental harm and for reindeer herding. It is alleged that in this assessment process, the Swedish Government did not take into account the rights of Sami indigenous peoples, in particular their land rights and the right to free, prior and informed consent, as constitutionally protected rights. Paragraphs 13 and 14 of the Swedish Government's reply to the communication by the Special Rapporteurs seems to confirm this claim.

The Swedish Government formulated twelve conditions for the approval of the concession, among others: ensure that the operation use as little land as possible; the conduct of mining activities during periods with least impact on reindeer herding; the compensation for reindeer communities; the building of fences and bulwark to protect the reindeer; the restoration of the area after any mining operations. The Government has reportedly not consulted with the relevant Sami communities on these conditions.

The Committee is seriously concerned about the allegations received, in particular about the lack of consultation with Sami communities that could be affected by the mine concession and the absence of consideration of international human rights obligations and standards in this regard. While noting the positive development of the adoption of the Act on consultation in matters of special importance to the Sami people, which entered into force on 1 March 2022, the Committee profoundly regrets that this Act would only be applicable in new cases concerning exploitation concessions, and did not and will not lead to a constructive dialogue with Sami indigenous peoples in the case of the Kallak/Gálllok project.

The abovementioned allegations, if verified, could amount to a breach of the State party's duty to respect and protect the rights of the Sami indigenous peoples, in particular the right to be consulted and to free, prior and informed consent. In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decision directly relating to the rights or interests of indigenous peoples is taken without their informed consent.

The Committee would also like to remind the State party of the Committee's recommendations on the rights of Sami indigenous people made in paragraph 17 of its concluding observations of June 2018 (CERD/C/SWE/CO/22-23). Furthermore, the Committee recalls its Opinion of 18 November 2020 (CERD/C/102/D/54/2013) regarding a similar case concerning the Rönnebäcken mines in Sweden, in which it considered that the State party did not comply with its international obligations to protect the concerned Sami reindeer herding community against racial discrimination by adequately or effectively consulting the community in the process of granting the concessions.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to receive a response to the above allegations before 15 July 2022. In particular, the Committee requests the State party to provide information on:

- (a) The measures adopted to consider suspending or revoking the mining concession that affects the Sami communities in Kallak/Gálllok until free, prior and informed consent is granted by these indigenous peoples following the full and adequate discharge of the duty to consult;

- (b) The efforts undertaken to engage in consultations with the Sami communities that could be affected by the exploitation concession at Kallak/Gállok;
- (c) The measures taken to ensure that the conditions that apply to the approval of the concession protect the interests of the indigenous peoples effectively, in particular through consultation with representatives of the affected indigenous peoples during the process of developing and determining these conditions;
- (d) The process of consultation that is required under these conditions, and on how far this process allows the affected indigenous peoples to effectively influence the mining activities;
- (e) Whether the affected indigenous communities are consulted in the environmental examination process under the Swedish Environmental Code or any other administrative procedures, required for the approval of the mining activities;
- (f) The steps taken to refrain from approving projects and granting mining permits or concessions without obtaining the free, prior and informed consent of the affected indigenous peoples;
- (g) The measures adopted to consider providing for the applicability of the Act on consultation in matters of special importance to the Sami people with regard to the further steps of the procedure that could lead to the approval of the mining operations.

In this regard, the Committee encourages the State party to consider seeking assistance from the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) that is mandated by the Human Rights Council (resolution 33/25, paragraph 2), to provide States with technical advice on the rights of indigenous peoples and facilitate dialogue between States, indigenous peoples and/or the private sector.

14. USA, 29 April 2022

I write to inform you that in the course of its 106th session, the Committee considered additional information received under its early warning and urgent action procedure, related to the situation of the Anishinaabe indigenous peoples in Minnesota, in the United States of America, in relation to the expansion of a tar sands pipeline ("Line3").

The Committee would like to thank the State party for its reply dated 16 November 2021 in response to the Committee's letter of 25 August 2021. It takes note of the information provided by your Government with regard to the allegations set out in the Committee's previous letter. It regrets, however, that some of the allegations raised were not addressed in the State party's letter. Some of the information provided remains general, in particular in relation to allegations of violence against indigenous women and of excessive use of force by members of the police and private security companies against peaceful protestors, especially those belonging to the Anishinaabe communities.

Based on the reply submitted by your Government and on new information received since then, the Committee would like to request the State party to provide information on the measures adopted to: a) consider suspending the activities of the Line 3 pipeline until free, prior and informed consent is granted by the affected Anishinaabe indigenous peoples, following the full and adequate discharge of the duty to consult; b) evaluate carrying out an environmental impact assessment that considers the impact of the Line 3 pipeline in formal consultation with the affected indigenous peoples; c) effectively prevent and duly investigate the further allegations of sexual assault and harassment of Anishinaabe indigenous women, reportedly attributed to the workers

of Line 3, as well as the allegations of arrests, racial profiling, and excessive use of force, including alleged incidents of the intentional infliction of pain, against persons from the Anishinaabe communities by law enforcement officials and private security companies; d) ensure that Indigenous Peoples have access to effective and prompt judicial and other remedies to seek protection for their rights.

The Committee would like to inform the State party that the above-mentioned issues will be discussed during the presentation of its combined tenth to twelfth periodic reports, which will take place at the 107 th session of the Committee (Geneva, 8 to 30 August 2022).

15. Australia, 3 December 2021

I write to inform you that in the course of its 105th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the Western Australian Government's draft Aboriginal Cultural Heritage Bill 2020 (Draft Bill), and its impact on Aboriginal peoples.

According to the information before the Committee, Western Australian legislation, including the Aboriginal Heritage Act of 1972, did not prevent the damage and destruction of sacred sites and other cultural heritage of Aboriginal peoples, such as the Juukan Gorge rock shelters. The information received indicates that the Draft Bill will supersede the Act of 1972 and that it could constitute an opportunity to overcome the multiple failures of the current legislation. However, the Draft Bill allegedly fails to respect, protect and fulfil the right to culture of Aboriginal peoples who strongly oppose it, due to the serious risk it poses to their cultural heritage.

The Committee is concerned about the allegations that the consultation process on the Draft Bill was not adequate, notably by not assigning enough time to evaluate particularly important topics for Aboriginal peoples, such as whether the draft appropriately incorporates the right to free, prior and informed consent of concerned communities. Similarly, it is reported that Aboriginal peoples have not been informed if consultations will continue or if there is a new version of the Draft Bill.

Moreover, according to the information received, the Draft Bill:

- i. Provides the final decision maker, the Minister for Aboriginal Affairs, with overly wide discretion to approve activities that could have an impact on Aboriginal cultural heritage, based on an "interests of the State" test and without establishing a clear requirement to protect such heritage from degradation or destruction;
- ii. Initially included the possibility for Aboriginal peoples to request the review of the Minister's decision in the State Administrative Tribunal of Western Australia, but that such review opportunity has been removed from the Draft Bill;
- iii. Does not require free, prior and informed consent of Aboriginal Traditional Owners with respect to decisions that could impact the Aboriginal heritage;
- iv. Includes a mechanism for the creation of "protected areas", which would only protect Aboriginal heritage of "outstanding significance", that is to be decided by the Minister for Aboriginal Affairs, without a possibility to review its decision.

According to the information received, the discretionary power attributed to the Minister of Aboriginal Affairs and the absence of effective remedies and legal redress for Aboriginal peoples to challenge his decisions will maintain the structural racism of the cultural heritage legal and policy scheme, which has already led to the destruction of Aboriginal cultural heritage in Western Australia.

The Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples. It further recalls its concluding observations of 2017 (CERD/C/AUS/CO/18-20, para. 22), in which the Committee recommended the State party to ensure that the principle of free, prior and informed consent is incorporated into pertinent legislation and fully implemented in practice. The Committee further recommended the State Party to respect and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

Accordingly, the Committee requests the State party to provide information on:

- (a) The allegations mentioned above regarding the Draft Bill;
- (b) The current status of the Draft Bill, including information on any recent modifications that addresses the concerns raised by Aboriginal peoples;
- (c) The measures adopted to fully and adequately guarantee the right to consultation of Aboriginal peoples in Western Australia regarding the drafting and discussion of this Draft Bill, as well as on any steps taken to consider suspending its adoption or withdrawing it until such consultations take place and consent is obtained.

In this regard, the Committee encourages the State party to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) that is mandated by the Human Rights Council (resolution 33/25, paragraph 2), to provide States with technical advice regarding the development of domestic legislation and policies relating to the rights of indigenous peoples and to facilitate dialogue between States and indigenous peoples.

16. USA, 3 December 2021

I write to inform you that in the course of its 105th session, the Committee considered further the situation of the Gwich'in indigenous peoples in Alaska, in the United States of America, under its early warning and urgent action procedure.

The Committee would like to thank the State party for the information included in its letter dated 10 August 2021, in response to the Committee's letter of 24 November 2020.

The Committee takes note of and welcomes the information provided regarding the decision of the Government of the United States of America to suspend all activities related to the implementation of the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge pending completion of a new, comprehensive analysis under the National Environmental Policy Act.

In this regard, the Committee would like to recall the attention of the State party of its obligations under the Convention and to guarantee the respect of the rights of the Gwich'in and other indigenous peoples in Alaska, including their right to consultation and to free, prior and informed consent, in its future considerations of the project of oil and gas development in the Coastal Plain.

The Committee would like to inform the State party that the above-mentioned issues will be discussed during the presentation of its combined tenth to twelfth periodic reports already submitted by your Government in June 2021.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of the United States of America, with a view to ensuring the effective implementation of the Convention.

17. USA, 25 August 2021

I write to inform you that in the course of its 104th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, concerning the situation of the Anishinaabe indigenous peoples in Minnesota, in the United States of America.

The information received alleges that the decision of the Government of the United States of America and of the State of Minnesota to permit the expansion of a tar sands pipeline (“Line 3”) has been conducted without adequate consultation with and without obtaining the free, prior and informed consent of the Anishinaabe indigenous peoples, despite the serious harm such pipeline could allegedly cause.

It is further alleged that the “Line 3” project would infringe the rights of the Anishinaabe indigenous peoples, in particular by significantly reducing their traditional source of food, the “manoomin” wild rice, by encroaching on their lands and sacred sites and increasing health risks connected to environmental degradation, due to, in particular, air and water pollution. Reportedly, this project would exacerbate the already disproportionate impact of climate change on indigenous peoples in Minnesota, putting at risk their watersheds and their wild rice ecosystem.

According to the information received, the “Line 3” project would, furthermore, increase the risk of violence against indigenous women, including sex trafficking and sexual abuse, due to the significant influx of workers and the establishment of camps composed of male workers. It is also alleged that the intensified presence of law enforcement officials and private security companies would increase the risk of excessive use of force by members of the police and of these security companies against peaceful protestors, in particular those belonging to the Anishinaabe communities.

Moreover, it is claimed that the domestic remedies available to indigenous peoples do not provide a legal basis for addressing the underlying cause of structural discrimination. Consequently, lawsuits filed against “Line 3” project by Anishinaabe organizations have reportedly been rejected without duly considering its impact on the human rights of the Anishinaabe.

In addition, the Committee has been informed that the usufructuary rights of Anishinaabe indigenous peoples to hunt, fish and gather wild rice, among others, are based on a series of treaties signed between the Anishinaabe and the Government of the United States of America. Reportedly, the Anishinaabe retain such usufructuary rights, which have been upheld by a ruling of the Supreme Court of the United States of America (*Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 1999).

These allegations, if verified, could amount to violations of the Convention. In this regard, the Committee recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples and its previous concluding observations concerning the United States of America (CERD/C/USA/CO/7-9, par. 10, 19 and 24). Accordingly, the Committee would like to request the State party to provide information on the above allegations as well as on the measures taken to:

- (a) Fully and adequately guarantee the right to consultation and to fulfil the requirement of free, prior and informed consent of the Anishinaabe indigenous peoples with regard to the “Line 3” project, as well as information on steps taken to suspend the project until such consultations have taken place and free, prior and informed consent has been obtained;

- (b) Prevent any adverse impact of the “Line 3” project on the livelihood and the rights of the Anishinaabe indigenous peoples, including on the environment, their right to health and to their culture;
- (c) Guarantee the right of the Anishinaabe indigenous peoples to an effective remedy with regard to possible violations of their rights in the context of the permission and construction of the “Line 3” project;
- (d) Prevent violence against indigenous women and of excessive use of force against protesters, in particular those belonging to the Anishinaabe indigenous peoples.

The Committee also requests the State party to provide details on the status of the treaties concluded between the Anishinaabe indigenous peoples and the Government of the United States of America and on measures adopted to guarantee the respect of the rights of the Anishinaabe under such treaties, in particular their usufructuary rights as upheld by the Supreme Court’s ruling mentioned above.

18. Brazil, 25 August 2021

I write to inform you that in the course of its 104th session, the Committee considered additional information received under its early warning and urgent action procedure, related to the situation of indigenous peoples and Afro-Brazilians, in the context of COVID-19 in Brazil. In this regard, the Committee refers to its previous letter of 7 August 2020 relating to the same matter.

According to the information received, the situation of the COVID-19 in Brazil has had a dramatic impact on indigenous peoples, particularly in the State of Amazonas. The information claims that Government authorities have diffused messages against public health measures to contain the pandemic, resulting in weakening the popular adherence to health recommendations based on scientific evidence.

The information further claims that the indigenous health policy benefits only indigenous peoples living in official indigenous lands (“Terra Indígena”), leaving those residing in urban and rural areas unprotected. The information also alleges that the inefficient management of public health and the neglect of hospitals in regions inhabited by indigenous peoples, including with regard to the lack of stock of oxygen and of adequate emergency flow of oxygen supply, has exacerbated the deaths from COVID-19 among indigenous peoples.

According to the information received, the Government of Brazil has not issued a recommendation at the national level that specifically addresses respect for funeral rites and burials of indigenous persons, leading to disrespect of the cultural traditions of indigenous peoples and to burials without the authorization of indigenous families. Reportedly, some civil registry offices have refused to recognize the indigenous identity of the deceased, which has allegedly deepened the underreporting of indigenous deaths.

The Committee has also received information alleging that the police carried out two violent operations in the favelas of Rio de Janeiro in violation of a Supreme Court ruling of June 2020, which temporarily bans police operations in the communities of Rio de Janeiro for the duration of the COVID-19 pandemic. Allegedly, the police has ignored the prohibition, as the number of police operations has increased in October 2020 and the first semester of 2021.

The first reported situation refers to an operation carried out by the Civil Police of Rio de Janeiro on 6 May 2021 in Jacarezinho, which resulted in the death of 28 Afro-Brazilians

and leaving many wounded. The second situation concerns a young Afro-Brazilian pregnant woman, who was allegedly shot to death on 8 June 2021 during a Military Police action in Complexo de Lins Vasconcelos.

The information received questions the independence of the investigations of these violent incidents as it is allegedly under the responsibility of the Civil Police of Rio de Janeiro. Furthermore, according to the information received, in May 2021 the Civil Police Secretariat of Rio de Janeiro imposed a five-year secrecy measure on all documents related to police operations since June 2020, which cover the operations that took place in Jacarezinho and in Complexo de Lins Vasconcelos.

According to the information received, the above-mentioned incidents only represent two recent examples of the systemic violence and racial discrimination against Afro-Brazilians by State agents, especially by members of police institutions. It is also alleged that the failure by the Government of Brazil to hold accountable police forces for violent and racist acts against Afro-Brazilians, has resulted in the repetition of similar acts and perpetuates the structural racism prevalent in Brazilian law enforcement.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to request the State party to provide a response to the allegations outlined above, by 15 October 2021. In particular, the Committee requests the State Party to provide information on:

- (a) The measures adopted to ensure that indigenous peoples have access without discrimination to quality and culturally appropriate health services, treatment and vaccines against COVID-19, including for those indigenous individuals living outside the official indigenous lands (“Terra Indígena”);
- (b) The actions taken to include and consult with indigenous peoples in the decision making process on the measures to prevent and combat the COVID-19 pandemic and its effects in their communities;
- (c) The measures adopted to accurately register COVID-19 deceases, including those of indigenous peoples, and to ensure that indigenous peoples burials could take place according to their culture and traditions, and in consultation with them;
- (d) The investigations initiated on the above-mentioned incidents of police violence against Afro-Brazilians, the measures adopted to ensure that they are conducted independently, thoroughly and impartially, and the results of those investigations;
- (e) The measures adopted to prevent police violence against Afro-Brazilian as well as to enquire on the structural dimension of police violence and racial discrimination against Afro-Brazilians, and report to the Committee on the results;
- (f) The actions taken to guarantee the full compliance with the ruling of the Supreme Court to ban police operations in communities of Rio de Janeiro during the COVID-19 pandemic.

The Committee requests the State Party to include in its reply the information requested in its previous letter of 7 August 2020, as it relates to the same matter.

19. India, 25 August 2021

I write to inform you that in the course of its 104th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, concerning the situation of the Scheduled Tribes of Lakshadweep in India.

According to the information received, on 28 April 2021 the Administration of the Union Territory of Lakshadweep published the “Draft Lakshadweep Development Authority Regulation 2021”, allegedly without duly informing or consulting the Scheduled Tribes of Lakshadweep before drafting the regulation. Additionally, the information suggests that the regulation could possibly cause serious harm to these tribes, if implemented.

It is reported that the regulation gives sweeping, arbitrary and unchecked powers to the Administration of the Union Territory to seize lands of the Scheduled Tribes of Lakshadweep for development projects, including building, engineering, mining, quarrying and other operations. Reportedly, it would infringe the rights of the Scheduled Tribes of Lakshadweep, in particular their right to their lands, to possess and retain their property and to their culture, and would irreparably damage the environment of Lakshadweep and the traditional way of life of its people.

It is further alleged that the regulation would violate the “Laccadive Islands and Minicoy Regulation I” of 1912 and the “Lakshadweep (Protection of Scheduled Tribes) Regulation” of 1964, in particular the prohibition of alienation of tribal lands in the Union Territory of Lakshadweep.

In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous people and its recommendations made in paragraphs 10 and 19 of its concluding observations (CERD/C/IND/CO/19) of 2007.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive a response to the allegations outlined above, by 15 October 2021. In particular, it requests the State Party to provide information on:

- (a) The current status of the “Draft Lakshadweep Development Authority Regulation 2021”, including information on any recent modification, in particular with regard to the alleged arbitrary powers conferred to the Administration of the Union Territory to seize lands of the Scheduled Tribes of Lakshadweep;
- (b) The measures adopted to fully and adequately guarantee the right to consultation and to fulfil the requirement of free, prior and informed consent of the Scheduled Tribes of Lakshadweep regarding the drafting and discussion of this Draft Regulation, as well as on any steps taken to consider suspending its adoption or withdrawing it until such consultations take place and consent is obtained.

20. Brazil, 25 August 2021

I write to inform you that in the course of its 104th session, the Committee considered further the situation of the impact of infrastructure projects on Xavante indigenous peoples in the State of Mato Grosso, in Brazil, under its early warning procedure. In this regard, the Committee refers to its previous letter of 30 April 2021 to the State Party.

The Committee would like to thank your Government for its replies, which it received on 14 July 2021, and takes note of the information provided.

Specifically, the Committee takes note that in December 2020, the National Department of Infrastructure of Transportation (DNIT) has requested the Institute of the Environment and Renewable Natural Resources (IBAMA) and the National Indian Foundation (FUNAI) to reassess the Indigenous Component Study (ECI) of highway BR-080 project, regarding the section related to the environmental and socio-cultural impacts of the project on indigenous territories. In this regard, the Committee requests the Government to provide further information on the reassessment by IBAMA and FUNAI of the Indigenous Component Study as well as the considerations of the Government based on this reassessment.

The Committee also takes note that five hydroelectric plant projects in the rivers Mortes and Cumbuco are currently under consideration and that, after the completion of relevant studies, these projects will be submitted for analysis of their technical, economic, social and environmental feasibility. Nonetheless, the Committee regrets that the Government has not addressed in its reply the allegations received that the Brazilian authorities have only consulted the Xavante communities living in proximity to these rivers, despite the impact that the hydroelectric projects could have for all Xavante peoples. In this respect, the Committee requests the Government to provide information about the participation of and consultation with all Xavante indigenous communities that could be affected by these projects.

The Committee reiterates its previous concern about Interministerial Ordinance No. 60/2015 and requests the Government to provide information on the Ordinance, in order to extend the relevant impact studies and consultation processes to all the indigenous peoples that could be affected and who are located within the strict geographical limits that it establishes

The Committee would be grateful to receive this additional information before 15 March 2022.

21. Indonesia, 30 April 2021

Excellency, I refer to your communication of 30 November 2020 in follow up to the virtual meeting of 17 November 2020 between representatives of your Government and the Committee, as well as previous communications from the Committee of 13 March 2009, 28 September 2009 and 28 August 2015. I thank your Government for its replies and the Committee takes note of the information provided.

The Committee has since received and considered further information, referring to the situation of indigenous peoples in Indonesia. The information received alleges that very few indigenous peoples have gained official state recognition. It alleges that, in practice, local governments do not give recognition while some of them expressly deny the existence of certain indigenous peoples, a fact which, if verified, constitutes a major impediment to the exercise and protection of their rights.

The Committee takes note of the information provided by your Government in relation to the “*masyarakat hukum adat*” or “customary law communities”. On this issue, the Committee reiterates the concern expressed in its previous concluding observations (CERD/C/IDN/CO/3, paragraph 15), that the domestic law of Indonesia does not contain appropriate protections to guarantee the respect for the principle of self-identification in the determination of these communities as indigenous peoples.

In addition, the information received refers to the adoption of the Omnibus Law on Job Creation (Law 11/2020 of 3 November 2020) alleging that this law was drafted and passed without proper consultation with the indigenous peoples of Indonesia. The

information alleges that that Law will amend many existing regulations and reverse current protections of indigenous peoples' rights.

According to the information received, based on the Omnibus Law the Government will be able to arbitrarily declare some lands as 'abandoned', and compulsorily acquire indigenous peoples' lands without any free, prior, or informed consent, and without fair and just compensation. Furthermore, it is alleged that the Omnibus Law will almost entirely abolish the requirement to conduct environmental impact assessments before companies proceed with business activities on indigenous peoples' lands, as well as the requirement of participation of local communities and indigenous peoples in the process of issuing business licenses.

The Committee reiterates its previous concerns and requests the Government to provide information in relation to the measures adopted to protect the rights of indigenous peoples, including the right to consultation, in the context of the increasing presence of palm oil plantations in indigenous people's lands and territories, in particular the Kalimantan Border Oil Palm Mega-Project along the Indonesia-Malaysia international border.

The Committee is also concerned about allegations of a lack of official recognition of indigenous peoples in Indonesia based on the principle of self-identification and about the alleged negative effects of the Omnibus Law on the livelihood and the rights of indigenous peoples.

These allegations, if verified, could amount to a breach of the State party's duty to recognize and protect the rights of Indonesian indigenous peoples to their lands and territories and the right to be consulted. In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights or interests of indigenous peoples is taken without their informed consent.

The Committee also recalls its recommendations of 15 August 2007 (CERD/C/IDN/CO/3), particularly paragraphs 15, 16 and 17 in which it recommends the State party, inter alia: "to respect the way in which indigenous peoples perceive and define themselves"; "to amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way [...] and are not used as a justification to override the rights of indigenous peoples"; "to secure the possession and ownership rights of local communities before proceeding further" with the Kalimantan Border Oil Palm Megaproject, and "ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in [the project]."

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party as a matter of urgency to submit its 4th to 6th combined periodic report overdue since 2010, in which it should include information on measures taken to address all the issues outlined above. In particular, it requests the State Party to provide information on:

- (a) The safeguards adopted to guarantee the respect of the fundamental principle of self-identification in the determination of indigenous peoples;
- (b) The measures taken to expedite the enactment of the draft bill on the recognition and protection of the rights of indigenous peoples, in consultation with them;
- (c) The concrete steps taken to prevent and address the conflicts between indigenous communities and oil palm companies, and to legally protect the

rights of these communities in the context of the increasing presence of oil palm plantations and roadbuilding, in particular in the Kalimantan border regions;

- (d) The status of implementation of the Omnibus Law on Job Creation (Law 11/2020 of 3 November 2020) including adverse impact on the rights of indigenous peoples and the measures adopted to revoke or to review it;
- (e) The concrete measures adopted to guarantee an inclusive and adequate discharge of the duty to consult indigenous peoples that could be affected by the oil palm industry and other large-scale projects, and to obtain their free, prior and informed consent.

22. Brazil, 30 April 2021

Excellency, I write to inform you that in the course of its 103rd session, the Committee considered further the situation of the building of highways and railroads in the State of Mato Grosso, in Brazil, and its impact on Xavante and other indigenous peoples' rights, under its early warning and urgent action procedure. In this regard, the Committee refers to its previous letter of 10 May 2019 relating to the same matter.

The Committee would like to thank your Government for the information provided in its reply of 8 July 2019 to the Committee's letter. Based on the reply submitted by your Government and on new information received since then, the Committee would like to address the following issues:

FUNAI's mandate

Regarding the mandate of the National Indian Foundation (FUNAI) to demarcate indigenous territories and lands, the Committee takes note of the information provided about the judicial decision taken by the Supreme Court of Brazil on 25 June 2019, suspending the "Medida Provisória" no. 886 of 18 June 2019, aimed to transfer this mandate of FUNAI to the Ministry of Agriculture.

Highway BR-080

The Committee also takes note of the information provided according to which the building of the highway BR-080 is still in the planning and preparation phase and the environmental and indigenous studies, as well as the consultations with the indigenous populations, are still to finalise. The Committee further takes note that the tentative route chosen for highway BR-080 is subject to changes according to future considerations, including those related to the concerns raised by indigenous communities.

According to new information received by the Committee at its 103rd session, the National Institute of Historic and Artistic Heritage (IPHAN) released a report on 14 May 2020, which indicates that the BR-080 highway would run within 16 kilometres of the Tsõrepré village, and concludes that the layout of the highway will negatively affect Xavante's territories. It is claimed that the highway will affect the health of Xavante's peoples, their access to natural resources and the preservation of their culture.

The information received also alleges that, in spite of IPHAN's findings, the Minister of Infrastructure of Brazil has indicated that the construction of the highway will resume once the restrictions on public movement due to COVID-19 are lifted.

It is also claimed that FUNAI has consulted only with the Xavante residents who live in proximity to the BR-080 project, and that it has excluded from such consultations

all other Xavante communities, which will also be affected by the project and to whom Tsõrepré village is sacred. The Committee was informed that Xavante peoples in Areões, Marawãitsede, Parabubure, Chão Preto, Ubawawe, Marechal Rodon, and Sangradouro Indigenous Territories are all committed to protecting this cultural site and demand to exercise their right to participate in meaningful consultations. Moreover, according to information received, the consultations are mostly about information sharing with no real attempt to consider the concerns raised by the indigenous communities, or to obtain their free, prior and informed consent with regard to the project.

FICO railway project

The Committee takes note of the information provided by your Government in relation to the FICO railway project, stating that according to the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA), the project does not encroach any indigenous lands. Furthermore, IBAMA has indicated that the project will not be located within any areas close enough to indigenous lands to justify consultation by FUNAI, based on the rules set forth by Interministerial Ordinance n° 60/2015.

According to new information received, the FICO railway project threatens to traverse multiple areas within the Xavante indigenous territories and would impact the 21,000 Xavante and 6,000 Xingu Indigenous peoples living within the Mato Grosso State. It is also alleged that the Minister of Infrastructure of Brazil announced that the contract which initiates the construction of the railway will be signed in the coming months. According to information received, Xavante rely on all of these traditional lands to hunt, fish, collect fruits and vegetables from the forests, and also to perform important cultural rituals. They are concerned that the railway project would threaten their food security and would put the region's biodiversity at risk.

Small Hydropower Plants along the rivers “Rio das Mortes” and “Rio Cumbuco” (a tributary to “Rio das Mortes”)

According to the information received, these hydropower plants have the capacity to affect all Xavante peoples and not just the communities living near the construction or alongside these rivers. It is reported that “Rio das Mortes” is a sacred river for all Xavante peoples, where major traditional rituals take place, and that Xavante people's existence depends on the river's resources. The Committee was informed that Xavante are concerned that such changes to the river can provoke serious consequences, such as large fish die-offs, damaged flora and fauna, psychological impact, and even human deaths. Reportedly, these types of consequences have already impacted Xavante and other Indigenous communities as a result of previously constructed hydropower plants, which had also contributed to the suspension of other hydropower plant construction projects on the Rio das Mortes in 2011.

The information received also alleges that, despite the importance of this river for all Xavante peoples, Brazilian authorities have only consulted the communities living in proximity to the river. Reportedly, this exclusion of other communities has been based on a technical detail in the Interministerial Ordinance No. 60/2015, which defines the affected construction areas as only those located within a radius of 40 km of the project. It is claimed that this Ordinance prevents other affected Xavante's communities from participating in the consultations and in the process aimed at organizing the relevant impact studies.

The Committee remains concerned about the adverse impact of the above-mentioned large-scale infrastructure projects on Xavante and other indigenous peoples. In particular, the Committee is concerned about the reiterated allegations of the lack of inclusive consultation in all these projects, and the alleged failure to seek to obtain the free, prior and informed consent of all the impacted indigenous peoples.

In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights or interests of indigenous peoples are taken without their informed consent.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive a response to these additional allegations as outlined above by 14 July 2021. In particular, it requests the State Party to provide information on measures taken to:

- (a) Finalize the environmental and indigenous studies relating to the building of the highway BR-080 and, if applicable, the results of these studies;
- (b) Prevent any adverse impact of the highway BR-080, the FICO railway project, and the three hydropower plants on the livelihood and the rights of Xavante and other indigenous peoples, including information on the steps taken to consider their suspension;
- (c) Guarantee an inclusive and adequate discharge of the duty to consult all Xavante and other indigenous peoples that could be affected by these large-scale projects, and to obtain their free, prior and informed consent;
- (d) Review Interministerial Ordinance n° 60/2015, with a view to provide the opportunity to all affected indigenous peoples to participate in the consultations processes organised by the State Party, regarding the above-mentioned projects or other infrastructure projects.

The Committee also requests the State party to provide information on the administrative situation of FUNAI and in particular on its mandate to demarcate indigenous people´s territories and lands.

23. Canada, 30 April 2021

Excellency, I would like to inform you that in the course of its 103rd Session, the Committee on the Elimination of Racial Discrimination considered information received under its Early warning and urgent action procedure, related to allegations of acts of racist violence against Mi'kmaw indigenous peoples in Nova Scotia, Canada.

According to the information received, during September and December 2020, especially between 13 and 17 October, Mi'kmaw people, and in particular Mi'kmaw fishers, have been subject to escalating racist hate speech, violence, including with firearms, intimidation, burning and destruction of their property, including lobster traps, lobster processing facilities and work vehicles.

Allegedly, these acts have been carried out by non-indigenous fishers trying to obstruct the Mi'kmaw traditional fishing activities, reportedly as they consider that a Mi'kmaw fishery, which was launched in September 2020, is illegal and that it threatens conservation efforts.

It is further alleged that, despite being aware of the high risk of violence, the competent Canadian authorities – in particular the Royal Canadian Mounted Police (RCMP) and the Department of Fisheries and Oceans (DFO) – failed to take appropriate

measures to prevent these acts of violence and to protect the Mi'kmaw fishers and their properties from being vandalized.

It is claimed that the Canadian authorities have also failed to fully investigate the allegations of racially motivated harassment, racist hate speech and incitement of racist violence online, violence and intimidation by private actors against Mi'kmaw human rights defenders and fishers.

In addition, the Committee has been informed that the Mi'kmaw indigenous peoples' right to their traditional fishing activities is based on a series of treaties signed between 1760- 1761 by the Mi'kmaq and the British Crown, and that these treaties remain valid according to decisions of the Supreme Court of Canada in 1999.

The Committee has further been informed that pursuant to these decisions, Mi'kmaw rights may only be limited if there is an overriding public purpose, that any infringement must be the minimum needed to meet such public purpose and that the indigenous group must be consulted before the limitation on the right is imposed.

According to the allegations received, Provincial and Federal governments have failed to fully respect the treaty based right of the Mi'kmaw peoples to their traditional fishing activities. It is alleged that, in that context, the Mi'kmaw fishers have been subject to criminalization for exercising such fishing rights and that Canadian authorities have confiscated their catches and equipment. It is also claimed that the failure by the State Party authorities to respect and protect the Mi'kmaw people's rights to their fishery has reinforced the escalating reported racism and violence.

The Committee is concerned about allegations of lack of response by the State Party authorities to prevent and to investigate the allegations of racist hate speech and incitement of violence online as well as acts of violence and intimidation against Mi'kmaw peoples by private actors. In case the above allegations would be corroborated, the Committee is concerned that further acts of racist violence and intolerance could exacerbate the hostility and lead to the loss of human lives.

The Committee would like to recall its general recommendation No. 23 (1997) on the rights of indigenous peoples and its recommendations made in paragraphs 14 and 20 of its concluding observations of 2012, that requested the State party "to take steps to prevent racist hate crimes against all ethnic and minority groups, migrants and indigenous peoples in the State party"; "to facilitate reporting by the victims, and ensure effective investigation of cases of racist hate crimes and prosecute and sanction perpetrators"; "to implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected "; and to "continue to seek in good faith agreements with Aboriginal peoples with regard to their lands and resources claims under culturally-sensitive judicial procedures, find means and ways to establish titles over their lands, and respect their treaty rights" (CERD/C/CAN/CO/19-20).

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party submit information on all of the issues as outlined above by 14 July 2021, as well as on any action already taken to address the abovementioned allegations and concerns. In particular, it requests the State Party to provide information on measures taken to:

- (a) Investigate the alleged acts of racist hate speech, violence and incitement to violence, as well as and the destruction of property by private actors against Mi'kmaw indigenous peoples;

- (b) Investigate the alleged lack of adequate response by relevant State Party authorities to effectively prevent, and protect Mi'kmaw indigenous peoples from such acts;
- (c) Prevent further acts of violence, racist hate speech, incitement of violence and destruction of property against Mi'kmaw indigenous peoples;
- (d) Respect, protect and guarantee the rights of Mi'kmaw peoples in relation to their fishing activities and territories, as well as their rights to be consulted, to food and cultural rights, including the measures taken to repeal federal and provincial laws, as well as policies and regulations that unduly limit such rights.

24. Peru, 30 April 2021

Excellency, I would like to refer to your communication of 17 March 2020 containing information in response to the Committee's letter of 29 August 2019 adopted under its early warning and urgent action procedure, regarding the situation of the Santa Clara de Uchnya indigenous community, in Peru.

In its letter of 29 August 2019, the Committee expressed concerns about allegations that the newly adopted regulation by the Regional Government of Ucayali ("Ordinance no. 010-2018-GRU-CR") would negatively affect the land titles over the traditional territory of the Santa Clara de Uchnya indigenous community. It also expressed concern that this Ordinance had been allegedly adopted without adequate consultation and free, prior and informed consent of these indigenous peoples.

The Committee would like to thank your Government for the information provided in its reply of 17 March 2020 and takes note that the above-mentioned Ordinance has been removed.

However, the Committee regrets that the State party has provided no information on requests made in the Committee's letter to ensure that no decision affecting indigenous peoples' rights is taken without their free, prior and informed consent and to protect members of the the Santa Clara de Uchnya indigenous community from intimidation, violence, harassment by land-traffickers.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedures, the Committee would be grateful to receive information on the two requests outlined above, by 14 July 2021.

25. Canada, 24 November 2020

Excellency, I refer to your letter of 7 July 2020 and I thank you for the information provided in response to the Committee's decision of 13 December 2019 concerning allegations of violations of the rights of indigenous peoples, in particular the absence of the free, prior and informed consent of the Secwepemc and We'suwet'en communities, in relation to the development of the C dam project, the approval of the Trans Mountain Pipeline Expansion project in British Columbia as well as the Coastal Gaz Link Pipeline.

The Committee takes note of the information provided regarding the interpretation of the free, prior and informed consent principle and the duty to consult.

The Committee also notes that the State party plans to introduce legislation by the end of 2020, co-developed with indigenous peoples to implement the United Nations Declaration on the Rights of Indigenous Peoples similar to the legislation adopted by the provincial Government of British Columbia.

The Committee regrets the State party interprets the free, prior and informed consent principle as well as the duty to consult as a duty to engage in a meaningful and good faith dialogue with indigenous peoples and to guarantee a process, but not a particular result. In this regard, the Committee would like to draw its attention on the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights or interests of indigenous peoples is taken without their informed consent.

Further, the Committee regrets that the State party has provided no information on measures taken to address the concerns raised by the Committee in its decision of 13 December 2019.

In this regard, and in accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee invites the State party to provide updated information in its 21st to 23rd combined periodic report on measures taken to address all the issues contained in the decision referred to above. In addition, the Committee requests the State party to provide information in its periodic report, on: a) the status of adoption of the legislation to implement the UN Declaration on the Rights of Indigenous Peoples, indicating to what extent indigenous peoples have been involved in its drafting; b) the implementation of the legislation adopted by the province of British Columbia including in relation to the development of the C dam project, the approval of the Trans Mountain Pipeline Expansion project in British Columbia as well as the Coastal Gas Link Pipeline; c) further efforts undertaken to engage in negotiations and consultations with the Secwepemc and We'suwet'en communities affected by the projects mentioned above, where no agreement has been reached with, as well as their results.

26. Panama, 24 November 2020 (Unoff. Transl.)

I have the honour to inform you that, during the course of the 102nd session, the Committee continued to consider the situation of the Ngäbe indigenous people affected by the Changuinola 1 hydroelectric power plant in Panama within the framework of the early warning procedure. In this regard, the Committee refers to its previous letter of 13 December 2019 on this subject.

The Committee wishes to thank its Government for the replies provided, which were received on 10 March 2020.

The Committee takes note of the information provided by its Government, particularly with regard to the measures taken with a view to implementing the Tripartite Framework Agreement of 26 November 2009. However, the Committee expresses concern at information indicating that this Agreement has not yet been fully implemented.

In this regard, the CTC would appreciate receiving information on (i) the concrete measures taken to declare collective lands in the territories inhabited by Ngäbe communities, in compliance with the Tripartite Framework Agreement; and, (ii) measures to ensure the participation of Ngäbe indigenous communities in procedures related to the declaration of collective lands.

The Committee also takes note of the information provided by its Government regarding the adoption of the "Declaration of Commitment on the Friendly Agreement to resolve the situation of the Chan 1 hydroelectric plant" on 13 September 2019; the signing of a cooperation agreement between AES and the Ministry of Social Development to develop a development plan for the affected Ngäbe communities; and, the "Beehive Plan" designed to improve the services provided by the State.

The Committee requests the State party to provide detailed information on the above-mentioned declaration, the cooperation agreement and the “Beehive Plan”, in particular the mechanisms designed to ensure the participation of indigenous peoples in these initiatives, in the light of the principle of free, prior and informed consent and the Committee’s general recommendation No. 23 on the rights of indigenous peoples.

The Committee would also appreciate receiving information on the measures taken by the State party to strengthen the framework for the protection of the rights of indigenous peoples. In this regard, the Committee reiterates its call on the State party to consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), as reflected in the Committee’s latest concluding observations (CERD/C/PAN/CO/15-20, para. 22).

[...]

27. Russian Federation, 24 November 2020

Excellency, I would like to inform you that in the course of its 102nd session, the Committee on the Elimination of Racial Discrimination considered under its Early Warning and Urgent Action Procedure allegations of judicial harassment of a non-governmental indigenous organization working on the promotion and the protection of the rights of indigenous peoples in the Russian Federation.

It is alleged that the Minister of Justice of the Russian Federation introduced a request accusing this non-governmental organization of violating the “Foreign Agent Law”, including by keeping an outdated address, outdated provisions in its Charter and or failing to report to the Ministry of Justice. On 6 November 2019, the Moscow City Court reportedly rendered a decision with effect to terminate the activities of that organization.

The submission also alleges that irregularities the organization was accused of were formal in nature and could have been rapidly corrected. However, the Court allegedly refused to give any time for corrections. Therefore, the submission further alleges that the Court’s decision was disproportionate, and not in accordance with the jurisprudence of the Supreme Court of the Russian Federation.

According to further information received, on 3 March 2020, the First Appellate Court upheld the decision of the Moscow City Court and the case went to the Cassation Court.

The Committee recalls that in its concluding observations of 2017 (CERD/C/RUS/CO/23-24, 2017, paras. 11-12), it raised concerns with the State party about “the continuous classification of some non-governmental organizations (NGOs) as foreign agents, which could have a negative impact on their operational activities and in some instances has led to their closure” [...] It recommended that “that the Federal laws on Non-commercial Organizations and on “Undesirable Organizations” be reviewed to ensure that NGOs, including those working with ethnic minorities, indigenous peoples, non-citizens and other vulnerable groups that are subjected to discrimination, are able to carry out their work effectively to promote and protect, without any undue interference, the rights contained in the Convention”.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party submit information on all of the issues of concern outlined above by 31 March 2021, as well as on any action already taken to address them. In particular, it requests that the State party provide information on: a) the outcome of the case that is pending before the Cassation Court; b) measures taken to review the Federal Agent Law and; c) whether the non-organization whose

activities have been terminated could correct the irregularities found, so as to resume its activities after the legal proceedings are terminated.

28. Thailand, 24 November 2020

Excellency, I would like to refer to your communication received on 22 November 2019 containing information in response to the Committee's letter of 29 August 2019 adopted under its early warning and urgent action procedure regarding the situation of indigenous peoples in the Kaeng Krachan National Park ("KKNP") in Thailand.

The Committee's letter follows previous letters of 17 May 2017, 3 October 2016 and of 9 March 2012, and the State party replies of 24 April 2019 and 9 January 2017. In 2012, the Committee expressed concerns about allegations of forced evictions and harassment and reported continuous and escalating violence against indigenous peoples in the KKNP.

In 2016, the Committee requested the State party to urgently halt the eviction of the Karen indigenous peoples from the KKNP and to take steps to prevent any irreparable harm to the livelihood of Karen as well as to ensure that they enjoy their rights, including by effectively implementing the relevant provisions of the Constitution.

In 2017, the Committee reiterated its previous concerns regarding forced evictions of Karen indigenous peoples, continuing harassment against them and the failure to ensure adequate consultation with the aim to obtain free, prior and informed consent and to implement the Cabinet Resolution of 3 August 2010 on the restoration of the livelihoods of the Karen.

In 2019, the Committee reiterated its concerns about allegations of attacks and continuing harassment against Karen indigenous peoples, the failure to ensure accountability for these violations, and the reactivation of the nomination of the KKNP to be designated as UNESCO World Heritage site in 2019, without adequate consultation with the affected indigenous peoples and the lack of measures to seek their free, prior and informed consent.

The Committee would like to thank your Government for its reply of 22 November 2019 to the Committee's letter of 29 August 2019. It takes note of the additional information provided by your Government in relation to the situation of indigenous peoples in the KKNP, in particular regarding a) the establishment of the Sub-Committee on the Nomination of the KKNP as a World Heritage Site; b) the survey to be conducted by the Sub-Committee; c) on the opinions of local communities regarding the nomination of the KKNP as a world heritage site; c) the report of the survey on land tenure in the conserved forest areas and agreements on land use in accordance with the National Parks Act B.E. 2562 (2019) and the Wildlife Conservation and Protection (2019) Act B.E. 2562; d) the measures and guidelines identified to resolve the encroachment of protected forest areas and land tenure through a participatory process; e) the investigations on the enforced disappearance of Mr. Pholachi Rakchongcharoen; and f) the Supreme Administrative Court's decision of 12 June 2019 allowing monetary penalties in favour of six Karen plaintiffs.

However, the Committee notes that the State party's replies do not address all the issues outlined in its previous letters of 29 August 2019 and 17 May 2017.

In spite of the information received, the Committee reiterates its previous concerns and, accordingly, requests the State party to provide further and detailed information on the following issues:

1. The implementation of the Community Forest Act adopted on 15 February 2019, as referred to in the State party's letter of 24 April 2019;
2. The measures taken to investigate the attacks suffered by the Karen indigenous peoples in the KKNP; the ongoing and/or completed investigations; the results of such investigative procedures;
3. the sanctions against those found responsible; and the reparation provided to the victims;
4. The measures taken to protect indigenous people's human rights defenders, including information on the witness protection programmes and their implementation;
5. The results of the survey on the opinion of the local communities with regard to the nomination of the KKNP as World Heritage site; the conclusions and recommendations following the survey on land tenure in the conserved forest areas and the concrete measures taken to enter into agreements on land use as well as examples of the agreements concluded and how local communities have been involved in the process;
6. The concrete measures adopted and results obtained to promote the traditional way of life of the Karen communities and results;
7. The specific measures and guidelines identified to resolve the encroachment of protected forest lands and land tenure and the results of the participatory process designed to this end.

29. USA, 24 November 2020

Excellency, I write to inform you that in the course of its 102nd session, the Committee continued the consideration of the situation of Gwich'in indigenous peoples in Alaska, in the United States of America, under its early warning and urgent action procedure. In this regard, the Committee refers to its previous letter of 7 August 2020 on this issue.

Since its previous letter, the Committee has received and considered further information. According to the additional information received by the Committee, the United States Government released the Coastal Plain Oil and Gas Leasing Program Record of Decision on 17 August 2020, a decision that would constitute the final administrative step required for the Government to move forward with a lease sale of the Coastal Plain to oil and gas companies.

The information received by the Committee alleges that once the lease sale is initiated, it will be nearly impossible to cancel the sale and prevent oil and gas development of the area. Allegedly, the drilling option selected is the most expansive one and it will have the greatest and most destructive impact on the Coastal Plain and the caribou herd.

Moreover, the information alleges that permitting to lease the area for oil and gas development will cause irreparable harm to the environment and the Gwich'in, in particular their right to health, adequate food, education, freedom of religion, and that it will increase the risk of violence against indigenous women.

It is further alleged that the domestic legal framework does not provide an adequate forum to address the negative impact of these measures on the human rights of the Gwich'in People, and that the United States has continually failed to consult with the Gwich'in or to seek their free, prior and informed consent.

The information received also alleges that in the context of recovering from the impact of the COVID-19 pandemic, the United States Government is removing existing

regulations and forging ahead with oil and gas development in the Coastal Plain and other energy projects, which directly and disproportionately impact indigenous peoples.

The Committee recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples and its previous concluding observations (CERD/C/USA/CO/7-9).

Accordingly, the Committee would be grateful to receive a response to the request of information contained in its letter of 7 August 2020 and to these additional allegations, including information on:

- (a) The status of the proposal to develop oil and gas in the Coastal Plain and if a final administrative decision has been taken to move forward with a lease sale to oil and gas companies;
- (b) The mechanisms available that would allow to reassess the options proposed in the Final Environmental Impact Statement regarding the oil and gas projects in the Coastal Plain;
- (c) The concrete measures taken to protect the Coastal Plain, its wildlife and the indigenous peoples who live in there, including measures to implement the commitments under the Agreement Between the Government of Canada and the Government of the United States of America on the Conservation of the Porcupine Caribou Herd;
- (d) The measures adopted to incorporate the United Nations Declaration on the Rights of Indigenous Peoples into domestic law;
- (e) The measures adopted to ensure that isolated indigenous communities are protected from the effects of COVID-19, in consultation with them.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive a response to the above allegations and concrete measures taken in this regard before 31 March 2021. The Committee also urges the State party to submit its 10th to 12th periodic report without further delay, which was due on 20 November 2017.

30. Statement 2 (2020) Peru, 7 August 2020

Acting under its Early Warning and Urgent Action Procedures;

Alarmed by the increasing spread of COVID-19 among the indigenous peoples living in the Amazon region of the State party, with an estimate of several thousand contaminations, affecting a higher number of women than men, and an estimate of hundreds of deaths;

Deeply alarmed by the threat posed by the COVID-19 pandemic to the physical and cultural survival of indigenous peoples living in the Amazon region in particular of those in voluntary isolation or in initial contact, particularly due to their high vulnerability to external diseases;

Concerned by the disproportionate and adverse socio-economic impact of the COVID-19 pandemic on indigenous peoples, in particular in the Amazon region, caused by the persistent racial structural discrimination hampering access to quality health services and to economic aid related to the COVID-19 pandemic;

Concerned that the absence of an effective mechanism for the protection of indigenous peoples' rights to lands, territories and resources further put the cultural and physical survival of indigenous peoples in the Amazon region at risk;

Highly concerned by the continuity of extractive activities in the Amazon region, which directly contribute to the spread of COVID-19 in the Amazon region, including in the most remote areas;

Disturbed by the absence of specific measures for indigenous peoples in the early response to the COVID-19 pandemic launched in March 2020, and the significantly delayed adoption of such specific measures;

Noting that the Legislative Decree 1489 which was adopted only on 10 May 2020 as a specific response to the situation of indigenous peoples in the context of the COVID-19 pandemic, is poorly implemented due to the lack of necessary funding and of limited technical capacities of regional governments;

Noting further the adoption of a plan of intervention for indigenous and rural communities in the Amazon region, on 30 May 2020, by the Ministry of Health;

Noting moreover the measures taken by the State party to mitigate any adverse impact of private companies operating in indigenous territories and lands, such as the Legislative Decree 1500; *Recalling* its previous concluding observations of 23 May 2018 (CERD/C/PER/CO/22-23) and 25 September 2014 (CERD/C/PER/CO/18-21) on Peru and its general recommendations No. 23 (1997) on the rights of indigenous peoples and No. 32 (2009) on the meaning and scope of special measures in the Convention:

1. **Calls upon** the State party to ensure the participation of indigenous peoples in decisionmaking processes as key partners in addressing the COVID-19 pandemic and in decisionmaking, including in the design and implementation of measures taken to prevent and contain the disease, as well as in relation to recovery plans;
2. **Urges** the State party to immediately adopt protection measures for indigenous peoples in voluntarily isolation or initial contact and to prevent the entry of unwanted outsiders in their territories, in particular through the strict implementation of sanitary areas and expedited legislation establishing the protection and intangibility of areas where indigenous peoples live;
3. **Urges** the State party to give priority to and the necessary resources for adequate and fully funded implementation of the Legislative Decree 1489, as well as of the Supreme Decrees 004-2020-MC, 008-2020-MC and 010-2020-MC adopted by the Ministry of Culture, to ensure culturally appropriate health goods and services to indigenous peoples and delivery of humanitarian aid by public authorities and to consider the adoption and effective implementation of further measures to address the negative impact of the pandemic on indigenous peoples;
4. **Urges** the State party, including local authorities, to ensure the urgent and full respect of indigenous territories in association with indigenous peoples, by strictly enforcing controls on the entry of any unwanted person into indigenous territories in agreement and close collaboration with indigenous peoples, including compulsory testing for COVID19 and medical evaluation of individuals wishing to enter these territories;
5. **Urges** the State party to adopt special measures to mitigate the socio-economic and cultural impact on indigenous peoples, caused by the COVID-19 pandemic, and to ensure access of indigenous peoples to economic aid without discrimination;
6. **Urges** the State party to ensure the right to free, prior and informed consent regarding the extractive activities and other development projects in indigenous people's territories which might further contribute to the spreading of COVID-19;

7. **Calls upon** the State party to cooperate internationally to seek support to its response to the COVID-19 pandemic with regard to indigenous peoples, in particular those living in the Amazon region, and in developing responses to the pandemic for communities bordering Brazil and Colombia.

31. Statement 3 (2020), Statement on the coronavirus (COVID-19) pandemic and its implications under the International Convention on the Elimination of All Forms of Racial Discrimination, 7 August 2020

Impact of the COVID-19 pandemic on the right to non-discrimination and to equality

The COVID-19 pandemic is having significant adverse impacts on the enjoyment of human rights, in particular on the right to non-discrimination and to equality based on the grounds set forth in article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination. Several months into the pandemic, evidence shows that the pandemic disproportionately affects individuals and groups who are marginalized and more vulnerable to racial discrimination, in particular persons belonging to national or ethnic, religious and linguistic minorities as well as indigenous peoples....

[...]

In addition, the pandemic as well as the responses to the pandemic have exacerbated the specific vulnerability of women and girls, children, and persons with disabilities, leading to multiple or intersecting forms of discrimination. An increase of domestic as well as other forms of sexual, psychological and physical violence against minority and indigenous women has been reported. [...]

[...]

Obligations of States under the International Convention on the Elimination of All Forms of Racial Discrimination

States have an obligation to respect, protect and fulfil their international human rights obligations, including in times of crisis. States may enact and enforce restrictions of human rights on public health grounds only if they are necessary, reasonable, proportionate and nondiscriminatory. Both with regard to the impact of the pandemic in general as well as when addressing the pandemic, States need to respect human rights and to ensure that their measures are in accordance with their international obligations, including those arising from the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee reminds State Parties of its General Recommendations to ensure compliance of the measures they take to address the COVID-19 pandemic and its impact with the provisions of the Convention: ...

4. The disparate impact of the COVID-19 pandemic is particularly pertinent with regard to the enjoyment of economic, social and cultural rights. States must protect against and mitigate the impact of the pandemic on individuals and groups subject to structural discrimination and disadvantage on the basis of the grounds in the Convention, taking into account the gender-related dimensions of racial discrimination: ... (f) Indigenous peoples, specifically those living in remote areas and in isolation, are particularly vulnerable to the COVID-19 pandemic. States have an obligation to ensure, through positive measures if needed, that the rights of indigenous communities living on their territory are protected.

32. Brazil, 7 August 2020

Excellency, I would like to inform you that in the course of its 101st session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the situation of indigenous peoples, Afro-Brazilians and quilombolas, in the context of COVID-19 in Brazil.

The information received claims that structural and pervasive discrimination affecting indigenous peoples, Afro-Brazilians and quilombolas has been exacerbated by the seriousness and magnitude of the spread of COVID-19. More specifically, the information claims that persisting challenges faced by these populations in accessing adequate employment; social security; adequate food, water and sanitation, health, and education have been aggravated in the context of the pandemic. Indigenous women, Afro-Brazilian and quilombolas women are disproportionately affected by the crisis, intensifying the multiple forms of discrimination already affecting them and exposing them to increased gender-based violence.

The information also reports that, indigenous peoples, Afro-Brazilians and quilombolas have faced discrimination in accessing adequate and culturally adapted information; quality and culturally adapted health care and medical services; COVID-19 tests; hygiene, cleaning and disinfection materials; as well as the emergency income aid. The information further claims that social exclusion, marginalisation and poverty has put indigenous peoples, Afro-Brazilians and quilombolas at a higher risk of contamination and transmissions of COVID-19, as reflected in the high number of cases among these groups, and the high mortality rates in comparison with the rest of the population.

According to the information received, during the COVID-19 crisis, land grabbing and conflicts over indigenous peoples' lands and territories have increased, exposing women and girls to increased violence by individuals aiming at grabbing their lands. Violence and excessive use of force against Afro-Brazilians, including women has also worsened. The information alleges that indigenous women, Afro-Brazilian and quilombolas women, as well as women human rights defenders have been victims of intimidation, threat and violence, including sexual, psychological and physical violence. The information received also claims that, comprehensive and disaggregated data on the impact of the pandemic is not systematically collected at national or local levels, making difficult to assess the situation of these groups and to adopt informed and appropriate measures, policies and plans to effectively address their specific needs in the context of this crisis.

With regard to the information received, the Committee would like to request the State party to provide information on the measures adopted:

- (a) To address the health and socioeconomic challenges of the pandemic and its adverse effects in the exercise and enjoyment of human rights of indigenous peoples, Afro-Brazilians and quilombolas, indicating whether such measures have been elaborated in consultation with these groups and taking into account their specific needs, culture and traditions;
- (b) To ensure that indigenous peoples, Afro-Brazilians and quilombola have access without discrimination to quality and culturally appropriate medical care and treatment, as well as COVID-19 testing; accurate and culturally adapted information; hygiene, cleaning and disinfection materials; as well as to the emergency income aid provided in the context of the pandemic;
- (c) To address the specific needs of indigenous women, as well as AfroBrazilian and quilombolas women in the context of the pandemic, particularly to

ensure their access to adequate employment, education and health services, including sexual and reproductive health; their participation in decision-making processes, as well as measures to combat gender-based violence against women in the context of the pandemic;

- (d) To collect comprehensive, disaggregated and reliable information on the impact of COVID-19 on indigenous peoples, Afro-Brazilians and quilombolas in order to assess their situation and inform the elaboration and implementation of specific policies and plans.

The Committee takes note of the efforts made by the State party to submit its 18th to 20th periodic report, due in 2008, which was received on 14 July 2020. In this regard, and in accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee invites the State party to provide the information on the issues mentioned above and concrete measures adopted to address them during the upcoming review of the State party report.

C. GENERAL RECOMMENDATIONS

1. No. 36 on preventing and combating racial profiling by law enforcement officials, CERD/C/GC/36, 17 December 2020

Established principles and practice

4. In drafting the present general recommendation, the Committee has taken account of its extensive practice in addressing racial profiling by law enforcement officials, primarily in the context of the review of State party reports and in key general recommendations. The Committee explicitly addressed the issue of racial profiling in its general recommendation No. 30 (2004) on discrimination against non-citizens, in which it recommended that States ensure that any measures taken in the fight against terrorism did not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens were not subjected to racial or ethnic profiling or stereotyping (para. 10); in its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, in which the Committee recommended that States parties take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion (para. 20); and in general recommendation No. 34 (2011) on racial discrimination against people of African descent, in which the Committee recommended that States take resolute action to counter any tendency to target, stigmatize, stereotype or profile people of African descent on the basis of race, by law enforcement officials, politicians and educators (para. 31). Other recommendations are also relevant to racial profiling, such as general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights, in which the Committee stressed that law enforcement officials should receive training to ensure they uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin (para. 2); general recommendation No. 23 (1997) on the rights of indigenous peoples, in which the Committee stressed that indigenous peoples should be free from any discrimination, in particular that based on indigenous origin or identity (para. 4 (b)); general recommendation No. 27 (2000) on discrimination against Roma, in which the Committee recommended that States, taking into account their specific situations,

take measures to prevent illegal use of force by police against Roma, particularly in connection with arrest and detention (para. 13), and to build trust between Roma communities and the police; general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, in which the Committee mentioned the concept of “intersectionality”, whereby the Committee addressed situations of double or multiple discrimination – such as discrimination on grounds of gender or religion – when discrimination on such a ground appeared to exist in combination with a ground or grounds listed in article 1 of the Convention (para. 7); and general recommendation No. 35 (2013) on combating racist hate speech.

[...]

6. In addition, several other international human rights mechanisms have explicitly highlighted racial profiling as a violation of international human rights law. In 2009, through its decision in the case *Williams Lecraft v. Spain*, the Human Rights Committee became the first treaty body to directly acknowledge racial profiling as unlawful discrimination. In more recent concluding observations, the Human Rights Committee has regularly expressed concern at the continuous practice of racial profiling by law enforcement officials, targeting in particular specific groups such as migrants, asylum seekers, people of African descent, indigenous peoples, and members of religious and ethnic minorities, including Roma; the concern has been echoed by the Committee against Torture.

[...]

Scope

[...]

11. The Committee has recognized that specific groups, such as migrants, refugees and asylum seekers, people of African descent, indigenous peoples, and national and ethnic minorities, including Roma, are the most vulnerable to racial profiling.

D. OPINIONS ADOPTED BY THE COMMITTEE UNDER ARTICLE 14 OF THE CONVENTION

1. Yaku Pérez Guartambel v. Ecuador, 26 July 2022³⁷

Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 61/2017

<i>Communication submitted by:</i>	Yaku Sacha Pérez Guartambel (not represented by counsel)
<i>Alleged victim:</i>	The petitioner
<i>State party:</i>	Ecuador
<i>Date of communication:</i>	10 February 2017 (initial submission)
<i>Date of adoption of opinion:</i>	28 April 2022
<i>Document references:</i>	Decision taken pursuant to rule 91 of the Committee's rules of procedure, transmitted to the State party on 28 March 2017 (not issued in document form)
<i>Subject matter:</i>	Discrimination due to non-recognition of ancestral marriage
<i>Procedural issues:</i>	Exhaustion of domestic remedies; non-substantiation of claims
<i>Substantive issue:</i>	Discrimination on the grounds of national or ethnic origin Articles of the Convention: 1 (1), (2) and (4); 2 (1) (a) and (2); 5 (a) and (d) (iv); and 9 (1)

- 1.1 The petitioner is Yaku Sacha Pérez Guartambel, born on 26 February 1969. He is a national of Ecuador, a member of the Escaleras indigenous community belonging to the Kichwa Kañari people, the president of the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador and the general coordinator of the Coordinadora Andina de Organizaciones Indígenas. He claims that the State party has violated his rights under articles 1 (1), (2) and (4), 2 (1) (a) and (2), 5 (a) and (d) (iv), and 9 (1) of the Convention. The State party ratified the Convention in 1966 and made the declaration provided for in article 14 thereof on 18 March 1977. The petitioner is not represented by counsel.
- 1.2 The petitioner married Manuela Lavinás Picq, a journalist and professor of Brazilian and French nationality, on 21 August 2013 in the Escaleras indigenous community. The marriage was officiated by the traditional authorities of the Kichwa Kañari people of the Escaleras indigenous community in keeping with their cultural and spiritual traditions. The marriage was recorded in the ancestral marriage register of the Escaleras indigenous community¹ and an ancestral marriage certificate was issued by the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador.² In 2015, following the couple's arrest during a march in defence of the rights of indigenous peoples, Ms. Lavinás Picq's visa was revoked. A deportation procedure was initiated, obliging Ms. Lavinás Picq to leave the country. The petitioner and Ms. Lavinás Picq

³⁷ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2F106%2FD%2F61%2F2017&Lang=en

applied for a family reunification visa so that she could return to Ecuador to live with her husband, resume her employment and reintegrate her social network. The visa application was denied because the marriage had not been recorded in the State party's civil register. The petitioner sought to have his marriage registered with the Directorate General for Civil Registration, Identification and Certification; however, his request was denied on the grounds that the State party does not recognize marriages officiated by traditional indigenous authorities but, rather, only those officiated by civil authorities affiliated with the civil registry. The petitioner initiated constitutional protection proceedings before the Criminal Court of the Metropolitan District of Quito, requesting that his marriage be entered in the civil register and that his wife be granted a family reunification visa. The application for constitutional protection was dismissed on the grounds that the marriage was not legally valid because the indigenous authorities were not competent to officiate and register marriages and on the grounds that there was nothing preventing the petitioner and his wife from being married by the competent authority. The petitioner lodged an appeal with the Pichincha Provincial Court, which was dismissed on the grounds that the marriage was not officiated in keeping with the relevant law, namely, the Civil Code and the Organic Act on Identity and Civil Data Management. The petitioner alleges that the State party's refusal to recognize his marriage, which had been officiated by a legally and legitimately constituted community authority that was recognized by the community assembly constitutes discrimination. The petitioner also alleges that his wife's visa was denied in retaliation for his defence of the rights of indigenous peoples, especially in relation to extractive activities in indigenous territories. The petitioner maintains that there has been a violation not only of his individual rights but also of the collective rights of indigenous peoples to preserve their culture, traditions, ways, customs and historical continuity. The facts of the present case violate the right of indigenous peoples to self-determination and autonomy in matters of jurisdiction, procedures and their own age-old institutions, such as marriage, which predates the State and is made up of rites, allegories, ceremonies and formalities that are specific to indigenous peoples and are based on their cultural and spiritual world views. The petitioner also maintains that his right to due process was violated when, after a judge suspended his wife's deportation, the Minister of the Interior requested the court to consult the Ministry in taking the final decision, thus amounting to interference by the executive in judicial affairs.

- 1.3 On 4 December 2019, under article 14 of the Convention and rule 94 of its rules of procedure, the Committee declared the communication admissible. First, regarding competence *ratione personae*, the Committee determined that the complaint presented by the petitioner on behalf of indigenous peoples, whose collective rights he claims were violated by the non-recognition of indigenous marriage, is generic. Consequently, the Committee decided to limit its consideration to the complaint presented by the petitioner on his own behalf as the person directly and personally affected by the refusal to register his marriage and by the denial of his wife's visa. Secondly, the Committee found that the petitioner, having initiated constitutional protection proceedings and lodged an appeal, had exhausted all domestic remedies that could reasonably be considered available and effective in connection with the refusal to register his marriage and the denial of his wife's visa. Thirdly, the Committee found that the petitioner had not exhausted domestic remedies in relation to his allegations of political persecution and declared that part of the communication inadmissible. Fourthly, the Committee found that the petitioner

had not sufficiently substantiated the part of the communication dealing with the due process violation and therefore also declared that part of the communication inadmissible. Lastly, regarding the petitioner's allegation that he is the victim of racial discrimination because the authorities of the State party did not recognize and refused to register his ancestral marriage and, as a result, denied his wife a family reunification visa despite the marriage having been officiated by a legally and legitimately constituted community authority that was recognized by the community assembly, the Committee notes the State party's argument that the petitioner's marriage had to meet the requirements under domestic law in order to be entered in the civil register. However, in light of article 1 of the State party's Constitution, which establishes that Ecuador is an intercultural and plurinational State, article 11 (1) of the United Nations Declaration on the Rights of Indigenous Peoples and the Committee's general recommendation No. 23 (1997), the Committee found that, for the purposes of admissibility, the petitioner's allegations concerning articles 1 (4), 2 (1) (a) and (2), and 5 (d) (iv) of the Convention had been sufficiently substantiated and should be considered on the merits. The Committee requested the parties to submit written observations and comments concerning the merits of the communication. For further information about the facts, the petitioner's claims, the parties' observations and comments on admissibility and the Committee's decision thereon, refer to the decision on admissibility.

[...]

Issues and proceedings before the Committee Consideration of the merits

- 4.1 The Committee has considered the present communication in light of all the submissions and documentary evidence produced by the parties, as required under article 14 (7) (a) of the Convention and rule 95 of its rules of procedure.
- 4.2 The Committee notes that the petitioner alleges a violation of articles 1 (4), 2 (1) (a) and (2) and 5 (d) (iv) of the Convention in that the failure to recognize the jurisdiction of the traditional indigenous authorities who officiated his marriage – a ceremony that was conducted in accordance with indigenous culture and customs for millennia, before the construction of the State – and the consequent failure to recognize his marriage constitute an act of discrimination, as a result of which he is being prevented from enjoying the same civil rights as those whose marriages are officiated in accordance with the State party's laws. The Committee also notes that, according to the petitioner, denying him a family reunification visa and recommending that his marriage be officiated by an ordinary civil authority amounts to forced assimilation into the State institution of civil marriage. That is in contravention of the Constitution, which establishes Ecuador as a plurinational State, safeguards the right of indigenous peoples and nationalities to apply and practise their distinct or customary laws and permits them to exercise judicial functions based on their ancestral traditions and their own laws. In the petitioner's view, the Directorate General for Civil Registration, Identification and Certification is obliged to respect these constitutional norms, as well as international law, which recognizes the right of indigenous peoples to self-determination in matters of jurisdiction, procedures and their own, age-old institutions and establishes that, in applying national laws to indigenous peoples, States must have due regard to their customs and customary laws.

4.3 The Committee notes the State party's argument that indigenous marriages are not banned in Ecuador and that the refusal to register the ancestral marriage in this case did not stem from an institutional stance against any particular racial group or ethnicity. The Committee also notes the State party's argument that the officiation and registration of civil marriages in Ecuador is the exclusive competence of civil registry officials and the Directorate General for Civil Registration, Identification and Certification and not that of the traditional authorities of the Escaleras indigenous community or the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador. Therefore, the petitioner should have been married by the competent State authority.

Self-determination, autonomy and indigenous jurisdiction

4.4 The Committee notes that the 2008 Constitution, which establishes Ecuador as an intercultural and plurinational State (art. 1), recognizes and guarantees that "indigenous communes, communities, peoples and nationalities" hold collective rights to "freely maintain, develop and strengthen their identity, sense of belonging, ancestral traditions and forms of social organization", to "preserve and develop their own systems of coexistence and social organization and methods for establishing and exercising authority in their legally recognized territories and on their communal lands of ancestral possession", to "establish, develop, apply and practise their distinct or customary laws, provided that these do not breach constitutional rights, especially those of women, children and adolescents" and to "establish and maintain organizations to represent them, in the spirit of pluralism and cultural, political and organizational diversity. The State shall recognize and promote all their forms of expression and organization" (art. 57 (1), (9), (10) and (15)). The Constitution also establishes that "the authorities of indigenous communities, peoples and nationalities shall perform judicial functions, based on their ancestral traditions and their own law, within their own territory" and that the State must ensure that the judicial decisions of indigenous authorities, which are subject to constitutional review, "are respected by public institutions and authorities" (art. 171). The Committee notes that, in addition to the Constitution, the Organic Code of the Judiciary also establishes with regard to the "scope of indigenous jurisdiction" that the "the authorities of indigenous communities, peoples and nationalities shall perform judicial functions, based on their ancestral traditions and distinct or customary laws, within their own territory" (art. 343) and that the actions and decisions of civil servants must adhere to the principles of diversity "taking into account the law, customs and ancestral practices of indigenous persons and peoples"; non bis in idem, in other words "the actions of indigenous judicial authorities cannot be judged or reviewed by ... any administrative authority"; "pro indigenous jurisdiction", according to which "in case of doubt between the ordinary jurisdiction and the indigenous jurisdiction, the latter should take precedence so as to ensure its greatest possible autonomy and the least possible intervention"; and the "intercultural interpretation" of rights, bearing in mind "cultural elements connected to customs, ancestral practices, norms and procedures of the distinct law of indigenous peoples, nationalities, communes and communities" (art. 344).

4.5 In addition, the Committee notes that the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which the State party has ratified, protects the practices and institutions of indigenous peoples (art. 5) and stipulates that, in applying national laws to indigenous peoples, "due regard shall be had to their customs or customary laws" and that indigenous peoples "shall have the right to retain their

own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights” (art. 8). Similarly, the United Nations Declaration on the Rights of Indigenous Peoples establishes that indigenous peoples “have the right to self-determination” (art. 3). In exercising this right, they “have the right to autonomy or self-government” (art. 4), “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions” (art. 5), “to practise and revitalize their cultural traditions and customs”, including the right to maintain, protect and develop the manifestations of their cultures, such as ceremonies (art. 11), “to determine the structures and to select the membership of their institutions in accordance with their own procedures” (art. 33) and “to promote, develop and maintain their institutional structures and their distinctive ... juridical systems or customs, in accordance with international human rights standards” (art. 34). The American Declaration on the Rights of Indigenous Peoples, meanwhile, establishes that “States shall recognize fully the juridical personality of indigenous peoples, respecting indigenous forms of organization” (art. IX), that “indigenous people have the right to promote, develop and maintain their institutional structures and their distinctive ... juridical systems or customs, in accordance with international human rights standards” and that “indigenous law and legal systems shall be recognized and respected by national, regional and international legal systems” (art. XXII). The Committee also notes that the Declaration establishes that States shall recognize, respect and protect the various indigenous forms of family “as well as their forms of matrimonial union” (art. XVII (1)).

4.6 The Committee is of the view that the aforementioned norms relating to the recognition of self-determination, autonomy, indigenous jurisdiction and self-government through traditional indigenous authorities who apply customary law reflect legal pluralism. In this connection, the Committee notes the recognition of Ecuador, in article 1 of the Constitution, as an intercultural and plurinational State. This implies the understanding that different systems of government and social regulation, based on cultural, political or historical aspects, coexist through various authorities, such as the ordinary jurisdiction and the indigenous jurisdiction. Furthermore, the Committee is of the view that the main purpose of self-determination for indigenous peoples is to recognize the cultural diversity within a country’s territory and to ensure that this diversity is protected and preserved. In addition to being a form of intangible heritage, self-determination is linked to the effective realization of the rights of indigenous peoples, specifically their right to maintain and develop their own political, judicial, cultural, social and economic institutions.

Obligations under the Convention in light of indigenous customary law

4.7 The Committee recalls that the prohibition of racial discrimination set out in the Convention requires that States parties guarantee to everyone under their jurisdiction the enjoyment of equal rights *de jure* and *de facto*. According to article 2 (1) (c), all States parties must take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists. Thus, the Committee has already established that States must take positive measures to enable the realization of human rights for indigenous peoples, either by removing remaining obstacles or by adopting specific legislative and administrative measures to fulfil their obligations under the Convention. It has stated, for example,

that recognition of indigenous peoples' rights over their traditional territories, based on immemorial usage and indigenous customary law, entails the obligation to respect and protect these rights in practice, including through the adoption of special measures. That is because, as the Committee has stated previously, to ignore the inherent right of indigenous peoples to their traditional territories – which is grounded in indigenous customary law – constitutes a form of discrimination as it results in nullifying or impairing the recognition, enjoyment or exercise by indigenous peoples, on an equal footing, of the property rights tied to their identity.

Non-discrimination in the enjoyment of marriage rights

4.8 In the present case, the Committee notes that the entry in the ancestral marriage register of the Escaleras ancestral community states that:

Before the indigenous authority of this community, stand freely, consciously and voluntarily brother Carlos Pérez Guartambel and sister Manuela Lavinas Picq, accompanied by witnesses Mirian Chuchuca Pugo and Ruth Noemi Pugo Pérez, to enter in the family certificates register of this community the following certificate of ancestral marriage: Identity of the groom: Carlos Pérez Guartambel (identification card No. 0102475449). Place and date of birth: Kachipucara/Escaleras, Tarqki parish, 26 February 1969. Civil status: widower, his wife María Verónica Cevallos Uguña, with whom he had two descendants ..., having departed for a higher dimension of life on 16 October 2012. Identity of the bride: Residence of the bride and groom: ... Place and date of the ceremony: Lagunas de Kimsakocha during the full moon (Junda Killa) of 21 August of the Western year 2013. This certificate is also signed by Rosa Inés Guartambel Guinansaca who, in her capacity as grandmother and godmother to the minor children, ... undertakes to lend her utmost support to ensure the children have the best comprehensive upbringing, inspired by the Allí Sumak Kawsay, in cooperation with and complement to the children's father, in accordance with the law of the original peoples. This certificate is issued by the good community government on the basis of articles 1, 10, 11, 56, 57, 68 and 171 of the Constitution, articles 1–3, 5 and 8 of ILO Convention No. 169, articles 1–5, 9, 11, 33 and 34 of the United Nations Declaration on the Rights of Indigenous Peoples, articles 343 and 344 of the Organic Code of the Judiciary and the law of the ancient peoples. We proceed to the registration of this certificate of ancestral marriage in the Escaleras community register ... and to its transmission to the Federación de Organizaciones Indígenas y Campesinas del Azuay and the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador.

4.9 The Committee also notes that the ancestral marriage registers of both the Federación de Organizaciones Indígenas y Campesinas del Azuay and the Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador certify in similar terms the ancestral marriage of the petitioner to Ms. Lavinas Picq, officiated by the Kichwa Kañari indigenous authorities of the Escaleras indigenous community.

4.10 The Committee notes that the traditional authorities of the Escaleras ancestral community who drew up the marriage certificate in accordance with their ancient customs verified the identity of the spouses, their age, their prior civil status, their address, the voluntary nature of their union and the date and place of the marriage – all in the presence of two witnesses.

- 4.11 The Committee also notes that the State party did not recognize the petitioner's marriage because it was not officiated by State authorities established pursuant to the Civil Code and the Organic Act on Identity and Civil Data Management. It further notes that the State party requests the petitioner to hold another wedding before civil registry officials. The Committee is of the view that the above could contribute to jeopardizing cultural practices, which are a part of cultural heritage. In the present case, the State party's refusal to recognize the petitioner's marriage has meant that the petitioner was not able to enjoy a civil right that is associated with marriage, namely, the issuance a family reunification visa, thus undermining his right to respect of his family life.
- 4.12 The Committee recalls article XVII (1) of the American Declaration on the Rights of Indigenous Peoples, which establishes that States must recognize, respect and protect the various indigenous forms of matrimonial union. It also recalls that, under articles 57 and 171 of the Constitution, indigenous peoples exercise judicial functions and their own forms of government based on their ancestral traditions and their distinct or customary laws. The Committee further recalls that, in accordance with the State party's Organic Code of the Judiciary, rights must be interpreted from an intercultural perspective, taking into account cultural elements related to the customs, ancestral practices and norms or procedures of the distinct law of indigenous peoples (para 4.4). Accordingly, the Committee is of the view that, far from depriving the State party of its jurisdiction over civil law, the registration and recognition of the legal effects of marriages officiated by traditional indigenous authorities in keeping with their ancient customs actually serve to create the necessary cooperation and coordination that should be at the heart of the relationship between the ordinary system and the indigenous system – a system emanating not only from the constitutional framework that promotes interculturality and plurinationality, but also from the right of indigenous peoples to autonomy and self-government (para 4.6).
- 4.13 Therefore, the Committee is of the view that, in order to comply with its obligations under article 5 (d) (iv) of the Convention, not only must the State party refrain from prohibiting the celebration of indigenous marriages (para 2.3) and the issuance by traditional indigenous authorities of registration certificates for marriages officiated in their territories, but it must also take all necessary steps, in cooperation with the traditional indigenous authorities, to record such marriages in the civil register where they are not contrary to other international human rights obligations or to requirements under national law for the celebration of marriages. If this had happened in the present case, the petitioner and Ms. Lavinias Picq would have enjoyed the same civil rights as individuals whose marriage is recognized by the civil registry. In light of the foregoing, the Committee finds that the facts before it disclose a violation of the petitioner's rights under article 5 (d) (iv) of the Convention.
5. In the circumstances of the case, the Committee, acting under article 14 (7) (a) of the Convention, considers that the facts before it disclose a violation by the State party of article 5 (d) (iv).
6. The Committee recalls that, in keeping with a customary norm that constitutes one of the fundamental principles of contemporary international law on the responsibility of States, any violation of an international obligation that has resulted in harm entails a duty to comprehensively repair that harm.¹⁶ Therefore, the State party should, inter alia, (a) record the petitioner's marriage to Ms. Lavinias Picq in the civil register so that they may apply for a family reunification visa; (b) provide

appropriate compensation to the petitioner for the harm caused; (c) apologize to the petitioner for the violation of his rights; (d) amend its legislation in keeping with the present opinion to provide for the recognition and registration of marriages officiated by traditional indigenous authorities in accordance with their customs and customary law that are not contrary to other international human rights obligations or to requirements under national law for the celebration of marriages; (e) establish a training programme for civil registry officials and the judiciary and other court personnel regarding the validity and recognition of indigenous marriages officiated by traditional authorities; and (f) disseminate this opinion widely and translate it into the Kichwa language.

7. The Committee requests the State party to provide, within 90 days, information on the steps taken to give effect to the present opinion.

2. Anne Nuorgam v. Finland, CERD/C/106/D/59/2016, 2 June 2022³⁸

Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 59/2016

<i>Communication submitted by:</i>	Anne Nuorgam et al., represented by Dr. Martin Scheinin
<i>Alleged victims:</i>	The petitioners
<i>State party:</i>	Finland
<i>Date of the communication:</i>	14 March 2016 (initial submission)
<i>Date of the present decision:</i>	22 April 2022
<i>Document references:</i>	Decision taken pursuant to rule 91 of the Committee's rules of procedure, transmitted to the State party on 18 January 2017 (not issued in document form)
<i>Subject matter:</i>	Right to vote in elections to the Sami Parliament; equality in the enjoyment of cultural rights
<i>Procedural issues:</i>	Jurisdiction of the Committee; victim status; exhaustion of domestic remedies
<i>Substantive issues:</i>	Discrimination on the ground of ethnic origin
<i>Articles of the Convention:</i>	1 and 5 (a), (c) and (e)

[...]

- 1.2 On 7 May 2018, under article 14 of the Convention and rule 94 of its rules of procedure, the Committee adopted a decision on the admissibility of the communication. For further information about the facts, the petitioners' claims, the parties' observations on admissibility and the Committee's decision on admissibility, refer to Nuorgan et al. v. Finland (CERD/C/95/D/59/2016).

³⁸ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2F106%2FD%2F59%2F2016&Lang=en.

The facts as submitted by the petitioners

- 2.1 The communication concerns a series of judicial decisions concerning the electoral roll to the Sami Parliament. The Act on the Sami Parliament (No. 974/1995) defines the functioning and powers of the Parliament. Pursuant to section 5 (1) of the Act, the task of the Sami Parliament is to “look after the Sami language and culture as well as to take care of matters relating to their status as an indigenous people”. In matters pertaining to its tasks, the Sami Parliament may take initiatives and bring proposals to the authorities, as well as issue statements (sect. 5 (2)). Section 9 stipulates that:
- (a) The authorities shall negotiate with the Sámi Parliament in all far-reaching and important measures which may directly and in a specific way affect the status of the Sami as an indigenous people and which concern the following matters in the Sámi homeland:
 - (1) Community planning;
 - (2) The management, use, leasing and assignment of state lands, conservation areas and wilderness areas;
 - (3) Applications for licences to stake mineral mine claims or file mining patents;
 - (4) Legislative or administrative changes to the occupations belonging to the Sámi form of culture;
 - (5) The development of the teaching of and in the Sámi language in schools, as well as the social and health services; or
 - (6) Any other matters affecting the Sami language and culture or the status of the Sámi as an indigenous people.
 - (b) In order to fulfil its obligation to negotiate, the relevant authority shall provide the Sámi Parliament with the opportunity to be heard and discuss matters. Failure to use this opportunity in no way prevents the authority from proceeding in the matter.
- 2.2 The petitioners submit that section 3 of the Act on the Sami Parliament contains the definition of who is to be regarded as a Sami for the purposes of being allowed to vote in Sami parliamentary elections: “A Sami means a person who considers himself a Sami provided: (1) that he himself or at least one of his parents or grandparents has learned Sami as his first language; (2) that he is a descendent of a person who has been entered in a land, taxation or population register as a mountain, forest or fishing Lapp; or (3) that at least one of his parents has or could have been registered as an elector for an election to the Sami Delegation or the Sami Parliament.” The petitioners stress that this wording indicates that the chapeau requirement of considering oneself to be a Sami is cumulative to one of the three objective criteria provided in subparagraphs (1), (2) and (3).
- 2.3 In the context of the 2015 elections, 182 decisions by the competent organ of the Sami Parliament, the Electoral Board, to reject the inclusion of individuals in the electoral roll were appealed to the Executive Board of the Sami Parliament and then to the Supreme Administrative Court of Finland. On 30 September 2015, the Court decided to include 93 of those persons in the electoral roll, against the decisions of the Electoral Board and of the Executive Board of the Sami Parliament.¹ The petitioners indicate that in at least 53 out of the 93 rulings, the Court included a new voter on the electoral register based on the “overall consideration”, without demonstrating that he or she fulfilled one of the three objective criteria established by article 3 of the Act on the Sami Parliament. In other cases, the new voter was registered because of a

family tie with a person who had been admitted to the electoral register in 2011 also in application of the “overall consideration” by the Court.

2.4 On 18 November 2015, the Executive Board, having received petitions from individuals, including the petitioners, decided that new elections should be held because the Supreme Administrative Court’s rulings had, in its view, distorted the will of the Sami people. Some of the 93 individuals included in the list of voters appealed the Executive Board’s decision to the Supreme Administrative Court. On 13 January 2016, the Supreme Administrative Court quashed the Executive Board’s decision to hold new elections. The election results announced on 7 October 2015 therefore became final.

[...]

Issues and proceedings before the Committee

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the submissions and documentary evidence produced by the parties, as required under article 14 (7) (a) of the Convention and rule 95 of its rules of procedure.

9.2 The Committee notes the petitioners’ allegations that in at least 53 of its 93 rulings, the Supreme Administrative Court included a new voter on the electoral register based on the “overall consideration”, without demonstrating that he or she fulfilled one of the three objective criteria established by article 3 of the Act on the Sami Parliament. The petitioners argue that the rulings constitute a violation of the State party’s obligations under article 5 (a), (c) and (e) of the Convention. They allege that the State party has violated the petitioners’ and other Sami persons’ right to equal treatment before the tribunals due to the arbitrary nature of the rulings; intervened in the right of the Sami to freely determine the composition of their representative organ and thereby impaired the recognition, enjoyment and exercise by the petitioners and other Sami in Finland, of their human rights and fundamental freedoms in the political, economic, social, cultural and other fields of public life; violated the petitioners’ and other Sámi persons’ right to political participation by compromising and delegitimising the representativeness of the elected Sámi Parliament; and caused, through the weakening of the authority of the elected Sámi Parliament, adverse effects upon the exercise and enjoyment of economic, social and cultural, including linguistic, rights of the petitioners and other Sami persons.

9.3 The Committee takes note of the State party’s argument that the petitioners have failed to establish in what way their right under article 5 e) of the Convention to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service, since their right to vote has not been affected.

9.4 The Committee first recalls that the provisions of the Convention apply to indigenous peoples. As noted in its general recommendation No. 23 (1997), the culture and historical identity of indigenous peoples has been and is being jeopardised. The Committee called upon States parties to ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent. The Committee has frequently reaffirmed the understanding that lack of appropriate consultation with indigenous peoples may constitute a

form of racial discrimination and could fall under the scope of the Convention. The Committee adheres to the human rights-based approach of free, prior and informed consent as a norm stemming from the prohibition of racial discrimination, which is the main underlying cause of most discrimination suffered by indigenous peoples. Conscious of the collective dimension of indigenous peoples' rights, the Committee invited the States Parties to provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics and to ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages. With regard to indigenous peoples the realization of this right can include or even require the establishment of a separate body representing the interests and positions of the members of the indigenous community. Such a body is of importance with regard to ensuring adequate participation of the indigenous community in decision-making processes of the State that affect rights and interests of the indigenous community. It is also an instrument to facilitate and enable consultative processes which are required under international law. The Committee further points out the importance of the right to political participation under Art. 5 (c) ICERD for the enjoyment and full realization of other rights of indigenous communities, in particular their economic, social and cultural rights guaranteed under Art. 5 (e) ICERD.

- 9.5 The Committee notes that the powers and duties of the Sami Parliament include preserving the Sami language and culture, taking care of matters relating to the status of the Sami as an indigenous people, acting as a representative of the Sami people nationally and internationally in matters pertaining to its tasks, and being consulted by all authorities in a long list of matters that concern the Sami as an indigenous people or developments within the Sami homeland. The Committee accordingly considers that the Sami Parliament constitutes the institution that enables, under Finnish domestic law, the effective participation of the Sami in public life as an indigenous people. The Sami Parliament also conducts negotiations to ensure that a free, prior and informed consent is sought in all matters affecting the Sami people. The Committee considers that these functions determine the enjoyment of the political rights of members of indigenous peoples protected by article 5 (c) of the Convention; this without prejudice to other political rights that Finnish Sami individuals may have as Finnish citizens on equal footing with other citizens. Therefore, the electoral process for the Sami Parliament must ensure the effective participation of those concerned, in accordance with the traditions and customs of the community or nation concerned, both as a guarantee for the continued viability and welfare of the indigenous community as a whole and their effective protection from discrimination. The Committee recalls its admissibility decision in this case, where it stated that decisions taken by institutions of the State party, which have an impact on the composition of the Sami Parliament and the equal representation of the Sami, can have a direct impact on the civil, political, economic, social and cultural rights of individual members of the Sami community and of groups of Sami individuals, in the terms of article 14 (1) of the Convention. The Committee reiterates, therefore, that the composition and the effective functioning of the Sami Parliament and its capacity to adequately represent the views of the Sami affects both individually and collectively the rights of the petitioners, under article 5 (c), as members of the Sami indigenous people and as members of the Sami electoral roll.

- 9.6 The Committee notes that the right to vote in the elections of the Sami Parliament is determined by the requirements of section 3 of the Act on the Sami Parliament, which contains a subjective requirement (self-identification as a Sami) and an objective requirement based on either mother tongue or descent. The State party submits that the Committee has recommended that domestic legislations explicitly prohibit descent-based discrimination. The Committee recalls that the prohibition of racial discrimination underpinned in the Convention requires that States parties guarantee to everyone under their jurisdiction the enjoyment of equal rights de jure and de facto. Pursuant to article 2 (1) (c), each State party must take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination, wherever it exists. States must take positive measures to enable the realization of human rights for indigenous peoples, either by removing remaining obstacles or by adopting specific legislative and administrative measures to fulfil their obligations under the Convention. The Committee notes that the need of the Sami indigenous people to safeguard their culture and livelihoods is among the reasons why States parties must adopt concrete positive measures to ensure their effective consultation and participation in decision-making. The Committee recalls that, in its general recommendation No. 32 (2009), it clarified that the notion that special measures should not lead to separate rights for different racial groups must be distinguished from rights accepted and recognized by the international community to secure the existence and identity of groups such as minorities, indigenous peoples and other categories of person whose rights are similarly accepted and recognized within the framework of universal human rights.
- 9.7 In the current case, the Committee notes that the establishment of the Sami Parliament is a measure adopted, as mentioned earlier, to enable the effective participation of the Sami in public life as an indigenous people, and to hold negotiations to obtain a free, prior and informed consent, which are part of the rights of members of indigenous peoples protected by article 5 (c) of the Convention. As a special measure, it does not lead to separate rights for different racial groups, as citizens both within and outside the electoral roll do participate in the democratic system of Finland on an equal basis.
- 9.8 The Committee also notes that the definition in Section 3 of the Sami Parliament Act is used exclusively for the purposes of establishing the electoral roll to the Sami Parliament, but it does not determine the enjoyment of other rights. The Committee finally notes that the purpose of the subjective and objective requirements of Section 3 of the Sami Parliament Act is to ensure the representativeness of the Sami Parliament for the Sami as an indigenous people. In that context, the use of a descent-based distinction as an objective criterion in the specific circumstances of the current case is reasonable and justified by that purpose and is compatible with other human rights obligations.
- 9.9 The Committee notes that in its latest submission the State Party argued that the “overall consideration criterion” has been of significance in the decision-making of the Supreme Administrative Court if the person in question, in principle, met the objective criteria wording of Section 3, paragraphs 1 or 2, of the Act of the Sami Parliament and that therefore, the Court holds that it has not ignored the objective criteria but that the Supreme Administrative Court relied on the Committee’s Concluding Observations in its 2015 rulings in the sense of giving greater weight

to self-identification as well as on the legislative history of the Act on the Sami Parliament, the positions taken by the Constitutional Law Committee of Parliament, other relevant domestic legislation, and international human rights instruments, as well as fundamental and human rights-friendly interpretation of the law. The Committee recalls that, in the Kakkalajarvi et al case discussed by both parties in the present communication, the Human Rights Committee noted that it was undisputed by the parties that in a majority of cases the Supreme Administrative Court stated explicitly that the person did not meet any of the objective criteria spelled out in Section 3.

- 9.10 The Committee recalls that, under article 33 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions, and the right to determine the structures and to select the membership of their institutions in accordance with their own procedures. Article 9 of the Declaration provides that indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned, and that no discrimination of any kind may arise from the exercise of such a right. In accordance with article 8 (1) of the Declaration, indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture. In this context, the Committee notes the process of amending Section 3 of the Sami Parliament Act following negotiations between the State Party authorities and representatives from the Sami Parliament and that, according to the State party, the Sami Parliament did not accept the proposal of the Amendment of the Sami Parliament Act.
- 9.11 The Committee recalls that in 2012 and 2013, it shared its concern that the definition adopted by the Court (in its 2012 rulings) gave insufficient weight to the Sámi people's rights, recognized in the United Nations Declaration on the Rights of Indigenous Peoples, to self-determination (art. 3), in particular their right to determine their own identity or membership in accordance with their customs and traditions (art. 33), as well as their right not to be subjected to forced assimilation or destruction of their culture. The Committee further wishes to clarify that its recommendation provided in its Concluding Observation of 2009 referred to "adequate" weight, while in subsequent Concluding Observations, ²³ the Committee recommended that, in defining who is eligible to vote for Members of the Sami Parliament, due weight should be given to the rights of the Sami people to self-determination concerning their status within Finland, to determine their own membership and not to be subjected to forced assimilation.
- 9.12 The Committee recognises the right and obligation of State parties to ensure the legality of all administrative decisions adopted by its domestic authorities or other public institutions. The Committee wishes to highlight that although the principle of self-determination grants indigenous communities the right to freely determine their own membership in accordance with Art. 33 (1) UNDRIP, decisions regarding participation in representative bodies and elections may not be taken in an arbitrary manner or with the aim or the effect to exclude members or voters in violation of international human rights law. In this regard, judicial scrutiny by State courts can play an important and legitimate role. It stresses that, in the specific context of indigenous peoples' rights, this should be done in a way that is compatible with their right to determine their own identity or membership in accordance with their customs and traditions and should not amount to arbitrariness. Although it

falls within the competence of the judiciary to interpret the applicable law, when adjudicating on the rights of indigenous peoples and in particular on the criteria for membership as well as on the membership of individual persons, domestic courts, however, have to pay due regard to the right to self-determination of indigenous communities, in particular when courts deviate from generally established criteria for membership and from the assessment of representative bodies of the community in this regard.

- 9.12bis The Committee has examined the information referred to by the parties, including the report submitted by the State party, and notes that the Supreme Administrative Court has, on several occasions, explicitly established that the objective requirement could not be determined, but has continued to make an “overall consideration”, basing itself mainly on the subjective requirement, and finding that the appellant should be included in the electoral roll. The Committee notes that, even assuming that, as argued by the State party, the “overall consideration” was used only when there was some indication of fulfilment of the objective requirement, such “overall consideration” in essence amounted to considering that a high fulfilment of the subjective requirement could exempt the appellant from meeting the standard of evidence of fulfilment of the objective requirement. Therefore, it appears that the Supreme Administrative Court’s decisions did not apply the objective requirements provided in the applicable norm, the Act on the Sami Parliament.
- 9.13 In such context, the Committee finds that the rulings had the capacity to artificially modify the electoral constituency of the Sami Parliament, affecting its capacity to truly represent the Sami people and their interests. Therefore, those rulings of the Supreme Administrative Court that departed without any apparent justification from the existing proper interpretation of the applicable law, shared by the Supreme Administrative Court and the Sami Parliament, violated the petitioners’ right, as members of the Sami indigenous people, to collectively determine the composition of the Sami Parliament and take part in the conduct of public affairs, as protected by article 5 (c) of the Convention.
- 9.14 As regards a violation of Art. 5 (e) ICERD, the petitioners have not sufficiently substantiated that an adverse effect on their enjoyment of their economic, social and cultural rights has already taken place.
- 9.16 [sic] The Committee has further taken note of the petitioners’ claims under article 5 (a) of the Convention to the effect that, by departing from the wording of section 3 of the Act on the Sami Parliament, the Supreme Administrative Court has ignored the requirements of legality, foreseeability, non-arbitrariness and non-discrimination, and that identical cases had different outcome. The Committee notes the State party’s submission that the petitioners were not parties to the proceedings in question and that they have not substantiated how their rights to equal treatment before the tribunals has been violated. The Committee notes that it is undisputed that the petitioners were not part of the national proceedings, and that there is no additional information in the file that would suggest that their right to equal treatment before the tribunals and all other organs administering justice has been violated. The Committee therefore considers that, in the present circumstances, there was no violation of article 5 (a) of the Convention.
10. In the circumstances of the case, the Committee on the Elimination of Racial Discrimination, acting under article 14 (7) (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, considers that the facts before it disclose a violation by the State party of article 5 (c) of the Convention.

11. The Committee recommends that the State party provides an effective remedy to the petitioners by urgently initiating a genuine negotiation for the review of section 3 of the Act on the Sami Parliament with a view to ensuring that the criteria for eligibility to vote in Sami Parliament elections are defined in a manner that respects the right of the Sami people to provide its free, prior and informed consent on matters relating to their own membership and their political participation for the enjoyment and full realization of other rights of indigenous communities, in particular their economic, social and cultural rights guaranteed, in accordance with article 5 (c) and (e) of the Convention. The State party is also requested to give wide publicity to the Committee's views and to translate it into the official language of the State party as well as into the petitioners' language.

3. Lars-Anders Ågren et al. v. Sweden, CERD/C/102/D/54/2013, 18 December 2020³⁹

<i>Date of communication:</i>	16 September 2013 (initial submission)
<i>Date of adoption of opinion:</i>	18 November 2020
<i>Document references:</i>	Decision taken pursuant to rule 91 of the Committee's rules of procedure, transmitted to the State party on 22 October 2013 (not issued in document form)
<i>Subject matter:</i>	Granting of mining concessions on Sami traditional territory
<i>Procedural issues:</i>	Victim status; incompatibility with the provisions of the Convention
<i>Substantive issues:</i>	Right to property; right to equal treatment before the tribunals and all other organs administering justice; right to effective protection and remedies
<i>Articles of the Convention:</i>	5 (a) and (d) (v) and 6

- 1.2 The petitioners submit that, as members of the indigenous Sami people, they have their own culture, livelihoods and language, distinct from the cultures of non-Sami populations. In particular, reindeer herding constitutes the most central element of their cultural identity and traditional livelihood. The petitioners have migrated with their reindeer along the same routes used by their ancestors since time immemorial. The traditional territory of the Vapsten community covers approximately 10,000 km², of which 3,000 km² are spring, summer and autumn pasture areas and 7,000 km² are winter pasture areas. All seasonal pasture areas are of vital importance as, without adequate pasture in all seasons, reindeer herding cannot be practised. The State party granted exploitation concessions to a private mining company in the community's traditional territory, in the form of three open-pit mines located in the Rönnebäcken isthmus, a region with pasture areas of fundamental importance to the Vapsten community's reindeer herding cycle. Each mine would have an associated industrial area, and a road system would connect the three mining sites. The mining system would result in dust spreading about 15 km from the mining sites

³⁹ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CERD%2FC%2F102%2FD%2F54%2F2013&Lang=en

in all directions, damaging lichen pasture, which is a crucial part of the reindeer's nutrition. The mining system would also cut off the migration routes between various seasonal pasture areas, resulting in serious negative effects on reindeer herding. In addition to the Rönnbäcken triple project, other industrial projects have already been approved by the State party in the Vapsten community's traditional territory; as a consequence, a large part of this territory has already been taken from the reindeer herding community and its pasture land is constantly decreasing, which is creating a real threat to reindeer herding and placing enormous psychological pressure on the community's members. The petitioners claim that it is thus impossible for the community to sustain other mining concessions. They further claim that the State party, by granting, without the petitioners' consent, the concession of three open-pit mines within their traditional property where they pursue a traditional livelihood, breached their right to property as enshrined in article 5 (d) (v) of the Convention. Indeed, under both national and international law, the community has established a property right to the land area in dispute, through traditional use. Without the pasture areas that the mining activities would occupy in line with the concessions granted by the State party, and without the migration routes, the petitioners would no longer be able to practise their traditional livelihood and would therefore need to be forcibly relocated from their traditional territory. In addition, the petitioners claim that the State party breached their right to equal treatment before the tribunals and all other organs administering justice, as enshrined in article 5 (a) of the Convention, by ignoring the fact that the right to non-discrimination requires that the Vapsten community be treated as an indigenous reindeer herding community and not as a Swedish property rights holder. The petitioners claim that the mining legislation and policies discriminate against Sami reindeer herders' groups specifically, not by treating the Sami differently from the Swedish population, but by not doing so. According to the petitioners, this discrimination is the root cause of the violations. Finally, the petitioners claim that the State party also breached their right to effective protection and remedies, pursuant to article 6 of the Convention, by denying them the right to bring to a court the specific issue of their traditional property rights, as the Supreme Administrative Court can only review the application of domestic law when it is the law itself that has caused the breach of rights. The petitioners add that monetary compensation cannot adequately provide for the loss of reindeer pasture land, which is indispensable to the community's reindeer herding, as an element of its cultural identity and traditional livelihood.

- 1.3 On 22 October 2013, pursuant to rule 94 (3) of its rules of procedure, the Committee requested the State party to suspend all mining activities in the Vapsten reindeer herding community's traditional territory while the petitioners' case was under consideration.
- 1.4 On 1 May 2015, the Committee asked for additional information from the State party, reiterating its request for interim measures to be taken.
- 1.5 On 1 May 2017, under article 14 of the Convention and rule 94 of its rules of procedure, the Committee declared the communication admissible. First, it found that the petitioners had victim status, as the mere fact that the exploitation concessions were granted without prior consultation and consent has had an impact on the petitioners' rights under the Convention, irrespective of future developments that could determine whether the mining plans would be carried out. Secondly, recalling that article 26(2) of the United Nations Declaration on the Rights of Indigenous Peoples establishes the right for indigenous peoples to own, use, develop and control lands, territories and resources that they possess by reason of traditional

ownership or other traditional occupation or use, and recalling that this definition has been endorsed by the Committee in its general recommendation No. 23 (1997), the Committee found that the petitioners' claims raise issues related to article 5(d) (v), as well as articles 5(a) and 6 of the Convention. The Committee requested the parties to submit written observations and comments concerning the merits of the communication. For further information about the facts, the petitioners' claims, the parties' observations on admissibility and the Committee's decision on admissibility, refer to *Lars-Anders Ågren et al. v. Sweden* (CERD/C/92/D/54/2013).

[...]

Issues and proceedings before the Committee

Consideration of the merits

6.1 The Committee has considered the present communication in the light of all the submissions and documentary evidence produced by the parties, as required under article 14 (7) (a) of the Convention and rule 95 of the Committee's rules of procedure.

(a) Article 5 (d) (v) of the Convention

(i) Arguments submitted by the parties

6.2 The Committee first notes the petitioners' claim that their right to own property, protected under article 5(d)(v) of the Convention, has been violated, as the State granted, without their consent, concessions for three open-pit mines within their traditional property where they pursue a traditional livelihood, leading to a concrete threat to reindeer herding and placing enormous psychological pressure on its members.

6.3 The Committee notes the State party's argument that the petitioners' description of their right as a property right is misleading, as the Sami's right to pursue reindeer husbandry under Swedish legislation is not a right of ownership of land and does not entail formal title to or ownership of the land in question, but consists only of a right of usufruct. The Committee also notes the petitioners' allegation that international human rights law provides that indigenous peoples' traditional use of land in accordance with their own cultural practices establishes property rights, so that their rights to traditional territories exist independently of domestic legislation. According to the petitioners, a title is not a prerequisite for the recognition of indigenous people's property rights, as a cardinal aspect of structural discrimination directed against indigenous peoples is precisely the lack of official recognition of rights over land. According to them, in an indigenous context, the right to property does not necessarily have to be expressed in the form of a State-recognized title. In this regard, the petitioners recall the Committee's general recommendation No. 23 (1997), the United Nations Declaration on the Rights of Indigenous Peoples and reports by the Special Rapporteur on the rights of indigenous peoples. The petitioners claim that the term "right to own property" used in the Convention is considered as also encompassing property in the context of indigenous peoples, as the understanding of the right to property has clearly evolved when applied to an indigenous context. The Vapsten Sami reindeer herding community, which practises traditional Sami reindeer herding, has migrated along the same routes used by its ancestors since time immemorial. Thus, the petitioners claim that, even though Swedish mining legislation and the Reindeer Husbandry Act ignore these international human rights law standards, their property rights have been established through traditional use.

(ii) Scope

6.4 Regarding the scope and applicability of article 5 (d) (v) in this case, the Committee notes that the complaint does not raise the issue of legal determination of Sami property rights under national law, in other words, whether the right is of ownership of land or a usufructuary right but, rather, that of whether the facts related to the mining concessions before the Committee raise an issue of violation of the Convention.

(iii) Relevant principles

6.5 The Committee recalls that, in its general recommendation No. 23 (1997), it calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories (para. 5). As recalled in the decision of admissibility, these human rights law standards are also found in the United Nations Declaration on the Rights of Indigenous Peoples, which Sweden voted in favour of. Article 26 of the Declaration reads as follows:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

6.6 The Committee observes that, as the *raison d'être* of these principles, the close ties of indigenous peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival. Their "relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations". In this regard, the realization of indigenous peoples' land rights may also be a prerequisite for the exercise of the right to life, as such, and to "prevent their extinction as a people".

6.7 In this context, the Committee recalls that to ignore the inherent right of indigenous peoples to use and enjoy land rights and to refrain from taking appropriate measures to ensure respect in practice for their right to offer free, prior and informed consent whenever their rights may be affected by projects carried out in their traditional territories constitutes a form of discrimination as it results in nullifying or impairing the recognition, enjoyment or exercise by indigenous peoples, on an equal footing, of their rights to their ancestral territories, natural resources and, as a result, their identity.

(iv) Application of these principles in the present case

6.8 The Committee observes that the State party did not refute that Vapsten is part of the petitioners' traditional territory. Moreover, the Committee observes that the Supreme Administrative Court has acknowledged that Sami reindeer herding communities' traditional use of land has established property rights, based on immemorial prescription and customary law. The Committee also observes that, under the Nordic Saami Convention, negotiated by the Nordic Governments

together with the Sami parliaments of Finland, Norway and Sweden, which builds on existing international law and aims at implementing it in a Nordic context, access to land and water is recognized as the foundation of the Sami culture, language and social life, and thus both the individual and the collective property rights of the Sami to their lands and resources are protected.

- 6.9 The Committee recalls that, in its concluding observations concerning the implementation by Sweden of article 5 of the Convention, it has expressed concern over the issue of land rights of the Sami people, in particular their hunting and fishing rights, which are threatened by, inter alia, the privatization of traditional Sami lands. It has repeatedly recommended the adoption of legislation recognizing and protecting traditional Sami land rights, reflecting the centrality of reindeer husbandry to the way of life of the indigenous people of Sweden and enshrining the right to free, prior and informed consent into law, in accordance with international standards.
- 6.10 The Committee considers that it needs to examine the petitioners' claims regarding the alleged failure of the State party to consult the Vapsten Sami reindeer herding community and obtain its free, prior and informed consent in the granting of mining concessions on its traditional territory. It notes that the concessions are valid for 25 years and entail rights to the extraction and utilization of nickel, iron, chromium, cobalt, gold, silver, platinum and palladium. In respect of the petitioners' claim that the State party failed to fulfil its obligations under article 5(d)(v) of the Convention, the Committee considers that, even though the right to property is not absolute, States parties must respect the principle of proportionality when limiting or regulating indigenous peoples' land rights, taking into account their distinctive status as described above (paras. 6.5–6.7 above), so as not to endanger the very survival of the community and its members.
- 6.11 The Committee notes the petitioners' allegation that, when added to the existing industrial projects granted by the State party in the Vapsten community's traditional territory, the three mining exploitation concessions which motivated the present communication would result in the petitioners being unable to pursue their traditional livelihood, meaning that they would need to be forcibly relocated from their traditional territory. The affected Sami community was able to provide only input to the triple project, which cannot, in the petitioners' opinion, be characterized as anything close to consultations having taken place, as consultations must involve a serious engagement with the community, with a genuine and sincere ambition to reach consensus. Indeed, the petitioners maintain that the State party must obtain their free, prior and informed consent in the case of such negative impacts. The Committee also notes the State party's argument that the granting of exploitation concessions does not constitute a violation of article 5(d)(v) of the Convention because there is nothing to indicate that the decision to give priority to the designation of the area as being of national interest for mineral extraction over its designation as being of national interest for reindeer husbandry was erroneous. In the opinion of the State party, should the Committee find that there has been a limitation on the petitioners' rights, it should be noted that the limitation was necessary and proportional in relation to the State's valid objective. Indeed, extraction of nickel is important and, as deposits are located in a certain area, extraction cannot be carried out elsewhere, whereas it is possible for reindeer to use alternative grazing grounds. Moreover, the Vapsten Sami village has been consulted, but the legislation allows the Government to grant a mining permit regardless of who owns the land and without the prior consent of the property owner. Thus, according to the State party, no racial discrimination is proven in the

present case, given that the petitioners, who are treated on an equal footing with landowners concerned by the project, had been consulted, as any party affected, to the extent required under national law in matters regarding mining concessions.

- 6.12 The Committee considers that the State party's reasoning is misguided and that it has not complied with its international obligations to protect the Vapsten Sami reindeer herding community against racial discrimination by adequately or effectively consulting the community in the granting of the concessions.
- 6.13 The prohibition of racial discrimination underpinned in the Convention requires that States parties guarantee to everyone under their jurisdiction the enjoyment of equal rights de jure and de facto. Pursuant to article 2 (1) (c), each State party must take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination, wherever it exists. States must take positive measures to enable the realization of human rights for indigenous peoples, either by removing remaining obstacles or by adopting specific legislative and administrative measures to fulfil their obligations under the Convention.
- 6.14 In particular, in its general recommendation No. 23 (1997), the Committee has called on the States parties to recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation, which has been and still is jeopardized. The Committee recalls that indigenous peoples' land rights differ from the common understanding of civil law property rights and considers that reindeer herding is not an "outdoor recreational exercise" as qualified in the Chief Mining Inspector's decision, but a central element of the petitioners' cultural identity and traditional livelihood.
- 6.15 Indeed, the recognition of the Sami communities' land rights and their collective reindeer husbandry right, based on immemorial usage, entails the obligation to respect and protect these rights in practice. The need to safeguard their cultures and livelihoods is among the reasons why States parties should adopt concrete measures to ensure their effective consultation and participation in decision-making. The Committee recalls that, in its general recommendation No. 32 (2009), it clarified that the notion of inadmissible "separate rights" must be distinguished from rights accepted and recognized by the international community to secure the existence and identity of groups such as minorities, indigenous peoples and other categories of person whose rights are similarly accepted and recognized within the framework of universal human rights (para. 26). Rights to lands traditionally occupied by indigenous peoples are permanent rights, recognized as such in human rights instruments, including those adopted in the context of the United Nations and its specialized agencies.
- 6.16 The Committee has frequently reaffirmed the understanding that lack of appropriate consultation with indigenous peoples may constitute a form of racial discrimination and could fall under the scope of the Convention. The Committee adheres to the human rights-based approach of free, prior and informed consent as a norm stemming from the prohibition of racial discrimination, which is the main underlying cause of most discrimination suffered by indigenous peoples.
- 6.17 The Committee notes that it is incumbent upon States parties to provide evidence that they fulfil this obligation, either directly, by organizing and operating consultations in good faith and with a view to reaching consensus, or indirectly, by providing sufficient guarantees of effective participation of indigenous communities and by ensuring that due weight is indeed given by any third party to

the substantive arguments raised by the indigenous communities. The Committee considers that the duty to consult in such a context is the responsibility of the State and cannot be delegated without supervision to a private company, especially to the very company that has a commercial interest in the resources within the territory of the indigenous peoples. As observed by the Special Rapporteur on the rights of indigenous peoples, in addition to not absolving the State of ultimate responsibility, such delegation of a State's human rights obligations to a private company may not be desirable, and can even be problematic, given that the interests of the private company, generally speaking, are principally lucrative and thus cannot be in complete alignment with the best interests of the indigenous peoples concerned. In the present communication, by delegating the consultation process to the mining company without effective guarantees and thus failing in its duty to respect the land rights of the Vapsten Sami reindeer herding community, the State party did not comply with its international obligations.

- 6.18 Moreover, the Committee further considers that environmental and social impact studies should be part of the consultation process with indigenous peoples. These studies should be conducted by independent and technically competent entities, prior to the awarding of a concession for any development or investment project affecting traditional territories. Based on these studies, consultations must be held from the early stages and before the design of the project, not only at the point when it is necessary to obtain approval; they should not start with predefined ideas according to which the project must necessarily be carried out, and they must involve constant communication between the parties. The Committee recalls that, since the uncertainty of the outcome on the Vapsten Sami reindeer herding community has been identified and admitted by the State party, it is even more so the responsibility of the State party, in the context of the process of awarding the concessions, to impose strict terms on studies and to supervise their implementation in order to limit as much as possible their impact on reindeer husbandry. Although the need to achieve a balance between the mining operations and the reindeer husbandry was invoked by the administrative authorities, the procedure does not allow that to be done as, according to the State party, when a prospector has discovered a potentially profitable deposit, the first step towards starting mining operations is to apply for an exploitation concession; a concession decision determines who has the right to extract the metals or minerals and this right also applies vis-à-vis the property owners and without their consent, which is the main purpose of the concession system.
- 6.19 The Committee notes that the concession process is in practice dissociated from the environmental permit process, since the Land and Environment Court is competent to examine the submission for the environmental permit and to determine the conditions or terms and limitations to be placed on the operations after an exploitation concession is issued. In other words, the consultation process takes place at a stage of the procedure where, as the State party admits, "it is too soon to assess to what extent there would be an infringement on the petitioners' possibilities to pursue reindeer husbandry".
- 6.20 It is not up to the Committee to decide which public interest should prevail on the land, namely, mineral extraction, on the one hand, or "protecting areas that are important for reindeer husbandry against measures that may substantially obstruct its operation", on the other hand. However, it was the responsibility of the State party to strike a balance in fact and not only in theory or *in abstracto*, to

identify and indicate during the consultation process to the Vapsten Sami reindeer herding community where they could find alternative grazing grounds and to fulfil the obligation to operate an effective consultation process. Development and exploitation of natural resources, as a legitimate public interest, does not absolve States parties from their obligation not to discriminate against an indigenous community that depends on the land in question by mechanically applying a procedure of consultation without sufficient guarantees or evidence that the free, prior and informed consent of the members of the community can be effectively sought and won.

6.21 In the present case, the State party did not demonstrate how the process of granting the three mining concessions under the Minerals Act and the Environmental Code correctly took into account previous standards and the petitioners' specific rights.

6.22 In light of the above, due to the lack of consideration of the petitioners' land rights in the granting of the mining concessions, the Committee concludes that the petitioners' rights under article 5(d)(v) of the Convention have been violated.

(b) Article 5 (a) of the Convention

6.23 The Committee has further taken note of the petitioners' claims under article 5 (a) of the Convention to the effect that the State party breached their right to equal treatment before the tribunals and all other organs administering justice by legally allowing mining concessions on their traditional lands without considering their fundamental property right. In particular, the petitioners claim that mining legislation and policies discriminate against the Sami reindeer herders specifically, not by treating them differently from the rest of the Swedish population, but by not doing so, ignoring the particularities of the indigenous Sami cultural identity, traditional livelihoods and dependence on reindeer herding for survival. According to the petitioners, the right to non-discrimination requires that Vapsten be treated as an indigenous reindeer herding community and not simply as a Swedish property right holder. The Committee also notes the State party's argument that no act of racial discrimination on account of their ethnic origin has occurred as the petitioners are treated on an equal footing with landowners concerned by the project.

6.24 The Committee considers that, in the present case, the petitioners have not sufficiently substantiated their claim under article 5 (a) of the Convention. As a consequence, the Committee is not in a position to consider whether the State party has violated article 5 (a) of the Convention.

(c) Article 6 of the Convention

6.25 Regarding the petitioners' allegations under article 6 of the Convention, the Committee considers that the main issue is whether the State party fulfilled its obligations under that provision to ensure respect for the petitioners' right to seek effective protection and remedies for any damage suffered as a result of the granting of three mining concessions in their traditional territory. The Committee notes the petitioners' affirmation that they have not had access to any domestic institution that could evaluate the fundamental right to traditional property and include an evaluation of whether the mining activities should be disallowed due to their negative impact on Sami reindeer herding. The Land and Environment Court and the Supreme Administrative Court, while applying the mining legislation, can only examine the application of domestic law, which is itself the source of the breach of rights. The petitioners recall previous similar refusals. In addition, the petitioners allege that, whereas Swedish landowners can be provided with full

market-value compensation for their property, monetary compensation cannot adequately compensate Sami indigenous peoples when deprived of reindeer pasture land that is indispensable to the community's reindeer herding and an element of the very basis of their cultural identity and traditional livelihood. The Committee also notes the State party's argument that there is no breach of article 6 of the Convention as the possibility of a judicial review by the Supreme Administrative Court satisfies the petitioners' right to appeal against the granting of the concessions.

- 6.26 The Committee recalls that article 6 provides protection to alleged victims if their claims are arguable under the Convention and notes that the State party did not submit any evidence on available domestic remedies that could provide adequate reparation or satisfaction for the damage the petitioners have suffered as a result of the ineffective consultation process in the context of the mining concessions. Moreover, the Committee notes that the judicial review by the Supreme Administrative Court does not entail a review of the sustainability of reindeer husbandry on the remaining lands.
- 6.27 The Committee also recalls that, where indigenous peoples have been deprived of lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, the State should take steps to return those lands and territories. Only when this is for factual reasons impossible should the right to restitution be substituted by the right to just, fair and prompt compensation, which should, as far as possible, take the form of lands and territories.
- 6.28 The Committee observes that the State party admits that the decisions to grant mining concessions did not involve any consideration of the petitioners' property rights. The Committee is of the view that the impossibility of obtaining an effective judicial review of a decision where the fundamental right of indigenous peoples to traditional territory is being questioned is a consequence of the State party treating indigenous communities as private landowners affected by the mining operations, without due regard to the potential irreversibility of the consequences these operations may have on indigenous communities.
- 6.2 Since the decisions of the Land and Environment Court and the Supreme Administrative Court could not evaluate the taking of the land from the perspective of the petitioners' fundamental right to traditional territory, the Committee concludes that the facts as submitted reveal a violation of the petitioners' rights under article 6 of the Convention.
7. In the circumstances of the case, the Committee, acting under article 14 (7) (a) of the Convention, considers that the facts before it disclose a violation by the State party of articles 5 (d) (v) and 6 of the Convention.
8. The Committee recommends that the State party provide an effective remedy to the Vapsten Sami reindeer herding community by effectively revising the mining concessions after an adequate process of free, prior and informed consent. The Committee also recommends that the State party amend its legislation to reflect the status of the Sami as indigenous people in national legislation regarding land and resources and to enshrine the international standard of free, prior and informed consent. The State party is also requested to widely disseminate the present opinion of the Committee and to translate it into the official language of the State party, as well as into the petitioners' language.
9. The Committee requests the State party to provide, within 90 days, information on the steps taken to give effect to the Committee's opinion.

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Human Rights Committee

A. CONCLUDING OBSERVATIONS

1. Ethiopia, CCPR/C/ETH/CO/2, 7 December 2022

Indigenous Peoples

47. The Committee is concerned at the absence of dedicated legislation recognizing and promoting the rights of Indigenous Peoples in the State party. It is also concerned by reports that the principle of free, prior and informed consultations was not fully upheld with regard to development projects that may affect the rights of Indigenous Peoples, including prior to the construction of the Gibe III hydroelectric dam. It is further concerned at reports that the deficient management of the Lega Dembi gold mine, combined with the lack of official oversight, resulted in toxic contamination of water and soil, leading to grave health, environmental and socioeconomic impacts on adjacent Indigenous communities. It is further concerned at reports that, after a temporary closure, the mine has resumed its operations without prior full and meaningful consultations with affected communities and without the publication of independent impact assessments or the implementation of necessary safeguards, such as fences around hazardous areas and effective waste disposal systems, that existing contamination has not been sufficiently remediated and that victims have not had access to full redress (arts. 2, 14 and 27).
48. The State party should take immediate steps to:
- (a) Develop and adopt a legal framework to recognize and protect the rights of Indigenous Peoples, including the right to their ancestral lands;
 - (b) Ensure that full and meaningful consultations are held with Indigenous Peoples with a view to obtaining their free, prior and informed consent before the adoption or application of any measure that may affect their rights, including when granting permission for development projects, and that Indigenous Peoples are consulted prior to the adoption of any regulatory instrument relating to such consultations;
 - (c) Put in place a regulatory oversight mechanism to effectively monitor extractive and any other activities that discharge toxic wastes and tailings in Indigenous lands, such as the Lega Dembi gold mine, to protect these lands against contamination and destruction and to prevent adverse impact on the rights of Indigenous Peoples;
 - (d) Conduct and make public and accessible independent health, environmental and socioeconomic impact assessments of the Lega Dembi gold mine, and provide victims of toxic contamination with full reparations, including adequate compensation and rehabilitation.

2. Russian Federation, CCPR/C/RUS/CO/8, 1 December 2022

Violations of Covenant rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation

38. The Committee, reiterating its due regard for the General Assembly resolution 68/262 on the territorial integrity of Ukraine, remains gravely concerned about the reported violations of the Covenant in the Autonomous Republic of Crimea and the city of Sevastopol, temporarily occupied by the Russian Federation, which are under the effective control of the State party, including alleged serious violations committed against inhabitants of Crimea, in particular extrajudicial killings, abductions, enforced disappearances, politically motivated prosecutions, discrimination, harassment, intimidation, violence, including sexual violence, arbitrary arrests and detentions, torture and ill-treatment, in particular to extract confessions, and psychiatric internment, and the forcible transfer or deportation of inhabitants from Crimea to the Russian Federation, and the lack of investigation into these violations. ... It is gravely concerned about allegations of forced mobilization and conscription of thousands of Crimean inhabitants, many of whom are Indigenous people. ...
39. The State party should: ... (d) Respect and ensure the rights of persons belonging to minorities and Indigenous Peoples, and ensure in particular that Crimean Tatars and Ukrainians are not subject to discrimination, including with respect to education in their language and political participation, in particular by reinstating the Mejlis....

Rights of Indigenous Peoples

40. The Committee is concerned about reports of infringements on the rights of Indigenous Peoples in the context of extractive industry operations and other development projects, in particular with respect to their right to participate in the decision-making process concerning their lands and resources based on the principle of free, prior and informed consent. The Committee expresses its concern about the dissolution of the Centre for Support of Indigenous Peoples of the North. The Committee reiterates its previous concerns about allegations of harassment of Indigenous human rights defenders, which remain unanswered by the State party, and expresses concern about further allegations of harassment that it has received, including in relation to participation of Indigenous representatives in international forums (arts. 6, 19, 22 and 27).
41. In line with article 27 of the Covenant, other international standards and constitutional guarantees, the State party should:
- (a) Ensure the participation of Indigenous Peoples in the decision-making process concerning their lands and resources on the basis of the principle of free, prior and informed consent;
 - (b) Guarantee freedom of association for Indigenous people, including by reconsidering the dissolution of the Centre for Support of Indigenous Peoples of the North;
 - (c) Protect Indigenous human rights defenders from all harassment, including in respect to their participation in relevant international forums on Indigenous Peoples' rights.

3. Japan, CCPR/C/JPN/CO/7, 30 November 2022

Rights of minorities

42. While noting the adoption in 2019 of the Ainu Policy Promotion Act, the Committee remains concerned at reports of discrimination against the Ainu people and the denial of their rights as an Indigenous group, the lack of recognition of the Indigenous Ryukyu community and their rights, and the denial of the rights of the Okinawa communities to participate freely in decision-making on policies that affect them, their rights to their traditional land and natural resources, and their rights to educate their children in their native languages. ...
43. The State party should take further steps to fully guarantee the rights of Ainu and Ryukyu and other Okinawa communities to their traditional land and natural resources, ensure respect for their right to participate freely in decision-making on any policies that affect them, and facilitate, to the extent possible, the education of their children in their native languages. ...

4. Nicaragua, CCPR/C/NIC/CO/4, 30 November 2022

4. The Committee welcomes the ratification of, or accession to, the following instruments by the State party: ... (e) The Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization, on 25 August 2010.

Non-discrimination

13. While the Committee notes that the principles of equality and non-discrimination are recognized in article 27 of the Constitution of the State party, it is concerned that the current national legal framework does not provide comprehensive protection against discrimination on the basis of any of the grounds listed in the Covenant, in particular the grounds of sexual orientation and gender identity. Moreover, the Committee notes with concern that ... Indigenous persons and persons of African descent continue to be subjected to discrimination and violence, especially in detention. ...

Participation in public affairs

39. The Committee notes with great concern that the elections held in the State party in November 2021 did not meet international standards for free and fair elections. It is particularly concerned about legislative reforms allowing for the indefinite re-election of the President and limiting citizen oversight, the broadening of grounds for the revocation of the legal personality of political parties under Act No. 1070, reports of the arrest and criminal prosecution of potential presidential candidates and allegations of electoral fraud. The Committee is also concerned about reports that the Supreme Electoral Council lacks independence and impartiality. Lastly, the Committee is concerned about the approval of the Manual for the Certification of Communal and Territorial Authorities of 2020, which establishes communal and territorial election procedures that violate communal statutes and Act No. 445 (arts. 25–26).
40. The State party should take the steps necessary to bring its electoral regulations and practices into full conformity with the Covenant, in particular article 25. It should, inter alia: ... (d) Take steps to guarantee the full participation in political life of Indigenous persons and persons of African descent, including by revising the Manual for the Certification of Communal and Territorial Authorities to ensure its conformity with the Covenant....

Rights of Indigenous Peoples and other minorities

41. While the Committee takes note of the fact that the State party's laws recognize the collective right of Indigenous Peoples and Afrodescendent peoples to their lands and their right to free, prior and informed consultation (Constitution, arts. 5, 89, 91 and 181), it is concerned about reports of situations in which the principle of free, prior and informed consultation was not fully upheld. Moreover, while the Committee takes note of the information provided by the State party according to which titles have been granted to communal territories covering the equivalent of 31.16 per cent of the national territory, it is concerned about the lack of progress made in regularizing territories that have already been demarcated. The Committee is also concerned about reports that some Indigenous Peoples have been subjected to violence following the invasion and colonization of territories by mestizo settlers. It also notes with concern the information it received on the obstacles faced by Indigenous persons and persons of African descent, in particular Indigenous and Afrodescendent women, to participation in decision-making bodies and State institutions, especially communal governments and Indigenous territorial governments (arts. 25–27).
42. The State party should:
- (a) Ensure full and meaningful consultation with Indigenous Peoples and Afrodescendent peoples on matters concerning their rights, in particular their right to free, prior and informed consent, including in relation to the granting of permits for development projects that may affect their land rights;
 - (b) Uphold in practice the right of Indigenous Peoples to the lands and territories that they have traditionally owned or occupied, through such legal recognition and protection as may be necessary and the regularization of territories that have already been demarcated and titled;
 - (c) Step up its efforts to prevent conflicts over land use, including by providing guarantees in relation to land traditionally owned or occupied by Indigenous Peoples;
 - (d) Take all measures necessary to eliminate all forms of discrimination in relation to the appointment and representation of Indigenous persons and persons of African descent and guarantee their participation in public and political life.

5. The Philippines, CCPR/C/PHL/CO/5, 30 November 2022

Non-discrimination

15. The Committee takes note of several anti-discrimination bills pending at different stages in the State party, including comprehensive anti-discrimination bills and antidiscrimination bills on the basis of race, ethnicity, religion, sexual orientation, gender identity and expression and sex characteristics. It remains concerned, however, by the delay in adopting those bills and continuing reports of discriminatory practices and attitudes towards persons with disabilities, lesbian, gay, bisexual and transgender persons, Muslims and Indigenous Peoples. In particular, it is concerned about ... discrimination against Indigenous Peoples in accessing health care, education and social services (arts. 2 and 26).
16. The State party should:
- (a) Expedite the adoption of comprehensive legislation prohibiting discrimination, including multiple, direct and indirect discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the

Covenant, and ensure access to effective and appropriate remedies for victims of discrimination;

- (b) Take effective measures to combat stereotypes about and negative attitudes towards persons on the basis of disability, sexual orientation and gender identity and ethnicity;
- (c) Ensure that all acts of discrimination and violence against persons with disabilities, lesbian, gay, bisexual and transgender persons, members of minority groups and Indigenous Peoples are promptly and effectively investigated, perpetrators are brought to justice and victims are provided with redress.

Rights of Indigenous Peoples

51. While noting the State party's efforts to recognize and promote the rights of Indigenous Peoples, including through the Indigenous Peoples Rights Act of 1997, the Committee remains concerned about the shortcomings in implementing existing legal framework and safeguards. In particular, it is concerned about reports of substantially low rates of the legal recognition of lands as Indigenous domains, the redistribution by the Department of Agrarian Reform of Indigenous lands to settlers who are not Indigenous without consent, the undue influence of economic and political forces on national development policies and the deception, threats, force and fatal violence involved in the processes for obtaining the free, prior and informed consent for development projects. It is also concerned about attacks against and the killing of Indigenous Peoples who live in conflict-affected areas on the basis of their perceived affiliation with the army or the New People's Army. It notes with concern reports of the militarization of Indigenous schools, harassment and attacks against teachers, and the closure of 54 Indigenous schools in Mindanao for allegedly teaching violent extremism. It is concerned about numerous reports of the killing of land and environmental rights defenders, including the killing of nine Tumandok Indigenous Peoples' rights activists in a joint police and military operation in December 2020, of tribal leader Datu Victor Danyan in December 2017 and of land reform advocate Nora Apique by unidentified assailants in March 2020 (arts. 2, 6, 14 and 27).
52. The State party should redouble its efforts to:
- (a) Fully implement the Indigenous Peoples' Rights Act of 1997, in particular its provisions on the principle of free, prior and informed consent;
 - (b) Facilitate the legal process of granting title to ancestral lands, including by developing and implementing a simplified procedure therefor;
 - (c) Ensure that full and meaningful consultations are held with Indigenous Peoples with a view to obtaining their free, prior and informed consent before the adoption or application of any measure that may affect their rights, including when granting permission for development projects, and ensure that Indigenous Peoples are consulted prior to the adoption of any regulatory instrument relating to such consultations;
 - (d) Ensure, in law and in practice, that Indigenous Peoples who are affected by development projects have adequate access to the fair and equitable sharing of benefits;
 - (e) Ensure that harassment, intimidation and violence against and the killing of Indigenous Peoples and Indigenous rights defenders are promptly, thoroughly, independently and impartially investigated, that the perpetrators are brought to justice and that victims have access to full reparations.

6. Bolivia, CCPR/C/BOL/CO/4, 2 June 2022

Equality between men and women

8. The Committee welcomes the measures taken in the area of gender equality and the results achieved by the legislative branch. However, it is concerned that women remain underrepresented in decision-making positions at all levels of the executive and judicial branches and regrets that it has not received information on the steps taken to increase their representation in decision-making bodies in the private sector. It is also concerned about the many cases of political harassment and violence against women that were recorded during the reporting period and the fact that there has been only one conviction in those cases (arts. 2–3 and 25–26).
9. The State party should: (a) Intensify its efforts to ensure effective equality between men and women in all spheres and throughout the country. In particular, it should take tangible steps to increase the representation of women, including indigenous women and women of African descent, in decision-making positions at all levels of the executive and judicial branches and in the private sector....

Rights of indigenous peoples

32. The Committee notes with concern that no framework law has been adopted to guarantee the conduct of free, prior and informed consultations to obtain the consent of indigenous and aboriginal campesino nations and peoples in relation to decisions about projects that may affect their way of life and/or culture. Although it notes the State party's efforts to ensure the rights of indigenous peoples, the Committee is concerned at reports of situations where the principle of free, prior and informed consultations was not fully upheld or licences were issued for mining activities that might generate mercury pollution in protected areas and indigenous territories. It is further concerned by reports that no regulatory instrument has been adopted for Act No. 450 on the Protection of Highly Vulnerable Indigenous and Aboriginal Nations and Peoples and that this jeopardizes its implementation (arts. 2, 14 and 27).
33. The State party should:
 - (a) Adopt as soon as possible a framework law on the conduct of consultations with indigenous and aboriginal campesino nations and peoples with a view to obtaining their free, prior and informed consent before the adoption and application of any measure that may have an impact on their way of life and/or culture; ensure that the law is fully in line with the Covenant and other international standards; and guarantee the active participation of indigenous and aboriginal campesino nations and peoples in the drafting of the law;
 - (b) Ensure that good faith consultations with indigenous and aboriginal campesino nations and peoples are conducted with a view to obtaining their free, prior and informed consent before the adoption and application of any measure that may have an impact on their way of life and/or culture;
 - (c) Redouble its efforts to ensure that no measure that might harm protected areas or indigenous territories is taken and to protect highly vulnerable indigenous peoples, including through the prompt adoption of regulations for the implementation of Act No. 450 of 2013.

7. Cambodia, CCPR/C/KHM/CO/3, 18 May 2022

Indigenous peoples

42. The Committee welcomes the efforts of the State party to enhance protection mechanisms for the rights of indigenous persons. However, the Committee remains concerned about shortcomings in the implementation of the legal framework and safeguards in place for the protection of the right of indigenous peoples to use and occupy their land and territories. It is concerned that indigenous peoples' right to free, prior and informed consent in decision-making processes affecting them, and particularly in granting approval of development projects on their lands, is not systematically respected. The Committee also expresses its concern about the effective protection of indigenous communities in the context of the COVID-19 pandemic (arts. 2 and 26–27).
43. The State party should:
- (a) Develop and adopt a legal framework to recognize and protect the rights of indigenous peoples, including a simplified procedure for obtaining communal land titles;
 - (b) Ensure full and meaningful consultation with indigenous peoples in matters concerning their rights, in particular their right to free, prior and informed consent, including when granting permission for development projects that may affect their land rights;
 - (c) Continue its efforts to prevent conflicts over land use, including by providing guarantees in relation to land traditionally owned or occupied by indigenous peoples;
 - (d) Ensure that indigenous peoples are not relocated without following all legal and procedural safeguards, including the provision of comparable alternatives and adequate compensation;
 - (e) Ensure that in the context of the COVID-19 pandemic indigenous peoples have access to information and health-care services, including testing, treatment and vaccines.

8. Botswana, CCPR/C/BWA/CO/2, 24 November 2021

Applicability of the Covenant in the domestic legal system

5. The Committee notes that the Covenant is not directly applicable in domestic law and, while welcoming the efforts made by the State party to harmonize statutory and customary legislation with the Covenant, it is concerned that there still remain provisions in domestic legislation, particularly customary laws, that are inconsistent with the Covenant. The Committee is also concerned that the State party has not yet ratified the first Optional Protocol to the Covenant (art. 2).
6. Recalling the Committee's previous recommendations,⁴ the State party should:
- (a) Continue to evaluate and revise statutory and customary legislation to ensure harmonization with the rights guaranteed in the Covenant and ensure that domestic laws are interpreted and applied in conformity with its provisions;
 - (b) Intensify its efforts to raise awareness about the Covenant, including by widely disseminating the Committee's recommendations and by providing specific training on the Covenant to government officials, prosecutors and judges in the formal and customary courts, as well as lawyers;

- (c) Consider ratifying the first Optional Protocol to the Covenant, which establishes an individual complaint mechanism.

Non-discrimination

11. The Committee is concerned about the lack of comprehensive anti-discrimination legislation and about the fact that section 15 (4) (b)–(d) of the Constitution continues to provide for exceptions to the right not to be discriminated against. ... The Committee is further concerned about the persistence of customary laws and practices that discriminate against women, particularly in relation to marriage and family relations, inheritance, property rights and legal guardianship by men of unmarried women (arts. 2–3, 17 and 26–27).
12. In light of and bearing in mind the Committee's previous recommendations,⁶ the State party should:
 - (a) Adopt comprehensive legislation prohibiting discrimination, including multiple, direct and indirect discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the Covenant, including sex, sexual orientation, gender identity, religion, disability, socioeconomic status, HIV/AIDS status, ethnic and political affiliation or other status;
 - (b) Amend section 15 of the Constitution in order to bring it into line with articles 2–3 and 26 of the Covenant;
 - (c) Repeal section 164 of the Penal Code;
 - (d) Review customary laws and practices that discriminate against women to ensure their full compliance with the provisions of the Covenant....

Rights of minorities and indigenous communities

37. The Committee is concerned about the difficulties faced by minorities and indigenous communities in accessing public services, including health care and education, in enjoying their rights to their traditional lands and natural resources and in exercising their linguistic rights. In particular, it is concerned that: (a) former residents of the Central Kalahari Game Reserve, in particular the Basarwa and Bakgalagadi, who were not applicants in the case *Roy Sesana and Others v. the Attorney General*, are required to obtain entry permits to enter the reserve; (b) children belonging to minority groups in remote areas, particularly Basarwa children, are institutionalized in hostels that are located very far from their families, that are reportedly unsafe and that sometimes lack access to water or electricity, in order to receive primary education; (c) languages other than English and Setswana are prohibited in broadcasting, private printed media and private radio stations; (d) there are no provisions in the Communications Regulatory Authority Act (2012) for local community-based broadcasting and that broadcasting licences for locally based community radio stations have reportedly been rejected; and (e) under the Constitution, members of minorities who do not speak English are not eligible to be elected to the National Assembly (arts. 2, 19 and 25–27).
38. In light of and bearing in mind the Committee's previous recommendation,¹³ the State party should:
 - (a) Ensure that the rights of minorities and indigenous communities, particularly in relation to their traditional lands, natural resources and linguistic rights, are promoted, protected and recognized in law and in practice, including through the development and enactment of dedicated legislation with a view to guaranteeing their enjoyment of Covenant rights without discrimination;

- (b) Ensure the consistent and effective application of the principle of free, prior and informed consent before any developmental or other activities take place on lands traditionally used, occupied or owned by minorities and indigenous communities;
 - (c) Ensure that no restrictions are imposed on current and former residents of the Central Kalahari Game Reserve, including those who were not applicants in *Roy Sesana and Others v. the Attorney General*, to their return to and stay in the reserve;
 - (d) Review the practice of institutionalizing in hostels children belonging to minority groups in remote areas for the purpose of receiving education and find suitable alternatives;
 - (e) Ensure that indigenous communities are able to express themselves in their own languages and promote their cultures, including in broadcasting, private printed media and private radio stations.
39. The Committee is concerned that, despite legislative amendments, the current rules regarding appointments to the Ntlo ya Dikgosi do not guarantee the fair representation of non-Tswana tribes and, in particular, that: (a) the Constitution still grants preferred status to the Tswana tribes and the de facto automatic appointment of their Chiefs to the Ntlo ya Dikgosi; and (b) only a few non-Tswana tribes have been recognized under the Bogosi Act of 2008 (arts. 25–27).
40. Recalling the Committee’s previous recommendation,¹⁴ the State party should take all the legislative measures necessary to repeal any discriminatory element in the appointment and representation of tribes to the Ntlo ya Dikgosi and to ensure the fair representation of non-Tswana tribes.

9. Kenya, CCPR/C/KEN/CO/4, 11 May 2021

Climate change and environmental degradation

26. The Committee welcomes the measures taken to date by the State party to adapt and mitigate the effects of climate change, including the development of the National Climate Change Action Plan for the period 2018–2022, and welcomes constitutional provisions mandating public participation in environmental management. It is concerned, however, about reports that such provisions have not been consistently implemented to ensure the effective, meaningful and informed participation of the population, including indigenous peoples, in projects that affect sustainable development and resilience to climate change (arts. 6 and 25).
27. The State party should continue and expand its efforts to develop its resilience to climate change through adaptation and mitigation measures. All projects that affect sustainable development and resilience to climate change should be developed with the meaningful and informed participation of the affected population, including indigenous peoples. In that regard, the Committee draws the State party’s attention to paragraph 62 of the Committee’s general comment No. 36 (2018) on the right to life.

Forced evictions

40. The Committee is concerned about continued reports of forced, and sometimes violent, evictions, including among indigenous populations in forest areas, such as the Embobut and Mau forests. The Committee is concerned that such evictions have been undertaken without full regard for due process requirements, such as

adequate notice and prior and meaningful consultation with those affected, and the protections outlined in section 152G of the Land Laws (Amendment) Act (Act No. 28 of 2016), the moratorium declared during the COVID-19 pandemic and judicial decisions. It is also concerned about insufficient access to justice and remedies, including the provision of compensation and resettlement among all those affected following the failure to enact the Evictions and Resettlement Bill of 2012. The Committee also notes with concern the lack of information on investigations, prosecutions, convictions and punishments of those who violate legal standards during evictions, including in cases where such violence has led to the death of affected individuals (arts. 6, 7, 12, 17, 26 and 27).

41. The State party should ensure that all evictions are carried out in accordance with national and international standards, including by:
 - (a) Putting in place a sustainable system of equitable land tenure to prevent forced evictions;
 - (b) When there is no alternative to forced evictions, taking all necessary measures to implement effective protections, including the need for adequate notice and prior and meaningful consultation with and the provision of adequate compensation and/or resettlement of those affected. In that regard, it should effectively implement the Land Laws (Amendment) Act (Act No. 28 of 2016), including the safeguards contained in section 152G;
 - (c) Strictly upholding the moratorium declared during the COVID-19 pandemic and all judicial decisions on evictions;
 - (d) Improving compensation and resettlement among those affected by evictions, including through enacting the Evictions and Resettlement Bill of 2012 into law without delay;
 - (e) Ensuring the investigation, prosecution, conviction and punishment of all individuals who breach the law during evictions.

Indigenous peoples

50. The Committee is concerned about:
 - (a) The absence of dedicated legislation to provide specific protections for indigenous peoples in the State party;
 - (b) The disproportionate impact on indigenous peoples of the failure of the State party to consistently implement the safeguards contained in section 152G of the Land Laws (Amendment) Act (Act No. 28 of 2016);
 - (c) Slow and inadequate implementation of provisions in the Community Land Act (Act No. 27 of 2016) to ensure indigenous peoples can obtain official recognition and registration of their lands;
 - (d) The failure of the Government to publish the recommendations of the task force to advise the Government on the implementation of the decision of the African Court on Human and Peoples' Rights in respect of the rights of the Ogiek community of Mau and enhancing the participation of indigenous communities in the sustainable management of forests;
 - (e) The lack of information about measures taken to address the vulnerabilities of indigenous women in the State party (arts. 2, 25, 26 and 27).

51. The State party should:

- (a) Develop and enact dedicated legislation to expand specific protection for indigenous peoples;
- (b) Step up safeguards against forced evictions of indigenous peoples and ensure the consistent and effective application of the principle of free, informed and prior consent before any developmental or other activities take place on lands traditionally used, occupied or owned by indigenous communities;
- (c) Intensify implementation of the Community Land Act (Act No. 27 of 2016), including by the allocation of adequate funding to facilitate the required processes, so as to ensure indigenous peoples can obtain official recognition and registration of their land;
- (d) Publish without delay the recommendations of the task force to advise the Government on the implementation of the decision of the African Court on Human and Peoples' Rights in respect of the rights of the Ogiek community of Mau and enhancing the participation of indigenous communities in the sustainable management of forests, and comply with the decision of the Court;
- (e) Ensure that specific measures are in place to promote and protect the rights of indigenous women.

10. Finland, CCPR/C/FIN/CO/7, 3 May 2021

Implementation of the Covenant and its Optional Protocol

4. The Committee notes that Finnish higher courts have invoked the Covenant while reviewing domestic cases. It regrets, however, the lack of concrete examples of court cases in which the provisions of the Covenant have been directly applied, in particular by setting aside relevant domestic legal provisions in conflict with the Covenant. The Committee also expresses its concern that the Views adopted by the Committee in November 2018 regarding the right of self-determination of the Sami people have not been implemented. On the contrary, the decisions of the Supreme Administrative Court of 5 July 2019, reinstating 97 individuals to the electoral role that the Electoral Committee of the Sami Parliament had removed, appear to run counter to the Views of the Committee. Furthermore, the Sami Parliament elections of September 2019 were not cancelled or postponed by the Government of Finland, thus resulting in a significant change in the composition of the Sami Parliament, with the entry of ethnic Finns, who are not considered to be Sami by the Sami Parliament (art. 2).
5. The State party should continue its efforts to inform and educate lawyers, prosecutors, judges, law enforcement officers and the public about the Covenant and its Optional Protocol. It should also promptly comply with all the Views adopted by the Committee with respect to the Sami indigenous people, through appropriate and effective mechanisms, so as to guarantee the right of victims to an effective remedy, in accordance with article 2 (3) of the Covenant.

Human rights impact assessment

6. The Committee takes note of the human rights impact assessments of legislative and other policy proposals undertaken by various actors, such as the Council of Regulatory Impact Analysis. The Committee also notes that the constitutionality of legislation and the compliance with human rights obligations is supervised by

the Chancellor of Justice and the Constitutional Law Committee. It is concerned, however, by reports of the lack of a systematic approach to such assessment and their limited effectiveness in upholding the rights of children, women, asylum seekers, migrants and the Sami people, in particular regarding the collection and analysis of relevant data (art. 2).

7. The State party should strengthen the mechanisms for human rights assessment of legislative and policy proposals prior to their adoption to ensure their compatibility with the Covenant, in particular with respect to any legislative and policy proposals concerning the rights of persons belonging to vulnerable groups. The State party should also improve its system of collecting reliable disaggregated data with a view to conducting impact assessments of legislation and policies on Covenant rights.

Rights of the Sami indigenous people

42. The Committee acknowledges the steps taken by the State party to promote the rights of the Sami people, including the ongoing establishment of a truth and reconciliation commission. The Committee, however, remains concerned that, despite the Committee's Views adopted in that respect in November 2018, the Sami Parliament Act – in particular section 3, on the definition of a Sami, and section 9, on the obligation of the authorities to negotiate with the Sami Parliament in all far-reaching and important measures that may affect the status of the Sami as an indigenous people – has not yet been amended in a way that guarantees the Sami people's right of self-determination. On the contrary, the decisions of the Supreme Administrative Court of 5 July 2019, and the Government's decision not to cancel or postpone the Sami Parliament elections of September 2019 appear to run counter to the Views adopted by the Committee regarding the Sami (see paras. 4 and 5 above). The Committee is further concerned about reports that vague criteria used to assess the impact of measures, including development projects, on Sami culture and traditional livelihoods have resulted in the authorities' failure to engage in meaningful consultations to obtain their free, prior and informed consent. The Committee also notes the State party's delay in ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (arts. 1, 25 and 27).
43. The State party should:
 - (a) Speed up the process of revising the Sami Parliament Act, in particular its sections 3, on the definition of Sami, and 9, on the principle of free, prior and informed consent, with a view to respecting the Sami people's right of self-determination, in accordance with article 25, read alone and in conjunction with article 27, as interpreted in the light of article 1 of the Covenant, and of implementing the Committee's Views adopted in November 2018;
 - (b) Review existing legislation, policies and practices regulating activities that may have an impact on the rights and interests of the Sami people, including development projects and extractive industries operations, with a view to ensuring, in practice, meaningful consultation with the Sami people to obtain their free, prior and informed consent;
 - (c) Consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization;
 - (d) Step up its efforts to provide government and local officials, police officers, prosecutors and judges with appropriate training on the need to respect the rights of the Sami as an indigenous people.

11. Central African Republic, CCPR/C/CAF/CO/3, 30 April 2020

Indigenous people

37. The Committee is concerned about reports that indigenous communities (Mbororo and Baka) continue to face significant obstacles to the enjoyment of the rights set out in the Covenant. In particular, the Committee is concerned about allegations that some individuals, including individuals of foreign nationality, have been reduced to slavery. It is also concerned to note that indigenous communities are not represented in the decision-making and electoral spheres (arts. 8, 25, 26 and 27).
38. In accordance with the concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/CAF/CO/1, para. 22), the State party should adopt a national strategy to promote and protect the rights of indigenous populations, with the participation of the communities concerned, with a view to eradicating practices involving the enslavement of indigenous populations, promoting their participation in public affairs and obtaining their free, prior and informed consent with regard to all decisions affecting them.

12. Dominica, CCPR/C/DMA/COAR/1, 24 April 2020 (in the absence of the initial report)

1. In the absence of a report by the State party, the Committee considered the situation of civil and political rights under the Covenant in Dominica at its 3702nd and 3703rd meetings (See CCPR/C/SR.3702 and 3703), held in public sessions on 10 and 11 March 2020. Pursuant to rule 71, paragraph 1, of the Committee's rules of procedure, the failure of a State party to submit its report under article 40 of the Covenant may lead to an examination in a public session of the measures taken by the State party to give effect to the rights recognized in the Covenant and to adopt concluding observations.
2. On 27 March 2020, the Committee adopted the following concluding observations.

Indigenous peoples

47. The Committee welcomes the efforts made to promote the rights of indigenous peoples, including the designation of a dedicated ministry, education and housing programmes and support for indigenous businesses. However, it notes the absence of detailed information about policy and legal frameworks governing the ownership and use of indigenous land and measures taken to consistently uphold the right of indigenous peoples to free, informed and prior consultation in relation to programmes impacting them (arts. 2 and 27).
48. The State party should consider:
 - (a) Continuing and expanding measures to promote the rights of indigenous peoples;
 - (b) Adopting comprehensive anti-discrimination legislation that provides protection against discrimination on the basis of indigenous status;
 - (c) Ensuring that meaningful consultations are held with the indigenous peoples concerned with a view to obtaining their free, prior and informed consent relating to the adoption or application of any measure that may have a substantial impact on their way of life and culture.

B. GENERAL COMMENTS

1. No. 37, the right of peaceful assembly (article 21), CCPR/C/GC/37, 17 September 2020

I. Introduction

1. The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals. Where they are used to air grievances, peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences.
2. The right of peaceful assembly is, moreover, a valuable tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights. It is of particular importance to marginalized individuals and groups. Failure to respect and ensure the right of peaceful assembly is typically a marker of repression.

[...]

II. Scope of the right of peaceful assembly

11. Establishing whether or not someone's participation in an assembly is protected under article 21 entails a two-stage process. It must first be established whether or not the conduct of the person in question falls within the scope of the protection offered by the right, in that it amounts to participation in a "peaceful assembly" (as described in the present section). If so, the State must respect and ensure the rights of the participants (as described in section III below). Second, it must be established whether or not any restrictions applied to the exercise of the right are legitimate in that context (as described in section IV below).

[...]

III. Obligation of States parties regarding the right of peaceful assembly

21. The Covenant imposes the obligation on States parties "to respect and to ensure" all the rights in the Covenant (art. 2 (1)); to take legal and other measures to achieve this purpose (art. 2 (2)); and to pursue accountability, and provide effective remedies for violations of Covenant rights (art. 2 (3)). The obligation of States parties regarding the right of peaceful assembly thus comprises these various elements, although the right may in some cases be restricted according to the criteria listed in article 21.
22. States must leave it to the participants to determine freely the purpose or any expressive content of an assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be content neutral, and must not be based on the identity of the participants or their relationship with the authorities. Moreover, while the time, place and manner of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience.

23. The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.
24. Moreover, States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives. States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public, counterdemonstrators and private security providers.
25. States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status. Particular efforts must be made to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination, or that may face particular challenges in participating in assemblies. Moreover, States have a duty to protect participants from all forms of discriminatory abuse and attacks.

C. VIEWS ADOPTED UNDER OPTIONAL PROTOCOL I

1. Daniel Billy et al v. Australia, CCPR/C/135/D/3624/2019, 22 September 2022⁴⁰

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019

<i>Communication submitted by:</i>	Daniel Billy et al. (represented by counsel, ClientEarth)
<i>Alleged victims:</i>	The authors and six of their children
<i>State party:</i>	Australia
<i>Date of communication:</i>	13 May 2019 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to former rule 92 of the Committee's rules of procedure, transmitted to the State party on 18 June 2019 (not issued in document form)
<i>Date of adoption of Views:</i>	21 July 2022
<i>Subject matter:</i>	Failure to take mitigation and adaptation measures to combat the effects of climate change
<i>Procedural issues:</i>	Admissibility–incompatibility; admissibility–manifestly ill-founded; admissibility– <i>ratione materiae</i> ; admissibility – victim status
<i>Substantive issues:</i>	Arbitrary/unlawful interference; children rights; effective remedy; family rights; home; indigenous peoples; minorities – right to enjoy own culture; privacy; right to life
<i>Articles of the Covenant:</i>	2, read alone and in conjunction with 6, 17, 24 (1) and 27; 24 (1), read alone and in conjunction with 6, 17, and 27; and 6, 17, and 27, each read alone.
<i>Articles of the Optional Protocol:</i>	1, 2 and 3

[...]

The facts as submitted by the authors

- 2.1 The authors belong to the indigenous minority group of the Torres Strait Islands and live on the four islands of Boigu (Keith Pabai and Stanley Marama), Masig (Nazareth Warri; and Yessie, Genia, Ikasa, Awara, Santoi and Baimop Mosby), Warraber (Kabay and Tyrique Tamu; and Ted and Daniel Billy) and Poruma (Nazareth Faud). The indigenous people of the Torres Strait Islands, especially the authors who reside in low-lying islands, are among the most vulnerable populations to the impact of climate change.
- 2.2 The Torres Strait Regional Authority (TSRA), a government body, has stated that “the effects of climate change threaten the islands themselves as well as marine and coastal ecosystems and resources, and therefore the life, livelihoods and unique culture of Torres Strait Islanders.” The TSRA also noted that “even small increases in sea level due to climate change will have an immense impact on Torres Strait

⁴⁰ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F135%2FD%2F3624%2F2019&Lang=en.

communities, potentially threatening their viability” and “large increases would result in several Torres Strait islands being completely inundated and uninhabitable.”

- 2.3 Sea level rise already caused flooding and erosion on the authors' islands, and higher temperature and ocean acidification produced coral bleaching, reef death, and the decline of seagrass beds and other nutritionally and culturally important marine species. According to the TSRA, in the Torres Strait region, sea level has risen at ~0.6 cm per year from 1993-2010 (compared to the global average of 3.2 mm/yr).
- 2.4 With respect to the impact of climate change on the islands, the village on Boigu – one of five communities particularly vulnerable to inundation – is flooded each year. Erosion has caused the shoreline to advance and has detached a small area from the island. On Masig, a cyclone in March 2019 caused severe flooding and erosion and destroyed buildings. The cyclone resulted in the loss of three metres of shoreline. Approximately one metre of land is lost every year. In addition, a tidal surge in recent years has destroyed family graves, scattering human remains. On Warraber, high tides and strong winds cause seawater to flood the village centre every two to three years. On Poruma, erosion has washed away much of the island's sand over the past few decades.
- 2.5 Sea level rise has caused saltwater to intrude into soil of the islands, such that areas previously used for traditional gardening can no longer be cultivated. On Masig, rising sea level has caused coconut trees to become diseased, such that they do not produce fruits or coconut water, which are part of the authors' traditional diet. Such changes make the authors reliant on expensive imported goods that they often cannot afford. Patterns of seasons and winds play a key role in ensuring the authors' livelihoods and subsistence but are no longer predictable. Precipitation, temperature and monsoon seasons have changed, making it harder for the authors to pass on their traditional ecological knowledge. Seagrass beds and dependent species have disappeared. While crayfish is a fundamental source of food and income for the authors, they no longer find crayfish in areas where coral bleaching has occurred.
- 2.6 Referring to the TSRA report, the authors predict that the severe impacts on their traditional ways of life and subsistence and culturally important living resources will present significant social, cultural and economic challenges; impacts on infrastructure, housing, land-based food production systems and marine industries; and health problems such as increased disease and heat-related illness.
- 2.7 The State party has failed to implement an adaptation programme to ensure the long-term habitability of the islands. Despite numerous requests for assistance and funding made to the state and federal authorities by or on behalf of the islanders, the State party has not promptly and adequately responded. Although some works were done on Boigu and Poruma between 2017 and 2018, many of the priority actions identified in the Torres Strait Regional Adaptation and Resilience Plan 2016-21 remain unfunded. As of now, there is no further government funding confirmed. Local authorities have taken a triage approach to save homes and infrastructure, and residents of Warraber and Masig have taken matters into their own hands, using green waste and debris to secure fragile coastal ecosystems from erosion.
- 2.8 The State party has also failed to mitigate the impact of climate change. In 2017, the State party's per capita greenhouse gas emissions were the second highest in the world. Those emissions increased by 30.72% between 1990 and 2016. The State party ranked 43rd out of 45 developed countries in reducing its greenhouse gas emissions

during that period. Since 1990, the State party has actively pursued policies that have increased emissions by promoting the extraction and use of fossil fuels, in particular thermal coal for electricity generation.

- 2.9 There are no available or effective domestic remedies to enforce their rights under articles 2, 6, 17, 24 and 27 of the Covenant. The authors' rights under the Covenant are not protected in the Constitution or any other legislation applicable to the federal Government. The High Court of Australia has ruled that state organs do not owe a duty of care for failing to regulate environmental harm.

Issues and proceedings before the Committee

[...]

Consideration of the merits

- 8.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.
- 8.2 The Committee notes the authors' claim that by failing to implement adequate mitigation and adaptation measures to prevent negative climate change impacts on the authors and the islands where they live, the State party has violated their Covenant rights.

Article 6

- 8.3 The Committee notes the authors' claim that the events in this case constitute a violation by act and omission of their right to a life with dignity under article 6 of the Covenant, owing to the State party's failure to perform its duty to provide adaptation and mitigation measures to address climate change impacts that adversely affect their lives, including their way of life. With respect to the State party's position that article 6 (1) of the Covenant does not obligate it to prevent foreseeable loss of life from climate change, the Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures to protect the right to life. The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3). The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. The Committee considers that such threats may include adverse climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity.
- 8.4 The Committee takes note of the State party's position that the extension of article 6 (1) of the Covenant to a right to life with dignity through general comment No. 36 is unsupported by the rules of treaty interpretation, with reference to article 31 of the 1969 Vienna Convention on the Law of Treaties. However, the Committee is of

the view that the language at issue is compatible with the latter provision, which requires that a treaty be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In this regard, the Committee notes that under article 31 of the Convention, the context for interpretation of a treaty includes in the first place the text of the treaty, including its preamble and annexes. The preamble of the Covenant initially recognizes that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and further recognizes that those rights derive from the inherent dignity of the human person. While the State party notes that socioeconomic entitlements are protected under a separate Covenant, the Committee observes that the preamble of the present Covenant recognizes that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy their civil and political rights, as well as their economic, social and cultural rights.

- 8.5 The Committee observes that both it and regional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life. In the present case, the Committee notes that the TSRA, a government agency, recognised in its report entitled "Torres Strait Climate Change Strategy 2014-18" the vulnerability of the Torres Strait Islands to significant and adverse climate change impacts that affect ecosystems and livelihoods of the Islands' inhabitants. The Committee also notes the authors' claims regarding their islands (paras. 2.3-2.5 and 5.2), regarding flood-related damage, seawall breaches, coral bleaching, increasing temperatures, erosion, reduction of the number of coconut trees and marine life used for food and cultural purposes, and a lack of rain and its effect on crop cultivation.
- 8.6 The Committee recalls that in certain places, the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change. The Committee takes into account the authors' argument that the health of their islands is closely tied to their own lives. However, the Committee notes that while the authors evoke feelings of insecurity engendered by a loss of predictability of seasonal weather patterns, seasonal timing, tides and availability of traditional and culturally important food sources, they have not indicated that they have faced or presently face adverse impacts to their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to a life with dignity. The Committee further notes that the authors' claims under article 6 of the Covenant mainly relate to their ability to maintain their culture, which falls under the scope of article 27 of the Covenant.
- 8.7 Regarding the authors' assertion that their islands will become uninhabitable in 10 years (Boigu and Masig) or 10 to 15 years (Poruma and Warraber) in the absence of urgent action, the Committee recalls that without robust national and international efforts, the effects of climate change may expose individuals to a violation of their rights under article 6 of the Covenant. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized. The Committee notes that under the Torres Strait Seawalls Program (2019-23), multiple infrastructures will be constructed and upgraded to

address ongoing coastal erosion and storm surge impacts at Poruma, Warraber, Masig, Boigu and Iama. The Committee notes that by 2022, several coastal mitigation works had been completed on Boigu with funding of \$15 million: the construction of a 1,022 metre long wave return wall, the raising and extension of an existing bund wall to 450 metres, and the upgrading of stormwater drainage infrastructure. The Committee also observes that under the Program, coastal mitigation works on Poruma, Warraber and Masig were scheduled to begin in 2021 or 2022 and be completed by 2023. The Committee also takes note of the other adaptation and mitigation measures mentioned by the State party. The Committee considers that the time frame of 10 to 15 years, as suggested by the authors, could allow for intervening acts by the State party to take affirmative measures to protect and, where necessary, relocate the alleged victims. The Committee considers that the information provided by the State party indicates that it is taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms in the Islands. Based on the information made available to it, the Committee is not in a position to conclude that the adaptation measures taken by the State party would be insufficient so as to represent a direct threat to the authors' right to life with dignity.

8.8 In view of the foregoing, the Committee considers that the information before it does not disclose a violation by the State party of the authors' rights under article 6 of the Covenant.

Article 17

8.9 The Committee notes the authors' claims that climate change already affects their private, family and home life, as they face the prospect of having to abandon their homes. The Committee notes that the erosion of their islands causes the authors significant distress, and that flooding occurs on the islands. The Committee also notes Stanley Marama's allegation that his home was destroyed due to flooding in 2010. The Committee recalls that States parties must prevent interference with a person's privacy, family or home that arises from conduct not attributable to the State, at least where such interference is foreseeable and serious. Thus, when environmental damage threatens disruption to privacy, family and the home, States parties must prevent serious interference with the privacy, family and home of individuals under their jurisdiction.

8.10 The Committee recalls that the authors depend on fish, other marine resources, land crops, and trees for their subsistence and livelihoods, and depend on the health of their surrounding ecosystems for their own wellbeing. The State party has not contested the authors' assertions in that regard. The Committee considers that the aforementioned elements constitute components of the traditional indigenous way of life of the authors, who enjoy a special relationship with their territory, and that these elements can be considered to fall under the scope of protection of article 17 of the Covenant. In addition, the Committee considers that article 17 should not be understood as being limited to the act of refraining from arbitrary interference, but rather also obligates States parties to adopt positive measures that are needed to ensure the effective exercise of the rights under article 17 in the presence of interference by the State authorities and physical or legal persons.

8.11 The Committee takes note of the State party's extensive and detailed information that it has taken numerous actions to address adverse impacts caused by climate change and carbon emissions generated within its territory. Those actions include,

with relevance to the authors' claims, release of the Torres Strait Regional Adaptation and Resilience Plan 2016-21, which focused both on climate impacts and reducing vulnerability through resilience; direct involvement of the TSRA with communities in the region to enable them to respond to climate change impacts; community heat mapping to monitor and reduce heat risk; installation of monitoring sites relating to tides, sea level, temperature and rainfall; commitment of over \$15 billion for country-wide natural resource management, water infrastructure, drought and disaster resilience and recovery funding; investment of \$100 million or management of ocean habitats and coastal environments; provision of regional and global climate finance of \$1.4 billion (2015-20) and \$1.5 billion (2020-25), with a strong focus on achieving adaptation outcomes; reduction of its carbon emissions by 20.1% (from 2005 to 2020) and by 46.7% per person (from 1990 to 2020); investment of an estimated \$20 billion in low emissions technologies (2020-30) and \$3.5 billion in the Emissions Reduction Fund; initiation or completion of 58 actions identified in the Torres Strait Regional Adaptation and Resilience Plan 2016-21; development of local adaptation and resilience plans for the 14 outer island communities; development by the TSRA of a draft regional resilience framework to help build greater local and regional resilience to climate change impacts, informed by discussions with community representatives; ongoing assessment of climate change impacts for Torres Strait communities; coastal mapping on the Torres Strait Islands to inform coastal adaptation planning; continuation of coastal protection initiatives by the TSRA to address erosion and storm surge impacts on local communities; and investment of \$40 million in Stage 2 of the Torres Strait Seawalls Program (2019-23). The Committee recalls the information contained in para. 8.7 concerning the State party's completed and ongoing efforts to build new or updated seawalls on the islands where the authors live, and notes that the seawalls are all expected to be completed by 2023.

- 8.12 However, the Committee notes that the State party has not specifically commented on the authors' allegations that they attempted to request the construction of adaptation measures, in particular upgraded seawalls, at various points over the last decades. While welcoming the new construction of seawalls on the four islands at issue, the Committee observes that the State party has not explained the delay in seawall construction with respect to the islands where the authors live. It has not contested the factual allegations set forth by the authors concerning the concrete climate change impacts on their home, private life and family. The Committee notes that the State party has not provided alternative explanations concerning the reduction of marine resources used for food, and the loss of crops and fruit trees on the land on which the authors live and grow crops, elements that constitute components of the authors' private life, family and home. The Committee notes the authors' specific descriptions of the ways in which their lives have been adversely affected by flooding and inundation of their villages and ancestral burial lands; destruction or withering of their traditional gardens through salinification caused by flooding or seawater ingress; decline of nutritionally and culturally important marine species and associated coral bleaching and ocean acidification. The Committee also notes the authors' allegations that they experience anxiety and distress owing to erosion that is approaching some homes in their communities, and that the upkeep and visiting of ancestral graveyards relates to the heart of their culture, which requires feeling communion with deceased relatives. The Committee further notes the authors' statement that their most important cultural ceremonies are only meaningful if performed on native community lands. The

Committee considers that when climate change impacts – including environmental degradation on traditional [indigenous] lands in communities where subsistence is highly dependent on available natural resources and where alternative means of subsistence and humanitarian aid are unavailable – have direct repercussions on the right to one's home, and the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause, then the degradation of the environment may adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home. The Committee concludes that the information made available to it indicates that by failing to discharge its positive obligation to implement adequate adaptation measures to protect the authors' home, private life and family, the State party violated the authors' rights under article 17 of the Covenant.

Article 27

8.13 The Committee recalls that article 27 establishes and recognizes a right which is conferred on individuals belonging to minority indigenous groups and which is distinct from, and additional to, the other rights which all persons are entitled to enjoy under the Covenant. The Committee recalls that, in the case of indigenous peoples, the enjoyment of culture may relate to a way of life which is closely associated with territory and the use of its resources, including such traditional activities as fishing or hunting. Thus, the protection of this right is directed towards ensuring the survival and continued development of the cultural identity. The Committee further recalls that article 27 of the Covenant, interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples, enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity. Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion.

8.14 The Committee notes the authors' assertion that their ability to maintain their culture has already been impaired by the reduced viability of their islands and the surrounding seas, owing to climate change impacts. The Committee notes the authors' claim that those impacts have eroded their traditional lands and natural resources that they use for traditional fishing and farming and for cultural ceremonies that can only be performed on the islands. The Committee notes their claim that the health of their land and the surrounding seas are closely linked to their cultural integrity. The Committee notes that the State party has not refuted the authors' arguments that they could not practice their culture on mainland Australia, where they would not have land that would allow them to maintain their traditional way of life. The Committee considers that the climate impacts mentioned by the authors represent a threat that could have reasonably been foreseen by the State party, as the authors' community members began raising the issue in the 1990s. While noting the completed and ongoing seawall construction on the islands where the authors live, the Committee considers that the delay in initiating these projects indicates an inadequate response by the State party to the threat faced by the authors. With reference to its findings in para. 8.14, the Committee considers that the information made available to it indicates that the State party's failure to adopt timely adequate adaptation measures to protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party's positive obligation to protect the

authors' right to enjoy their minority culture. Accordingly, the Committee considers that the facts before it amount to a violation of the authors' rights under article 27 of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the authors' rights under articles 17 and 27 of the Covenant.
10. Having found a violation of articles 17 and 27, the Committee does not deem it necessary to examine the authors' remaining claims under article 24 (1) of the Covenant.
11. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to provide adequate compensation, to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable. The State party is also under an obligation to take steps to prevent similar violations in the future.
12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.

Annex I

Individual opinion by Committee Member Duncan Laki Muhumuza.

1. The Committee found that there was no violation of Article 6 based on the information provided by the State Party.
2. I have comprehensively perused the information provided by both the authors and the State Party and I am convinced that there is a violation of Article 6 of the Covenant, which states that;
3. "Every human being has the inherent right to life... protected by law, and that no one shall be arbitrarily deprived of his life."

The Committee found that there was no violation of Article 6 by the State Party based on the information provided by the State Party.

4. The Committee considered the information provided by the State Party in as far as the adaptive measures put in place to reduce the existing vulnerabilities and build resilience to climate change-related harms to the islands and it was on those grounds that the Committee found that there was no violation of Article 6.

5. I am cognisant of the adaptive measures that the State Party has taken under the Torres Strait Seawalls Program (2019-23), where:
 - a) Multiple infrastructures will be constructed and upgraded to address ongoing coastal erosion and storm surge impacts at Poruma, Warraber, Masig, Boigu and Iama.
 - b) By 2022, several coastal mitigation works had been completed on Boigu with funding of \$15 million, the construction of a 1,022-metre-long wave return wall, the raising and extension of an existing bund wall to 450 metres, and the upgrading of stormwater drainage infrastructure.
 - c) Coastal mitigation works on Poruma, Warraber and Masig were scheduled to begin in 2021 or 2022 and be completed by 2023.
9. These efforts and measures taken/and or yet to be taken are commendable and appreciated. However, there is an appalling outcry from the authors that has not been addressed and hence, the authors' right to life will continue to be violated and their lives endangered.
10. I am of the considered view that the State party has failed to prevent a foreseeable loss of life from the impact of climate change. As highlighted by the Urgenda Foundation v. the State of Netherlands case, the State Party is tasked with an obligation to prevent a foreseeable loss of life from the impacts of climate change, and to protect the authors' right to life with dignity.
11. In the instant case before us, the State Party has not taken any measures to reduce greenhouse gas emissions and cease the promotion of fossil fuel extraction and use, which continue to affect the authors and other islanders, endangering their livelihood, resulting in the violation their rights under article 6 of the Covenant.
12. The citizens of Torres Strait Islands have also lost their livelihood at the island due to the on-going climate changes and the State Party has not taken any measures to mitigate this factor. As a result of rise in the sea levels, saltwater intruded into the soils of the islands and as such lands previously used for traditional gardening could no longer be cultivated. The coral bleaching that occurred has led to the disappearance of crayfish which is a fundamental source of food and income for the authors.
13. These factors combined point to the imminent danger or threat posed to people's lives which is already affecting their lives, yet the State Party being aware has not taken effective protective measures to enable the people to adapt to the climate change.
14. The Urgenda case defined "Climate change as a real and imminent threat and requires the State to take precautionary measures to prevent infringement of rights "as far as possible."
15. The Court further held that it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life/or a disruption of family life.
16. The authors have ably informed the Committee that the current state of affairs and existence in the Torres Strait Islands is under imminent threat due to the on-going climate change and therefore, the State Party should take immediate adaptive precautionary measures to thwart the climate changes, and preserve the lives of the islanders including their health and livelihood. Any further delays or non-action by the State Party will continue to risk the lives of the citizens which is a blatant violation of Article 6 (1) of the Covenant.

17. Accordingly, I find that there is a violation of Article 6 and as a Committee, we should implore the State Party to take immediate measures to protect and preserve the lives of the people at Torres Strait Islands. In order to uphold the right to life, States must take effective measures (which cannot be undertaken individually) to mitigate and adapt to climate change and prevent foreseeable loss of life.

Annex II

Individual opinion by Committee Member Gentian Zyberi (concurring)

1. I am generally agreed with the Committee's findings. In this individual opinion, I explain my position on adaptation and mitigation measures, the law on international responsibility for countering climate change effects and adequate measures, and the violation of Article 27.
2. After having acknowledged climate change as a common concern of humankind in its preamble, the 2015 Paris Agreement addresses mitigation and adaptation respectively under Articles 4 and 7. Mitigation efforts are aimed at addressing the causes of climate change by preventing or reducing the emission of greenhouse gases (GHG) into the atmosphere. Adaptation efforts are aimed towards adjusting to the current and future effects of climate change. Both types of measures are intrinsically connected and require action by States (and non-State actors), individually and jointly through international cooperation.
3. The State party in this case has taken both mitigation and adaptation measures. When it comes to mitigation measures, assessing the nationally determined contributions taken by States parties to the ICCPR under the 2015 Paris Agreement, when the State is party to both treaties, is an important starting point. States are under a positive obligation to take all appropriate measures to ensure the protection of human rights. In this context, the due diligence standard requires States to set their national climate mitigation targets at the level of their highest possible ambition and to pursue effective domestic mitigation measures with the aim of achieving those targets. When a State is found to not have fulfilled these commitments, such a finding should constitute grounds for satisfaction for the complainant/s, while the State concerned should be required to step up its efforts and prevent similar violations in the future. The requirement of due diligence applies also to adaptation measures.
4. It has been 30 years since States have recognized climate change as a cause of common concern and action in the 1992 Earth Summit, but despite important developments in the form of the 1992 United Nations Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol, and the 2015 Paris Agreement, individual and joint State efforts at addressing the climate crisis remain insufficient. Over the years, the law on international responsibility on climate change has developed progressively.
5. A clear limitation of the law on international responsibility in cases of climate change and related litigation, is the difficulty involved in addressing what constitutes shared responsibility. Since it is the atmospheric accumulation of CO₂ and other GHGs that, over time, gives rise to global warming and climate change, States should act with due diligence when taking mitigation and adaptation action, based on the best science. This is an individual responsibility of the State, relative to the risk at stake and its capacity to address it. A higher standard of due diligence applies in respect of those States with significant total emissions or very high per capita emissions (whether these are past or current emissions), given the greater burden that their emissions place on the global climate system, as well as to States with

higher capacities to take high ambitious mitigation action. This higher standard applies to the State party in this case.

6. The Committee has significant practice on Article 27, with much of its case law concerning the rights of indigenous peoples. In this case, it has found a violation because of the State party's failure to adopt timely adequate adaptation measures to protect the authors' right to enjoy their minority culture under article 27 of the Covenant. In my view, the Committee should have linked the State obligation to "protect the authors' collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources" more clearly to mitigation measures, based on national commitments and international cooperation – as it is mitigation actions which are aimed at addressing the root cause of the problem and not just remedy the effects. If no effective mitigation actions are undertaken in a timely manner, adaptation will eventually become impossible. Such land and sea resources will not be available for indigenous peoples or even for humanity more generally, without diligent national efforts, as well as joint and concerted mitigation actions of the organized international community.
7. Climate change concerns have been addressed over the years by the Committee and other UN human rights treaty bodies, the UN Special Procedures, and more generally by the UN. This case shows the possibilities and limitations of human rights-based litigation. That said, alongside other general or specific institutional arrangements addressing climate change issues, the Committee provides a suitable venue for addressing some concerns, especially under articles 6, 7, 17 and 27, both under the Optional Protocol, as well as under Article 41 of the Covenant.

Annex III

Joint opinion by Committee Members Arif Bulkan, Marcia V. J. Kran and Vasilka Sancin (partially dissenting).

1. In addition to a violation of articles 17 and 27 found by the majority of the Committee, we would also find a violation of the right to life under article 6 of the Covenant.
2. The majority opinion correctly states that article 6 should not be interpreted restrictively. Yet, the "real and foreseeable risk" standard employed by the majority interprets article 6 restrictively, and was borrowed from the dissimilar context of refugee cases. In *Teitiota* the Committee concluded that due to insufficient information from the author, climate change was not a real or foreseeable enough risk to require the State party grant him refugee status. In contrast, here the primary question is whether the alleged violations of article 6 themselves ensue from inadequate mitigation and/or adaptation measures on climate change by the State party. Using a more accurate standard, from a factually similar case relating to environmental damage by pesticides, the question becomes whether there is "a reasonably foreseeable threat" to the authors' right to life. The authors detail flood related damage, water temperature increases, loss of food sources, and most importantly, explain that the islands they live on will become uninhabitable in a mere 10-15 years according to the Torres Strait Regional Authority (TSRA), a governmental body. Together, this evidence provides "a reasonably foreseeable threat" constituting a violation of article 6.
3. Using the "real and foreseeable risk" standard, the majority opinion requires adverse health impacts to demonstrate an article 6 violation. Not finding such impacts, the majority fails to find a violation of article 6. Nonetheless, the authors detail "real

and foreseeable risks” to their lives resulting from the flooding of the Torres Strait islands. First, the authors provide evidence of significant loss of food sources on which they rely to sustain themselves and their families. The crops lost include sweet potato, coconuts, and banana, which are required food sources and livelihood for the authors. The authors demonstrate that flooding has caused land erosion making food production impossible. They also detail that warmer waters due to climate change reduced the availability of cray fish, another primary food source. Second, the authors detail repeated damage to their homes, including significant water damage to the foundation of one author’s home. Thus the authors have demonstrated “real and foreseeable risks” to their lives through significant loss of food sources, livelihood, and shelter.

3. Interpreting article 6 restrictively, the majority opinion observes that the authors conflate violations of the article 27 guarantee of minority rights to enjoy culture with violations under the article 6 guarantee of the right to life. Accordingly, the majority finds a violation of article 27 but not of article 6. While the authors do discuss these violations as related, citing similar facts, the Committee’s jurisprudence does not require that facts relating to different violations arise from different sets of facts. The risks to the authors’ right to life are independent and qualitatively different from the risks to their right to enjoy their culture. Consequently, we are unable to agree that a violation of article 27 sufficiently addresses the authors’ claims.
4. We endorse the view that integral to article 6 is the right to live with dignity. It is, however, critical to do more than simply reference the Committee’s jurisprudence, it must also be used progressively, based on current realities. This jurisprudence unequivocally notes that no derogation is permitted from article 6. Moreover, it clarifies the direct connection between environmental harms, the right to life, and the right to live with dignity; and that State parties must duly consider the precautionary approach on climate change. Given the urgency and permanence of climate change, the need to adhere to the precautionary approach is imperative. In addition, the singular focus on the future obscures consideration of the harms being experienced by the authors, which negatively impact on their right to a life with dignity in the present. The unfortunate outcome is that the Committee’s jurisprudence promises far more than the majority delivers.
5. While we agree that the State party is not solely responsible for climate change, the main question before the Committee is significantly narrower: has the State party violated the Covenant by failing to implement adaptation and/or mitigation measures to combat adverse climate change impacts within its territory resulting in harms to the authors? The majority opinion relies on projects initiated by the State party since 2019, which might be completed by 2023. While these measures help build climate change resilience, the majority does not sufficiently consider the violations of article 6 that had already occurred at the time of filing this communication. Indeed, promises of future projects are insufficient remedies as they have not yet occurred whereas damage to the foundation of the authors’ homes has already occurred. Soil where the authors grow food for subsistence has already been eroded, and crops lost. These violations are a direct result of flooding which could have been prevented by adaptation measures including the timely construction of a seawall to protect the islands where the authors live. Indeed, in its 2014 report, the TSRA concluded that Australia had yet to take any steps on 33 out of the 34 adaptation measures suggested.

6. The State party has a positive obligation to minimize “reasonably foreseeable threats to life” and should remedy these violations by implementing adaptation measures including those identified by the TSRA in 2019. Despite multiple requests and knowledge of the ongoing impacts on the lives of the authors, the State party did not undertake adaptation measures in a timely manner. Consequently, we would find that the State party violated the authors’ right to life under article 6 of the Covenant in addition to the violations found by the majority.

2. Benito Oliveira Pereira and Lucio Guillermo Sosa Benega and the Indigenous Community of Campo Agua’ë, of the Ava Guaraní People v. Paraguay, Communication No. CCPR/C/132/D/2552/2015, 12 October 2021 (unoff. Transl.)⁴¹

Views adopted by the Committee under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 2552/2015

<i>Communication submitted by:</i>	Benito Oliveira Pereira and Lucio Guillermo Sosa Benega, on their own behalf and on behalf of the other members of the indigenous community of Campo Agua’ë, of the Ava Guaraní people (represented by the organizations Coordinadora de Derechos Humanos del Paraguay and Base Investigaciones Sociales)
<i>Alleged victims:</i>	The perpetrators and other members of the indigenous community of Campo Agua’ë
<i>State party:</i>	Paraguay
<i>Date of communication:</i>	30 September 2014 (initial submission)
<i>Document references:</i>	Rule 92 of the Committee’s rules of procedure, transmitted to the State party on 26 January 2015 (not issued in document form)
<i>Date of adoption of Views:</i>	14 July 2021
<i>Subject:</i>	Fumigation with agrochemicals and its consequences in an indigenous community
<i>Procedural issues:</i>	Exhaustion of local remedies
<i>Substantive issues:</i>	Right to an effective remedy; the right not to be subjected to arbitrary or unlawful interference with privacy, family and home; protection of minorities.

[...]

Facts as submitted by the authors

The indigenous community of Campo Agua’ë

- 2.1 The indigenous community of Campo Agua’ë (Canindeyú, Curuguaty) belongs to the Ava Guaraní people, one of the indigenous peoples whose existence is recognized by the State party’s Constitution as pre-existing to the formation and organization of the State.

⁴¹ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/132/D/2552/2015&Lang=en.

- 2.2 The community, consisting of approximately 201 people, is under the leadership of the two authors. Mr. Oliveira Pereira was elected community leader in community assembly. His traditional leadership and legal representation of the community are recognized by the State party through Resolution No. 345/10 of the Paraguayan Indigenous Institute, which recognizes Mr. Benito Oliveira as leader of the indigenous community of Campo Agua'ẽ. The resolution states that it "shall exercise legal representation of the aforementioned community, in accordance with the provisions of Act No. 904/81, Statute of Indigenous Communities". Mr. Sosa Benega is the teacher at the community school.
- 2.3 After successive dispossessions – mainly in favour of extractive enterprises with an enclaved economy – the indigenous community of Campo Agua'ẽ obtained legal recognition of its traditional territory in 1987 through Presidential Decree No. 21,910. The Ava Guarani people designate their territory as tekoha, the basis of all their socio-political and cultural organization. The rooms are located on the edge of the territory; In the center the forest is conserved that provides them with the necessary resources to preserve their cultural identity.

Fumigation with agrochemicals on farms close to the territory of the community, without control by the State party

- 2.4 The case is framed in a context, encouraged by the State party, of expansion of mechanized crops of transgenic seeds, with serious social and environmental impacts. The territory of the community, located in an area of greater agribusiness expansion, is surrounded by large Brazilian companies – estancia Monte Verde, owned by Issos Greenfield Internacional S. A., and estancia Vy'aha – that are dedicated to the extensive monoculture of genetically modified soybean seeds.
- 2.5 The systematic fumigations carried out violated the State party's environmental standards, which establish environmental impact mitigation measures and impose obligations to leave living barriers of protection between pesticide application and waterways, roads and villages, in order to avoid contamination. In violation of internal regulations, both companies apply pesticides to their crops without protective barriers and to the edges of the houses, the community school (even during class hours), the access road to the community and near the Curuguaty'y, Jejuí and Lucio kue rivers, which pass through the companies' lands before crossing the community, And in them the Indians are supplied with water, fishing, bathing and washing their clothes. Both companies apply both pesticides for legal use without respecting the registration obligation (paragraph 2.6), as well as prohibited agrotoxins (paragraph 2.27) and glyphosate (whose harmful effects are being debated in the scientific community).
- 2.6 The action of these enterprises is justified by the failure of the State party to comply with its obligations to authorize and control such activities, which is responsible for monitoring the use, marketing, distribution, export, import and transport of plant protection products for agricultural use, through the National Service for Plant and Seed Quality and Health, State agency with which both controlled sales agrotoxins (classified as "red stripe" for being extreme and highly toxic) and the people who use them must be registered. That body is also responsible for checking that the products used have been prescribed by a technical adviser registered with it and that the holdings have the abovementioned environmental safety barriers.
- 2.7 The authors recall that the situation they are confronting has already been observed by several United Nations human rights treaty bodies and extra-conventional

mechanisms. The Committee on Economic, Social and Cultural Rights noted with concern in 2007 that the expansion of soybean cultivation has led to the indiscriminate use of agrochemicals, causing deaths and diseases, water pollution, disappearance of ecosystems and damage to the traditional food resources of the communities, and requested the State party to guarantee the existing environmental regulations. In 2010, the Committee on the Rights of the Child expressed concern about the negative consequences of crop spraying suffered by farming families. In 2011, the Committee on the Elimination of Discrimination against Women requested the State party to conduct a study on the abuse of agrottoxins and eradicate their impact on the health of women and their children. In 2012, the Special Rapporteur on extreme poverty and human rights observed that the advance of soy monocultures and the uncontrolled and uncontrolled use of agrochemicals is seriously damaging the environment and the health of indigenous communities, with total inaction by the State, seriously endangering the lives of people living surrounded by soybeans, especially in Canindeyú.

Consequences of pollution

- 2.8 The massive fumigations carried out by both companies undermine the biological diversity of indigenous territory, destroying natural resources that are not only the source of food subsistence but also of ancestral cultural practices associated with hunting, fishing, forest gathering and Guaraní agroecology. The situation of extreme poverty in which the community finds itself – which lacks electricity, drinking water, sanitation and health posts – is aggravated by the destruction of its natural resources.
- 2.9 In addition, after each fumigation, community members suffer clear symptoms of poisoning (diarrhoea, vomiting, respiratory problems and headaches), including children, as spraying occurs a few metres from school during school hours. In general, its water sources, the Curuguay'y, Jejuí and Lucio kue rivers, are contaminated.
- 2.10 Also, after the rains, when contaminated water flows from plantations, breeding animals (chickens and ducks) are killed and crops (maize, cassava and sweet potato) are damaged. More generally, fruit trees stop bearing fruit and wild hives disappear due to the massive mortality of bees. Criminal complaint
- 2.11 On 30 October 2009, the authors filed a criminal complaint with the Specialized Unit for Crimes against the Environment of the Curuguay Public Prosecutor's Office for the health problems they suffer after each fumigation.
- 2.12 On 3 November 2009, the Public Prosecutor's Office informed the Criminal Court of Curuguay of the initiation of the investigation (file No. 1303/09: "Investigation of an alleged punishable act against the environment. Irregular use of agrochemical"). On 5 November 2009, it communicated this to the National Service for Plant and Seed Quality and Health.
- 2.13 On 17 November 2009, officials from the Public Prosecutor's Office travelled to indigenous territory, took testimonies from members of the community and toured the limits of the territory, noting that it is in the middle of two companies that are effectively engaged in intensive soybean plantations, a few metres from homes and schools. No living barrier of protection.
- 2.14 On 27 November 2009, the prosecutor set up in the community to verify this, noting that the ranches and the school are ten metres from the soybean crops,

without protective barriers. He also went to the entrance gate of the companies and required environmental licenses. Those in charge could not present them, arguing that they were in the hands of their bosses residing in Brazil.

- 2.15 On 24 May 2010, the Public Prosecutor's Office requested that environmental technicians conduct a chemical survey of the community, including water, blood and urine samples. Due to an error in the application procedure, the technical unit returned it to the prosecutor's office. No follow-up was given and the test was never completed.
- 2.16 On 3 August 2010, the authors requested that those responsible be charged with violations of article 203 of the Criminal Code – on the production of common risks by the release of poisons or other toxic substances – of Act No. 716/96 Penalizing Crimes against the Environment, and of the articles of the Constitution protecting the rights of indigenous peoples. They alleged that fumigation activities affect their rights to life, integrity and health, and involve losses of breeding animals, community and fruit crops, and hunting and fishing resources.
- 2.17 On August 9, 2010, the Public Prosecutor's Office charged the owners of the companies with having sufficient elements of conviction for violation of environmental laws. It defined an investigation period of six months to file an indictment.
- 2.18 On 2 October 2010, the authors filed an adhesive complaint. They denounced the violation of their rights to adequate food – due to the death of their chickens and ducks due to water pollution, and the loss of subsistence crops and fruit trees – to water – by supplying themselves in polluted rivers – and to health. They also denounced the disintegration of the community. The authors requested the taking of evidence.
- 2.19 On 23 November 2010, the Court admitted the employers' charges, setting the deadline for the filing of the indictment at 23 May 2011. On 4 February 2011, the authors filed charges against the two businessmen, requesting that the case be referred to trial. On 9 February 2011, the prosecution filed an indictment, but it was returned due to serious formal deficiencies.
- 2.20 On 2 March 2011, at the request of the authors, another judicial inspection was carried out in the community to find that the employers had failed to remedy their failure to comply with their obligation to create environmental barriers.
- 2.21 On 10 and 28 March 2011, the accused acknowledged their responsibility and requested the "conditional suspension of proceedings", a procedural institution that allows the proceedings to be suspended under a term of evidence in which the accused must observe certain rules of conduct in order for the criminal proceedings to be extinguished.
- 2.22 On 28 March 2011, the authors submitted to the criminal file "Diagnosis of the presence of glyphosate in surface waters in the departments of Canindeyú and San Pedro" carried out by the universities (footnote 9).
- 2.23 On 1 June 2011, the Public Prosecutor's Office again filed criminal charges against the employers, stating that "the punishable act is fully constituted".
- 2.24 The proceedings of the case were stalled for two years because the preliminary hearing was suspended seven times, six times for failure to notify the parties.
- 2.25 On 25 June 2013, the preliminary hearing was finally held. The Public Prosecutor's Office requested the provisional dismissal of the two defendants alleging lack of

evidence. On 30 July 2013, the Public Prosecutor's Office confirmed the request for provisional dismissal and listed 15 pieces of evidence to be produced (7 corresponded to evidence that had been requested by the authors and denied by the Public Prosecutor's Office). On 23 September 2013, the Court provisionally dismissed the case against the employers.

2.26 As of the submission of the submission, no outstanding evidence has been encouraged.

Administrative complaint

2.27 The authors also lodged a complaint with the National Service for Plant and Seed Quality and Health. On January 12, 2010, an inspection in both companies detected large quantities of the herbicide Paraquat and the insecticide Endosulfán, in violation of environmental regulations for not having been registered with the National Service of Quality and Plant and Seed Health despite being products called "red stripe" due to their high toxicity. Empty containers of the insecticide Chlorpyrifos were also found, which was banned because its exposure has been linked to neurological effects, developmental disorders and autoimmune disorders, as well as being highly toxic to fish and bees.

2.28 Despite the above, the complaint has had no effect, allowing the fumigations to continue to affect the community.

Deliberations of the Committee

[...]

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

8.2 The Committee notes that the authors allege that the facts of the present case constitute a violation of article 17 because their breeding animals, crops, fruit trees, as well as resources for hunting, fishing and gathering, constitute elements of their private, family and home life, and that the lack of State control of polluting agricultural activity — which poisons their watercourses, It destroys their subsistence crops, causes the death of their breeding animals, promotes the mass extinction of fish, bees and game animals, and causes them health problems – constitutes, consequently, arbitrary interference in their private and family life and their home. They specify that, in the case of indigenous peoples, the notions of "domicile" and "private life" must be understood within the special relationship they maintain with their territories. The Committee also notes that, according to the State party, there is no violation of article 17 because the facts alleged are not related to the two authors personally and because there is no evidence that agrochemicals have reached the territory.

8.3 The Committee notes that the authors and other members of the Campo Agua'ë indigenous community belong to the Ava Guaraní people, one of the indigenous peoples whose existence is recognized by the State party's Constitution as pre-existing to the formation and organization of the State (para. 2.1). This community obtained legal recognition of its traditional territory in 1987, through Presidential Decree No. 21,910. Their homes are located on the edge of the territory and in the center the forest is preserved, which provides the community with the necessary resources to preserve its cultural identity (para. 2.3). The Committee also notes that members of the indigenous community, including the perpetrators, depend

for their subsistence on crops, breeding animals, fruit trees, hunting, gathering, fishing, and water resources, all elements of their territory, in which they live and develop their private lives. This has not been contested by the State party. The Committee considers that the above-mentioned elements constitute the way of life of the authors and other members of the community, who have a special connection with their territory, and that they are elements that may fall within the scope of protection of article 17 of the Covenant. The Committee also recalls that article 17 should not be understood as limiting itself to the abstention from arbitrary interference, but implies the obligation to adopt positive measures necessary for the effective respect of this right in the face of interference from both State authorities and natural or legal persons.

- 8.4 In the present case, the Committee notes that the State party failed to exercise adequate controls over illegal polluting activities, which were widely documented (para. 2.7), observed by the State party itself (paras. 2.13 to 2.23) and even admitted by the two accused businessmen (para. 2.21). By not exercising adequate controls, the State party did not prevent contamination. This failure to protect allowed massive fumigations to continue for many years, contrary to domestic regulations, including the use of prohibited agrochemicals, which not only caused health problems for members of the community – including children, because the fumigations occurred a few meters from the school during class hours. but they also polluted their waterways, destroyed their subsistence crops, caused the death of their breeding animals and favored the mass extinction of fish and bees, constituent elements of their private and family life and their home. The Committee notes that the State party has not provided any alternative explanation to refute this alleged causal link between the spraying with agrottoxins and the above-mentioned damage. When pollution has a direct impact on the right to private and family life and the home, and its consequences have a certain level of gravity, environmental degradation affects the well-being of the individual and generates violations of private and family life and the home. Thus, in the light of the facts before it, the Committee concludes that the facts of the present case disclose a violation of article 17 of the Covenant.
- 8.5 The Committee also notes that the authors allege that the facts also constitute a violation of article 27. They argue that the serious environmental damage of the fumigations has had a serious impact equivalent to a denial of the right to enjoy one's own culture. In the first place, the loss of natural resources associated with their food subsistence threatens, in turn, their ancestral cultural practices associated with hunting, fishing, forest gathering and Guarani agroecology, generating loss of traditional knowledge. Secondly, the ceremonial practices of baptism, *mitãkarai*, are no longer carried out due to the disappearance: of the building materials of the dance house, *jerokyha*, which they previously obtained from the bush; of the maize of the *avati* variety for which the *kagüi* was made, of the *chicha* that constitutes a fundamental and sacred ritual element in the ceremony; and the wax used for the elaboration of ceremonial candles due to the mass extinction of wild bees, *jateí*. The disappearance of this ceremony leaves children without a crucial rite for the consolidation of their cultural identity, and the last religious leaders, *oporaiva*, no longer have apprentices, which threatens the preservation of their cultural identity. And thirdly, the community structure is weakened because several families are forced to emigrate. The authors specify that they have a personal responsibility to the community to ensure the intergenerational transmission of culture, in view of their roles as leaders and teachers of the community. The Committee also notes that, according to the State party, while its domestic legal system recognizes collective

rights, this is not the case under article 27 of the Covenant, and that the authors did not prove any personal injury.

- 8.6 The Committee recalls that, in the case of indigenous peoples, the enjoyment of culture may be related to ways of life closely associated with the territory and the use of its resources, and may include traditional activities such as fishing or hunting; Thus, the protection of this right is intended to ensure the preservation and continued development of cultural identity. As the Committee on Economic, Social and Cultural Rights has also expressed, the strong collective dimension of the cultural life of indigenous peoples is indispensable for their existence, well-being and integral development, and includes the right to lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired. Thus, “[t]he cultural values and rights of indigenous peoples associated with their ancestral lands and their relationship with nature must be respected and protected, in order to avoid degradation of their unique lifestyles, including livelihoods, loss of natural resources and, ultimately, their cultural identity”. The Human Rights Committee also notes that the Committee on the Elimination of Racial Discrimination has affirmed that the close relationship of indigenous peoples with the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival, their relationship with the land being a material and spiritual element that they must fully enjoy in order to preserve and transmit their cultural legacy to future generations, that is, a prerequisite for “preventing their extinction as a people”. The Committee concludes that article 27, interpreted in the light of the United Nations Declaration on the Rights of Indigenous Peoples, enshrines the inalienable right of indigenous peoples to enjoy the territories and natural resources that they have traditionally used for their subsistence food and cultural identity.
- 8.7 Furthermore, the Committee recalls that measures are required to ensure the effective participation of indigenous peoples in decisions affecting them. In particular, it is of fundamental importance that measures that compromise or interfere with the economic activities of cultural value of an indigenous community have been subject to the free, prior and informed consent of the members of the community, and must respect the principle of proportionality, so as not to endanger the community’s own subsistence. In this regard, the Committee notes that the State party’s own domestic legislation protects the right of indigenous peoples to be consulted in cases of activities that may affect their territories.
- 8.8 In the present case, the Committee notes that the authors and other members of the community exercise the right to the enjoyment of their culture in relation to a way of life closely associated with their territory and use of the natural resources contained therein. The Committee also notes that the massive spraying of pesticides constitutes threats that were reasonably foreseeable by the State party: not only had the competent State authorities been alerted to these activities and their impact on members of the community, but the Prosecutor’s Office found that the punishable act was “fully configured” (para. 2.23). and the accused businessmen themselves acknowledged their responsibility (para. 2.21). However, the State party did not stop these activities and therefore continued to pollute the rivers in which the authors fish, water supply, bathe and wash their clothes; continued to kill their breeding animals, a source of food; and continued to destroy their crops, as well as the resources of the forest from which they gather and hunt. The Committee notes that the State party has not provided an alternative explanation for what happened and has not justified taking any measures to protect the rights of authors and other

members of the community to have their own cultural life. The Committee therefore concludes that the facts before it disclose a violation of article 27 of the Covenant to the detriment of the indigenous community of Campo Aguaẽ.

- 8.9 Finally, the Committee notes that the authors allege that the facts also constitute a violation of article 2, paragraph 3, of the Covenant, in conjunction with articles 17 and 27, in the absence of an effective judicial remedy to protect them against the alleged violations. In particular, the authors note that, although the authorities had sufficient evidence to establish a causal link between the illegal use of agrotoxins by the companies and the harmful effects on their health and the integrity of their territory — for which the Prosecutor’s Office filed criminal charges — the criminal investigation initiated in 2009 was not completed and the pending evidence requested by the Public Prosecutor’s Office has not been produced; The fumigations continue to be carried out in contradiction with domestic regulations, and the damage has not been repaired – despite the possibility of agreement due to the requests of the businessmen accused of conditional suspension of the procedure for having acknowledged their responsibility. Nor did the Public Prosecutor’s Office, in violation of the criminal procedure law, have had a technical consultant specialized in indigenous issues, who would have sought to ensure that the investigation had an approach with a perspective of cultural diversity and that the differentiated impact of rape on the members of the community be documented. The Committee considers, therefore, that, more than 12 years after the authors filed the criminal complaint concerning the fumigations with agrochemicals, to which they have also been exposed all this time, the investigations have not progressed substantially, without the State party having offered an explanation to justify this delay, and have not allowed reparation for the damage suffered, in violation of article 2, paragraph 3, in conjunction with articles 17 and 27 of the Covenant.
9. The Committee, acting under article 5, paragraph 4, of the Optional Protocol, is of the view that the information before it reveals a violation by the State party of articles 17 and 27 of the Covenant, read alone and in conjunction with article 2, paragraph 3, of the Covenant.
10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide an effective remedy. In this regard, the State party should: (a) effectively and thoroughly investigate the facts, keeping the perpetrators adequately informed; (b) to pursue criminal and administrative proceedings against those responsible and, if their responsibility is established, to impose appropriate sanctions; (c) provide full reparation to the perpetrators and other members of the community for the harm suffered, including adequate compensation and reimbursement of legal costs; The State party is also under an obligation to take measures to prevent similar violations in the future.
11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, in accordance with article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide a remedy In fact, and legally enforceable where a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee’s Views. The State party is also requested to publish the present Views and to disseminate it widely, in particular in a newspaper widely circulated in the department of Canindeyú and in the Ava language.

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Committee
on Economic,
Social and
Cultural Rights

A. CONCLUDING OBSERVATIONS

1. El Salvador, E/C.12/SLV/CO/6, 9 November 2022

State of emergency

4. The Committee is aware of the security challenges in El Salvador and takes note of the report submitted by the State party on 29 July 2022 in response to the joint communication by special procedures mandate holders, in which it provided information on the measures taken to ensure the enjoyment of human rights in the context of the state of emergency declared in March 2022. However, the Committee is seriously concerned that the way in which the state of emergency is being implemented has had an impact on the enjoyment of economic, social and cultural rights. It is particularly concerned about the closure of forums for participation and dialogue at the national level, the practical restrictions imposed on the work of human rights defenders and on public protests and the conditions of detention of persons deprived of their liberty.
5. The Committee recommends that the State party: ... (c) Re-establish forums for open and constructive participation and dialogue with all stakeholders at the national level, including representatives of civil society, academia and the private sector, representatives and leaders of Indigenous Peoples and human rights defenders....

Business and human rights

16. The Committee is concerned about the lax enforcement of current environmental laws and administrative measures vis-à-vis companies operating under the jurisdiction of the State party. It is of concern that adequate environmental impact assessments are not conducted in respect of economic activities such as urban development projects, transportation and energy initiatives and landfills and that agrochemicals are used excessively in the agricultural sector. Of particular concern is that these activities affect the quality of the soil, air and water and harm the health of the population and the environment, thereby seriously hindering the enjoyment of the economic, social, cultural and environmental rights of Indigenous Peoples, neighbouring communities and farm workers. The Committee is also concerned about the reprisals to which judges and courts are subjected when they impose protective measures in respect of projects, both public and private, that cause environmental damage.
17. The Committee recommends that the State party:
 - (a) Strengthen its legislation and regulations, in accordance with its international human rights obligations, to ensure that urban development projects, transport and energy initiatives, landfills and other economic development activities undertaken by both national and international companies do not have an adverse effect on the enjoyment of economic, social and cultural rights;
 - (b) Prevent acts of intimidation and reprisals, including acts of violence, against judges and lawyers working to ensure the enforcement of environmental laws and administrative measures;

- (c) Ensure that communities and Indigenous Peoples affected by activities related to economic development and the exploitation of natural resources in their territories are consulted, receive compensation for any damage or loss and draw tangible benefits from such activities;
- (d) Take due account of the Committee's general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities and the reports of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes with respect to the right to science in the context of toxic substances and to the rights of workers in relation to occupational exposure to toxic substances.

Rights of Indigenous Peoples

18. The Committee notes the efforts made by the State party but regrets that it has not received detailed information on the extent of implementation and the results of the National Action Plan for Indigenous Peoples. The Committee is also concerned that the State party has no legal mechanism for recognizing the right of the Indigenous Peoples as such to acquire collective title to land and that free, prior and informed consultation with Indigenous Peoples is not systematically carried out in the context of decision-making processes related to the exploitation of natural resources in their ancestral territories. In particular, the Committee is concerned that El Salvador has not yet ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO).
19. The Committee recommends that the State party:
 - (a) Establish mechanisms for recognizing Indigenous peoples' rights to their ancestral lands and natural resources;
 - (b) Design, adopt and implement, in consultation with Indigenous Peoples, an adequate procedure that guarantees their right to free, prior and informed consultation in respect of legislative or administrative measures that may affect their rights and territories, and ensure that this procedure takes their traditions and cultural specificities into account;
 - (c) Engage in prior consultations regarding mining and hydrocarbon resource exploration and development activities that allow the peoples concerned to give their free and informed consent;
 - (d) Expedite the process of becoming a party to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169);
 - (e) Redouble efforts to promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

Non-discrimination

24. The Committee is concerned that article 3 of the Constitution does not guarantee equality and non-discrimination in a comprehensive manner. It is also concerned about the absence of comprehensive anti-discrimination legislation establishing an exhaustive list of prohibited grounds for discrimination. Moreover, the Committee is concerned about the persistence of de facto systemic discrimination and manifestations of violence towards some groups of the population, in particular women, Indigenous Peoples, people of African descent and the rural population, among others (art. 2 (2)).

Poverty

44. While the Committee notes the efforts made by the State party, it is concerned that the rates of poverty and extreme poverty remain high and about the wide disparity in poverty levels between rural and urban areas. In addition, the Committee regrets that it has not received information on the extent of implementation or the results of the Poverty Eradication Strategy of 2017, or detailed statistical data in that regard, in particular in relation to the situation of Indigenous Peoples (art. 11).
45. The Committee reiterates its previous recommendation 18 in this regard and urges the State party to: (a) Take the necessary measures to combat poverty, especially extreme poverty, within the framework of the Social Development Plan 2019–2024, applying a human-rights based approach and focusing in particular on rural areas and on the social exclusion of Indigenous Peoples in order to ensure that they are able to fully enjoy their human rights, especially their economic, social and cultural rights; (b) Provide, in its next periodic report, detailed statistical information on the results and impact of the measures taken to combat poverty. In this regard, the Committee refers the State party to its 2001 statement¹⁹ on poverty and the Covenant.

Right to education

60. While the Committee notes the increased education budget and the improvement of indicators pointing to reduced illiteracy and greater gender parity in access to education, it is concerned about the inadequacy of the budget and the high dropout rate in secondary education. It is also concerned about the significant differences in school enrolment and retention rates among students from households with different income levels and disparities between urban and rural areas in terms of the quality of education and school infrastructure (arts. 13 and 14).
61. The Committee recommends that the State party:
 - (a) Provide the resources necessary to ensure adequate quality and infrastructure in schools in both rural and urban areas;
 - (b) Pursue its literacy plan and redouble its efforts in that regard in rural areas and among Indigenous communities;
 - (c) Develop special programmes to prevent children from dropping out of school and address the root causes of school dropout.

Bilingual intercultural education

62. The Committee notes the measures taken by the State party. However, it reiterates its concern about the existence of barriers to access to and retention in secondary and higher education, which affect Indigenous adolescents and young people in particular. The Committee is also concerned about the high illiteracy rate among Indigenous communities, in particular among women and girls (arts. 13 and 14).
63. The Committee recommends that the State party:
 - (a) Adopt effective measures to guarantee that Indigenous Peoples have access to intercultural education in their own languages and ensure that such education incorporates Indigenous traditions and cultural knowledge;
 - (b) Redouble its efforts to preserve Indigenous languages and promote their use, including by ensuring that municipal and local authorities teach them and use them in schools, where appropriate.

Access to the Internet

64. While the Committee notes the efforts made by the State party to broaden Internet access, it is concerned that such access remains limited, especially for Indigenous peoples, rural populations and poor households (art. 15).
65. The Committee recommends that the State party step up its efforts to ensure universal and high-quality Internet access, particularly for marginalized and disadvantaged groups.

2. Guatemala, E/C.12/GTM/CO/4, 11 November 2022

Human rights defenders

10. The Committee is concerned by assaults, threats and reprisals committed against human rights defenders, including defenders of economic, social and cultural rights and Indigenous and Afrodescendent leaders, and in particular by the fact that criminal law is improperly used to persecute these individuals. The Committee is also concerned at the lack of national mechanisms to protect human rights defenders.
11. The Committee urges the State party to:
 - (a) Conduct thorough, impartial and effective investigations into all reports of attacks on the life, physical integrity or freedom of human rights defenders, as well as any acts of violence, threats, harassment, intimidation, bullying and defamation committed against human rights defenders;
 - (b) Design and implement a comprehensive policy with a gender and intercultural focus to prevent acts of violence against all human rights defenders, in particular defenders of economic, social and cultural rights, and to effectively protect their lives and personal integrity through effective coordination among national and municipal authorities, taking into account the specific needs of defenders living in rural or remote areas;
 - (c) Adopt the measures necessary to prevent the use of criminal law for the arbitrary criminalization of defenders of economic, social and cultural rights, including defenders of the rights of Indigenous Peoples and persons of African descent;
12. The Committee notes the information on the initiative of the Presidential Commission for Peace and Human Rights to develop a national action plan on business and human rights. It is concerned, however, at the negative impact on the enjoyment of economic, social and cultural rights potentially arising from the economic development activities and projects of companies, which, owing to a failure to conduct human rights due diligence, cause irreparable harm to the environment and undermine the right to health and a decent standard of living of the affected communities, in particular Indigenous Peoples ... (arts. 1 and 11).
13. The Committee recommends that the State party:
 - (a) Accelerate its efforts towards the prompt adoption of a national action plan on business and human rights while ensuring that both the formulation and implementation processes involve all interested parties, including representatives of companies, civil society organizations, Indigenous Peoples, persons of African descent and the most affected communities;
 - (b) Adopt appropriate legislative and administrative measures to ensure that companies that operate in the State party conduct human rights due diligence so as to prevent their activities from hindering the exercise of economic, social and cultural rights;

- (c) Take all measures necessary to ensure the legal liability of companies that operate in, are headquartered in and/or are under the jurisdiction of the State party for violations of economic, social and cultural rights resulting from their activities, and that it ensure appropriate reparations are provided to victims;
- (d) Take into account the Committee's general comment No. 24 (2017) on State obligations under the Covenant in the context of business activities.

Right of Indigenous Peoples to prior consultation

14. The Committee is concerned at the lack of effective legal mechanisms in line with international standards to guarantee that Indigenous Peoples are consulted regarding any legislative or administrative measures likely to affect them. The Committee is also concerned at the fact that, despite the efforts of the Ministry of Energy and Mines to hold "remedial" consultations pursuant to judgments of the Constitutional Court, the State party continues to grant concessions for natural resource exploitation projects without engaging in consultations aimed at obtaining the free, prior and informed consent of Indigenous Peoples or conducting social, environmental and human rights impact studies (art. 1).
15. The Committee recommends that the State party:
 - (a) In consultation with Indigenous Peoples and taking into account the cultural characteristics, ways and customs of each People, develop and implement a law and effective, appropriate and legally binding protocols, including clear requirements regarding the form of consultations and the representation of Indigenous Peoples, to ensure full respect for their right to be consulted to obtain their free, prior and informed consent in relation to decisions likely to affect them;
 - (b) Take the administrative measures necessary to guarantee that prior consultations are conducted in a systematic and transparent manner to obtain the free, prior and informed consent of Indigenous Peoples with regard to decisions likely to affect them, especially before the granting of licences for the conduct of economic activities in territories that they have traditionally possessed, occupied or used;
 - (c) Systematically incorporate in the prior consultation process the conduct of independent studies of the potential social, environmental and human rights impact of economic or natural resource exploitation projects in the Indigenous settlements concerned, publish the results of those studies and ensure that agreements on the implementation of such projects contain measures to mitigate their impact on economic, social and cultural rights, as well as sufficient compensation for the Indigenous Peoples concerned;
 - (d) Bear in mind the international obligations and commitments stemming from its ratification of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards.

Non-discrimination

18. The Committee is concerned at the persistence of discrimination against Indigenous Peoples and persons of African descent in the enjoyment of their economic, social and cultural rights. ...

19. The Committee recommends that the State party:

- (a) Adopt a comprehensive law on non-discrimination that provides sufficient protection against discrimination in keeping with article 2 of the Covenant and that: (i) explicitly includes all prohibited grounds for discrimination enumerated in that article and in general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights; (ii) defines direct and indirect discrimination in line with the State party's obligations under the Covenant; (iii) prohibits discrimination in the public and private spheres alike; and (iv) establishes effective judicial and administrative mechanisms to guard against discrimination, including the introduction of provisions on reparations in discrimination cases;
- (b) Adopt the measures, including affirmative action and awareness-raising campaigns, necessary to prevent and combat the persistent discrimination against all disadvantaged or marginalized persons and groups, particularly Indigenous Peoples and persons of African descent, so as to guarantee the full exercise of their rights under the Covenant....

Poverty

34. The Committee is concerned at the persistently high rate of poverty and extreme poverty in the State party, which affect in particular Indigenous Peoples, persons of African descent and persons living in rural areas. The Committee is further concerned by the persistent income and wealth inequality in the State party (art. 11).

35. The Committee recommends that the State party:

- (a) Step up its efforts to combat poverty, especially extreme poverty, by adopting a national poverty-reduction action plan that includes a human rights and gender focus and sufficient resources for its implementation and that duly addresses existing discrepancies and gaps between urban and rural areas;
- (b) Adopt effective measures to combat inequality, taking into account the needs of the most disadvantaged and marginalized segments of society, especially low income groups, Indigenous Peoples, persons of African descent and persons living in rural areas;
- (c) Take into consideration the Committee's 2001 statement on poverty and the Covenant.

Land disputes and forced evictions

36. The Committee is concerned by the lack of secure land tenure, which has led to serious social conflict and has undermined the right of Indigenous Peoples to the lands, territories and resources that they have traditionally occupied or possessed. The Committee is also concerned about reports that a considerable number of campesino and Indigenous families have been the victims of forced eviction that, owing to the lack of prior notice, the disproportionate use of force and the absence of resettlement measures, infringed international human rights standards (art. 11).

37. The Committee recommends that the State party:

- (a) Take the measures necessary to ensure equitable access to land and natural resources by guaranteeing legal security and agricultural rights, particularly for small-scale farmers;
- (b) Establish an effective mechanism to protect the right of Indigenous Peoples to possess, use, develop and control their lands, territories and resources in full

security, including by strengthening the process for the regularization, legal recognition and legal protection of territories in accordance with international standards;

- (c) Take effective measures against forced evictions in accordance with international human rights law, and ensure that victims have access to an effective remedy that allows the restitution of their property, return to their homes or land or a suitable alternative thereto, and appropriate compensation;
- (d) Take into consideration the Committee's general comment No. 7 (1997), which deals with the topic of forced evictions and contains, among others, guidance on appropriate legal remedies, adequate compensation and consultations.

Right to food

- 38. The Committee notes with concern the serious situation of food insecurity and the high rate of chronic child malnutrition in the State party, which primarily affect the Indigenous population.
- 39. The Committee recommends that the State party redouble its efforts to protect the right to adequate food and step up initiatives to provide an effective response to the situation of food insecurity and chronic child malnutrition, particularly in rural areas. The Committee further recommends that the State party increase investment in local agricultural production, including the possibility of reforming the agricultural sector, and enhance the productivity and market access of small-scale farmers so as to increase incomes in rural areas. The Committee refers the State party to its general comment No. 12 (1999) on the right to adequate food and to the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

Right to health

- 42. The Committee notes with concern that, despite the State party's efforts to improve access to health-care services, the low level of investment in health care continues to limit the accessibility, quality and availability of basic health-care services. Furthermore, the Committee is concerned that health-care costs are largely borne by the individual, thereby perpetuating serious inequalities in access to and enjoyment of the right to health by the most disadvantaged persons and groups, mainly low-income persons, Indigenous Peoples and persons living in rural or remote areas. It is also concerned that child mortality remains high in the State party, especially among low-income groups (art. 12).
- 43. The Committee recommends that the State party:
 - (a) Pursue its efforts to allocate sufficient resources to the health-care sector with a view to guaranteeing and improving the accessibility, availability and quality of health-care services for all persons without discrimination, low-income persons, Indigenous Peoples and persons living in rural or remote areas;
 - (b) Improve primary health-care infrastructure and ensure that hospitals throughout its territory have the necessary medical personnel, supplies and medicines, including for emergencies;
 - (c) Take measures, including affirmative action, to reduce existing inequalities in access to the right to health by, for example, extending health insurance to the most disadvantaged and marginalized groups, mainly low-income persons, Indigenous Peoples, persons of African descent and persons living in rural or remote areas....

Access to vaccines against coronavirus disease (COVID-19)

48. While it takes note of the explanations provided by the delegation, the Committee is concerned at how few people in the State party have been vaccinated against COVID-19.
49. The Committee recommends that the State party adopt a vaccination plan that guarantees access to all persons, without discrimination, to safe and effective vaccines against COVID-19 and to culturally appropriate information for Indigenous Peoples and persons of African descent.

Impact of the COVID-19 pandemic on the right to education

50. The Committee notes with concern the negative impact of the prevention measures adopted in the context of the COVID-19 pandemic on the right to education given that most students at the time did not, and still do not, have access to the Internet or technological and digital resources to pursue their studies online (arts. 13 and 14).
51. The Committee recommends that the State party take all the measures necessary to improve access to the Internet and technological and digital resources for students, especially those from low-income families, those belonging to Indigenous Peoples or peoples of African descent and those living in rural or remote areas, to ensure that education is accessible, available and affordable without discrimination.

Right to education

52. The Committee notes with concern the high dropout rate among girls, especially in rural areas, since they cannot continue their studies due to early pregnancy, as well as the lack of appropriate sexual and reproductive education programmes. The Committee is concerned that illiteracy remains high, particularly among Indigenous Peoples (arts. 13 and 14).

Cultural rights

54. The Committee is concerned at the continuous persecution of community-based Indigenous radio stations in the State party, which significantly curbs Indigenous Peoples' enjoyment of freedom of expression and cultural rights.
55. The Committee urges the State party to adopt, with the involvement of Indigenous Peoples, a legal framework on community-based media that respects their right to take part in cultural life. It also urges the State party to take the measures necessary to prevent the arbitrary use of the criminal law to prosecute operators of community-based Indigenous radio stations. Lastly, it urges the State party to take the measures necessary to comply with the judgment in the case of the *Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala* of 6 October 2021.

3. DRC, E/C.12/COD/CO/6, 28 March 2022

Rights of indigenous peoples

14. The Committee notes with satisfaction the adoption by the National Assembly, in April 2021, of the Act on the Protection and Promotion of the Rights of Indigenous Peoples. However, it is concerned by the fact that the Act has not yet been passed by the Senate and that the Batwa indigenous peoples continue to face persistent discrimination and exclusion that have an adverse effect on the effective enjoyment of their economic, social and cultural rights. The Committee is likewise concerned about the lack of recognition of their rights in respect of access to land and their

ancestral territories, including natural resources, and their lack of involvement in matters affecting them (arts. 1 and 2).

15. The Committee recommends that the State party:
 - (a) Recognize the rights of the indigenous peoples who are under its jurisdiction and take effective steps, in consultation with them, to combat the discrimination and exclusion they face;
 - (b) Protect and guarantee, in law and in practice, the right of indigenous peoples to freely dispose of their lands, territories and natural resources, including their right to be consulted with a view to obtaining their free, prior and informed consent;
 - (c) Accelerate the process of adopting and promulgating the Act on the Protection and Promotion of the Rights of Indigenous Peoples, and put in place the mechanisms necessary to ensure that it is effectively implemented with the involvement of the indigenous peoples concerned;
 - (d) Consider ratifying the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Use of natural resources

16. The Committee notes the efforts made to reinforce the legal framework for the mining and logging industries by amending the Forestry Code and the Mining Code. It remains, however, concerned about reports that the amendments are not being effectively implemented and that mining and logging activities are having an adverse impact on the traditional lifestyles of the populations concerned, including indigenous peoples, on their access to land, adequate food supplies, water and a decent standard of living, and on their participation in cultural life. The Committee is also concerned about acts of violence and intimidation committed against the communities concerned, including against the “eco-guards” working in natural parks (arts. 1 and 11).
17. The Committee recommends that the State party:
 - (a) Draw up clear guidelines and rules for evaluating the possible impact on the enjoyment of economic, social and cultural rights and the environment of economic development and natural resource exploitation initiatives, including mining and logging activities, throughout the State party;
 - (b) Take the steps necessary to ensure that the communities affected by activities linked to economic development and the exploitation of natural resources in their territories are consulted, receive compensation for damage and loss, and draw tangible benefits from such activities.
 - (c) Prevent acts of violence and intimidation against the communities concerned and the eco-guards working in natural parks, and guarantee effective protection for them, including through the intermediary of the Congolese Institute for Nature Conservation.

Business and human rights

18. The Committee regrets that it has not received specific information on the application of social and environmental responsibility to mining and logging businesses, nor on the possibility of engaging in negotiations with international businesses to ensure the exercise of reasonable diligence in respect of human rights.

19. The Committee recommends that the State party:

- (a) Take legislative and administrative measures, including the adoption of a plan of action, to ensure that the activities carried out by national and international businesses do not have an adverse effect on the enjoyment of economic, social and cultural rights;
- (b) Revise the legal framework governing social and environmental responsibility and the legal regime and regulatory standards applicable to mining and logging businesses to impose on them an obligation to exercise reasonable diligence in respect of human rights with a view to identifying the risks of violation of the rights protected by the Covenant, preventing and mitigating these risks, and preventing violations of these rights;
- (c) Refer to the Committee's general comment No. 24 (2017) on State obligations under the Covenant in the context of business activities.

Climate change

20. The Committee is concerned about the adverse effects of mining and logging activities on the environment. It is also concerned about the effects of deforestation on climate change, and the fact that, although a moratorium was imposed on logging concessions in 2002, agreements for the exploitation of forest resources have continued to be granted (art. 11).

21. The Committee recommends that the State party ensure that natural resources, including forest resources, are used in accordance with a fair and equitable conservation policy, in consultation with the communities concerned, indigenous peoples, civil society organizations and the authorities responsible for conservation. It urges the State party to respect the implementation of the moratorium on logging concessions. The Committee recommends that the State party continue its efforts to take the measures necessary to mitigate the negative impact of climate change on economic, social and cultural rights.

Non-discrimination

26. The Committee notes with concern that the State party has not yet adopted a comprehensive anti-discrimination law that covers all grounds for discrimination in all areas covered by the Covenant. It is also concerned about the lack of effective measures to combat the de facto discrimination in the effective enjoyment of economic, social and cultural rights that is experienced by indigenous peoples, and in particular the Batwa, internally displaced persons and persons with disabilities (art. 2 (2)).

27. The Committee recommends that the State party:

- (a) Adopt a broad anti-discrimination law, in accordance with article 2 (2) of the Covenant and general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, that prohibits direct and indirect discrimination on any grounds in all areas covered by the Covenant;
- (b) Ensure access to effective remedies for victims of discrimination, including the possibility of obtaining redress;
- (c) Effectively prevent and combat discrimination against indigenous peoples, particularly the Batwa, internally displaced persons and persons with disabilities, notably through awareness-raising campaigns and affirmative action measures, in order to guarantee the enjoyment of all Covenant rights by all persons without discrimination.

Poverty and inequality

46. The Committee notes with concern that poverty rates remain very high, affecting around 82 per cent of the population, with women, children and indigenous peoples disproportionately affected. The Committee is also concerned about the high levels of inequality in the State party (art. 11).
47. The Committee recommends that the State party redouble its efforts to combat social inequality and poverty, particularly extreme poverty, inter alia by implementing inclusive development models that benefit the most disadvantaged first and foremost and undertaking a thorough evaluation of existing programmes and strategies with a view to identifying obstacles and making the changes necessary to allow for the implementation of a comprehensive poverty reduction strategy. The Committee also recommends that the State party ensure that this strategy is accompanied by clear-cut, measurable objectives; is allocated the necessary resources; includes effective mechanisms for coordination between the various actors; is implemented in accordance with human rights standards and principles; and takes due account of existing regional disparities and the real needs of the population, especially those of the most disadvantaged and marginalized groups. In this connection, the Committee refers the State party to the statement on poverty and the Covenant that it adopted in 2001.

Right to food

48. The Committee notes with concern that a large number of people (approximately 27.7 million) continue to experience acute food insecurity and that a very large number of children are chronically malnourished (3.6 million). It is also concerned about the impact of the food crisis on the most disadvantaged and marginalized groups, including internally displaced persons and indigenous peoples (art. 11).
49. The Committee urges the State party to:
- (a) Take immediate action to address chronic malnutrition, including by adopting emergency action plans incorporating clear-cut targets for reducing rates of chronic malnutrition in the State party;
 - (b) Adopt a legislative and institutional framework and a global strategy for guaranteeing the right to adequate food and combating hunger and chronic malnutrition, and seek technical support for addressing food insecurity from the Food and Agriculture Organization of the United Nations;
 - (c) Step up its efforts to improve the productivity of smallholder farmers by facilitating their access to appropriate technologies and local markets with a view to raising income levels, particularly in rural areas;
 - (d) Refer to general comment No. 12 (1999) on the right to adequate food and to the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted by the Council of the Food and Agriculture Organization of the United Nations in 2004.

Right to education

58. The Committee notes the State party's efforts to guarantee free education. However, it remains concerned about: ... (b) The persistent inequalities in access to education affecting children who are internally displaced and Batwa children in particular....
59. The Committee recommends that the State party assume primary responsibility for providing a quality education for all children and, to this end, that it: ... (b) Take

the measures necessary to guarantee access to education for all children, including internally displaced children, Batwa children, and children in rural areas....

Cultural rights

60. The Committee notes with concern the absence of measures to promote cultural diversity and broaden knowledge of Batwa culture, traditions and traditional knowledge (art. 15).
61. The Committee recommends that the State party take the measures necessary to promote awareness of the Batwa heritage, and create conditions that enable the Batwa to safeguard, develop, express and share their history, culture, traditions, traditional knowledge and customs.

4. Nicaragua, E/C.12/NIC/CO/5, 15 October 2021

Positive aspects

4. The Committee welcomes the measures taken by the State party to strengthen the promotion and protection of economic, social and cultural rights, particularly for persons with disabilities and the indigenous and Afrodescendent peoples. The Committee also welcomes the efforts and progress made by the State party in combating poverty, reducing the gender gap in the areas of employment, education and health, and increasing access to education for children and adolescents.

National dialogue and cooperation with international and regional human rights mechanisms

5. The Committee notes with concern that forums for participation and dialogue at the national and international levels, particularly with mechanisms for the promotion and protection of human rights, are being closed down.
6. The Committee urges the State party to take the necessary steps to re-establish forums for open and constructive participation and dialogue with all stakeholders at the national level, including representatives of civil society, academia and the private sector, representatives and leaders of indigenous and Afrodescendent peoples, and human rights defenders. The Committee also urges the State party to re-establish dialogue and cooperation at the international level with regional and universal human rights protection mechanisms.

Rights of indigenous peoples

11. The Committee is concerned to have received reports highlighting the lack of appropriate mechanisms for guaranteeing the right of indigenous peoples to be consulted about decisions that may affect their rights, including their rights to the territories that they have traditionally occupied. The Committee is concerned to note that the State party failed to carry out appropriate prior consultation procedures before approving large investment projects that could affect the rights of indigenous peoples, such as the concession for the construction of the Grand Interoceanic Canal. The Committee is also concerned to note allegations that the State party has promoted the establishment of parallel governments to supplant the representative bodies of legitimately constituted communities of indigenous peoples, which affects consultation procedures and facilitates the usurpation of indigenous territories. It is also concerned about the stagnation of efforts to regularize indigenous territories and address the lack of effective mechanisms for the protection of indigenous peoples' rights to their lands, territories and resources.

The Committee is concerned about the serious social conflicts and violent disputes over the possession and use of lands and territories that arise between indigenous peoples and third parties that occupy or wish to exploit the natural resources in such territories, particularly in territories belonging to the indigenous and Afrodescendent peoples on the Caribbean coast (art. 1).

12. The Committee recommends that the State party:
 - (a) Design, adopt and implement, in consultation with indigenous and Afrodescendent peoples, an appropriate procedure to guarantee their right to be consulted with a view to obtaining their free, prior and informed consent to any legislative or administrative measure that may affect their rights and territories, and ensure that the procedure takes their traditions and cultural specificities into account;
 - (b) Ensure that communal authorities that are legitimately constituted and designated by indigenous peoples are not supplanted by parallel authorities in decision-making processes that may affect such peoples;
 - (c) Establish an effective mechanism that has sufficient human, technical and financial resources to protect the rights of indigenous peoples to possess, use, develop and control their lands, territories and resources in full security, including by strengthening the process of regularizing, legally recognizing and legally protecting territories in accordance with international standards;
 - (d) Conduct an impartial and thorough investigation into cases involving the usurpation of indigenous lands and territories and acts of violence carried out by third-party occupants against members of indigenous and Afrodescendent peoples.

Non-discrimination

17. The Committee is concerned to note allegations that persons who oppose or criticize the Government are subjected to discrimination on the basis of political opinion that affects the exercise and enjoyment of their economic, social and cultural rights, in particular their right to work and their access to health services. It is also concerned about the lack of information on the impact of measures taken to combat discrimination against indigenous and Afrodescendent peoples and discrimination on the grounds of disability, sexual orientation and gender identity (art. 2).
18. The Committee recommends that the State party take appropriate measures to ensure that no one is subjected to discrimination that affects their access to economic, social and cultural rights, including by adopting comprehensive anti-discrimination legislation that guarantees adequate protection against discrimination, in accordance with article 2 of the Covenant and taking into account general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. The Committee urges the State party to prevent and combat discrimination on the grounds of political opinion and to ensure that all victims of such acts have access to effective legal and administrative remedies to guarantee their protection.

Right to work

21. The Committee regrets that the State party has not provided up-to-date, disaggregated statistical information on employment, unemployment and underemployment rates and on the availability and accessibility of technical and vocational education programmes. The Committee is concerned about the high

levels of unemployment and the significant number of persons working in the informal sector, in particular women and persons belonging to indigenous or Afrodescendent groups (arts. 6, 7 and 9).

Poverty

34. Despite the efforts made by the State party, the Committee is concerned to note that poverty levels remain high, particularly in rural areas and in the autonomous regions of the Caribbean coast, which are mainly inhabited by indigenous and Afrodescendent peoples. The Committee is concerned about reports that the poverty rate has increased as a result of the sociopolitical and health crises and the devastating impact of Hurricanes Iota and Eta on the Caribbean coast (art. 11).
35. The Committee recommends that the State party take the necessary measures to combat poverty, especially extreme poverty, by adopting a national action plan that incorporates a human rights-based approach, has sufficient resources for its implementation and takes due account of the disparities and gaps between urban and rural areas and the social exclusion of the indigenous and Afrodescendent peoples living in the autonomous regions of the Caribbean Coast in order to ensure the full enjoyment of their human rights, in particular their economic, social and cultural rights.

Right to an adequate standard of living

36. The Committee notes with concern the information received about the negative impact of some firms' natural-resource exploitation projects, which cause irreparable damage to the environment and impinge on the right to health and the right to an adequate standard of living of the affected communities, particularly those of indigenous and Afrodescendent peoples (arts. 1, 11 and 12).
37. The Committee recommends that the State party:
 - (a) Draft clear guidelines and regulations for evaluating the social and environmental impact of natural-resource exploitation projects throughout the territory of the State party, in particular those carried out in territories belonging to indigenous or Afrodescendent peoples;
 - (b) Ensure that communities affected by the exploitation of natural resources in their territory, including communities of indigenous or Afrodescendent peoples, are consulted and receive compensation for damages or losses incurred and a share of the profits from the activities.

Cultural rights

50. The Committee notes with concern that the measures adopted by the State party have not done enough to promote respect for the cultural diversity of indigenous and Afrodescendent peoples or to disseminate information about their cultures (art. 15).
51. The Committee recommends that the State party take all necessary steps to strengthen the protection of cultural rights and respect for cultural diversity by fostering an environment that enables Afrodescendent communities to preserve, develop, express and share their identity, history, culture, traditions and customs.
57. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 10 (human

rights defenders), 12 (a) and (b) (rights of indigenous peoples) and 43 (management of the COVID-19 pandemic) above.

5. Bolivia, E/C.12/BOL/CO/3, 15 October 2021

Human rights defenders

8. The Committee is concerned about the security conditions in which human rights defenders operate, particularly in defending economic, social, cultural and environmental rights and the rights to territory and natural resources. It is also concerned about the obstacles faced by the Ombudsman's Office in the performance of its functions (art. 2 (1)).
9. The Committee recommends that the State party:
 - (a) Adopt a comprehensive policy to protect defenders of economic, social and cultural rights that includes measures to prevent attacks, in particular against indigenous peoples. In addition, the Committee urges the State party to combat the culture of impunity surrounding such attacks by investigating threats, harassment and violence and ensuring that perpetrators are punished. The Committee reminds the State party of its statement on human rights defenders and economic, social and cultural rights;
 - (b) Strengthen the capacities of the Ombudsman's Office, given its crucial role in the observance of and respect for the rights enshrined in the Covenant.

Indigenous peoples and territories

12. The Committee acknowledges the progress made by the State party in recognizing the rights of indigenous peoples and its efforts to enshrine in the Constitution four types of autonomous entity, namely departments, regions, municipalities and indigenous and aboriginal communities, in accordance with Act No. 031 of 2010. However, the Committee is concerned about claims that indigenous and aboriginal communities face obstacles to obtaining autonomous status, including requirements such as certification of viable governance and the lack of progress made in the accreditation processes already begun. The Committee also notes with concern that there are no regulations accompanying Act No. 450 of 2013 on the protection of highly vulnerable indigenous peoples and that Act No. 073 of 2010 on jurisdictional demarcation does not guarantee full protection for indigenous and aboriginal jurisdiction (art. 1 (2)).
13. The Committee recommends that the State party:
 - (a) Ensure legal certainty for indigenous peoples over lands, territories and natural resources traditionally occupied and used by them, and adopt the necessary measures to facilitate the attainment of autonomous status for indigenous and aboriginal communities;
 - (b) Approve the regulations of Act No. 450 of 2013 on the protection of highly vulnerable indigenous peoples and amend Act No. 073 of 2010 on jurisdictional demarcation;
 - (c) Expedite the training of public authorities and officials, particularly justice officials, on the economic, social and cultural rights of indigenous peoples. Right to be consulted and to free, prior and informed consent.
14. The Committee regrets the delays in adopting a framework act on free, prior and informed consultation, and the fact that the regulations governing mining and hydrocarbons do not guarantee consultation processes that meet international

standards. The Committee is concerned that the right of indigenous peoples to prior consultation in decisions that may affect them, including in connection with mining, hydrocarbon and infrastructure projects, is not widely respected. In particular, it regrets the irregularities surrounding the road-building project in Isiboro Sécure National Park and Indigenous Territory (art. 1 (2)).

15. The Committee recommends that the State party:
 - (a) Strengthen its regulations through consultations with indigenous peoples on the development of the legal, administrative and public policy framework for the enjoyment of the right to be consulted and to free, prior and informed consent, and update, in particular, its regulations on mining and hydrocarbons;
 - (b) Ensure adequate consultation with, and the free, prior and informed consent of, indigenous peoples regarding all legislative or administrative measures liable to affect them directly;
 - (c) Adopt measures to guarantee the integrity of the Isiboro Sécure National Park and Indigenous Territory.

Unemployment

26. While welcoming the reduction in unemployment under the 2017–2022 Job Creation Scheme, the Committee regrets that insufficient steps have been taken to tackle job losses resulting from the crisis triggered by the coronavirus disease (COVID-19) pandemic, especially among groups traditionally affected by unemployment, such as young persons, indigenous persons ... (art. 6).

Conditions of work

30. The Committee is concerned about groups who are exposed to difficult working conditions, violence and abuse in the informal economy, in particular indigenous persons... (arts. 2, 6 and 7).

Poverty

42. The Committee recognizes the significant reduction in poverty and the improvements in several social indicators during the reporting period. However, the Committee is concerned that the poverty rate remains high. It is also concerned about the lack of sufficient measures to mitigate the economic impact of the COVID-19 pandemic and about the persistent socioeconomic gaps between rural and urban populations and between indigenous and nonindigenous populations (art. 11).
43. The Committee recommends that the State party strengthen immediate measures to mitigate the social and economic effects of COVID-19, particularly on vulnerable groups. It also urges the State party to step up its efforts to further reduce poverty and close inequality gaps between the rural and urban populations and between the indigenous and non-indigenous populations. To that end, it recommends that a human rights approach be incorporated into poverty reduction strategies. In that connection, the Committee invites the State party to consult its statement on poverty and the Covenant.

Maternal mortality

52. The Committee welcomes the reduction in the maternal mortality rate, but regrets that it continues to be one of the highest in the region and that there are still gaps in access to obstetric services for indigenous women and women living in rural areas.

53. The Committee recommends that the State party redouble its efforts to reduce maternal mortality and the gaps in access to obstetric services in rural areas and among the indigenous and Afro-Bolivian populations.

Right to education

58. The Committee welcomes the State party's achievements in reducing school dropout rates and illiteracy. However, the Committee is concerned that the secondary education completion rate remains a challenge, particularly for students from rural areas, indigenous and Afro-Bolivian backgrounds or other disadvantaged and marginalized groups. ...

59. The Committee recommends that the State party:

- (a) Compile disaggregated data on the school dropout rate among students from rural areas, indigenous and Afro-Bolivian backgrounds or other disadvantaged and marginalized groups;
- (b) Adopt concrete and specific measures to reduce the school dropout rate, especially in secondary education, with respect to students from rural areas or indigenous and Afro-Bolivian backgrounds....

Impact of COVID-19 on the right to education

60. The Committee is concerned about the impact on education of the measures taken in 2020 owing to the spread of COVID-19, including the suspension of in-person classes, which has exacerbated disparities in access to quality education, particularly for indigenous students who live in rural areas and/or lack access to the Internet or new technologies (art. 13).

Multilingual and intercultural education

62. Within the framework of the Multilingual and Intercultural Education Policy and the Basic Curriculum of the Plurinational Education System, the Committee notes the steps taken by the State party to adopt and implement a number of regional intercultural curricula, but is concerned at their insufficient implementation and at the lack of such curricula for the Juaniquina, Cayubaba and Itonama indigenous nations and peoples (arts. 13 and 15).

63. The Committee recommends that the State party:

- (a) Evaluate the implementation of these regional curricula and ensure that they are adapted to the needs of the various indigenous peoples;
- (b) Adopt measures to approve and implement regional intercultural curricula for the Juaniquina, Cayubaba and Itonama indigenous nations and peoples.

Indigenous languages

64. The Committee welcomes the broad regulatory framework supporting the linguistic rights of indigenous nations and peoples, such as Act No. 269 of 2012. However, the Committee is concerned about the preservation of indigenous languages in the State party, especially those at risk of disappearance, which has direct implications for the exercise of cultural rights by indigenous peoples. The Committee regrets that only a small number of public officials fulfil the requirement to speak an indigenous language in order to guarantee access to the public services they provide (art. 15).

65. The Committee recommends that the State party adopt the necessary measures for the preservation of indigenous languages, including the approval of the regulations

on the effective implementation of Act No. 450 on the protection of highly vulnerable indigenous and aboriginal nations and peoples. It further recommends ensuring the promotion of the use of all indigenous languages in the public sphere.

Cultural diversity

66. The Committee expresses its concern about a number of demonstrations of discrimination against indigenous peoples in the State party. Furthermore, the Committee notes with concern the existence of a public discourse that uses ethnic identity as a criterion for exclusion and division, particularly in the context of the 2019 sociopolitical crisis (arts. 2 and 15).
67. The Committee recommends that the State party:
 - (a) Implement a comprehensive policy that places value on diversity and plurality and rejects all forms of discrimination;
 - (b) Create spaces for consensus and dialogue in order to protect, promote and appreciate cultural diversity and ensure that it is perceived by the general public as an element that enriches, rather than divides, society.

6. Finland, E/C.12/FIN/CO/7, 20 March 2021

Cultural rights of the Sami

50. The Committee is concerned that legislative changes, infrastructure projects and incursions into their lands have eroded the rights of the Sami to maintain their way of life and traditional livelihoods, including reindeer husbandry and fishing. It is also concerned at the lack of a legal obligation to conduct consultations with a view to obtaining the free, prior and informed consent of the Sami on matters that affect their lands and resources. Moreover, the Committee regrets the delay in the ratification of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) (arts. 1 (1), 2 (2), 11 and 15).
51. The Committee urges the State party to act upon instances of infringement on the rights of the Sami in order to maintain their culture, way of life and traditional livelihoods. In this regard, it recommends that the State party assess the impact of existing laws on these rights and enact the necessary amendments, including in the context of the revision of the Reindeer Husbandry Act. Moreover, the Committee urges the State party to strengthen the legal recognition of the Sami as indigenous peoples and the legal and procedural guarantees for obtaining the free, prior and informed consent of the Sami in line with international standards. It also encourages the State party to expedite the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) . The Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

7. Norway, E/C.12/NOR/CO/6, 2 April 2020

Data collection

12. The Committee is concerned about the absence of data disaggregated by ethnic or indigenous origin in the State party, which makes it difficult to assess the level of enjoyment of Covenant rights by the Sami and persons belonging to ethnic minority groups.
13. The Committee recommends that the State party improve the data-collection system to collect data disaggregated by ethnic or indigenous origin with a view to tracking progress in the realization of Covenant rights and designing effective and

targeted measures to increase the level of enjoyment of Covenant rights by the Sami and persons belonging to ethnic minority groups towards full realization.

Cultural rights

46. The Committee notes various measures taken by the State party to protect and preserve Sami languages and cultural heritage. Nevertheless, the Committee remains concerned that the right of Sami children to education in Sami languages as languages of instruction is not fully guaranteed in practice. It is also concerned about reports by the Sami Parliament that the facilities for the preservation of Sami cultural artefacts have received much less government support than those of other Norwegian cultural items and that there was an insufficient number of facilities for Sami cultural items (arts. 13–15).
47. The Committee recommends that the State party intensify its efforts to ensure that all Sami children, whether living in the Sami districts or elsewhere, fully enjoy their right to education in Sami languages as languages of instruction, and to provide sufficient resources, including financial and technical resources, for the preservation and exhibition of Sami cultural artefacts.

B. GENERAL COMMENTS

1. No. 26 land and economic, social and cultural rights, E/C.12/GC/26, (first published on 22 December 2022)⁴²

I. Introduction

1. Land plays an essential role in the realization of a range of rights under the International Covenant on Economic, Social and Cultural Rights. Secure and equitable access to, use of and control over land for individuals and communities can be essential to eradicate hunger and poverty and to guarantee the right to an adequate standard of living. The sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment and to promote the right to development, among other rights. In many parts of the world, land is not only a resource for producing food, generating income and developing housing, it also constitutes the basis for social, cultural and religious practices and the enjoyment of the right to take part in cultural life. At the same time, secure land tenure systems are important to protect people's access to land as a means of guaranteeing livelihoods and avoiding and regulating disputes.
2. However, the current use and management of land are not conducive to the realization of the rights enshrined in the Covenant. The most important factors in this trend are the following:
 - (a) The increased competition for access to and control over land. Long-term trends in high demand for land and rapid urbanization in most parts of the world have had a significant impact on the rights of many, in particular peasants, rural communities, pastoralists, fisherfolk and Indigenous Peoples, as well as persons living in poverty in urban areas;
 - (b) In cities, the financialization of housing markets has led to competition between different groups for access to and control over land and has encouraged speculation and inflation, affecting the rights of those left behind to an adequate standard of living and to adequate housing;

⁴² The date on the document of 24 January 2023.

- (c) In rural areas, competition for arable land resulting from demographic growth, urbanization, large-scale development projects and tourism has significantly affected the livelihoods and rights of rural populations;
 - (d) Land degradation owing to overuse, poor management and unsustainable agricultural practices has caused food insecurity and water degradation and is directly linked to climate change and environmental degradation, escalating the risk of widespread, abrupt and irreversible environmental changes, including massive desertification;
 - (e) Measures to mitigate climate change, such as large-scale renewable energy projects or reforestation measures, might contribute to such trends when not adequately managed;
 - (f) Global trends, including climate change and the resulting increase in internal and cross-border migration, are likely to increase tensions over the access to and use and tenure of land, with negative implications for human rights;
 - (g) Weak, mismanaged, corrupt or non-existent legal and institutional frameworks for the governance of land tenure exacerbate these problems and lead to land disputes and conflicts, social inequality, hunger and poverty.
3. Concerns relating to access to, use of and control over land have led in recent years to the adoption of a number of international instruments that have significantly influenced national legislation and policy and have been widely endorsed by Governments. In 2004, the Council of the Food and Agriculture Organization of the United Nations (FAO) adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, 2 which contain several provisions relating to access to natural resources, including land and water. In 2012, the Committee on World Food Security endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which have acquired a high degree of legitimacy owing to, inter alia, the inclusive nature of that Committee. In 2014, the Committee on World Food Security endorsed the Principles for Responsible Investment in Agriculture and Food Systems, which address, inter alia, the human rights implications of agricultural investments. In 2007, in its resolution 61/295, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples and in 2018, in its resolution 73/165, it adopted the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, in both of which the Assembly recognized a right to land for these populations. Indeed, the importance of land for the realization of many human rights has led some scholars, civil society organizations and special rapporteurs to consider land as a human right, with reference to all the rights, entitlements and State obligations relating to land. One example is the basic principles and guidelines on development-based evictions and displacement, which were drawn up by the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living.
 4. The present general comment was formulated on the basis of the Committee's experience in its review of State party reports and in the light of its other general comments and its Views and decisions on communications. It is aimed at clarifying States' obligations relating to the impact of access to, use of and control over land on the enjoyment of the rights enshrined in the Covenant, especially for the most disadvantaged and marginalized individuals and groups. Thus, it is aimed at clarifying the specific obligations contained in the Covenant that relate to land, particularly in the context of the rights enshrined in articles 1–3, 11, 12 and 15.

II. Provisions of the Covenant relating to land

5. Secure and equitable access to, use of and control over land can have direct and indirect implications for the enjoyment of a range of rights enshrined in the Covenant.
6. First, land is crucial to guarantee the enjoyment of the right to adequate food, as land is used in rural areas for the purpose of food production. Consequently, if land users are deprived of the land they use for productive purposes, their right to adequate food might be endangered. Article 11 (2) of the Covenant provides that States parties, recognizing the connection between the right to be free from hunger and the utilization of natural resources, which include land, should develop or reform agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources. In the Committee's general comment No. 12 (1999) on the right to adequate food and in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, the importance of access to productive resources is highlighted as a key element for the realization of the right to adequate food, particularly in rural areas, where most peasants and pastoralists live and where people are more likely to experience hunger.
7. Second, as access to land provides space for housing, the enjoyment of the right to adequate housing depends largely on having secure access to land. Without such access, people could be subject to displacement and forced eviction, which could violate their right to adequate housing. Secure access to land in rural areas serves the rights to both adequate food and housing, as housing is often built on land used for the purpose of food production.
8. Third, land is also directly linked to the enjoyment of the right to water. For example, the enclosure of communal grounds deprives people from access to water sources that are necessary to meet their personal and domestic needs.
9. Fourth, the use of land may affect the enjoyment of the right to the highest attainable standard of physical and mental health. For example, land use that relies on pesticides, fertilizers and plant growth regulators or that results in the production of animal waste and other microorganisms has contributed to various respiratory diseases.
10. Fifth, land is closely and often intrinsically related to the enjoyment of the right to take part in cultural life owing to the particular spiritual or religious significance of land to many communities, for example, when land serves as a basis for social, cultural and religious practices or the expression of cultural identity. This is particularly relevant for Indigenous Peoples and for peasants and other local communities living traditional lifestyles.
11. Sixth, land is also closely linked to the right to self-determination, enshrined in article 1 of the Covenant, the importance of which was emphasized in Declaration on the Right to Development (1986). The realization of self-determination is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. Indigenous Peoples can freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends only if they have land or territory in which they can exercise their self-determination. The present general comment deals only with the internal self-determination of Indigenous Peoples, which has to be exercised in accordance with international law and respecting the territorial integrity of States. Thus, according to their right to internal self-determination, the

collective ownership of lands, territories and resources of Indigenous Peoples shall be respected, which implies that these lands and territories shall be demarcated and protected by States parties.

III. Obligations of States parties under the Covenant

A. Non-discrimination, equality and groups or persons requiring particular attention

12. Under articles 2 (2) and 3 of the Covenant, States parties are required to eliminate all forms of discrimination and to ensure substantive equality. Accordingly, States parties shall undertake regular reviews to ensure that domestic laws and policies do not discriminate against people on any prohibited grounds. They should also adopt specific measures, including legislation, aimed at eliminating discrimination against both public and private entities in relation to rights under the Covenant in land-related contexts. In particular, women, Indigenous Peoples, peasants and other people working in rural areas deserve special attention, either because they have been traditionally discriminated against in terms of access to, use of and control over land or because of their particular relationship to land.

[...]

2. Indigenous Peoples

16. The right of Indigenous Peoples over the lands and territories they have traditionally occupied is recognized in international law. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and the United Nations Declaration on the Rights of Indigenous Peoples (arts. 25–28) both recognize Indigenous Peoples' right to land and territory. These sources of international human rights law provide for respect for and the protection of the relationship that Indigenous Peoples have with their lands, territories and resources, requiring States to demarcate their lands, protect those lands from encroachment and respect their right to manage the lands according to their internal modes of organization. The spiritual relationship of Indigenous Peoples to land is linked not only to spiritual ceremonies but also to every activity on land, such as hunting, fishing, herding and gathering plants, medicines and foods. Thus, States parties should ensure Indigenous Peoples' right to maintain and strengthen their spiritual relationship with their lands, territories and resources, including waters and seas in their possession or no longer in their possession but which they owned or used in the past. Indigenous Peoples have the right to have their lands demarcated, and relocation should be allowed only under narrowly defined circumstances and with the prior, free and informed consent of the groups concerned. Laws and policies should protect Indigenous Peoples from the risk of State encroachment on their land, for instance for the development of industrial projects or for large-scale investments in agricultural production. Regional human rights courts have contributed to strengthening the rights of Indigenous Peoples to their lands and territories. Both the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights have taken the view that Indigenous Peoples who have unwillingly lost possession of their lands without their free and prior consent after a lawful transfer to third parties "are entitled to restitution thereof or to obtain other lands of equal extension and quality".

17. In recent jurisprudence of regional human rights courts, some of the rights applicable to Indigenous Peoples concerning land have been extended to some traditional communities that maintain a similar relationship to their ancestral lands, centred on the community rather than the individual.

3. Peasants and other people working in rural areas

18. Access to land has particular importance for the realization of the rights of peasants and other people working in rural areas worldwide. For peasants, access to land and other productive resources is so important for the realization of most rights under the Covenant that it implies for them a right to land. Articles 5 and 17 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognize this right to land for peasants and other people working in rural areas, which include agricultural workers, pastoralists and fisherfolk. This right can be exercised individually and collectively. It includes the right to have access to, sustainably use and manage land to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures. States should take measures to support peasants to use the land in a sustainable manner, to maintain soil fertility and its productive resources, and to ensure that their methods of production do not endanger the environment for others, in terms of aspects such as access to clean water and preservation of biodiversity.
19. If disputes over land arise between Indigenous Peoples or peasants, States shall provide mechanisms for the adequate settlement of those disputes, making every effort to satisfy the right to land of both groups. Both groups depend to a large extent on access to communal lands or to collective ownership. Respect for Indigenous Peoples' self-determination and their customary land tenure system necessitates recognition of their collective ownership of lands, territories and resources. There are also other groups, including peasants, pastoralists and fisherfolk, for whom access to communal lands or the commons for gathering firewood, collecting water or medicinal plants or for hunting and fishing is essential. Customary forms of property may provide security for people who depend on commons and for whom formal property rights are generally not an appropriate solution. However, ill-conceived attempts to formalize customary tenure rights through titling schemes and the enclosure of communal lands might exclude such people from access to resources on which they depend, affecting the right to food, the right to water and other rights enshrined in the Covenant. Consequently, States have an obligation to guarantee secure access to legitimate land users without discrimination, including those who depend on collective or communal land.

B. Participation, consultation and transparency

20. Participation, consultation and transparency are key principles for the implementation of obligations arising from the Covenant, including in relation to land. Individuals and communities shall be properly informed about and allowed to meaningfully participate in decision-making processes that may affect their enjoyment of rights under the Covenant in land-related contexts, without retaliation. Equal access to sufficient and transparent information for all parties involved in decision-making is key for human rights-based participation in decision-making. States parties should develop relevant laws, policies and procedures to ensure transparency, participation and consultation in relation to decision-making affecting land, including in relation to land registration, land administration and land transfers, as well as prior to

evictions from land. Decision-making processes should be transparent, organized in the relevant languages, without barriers and with reasonable accommodation for all involved.

21. Decision-making processes should be widely publicized and include procedures to grant access to all relevant documents. Affected persons need to be contacted prior to any decision that might affect their rights under the Covenant. The international legal standard for Indigenous Peoples is that of free, prior and informed consent, which needs to be a process of dialogue and negotiation where consent is the objective. Indigenous Peoples shall not only be involved in decision-making processes, but shall also be able to actively influence their outcome. Consent is required for relocation, as stated in article 10 of the United Nations Declaration on the Rights of Indigenous Peoples. The right to participate is meaningful only when its use does not entail any form of retaliation.

C. Specific obligations of States parties

[...]

2. Obligation to protect

26. The obligation to protect requires States parties to adopt measures to prevent any person or entity from interfering with the rights enshrined in the Covenant relating to land, including the access to, use of and control over land. States parties shall protect access to land by ensuring that no one is forcibly evicted and that their access rights to land are not otherwise infringed by third parties. States parties should also ensure that legitimate tenure rights are protected in all processes relating to transfer of these rights, including voluntary or involuntary transactions because of investments, land consolidation policies or other land-related readjustment and redistribution measures.
27. Notwithstanding the type of land tenure systems put in place, States parties shall take measures to ensure that all persons possess a reasonable degree of security in relation to their relationship with land and to protect legitimate tenure rights holders from eviction, illegal land dispossession, appropriation, harassment and other threats. In addition, States parties should take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with the persons and groups concerned. States parties should also recognize and protect communal dimensions of tenure, particularly in relation to Indigenous Peoples, peasants and other traditional communities who have a material and spiritual relationship with their traditional lands that is indispensable to their existence, well-being and full development. That includes the collective rights of access to, use of and control over lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired. Legal frameworks should therefore avoid the increased concentration of land ownership and privileges within land tenure systems, including when the motivation to change the legal framework stems from international agreements.
28. States parties should develop laws and policies to guarantee that land-based investments are made in a responsible manner. That requires the early participation of all affected parties and the fair regulation of transfer processes. In all land-related investment processes, affected persons or groups shall have access to complaint mechanisms that allow them to challenge decisions of local governments, investment boards or other relevant parties before the start of the investment and up to the payment of fair compensation. Human rights impact assessments

shall be conducted to identify potential harm and options to mitigate it. Principles for responsible investors and investment need to be determined by law and shall be enforceable. Responsible investments shall respect legitimate tenure rights and shall not harm human rights and legitimate policy objectives such as food security and the sustainable use of natural resources. States parties should provide transparent rules on the scale, scope and nature of allowable transactions in tenure rights and should define what constitutes largescale transactions in tenure rights in their national contexts.

29. States parties should have safeguards and policies in place to protect legitimate tenure rights from risks that could derive from large-scale transactions in tenure rights. Large-scale land investments risk violating rights under the Covenant because they often affect many smallholders, whose informal land use titles are often not recognized. Such safeguards could include ceilings on permissible land transactions and the requirement that transfers exceeding a certain level should be approved at the highest level of Government or by the national parliament. States should consider the promotion of a range of production and investment models that do not result in large-scale displacements from land, including models encouraging partnerships with local tenure rights holders.
30. The obligation to protect entails a positive duty to take legislative and other measures to provide clear standards for non-State actors such as business entities and private investors, especially in the context of large-scale land acquisitions and leases at home and abroad. States parties shall adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the negative impact on rights enshrined in the Covenant caused by their decisions and operations.
31. In recent years, titling has been encouraged to protect land users from eviction by the State and encroachment by private actors, particularly large landowners, and by investors. That process, sometimes referred as “formalization”, consists of demarcating the land effectively occupied and used by each land user (and generally recognized under customary law), increasingly using digital techniques, and attributing a deed protecting land users from expropriation, while at the same time enabling them to sell the land. The impact of titling has been mixed. Clarification of property rights was intended to provide security of tenure, to allow dwellers in informal settlements to be recognized as owners and to protect small farmers from being evicted from their land. It was also justified by the need to establish a market for land rights, allowing for more fluid transfer of property rights and a lowering of transaction costs in those markets. Those two objectives may be contradictory since commodification of property rights can be a source of exclusion and increase insecurity of tenure. Therefore, States should adopt laws and policies to guarantee that titling programmes are not implemented solely to support the sale of land and the commodification of land tenure. If such laws or regulations are missing, titling of pre-existing, customary forms of tenure may result in more conflicts rather than more clarity and may also result in less security rather than improved security, with a negative impact on rights under the Covenant, in particular the right to an adequate standard of living. States shall ensure that any titling process that involves determining competing claims to land protects the rights of those most at risk of marginalization and discrimination, while addressing historical injustices.

3. *Obligation to fulfil*

[...]

35. States parties shall also recognize the social, cultural, spiritual, economic, environmental and political value of land for communities with customary tenure systems and shall respect existing forms of self-governance of land. Traditional institutions for collective tenure systems shall ensure the meaningful participation of all members, including women and young people, in decisions regarding the distribution of user rights. Ensuring access to natural resources cannot be limited to the protections granted to the lands and territories of Indigenous Peoples. Other groups depend on the commons, in other words, global public goods. Fisherfolk need access to fishing grounds, yet strengthening individual property rights might entail fencing off the land that gives them access to the sea or to rivers. Pastoralists also form a particularly important group in sub-Saharan Africa, where almost half of the world's 120 million pastoralists or agro-pastoralists reside. In addition, throughout the developing world, many peasants and rural households still depend on gathering firewood for cooking and heating, and on commonly owned wells or water sources for their access to water. The formalization of property rights and the establishment of land registries should not worsen the situation of any of those groups, as cutting them off from the resources on which they depend would threaten their livelihoods.
36. Agrarian reform is an important measure to fulfil rights enshrined in the Covenant relating to land. More equitable distribution of land through agrarian reform can have a significant impact on poverty reduction and can contribute to social inclusion and economic empowerment. It improves food security, since it makes food more available and affordable, providing a buffer against external shocks. Land distribution schemes should also support small, family-owned farms, which often use the land in a more sustainable way and contribute to rural development owing to their labour intensity. However, land redistribution schemes should ensure that the beneficiaries receive proper support to enhance their capacity to use land productively and to engage in sustainable agricultural practices in order to maintain the productivity of the land. Policy options to support the economic success of family farmers should include education on access to credits, help in using marketing opportunities and the pooling of machines. Policies should be formulated in a way that enables beneficiaries to benefit from the land they acquire and avoids incentives to sell the land to support their minimum needs. Redistribution of land and agrarian reforms should focus particularly on the access to land of young people, women, communities facing racial and descent-based discrimination and others belonging to marginalized groups, and should respect and protect the collective and customary tenure of land.
38. States parties should engage in long-term regional planning to maintain the environmental functions of land. They should prioritize and support land uses with a human rights-based approach to conservation, biodiversity and the sustainable use of land and other natural resources. They should also, inter alia, facilitate the sustainable use of natural resources by recognizing, protecting and promoting traditional uses of land, adopting policies and measures to strengthen people's livelihoods based on natural resources and the long-term conservation of land. That includes specific measures to support communities and people to prevent,

mitigate and adapt to the consequences of global warming. States should create the conditions for regeneration of biological and other natural capacities and cycles and cooperate with local communities, investors and others to ensure that land use for agricultural and other purposes respects the environment and does not accelerate soil depletion and the exhaustion of water reserves.

39. States parties shall put in place laws and policies that allow for the recognition of informal tenure through participatory, gender-sensitive processes, paying particular attention to tenant farmers, peasants and other small-scale food producers.

D. Extraterritorial obligations

40. Extraterritorial obligations are of particular significance to the implementation of obligations arising from the Covenant relating to access to, use of and control over land. Land transfers are quite often financed or fostered by international entities, including public investors such as development banks financing development projects requiring land, such as dams or renewable energy parks, or by private investors. In reviews of State party reports, the Committee has encountered an increasing number of references to the negative impact on individuals', groups', peasants' and Indigenous Peoples' access to productive resources as a result of international investment negotiations, agreements and practices, including in the form of public-private partnerships between State agencies and foreign private investors.

1. Extraterritorial obligation to respect

41. The extraterritorial obligation to respect requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the rights under the Covenant in land-related contexts outside their territories. It also requires them to take specific measures to prevent their domestic and international policies and actions, such as trade, investment, energy, agricultural, development and climate change-mitigation policies, from interfering, directly or indirectly, with the enjoyment of human rights. That applies to all forms of projects implemented by development agencies or financed by development banks. The safeguards developed by the World Bank and other international development banks are a form of recognition of that obligation, particularly relating to investments in land. In the wake of the world food crisis in 2007–2008, the number of large-scale investments in land has increased worldwide, causing a variety of problems for persons living on or using the land, including forced or involuntary evictions without adequate compensation. In order to mitigate or prevent such situations, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security were developed. Furthermore, the International Finance Corporation performance standards and the respective World Bank safeguards were updated. Moreover, States parties that are members of international financial institutions, notably the World Bank, the International Fund for Agricultural Development and regional development banks, should take steps to ensure that their lending policies and other practices do not impair the enjoyment of the rights enshrined in the Covenant relating to land.

2. Extraterritorial obligation to protect

42. The extraterritorial obligation to protect requires States parties to establish the necessary regulatory mechanisms to ensure that business entities, including transnational corporations, and other non-State actors that they are in a position to regulate do not impair the enjoyment of rights under the Covenant in land-related

contexts in other countries. Thus, States parties shall take the necessary steps to prevent human rights violations abroad in land-related contexts by non-State actors over which they can exercise influence, without infringing on the sovereignty or diminishing the obligations of the host States.

43. In the context of land acquisitions and other business activities that have an impact on the enjoyment of access to productive resources, including land, States parties shall ensure that investors domiciled in other countries and investing in farmland overseas do not deprive individuals or communities of access to the land or land-associated resources on which they depend for their livelihoods. That may imply imposing a due diligence obligation on investors to ensure that they do not acquire or lease land in a way that violates international norms and guidelines.
44. States parties that promote or carry out land-related investments abroad, including through partially or fully State-owned or State-controlled companies, including sovereign wealth funds, public pension funds and private-public partnerships, should ensure that they do not reduce the ability of other States to comply with their obligations arising from the Covenant. States parties shall conduct human rights impact assessments prior to making such investments and shall regularly assess and revise them. Such assessments shall be conducted with substantive public participation and the results shall be made public and shall inform measures to prevent, cease and remedy any human rights violations or abuses.
45. States parties shall ensure that the elaboration, conclusion, interpretation and implementation of international agreements, including but not limited to the areas of trade, investment, finance, development cooperation and climate change, are consistent with their obligations under the Covenant and do not have an adverse effect on access to productive resources in other countries.

3. Extraterritorial obligation to fulfil

46. States should take steps through international assistance and cooperation under article 2 (1) of the Covenant with a view to progressively achieving the full realization of rights under the Covenant relating to land, which would also benefit peoples and communities outside their territories. Support should include technical cooperation, financial assistance and institutional capacity-building for, inter alia, land administration, knowledge-sharing and assistance in developing national tenure policies, as well as the transfer of relevant technology.
47. International cooperation and assistance should be focused on supporting national policies to secure access to land tenure for those whose legitimate user rights have not been recognized. Policies should avoid leading to land concentration or commodification of land and should be aimed at improving the access of disadvantaged and marginalized individuals and groups and increasing their security of tenure. Adequate safeguard policies shall be in place, and persons and groups affected by measures of international cooperation and assistance shall have access to independent complaint mechanisms. International cooperation and assistance can facilitate efforts to ensure that land policies are sustainable and are or will become an integral part of official land use planning and States' broader spatial planning.

IV. Specific issues of relevance to the implementation of rights enshrined in the Covenant in land-related contexts

A. Internal armed conflicts and post-conflict situations

48. There are links between internal armed conflicts, land and the enjoyment of rights enshrined in the Covenant. Sometimes, land conflicts, especially those relating to structural unequal distribution of land tenure coming, for example, from colonial or apartheid systems, can be one of the root causes or a trigger of the conflict. In other cases, the conflicts may lead to forced displacements, land grabbing and land dispossession, especially for populations in vulnerable situations, such as peasants, Indigenous Peoples, ethnic minorities and women. It is noteworthy that addressing land disputes and conflicts might be a key to building resilience and sustaining peace. Thus, States should make every effort to prevent land dispossession during internal armed conflicts. If dispossessions do nevertheless occur, States are obliged to establish restitution programmes to guarantee to all internally displaced persons the right to have restored to them any land of which they were arbitrarily or unlawfully deprived. States should also address all those land conflicts that might trigger the re-emergence of an armed conflict.

C. Human rights defenders

54. The situation of human rights defenders is particularly difficult in conflicts over land. The Committee has regularly received reports of threats and attacks aimed at those seeking to protect their rights under the Covenant or those of others, often in the form of harassment, criminalization, defamation and killings, particularly in the context of extractive and development projects. In the context of land, many human rights defenders are also defenders of the environmental functions of land and of the sustainability of land use as a precondition for respecting human rights in the future. In accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, States shall take all measures necessary to respect human rights defenders and their work, including in relation to land issues, and to refrain from imposing criminal penalties on them or enacting new criminal offences with the aim of hindering their work.

55. The specific measures that States should adopt to safeguard the work of human rights defenders in relation to land are dependent on national circumstances. However, the following measures are of crucial importance: (a) public recognition, by the highest level of Government, of the importance and legitimacy of the work of human rights defenders and a commitment that no violence or threats against them will be tolerated; (b) repeal of any State legislation or any measures that are intended to penalize or obstruct the work of human rights defenders; (c) strengthening of State institutions responsible for safeguarding the work of human rights defenders; (d) investigation and punishment of any form of violence or threat against human rights defenders; and (e) adoption and implementation of programmes, in those affected by such projects. They shall also respect the free, prior and informed consent of Indigenous Peoples.

D. Climate change

56. The impact of climate change on access to land, affecting user rights, is severe in many countries. In coastal zones, sea level rise has an impact on housing, agriculture and access to fisheries. Climate change also contributes to land degradation and desertification. Rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods are increasingly affecting access to land. States shall cooperate at the international level and comply with their duty to mitigate emissions and their respective commitments made in the context of the implementation of the Paris Agreement. States have these duties also under human rights law, as the Committee has highlighted previously. Moreover, States shall avoid adopting policies to mitigate climate change, such as carbon sequestration through massive reforestation or protection of existing forests, that lead to different forms of land grabbing, especially when they affect the land and territories of populations in vulnerable situations, such as peasants or Indigenous Peoples. Mitigation policies should lead to absolute emissions reductions through the phasing out of fossil fuel production and use.
57. States have an obligation to design climate change adaptation policies at the national level that take into consideration all forms of land use change induced by climate change, to register all affected persons and to use the maximum available resources to address the impact of climate change, particularly on disadvantaged groups.
58. Climate change affects all countries, including those that may have contributed to it the least. Thus, those countries that have historically contributed most to climate change and those that are currently the main contributors to it shall assist the countries that are most affected by climate change but are least able to cope with its impact, including by supporting and financing land-related adaptation measures. Cooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and meaningful consultation with those affected by such projects. They shall also respect the free, prior and informed consent of Indigenous Peoples.

[...]

V. Implementation and remedies

59. States should ensure that individuals and groups are able to receive and impart information relevant to the enjoyment of land-related rights under the Covenant. States shall regularly monitor the implementation of tenure systems and all policies, laws and measures that affect the realization of rights enshrined in the Covenant in land-related contexts. Monitoring processes should rely on qualitative and disaggregated quantitative data collected by local communities and others, be inclusive and participatory, and pay particular attention to disadvantaged and marginalized individuals and groups. In countries where collective and customary tenure of land by rural communities is in place, monitoring should include participatory mechanisms to monitor the impact of specific policies on access to land for people living in the relevant communities.
60. States parties should ensure that they have administrative and judicial systems in place to effectively implement policy and legal frameworks relating to land, and that their administrative and judicial authorities act in accordance with the

State's obligations under the Covenant. That includes taking measures to provide non-discriminatory, prompt and accessible services to all rights holders in order to protect tenure rights and to promote and facilitate the enjoyment of those rights, including in remote rural areas. Access to justice is key: States parties shall guarantee that even in remote areas, it is accessible and affordable, particularly for disadvantaged and marginalized individuals and groups. Judicial remedies shall also be tailored to the conditions of rural areas and suited to the needs of victims of violations, giving them access to all relevant information and adequate redress and compensation, including, when appropriate, restitution of land and return of refugees and internally displaced persons. As highlighted in article 28 of the United Nations Declaration on the Rights of Indigenous Peoples, restitution of land is often the primary remedy for Indigenous Peoples. Access to justice shall include access to procedures to address the impact of business activities, not only in the countries where they are domiciled but also where the violations have been caused.

61. States parties shall build the capacity of their administrative and judicial authorities to ensure access to timely, affordable and effective means of resolving disputes over tenure rights through impartial and competent judicial and administrative bodies, particularly in remote rural areas. States parties should recognize and cooperate with customary and other established forms of dispute settlement where they exist, ensuring that they provide fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights, in accordance with human rights. For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed. The respect for and protection and guarantee of secure and equitable access to, use of and control over land are preconditions for the enjoyment of many of the rights enshrined in the Covenant. Effective remedies are crucial for their realization. consultation with potential beneficiaries, that are well resourced and have inbuilt coordination mechanisms that ensure that adequate protection measures are provided to human rights defenders at risk whenever necessary.

2. No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4)), 30 April 2020⁴³

Special protection for specific groups

28. Without prejudice to the duty of States to eliminate all forms of discrimination, special attention should be paid to groups that have experienced systemic discrimination in the enjoyment of the right to participate in and to enjoy the benefits of scientific progress and its applications, such as women, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, indigenous peoples and persons living in poverty. Temporary special measures might be necessary to achieve substantive equality and remedy current manifestations of previous patterns of exclusion of these groups. Owing to limitations of space, this general comment focuses on women, persons with disabilities, persons living in poverty and indigenous peoples.

Traditional knowledge and indigenous peoples

39. Local, traditional and indigenous knowledge, especially regarding nature, species (flora, fauna, seeds) and their properties, are precious and have an important role to play in the global scientific dialogue. States must take measures to protect such

⁴³ <https://undocs.org/E/C.12/GC/25>

knowledge through different means, including special intellectual property regimes, and to secure the ownership and control of this traditional knowledge by local and traditional communities and indigenous peoples.

40. Indigenous peoples and local communities all over the globe should participate in a global intercultural dialogue for scientific progress, as their inputs are precious and science should not be used as an instrument of cultural imposition. States parties must provide indigenous peoples, with due respect for their self-determination, to both the educational and technological means to participate in this dialogue. They must also take all measures to respect and protect the rights of indigenous peoples, particularly their land, their identity and the protection of the moral and material interests resulting from their knowledge, of which they are authors, individually or collectively. Genuine consultation in order to obtain free, prior and informed consent is necessary whenever the State party or non-State actors conduct research, take decisions or create policies relating to science that have an impact on indigenous peoples or when using their knowledge.

C. STATEMENTS

1. Statement on universal and equitable access to vaccines for the coronavirus disease, E/C.12/2020/2, 15 December 2020 (footnotes omitted)

5. It is impossible to guarantee that everyone will have immediate access to a vaccine for COVID-19, even if several vaccines are approved soon. The mass production and distribution of vaccines implies not only enormous financial costs but also complex administrative and health procedures. The prioritization of access to vaccines by specific groups is unavoidable, at least in the initial stages, not only nationally but also at the international level. In accordance with the general prohibition of discrimination, such prioritization must be based on medical needs and public health grounds. According to these criteria, priority may be given, for instance, to health staff and care workers, or to persons presenting greater risks of developing a serious health condition if infected by SARS-COV-2 because of age, or preexisting conditions, or to those most exposed and vulnerable to the virus owing to social determinants of health, such as people living in informal settlements or other forms of dense or instable housing, people living in poverty, indigenous peoples, racialized minorities, migrants, refugees, displaced persons, incarcerated people and other marginalized and disadvantaged populations. In any case, criteria of prioritization must be established through a process of adequate public consultation, be transparent and subject to public scrutiny and, in the event of dispute, to judicial review to avoid discrimination.

• IV •

Committee
the Rights
of the Child

A. CONCLUDING OBSERVATIONS

1. Philippines, CRC/C/PHL/CO/5-6, 26 October 2022

Data collection

10. The Committee, welcoming the development of a harmonized monitoring and evaluation system regarding the implementation of the Convention, recommends that the State party expand its system of data collection and analysis and make it publicly accessible, to include disaggregated data on ... children belonging to indigenous groups...

Definition of the child (art. 1)

13. The Committee, welcoming the adoption of Republic Act No. 11596 of 2021, prohibiting the facilitation and solemnization of child marriages and cohabitation with a child, urges the State party to ensure the implementation and monitoring of the Act throughout its territory, including in Muslim and indigenous communities.

Non-discrimination

14. Noting the programme on diversity and inclusion and the dedicated inter-agency committee, the Committee recommends that the State party:
- (a) Strengthen its efforts to combat discriminatory attitudes and ensure access to health care, education and basic services for girls, children living in poverty, children born to unmarried couples, children in street situations, lesbian, gay, bisexual and transgender children, children belonging to indigenous groups, children living in rural and conflict-affected areas, children in conflict with the law and other children in vulnerable situations;
 - (b) Ensure that all cases of discrimination against children are investigated and prosecuted and that perpetrators, including school personnel where appropriate, are held accountable.

Birth registration, name and nationality

19. The Committee welcomes the launch of the National Action Plan to End Statelessness (2017–2024), the adoption in 2012 of the Rules Establishing the Refugee and Stateless Status Determination Procedure and the Supreme Court's approval on 15 February 2022 of its Rule on Facilitated Naturalization of Refugees and Stateless Persons (AM No. 21-07-22). However, the Committee is seriously concerned that the large number of children, particularly Muslim children, children belonging to indigenous groups, children of Indonesian and Japanese descent and Filipino children of overseas migrant workers, remain unregistered, which may lead to statelessness and deprivation of the right to a name and nationality and of access to basic services.

Education

34. The Committee welcomes the establishment and expansion of preschool education, the expansion of compulsory education to 12 years, the school curriculum reform,

the development of alternative delivery modes to enable access to secondary and vocational education for out-of-school students over 12 years of age and other measures taken to improve access to education, which has resulted in increased school enrolment and completion rates and decreased school dropout rates. However, the Committee is concerned about:

- (a) The lack of access to quality education at all levels for children with disabilities, children belonging to indigenous groups....

35. The Committee recommends that the State party:

- (a) Ensure access to quality preschool, primary and secondary education for children with disabilities, children belonging to indigenous groups....

Children belonging to minority and indigenous groups

37. Noting with concern that children accounted for a third of those displaced as a result of the conflicts in Mindanao and in Marawi in particular, the Committee recommends that the State party:

- (a) Collect data on and ensure the protection of children belonging to indigenous groups;
- (b) Allocate adequate financial and human resources to the implementation of the Indigenous Peoples' Rights Act of 1997 (Republic Act No. 8371);
- (c) Prevent and combat children's displacement and the recruitment of children by armed forces and armed groups, and ensure the effective implementation of Republic Act No. 11596 of 2021, prohibiting the practice of child marriage.

2. Vietnam, CRC/C/VNM/CO/5-6, 21 October 2022

Allocation of resources

9. Recalling its general comment No. 19 (2016) on public budgeting for the realization of children's rights, the Committee reiterates its previous recommendations⁴ and urges the State party: ... (c) To conduct regular assessments of the distributional impact of government investments in sectors supporting the realization of children's rights and identifying measures to address any gender disparities, with particular attention to children with disabilities, children belonging to ... indigenous groups....

Dissemination, awareness-raising and training

12. The Committee welcomes the incorporation of children's rights into the school curriculum and recommends that the State party: (a) Expand teaching on children's rights to early childhood and all grades in school, including in languages of ethnic minority or indigenous groups....

Non-discrimination

16. The Committee notes the adoption of the strategy for ethnic affairs for the period 2021–2030, but remains deeply concerned about the persistence of disparities in the enjoyment of rights among children in vulnerable situations, including with regard to access to household registration, health services, education and social protection; and discriminatory gender stereotypes, as reflected in the imbalanced sex ratio at birth and high dropout rates from school and child marriages among girls.

17. Recalling target 10.3 of the Sustainable Development Goals, the Committee reiterates its previous recommendations⁷ and urges the State party:

- (a) To address disparities in access to all public services by ... children belonging to ... indigenous groups, including Hmong and Khmers-Krom children ... and regularly evaluate the enjoyment by these children of their rights;
- (b) To ensure that all children, including children belonging to ... indigenous groups ... have access to household registration....

Birth registration and nationality

21. Recalling target 16.9 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Strengthen its efforts to achieve universal registration, including through public awareness-raising on the importance of birth registration, and ensure that all children, including children belonging to ... indigenous groups, have access to birth registration and identity documents irrespective of their ethnicity or religion....

Right to identity

22. The Committee notes with appreciation the 2021 Law on Religion and Folk Belief. Recalling its previous recommendations,⁸ the Committee urges the State party to ensure full respect for the preservation of identity for all children and take effective measures to ensure that children belonging to ... indigenous groups are able to preserve their identity, including their names, languages and culture.

Harmful practices

31. Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, the Committee recommends that the State party: ... (b) Increase public awareness, particularly among indigenous, minority and rural communities, of the harmful effects of child and forced marriage on children.

Health and health services

38. The Committee welcomes the progress made in reducing the infant and under-5 mortality rates, but remains concerned about ethnic and regional disparities in mortality rates and access to health services. The Committee recommends that the State party:
- (a) Prioritize measures to improve access to quality health services, including scaling up community-based health services, in particular in rural areas and for children with disabilities and children belonging to ... indigenous groups;
 - (b) Strengthen measures to reduce infant mortality rates and to prevent and treat HIV/AIDS, tuberculosis and leprosy among children, in particular in the Central Highlands and Northern Midlands and mountainous areas and ... indigenous groups....

Adolescent health

40. Recalling its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, and targets 3.3, 3.7 and 5.6 of the Sustainable Development Goals, the Committee recommends that the State party: ... (b) Ensure that free, confidential and child-friendly sexual and reproductive health information and services are available in schools, and that children in rural areas and children belonging to ... indigenous groups have access to such services and information....

Standard of living

42. Noting with deep concern reports of forced eviction of children belonging to ... indigenous groups and their families, the Committee recalls target 1.2 of the Sustainable Development Goals and recommends that the State party:
- (a) Prevent eviction and displacement of children belonging to ... indigenous groups and their families, and provide redress to those families and children evicted from their homes;
 - (b) Strengthen its policies to ensure that all children have an adequate standard of living, including through increased resources for the Master Plan on Social Assistance Reform and Development 2017–2025 and the Vision to 2030 and by providing social benefits to pregnant women and children under 3 years of age;
 - (c) Prioritize access to water, sanitation and hygiene, particularly in rural areas and among ... indigenous groups.

Education, including vocational training and guidance

43. The Committee is deeply concerned about the poor quality of education and disparities in educational outcomes among regions and ethnic minority groups; the limited access to quality inclusive education for children ... belonging to ... indigenous groups...; the closure of satellite schools, forcing children, particularly those belonging to ... indigenous groups, to enrol in boarding or semi-boarding schools; and violence and bullying at schools.
44. Recalling targets 4.1 and 4.2 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Strengthen measures to guarantee access to inclusive education and increase school enrolment and completion rates for all children, especially at the early childhood and secondary levels, including by: (i) expanding its multilingual education programmes, and ensuring that they are adequately resourced and are culturally sensitive; (ii) addressing the school dropout rate, including among girls, children belonging to ... indigenous groups...; and (iii) ensuring the availability of quality satellite schools in remote areas, with a view to phasing out boarding and semi-boarding schools; ...
 - (d) Combat violence, including bullying and cyberbullying, in schools, especially of children in disadvantaged socioeconomic situations, children belonging to ... indigenous groups ... and ensure that such measures encompass prevention, early detection mechanisms, the empowerment of children and intervention protocols;
 - (e) Strengthen the quality of vocational training and facilitate equal access to it, particularly for ... children belonging to ... indigenous groups....

Children belonging to ethnic or religious minority or indigenous groups

46. The Committee urges the State party to combat discrimination and violence against children belonging to ethnic or religious minority or indigenous groups, and to ensure their enjoyment of all rights under the Convention including with regard to full and equal access to household registration, health care, adequate housing, education and right to identity.

3. Cambodia, CRC/C/KHM/CO/4-6, 27 June 2022

Non-discrimination

15. The Committee remains deeply concerned about the persistence of disparities in the enjoyment of rights among children in vulnerable situations and discriminatory gender stereotypes, as reflected in the code of conduct for women (Chbap Srey). Taking note of target 10.3 of the Sustainable Development Goals, the Committee reiterates its previous recommendations and urges the State party to: (a) Address disparities in access to all public services by ... children belonging to minority or indigenous groups ... and regularly evaluate the enjoyment by these children of their rights....

Harmful practices

29. Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, the Committee recommends that the State party:
- (a) Take all measures to eliminate child marriage, including forced marriage, including by ensuring the effective implementation of the action plan to prevent child marriage and teenage pregnancy in Ratanikiri for the period 2017–2021, and adopting similar action plans in other provinces, including Mondulkiri;
 - (b) Increase public awareness of the harmful effects of child and forced marriage on children, particularly among indigenous, minority and rural communities.

Standard of living

40. Noting with concern reports of land grabbing and forced evictions of children and their families, the Committee takes note of target 1.2 of the Sustainable Development Goals and recommends that the State party:
- (a) Prevent evictions and displacement of children, including indigenous children and children living in poverty, and their families; ensure that the policies and practices on development and governance of land are in line with relevant international standards; and provide redress to those families and children evicted from their lands....

Children belonging to minority or indigenous groups

44. Noting with deep concern the discrimination faced by children belonging to minority or indigenous groups, which places them in particularly vulnerable situations, the Committee recommends that the State party combat discrimination faced by children belonging to minority or indigenous groups, including children of Vietnamese origin and Khmer Krom children, and ensure their full and equal access to birth registration and identity documents, health care, adequate housing, education and all other services.

4. Canada, CRC/C/CAN/CO/5-6, 23 June 2022

Allocation of resources

10. The Committee welcomes the introduction of gender-responsive budgeting at the federal level. Recalling its general comment No. 19 (2016) on public budgeting for the realization of children's rights, and taking note of target 16.5 of the Sustainable Development Goals, the Committee recommends that the State party: ... (c) Define budgetary lines for all children, with special attention given to those in disadvantaged or vulnerable situations that may require affirmative social measures, such as children of indigenous persons, ... and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.

Non-discrimination

17. The Committee is deeply concerned about the following:
 - (a) The discrimination against children in marginalized and disadvantaged situations in the State party, such as the structural discrimination against children belonging to indigenous groups ... especially with regard to their access to education, health and adequate standards of living;
 - (b) The apparent disparities in the treatment of children and their rights among the different regions and territories, especially with regard to children with disabilities, migrant children and children belonging to ethnic minority groups.
18. Taking note of targets 5.1 and 10.3 of the Sustainable Development Goals, the Committee recommends that the State party put an end to structural discrimination against children belonging to indigenous groups ... and address disparities in access to services by all children, including those in marginalized and disadvantaged situations, such as indigenous children....

Right to life, survival and development

20. The Committee is seriously concerned about the following:
 - (a) The reports of unmarked graves found on the sites of former residential schools for indigenous children;
 - (b) Noting the 2019 findings of the National Inquiry into Missing and Murdered Indigenous Women and Girls, that thousands of girls' deaths or disappearances have likely gone unrecorded over the decades;
 - (c) Indigenous children from the Anishinaabe community of the Grassy Narrows First Nation in north-western Ontario continuing to experience chronic and severe physical and mental health problems, such as seizures, speech impairments and learning disabilities, as result of mercury contamination of the water in that region.
21. The Committee urges the State party to:
 - (a) Strengthen measures to investigate and provide justice to families of victims of murder and disappearances and survivors of residential schools across Canada;
 - (b) Implement the National Inquiry's calls for justice with the meaningful participation of indigenous girls;
 - (c) Ensure that indigenous children in north-western Ontario have access to the specialized health care necessary to treat mercury poisoning, including by fully funding the construction and operation of the mercury survivors home and care centre sought by the Grassy Narrows First Nation;

- (d) Ensure that the federal Government works with the province of Ontario to implement existing commitments to complete remediation of the English-Wabigoon River system to address the mercury health crisis;
- (e) Provide effective remedies to children for violations of their right to health as result of mercury contamination and take immediate measures to address the ongoing impacts of mercury contamination on the community's health and well-being.

Birth registration and nationality

23. While noting the disproportionate barriers to access to birth registration for children of indigenous communities, the Committee takes note of target 16.9 of the Sustainable Development Goals and urges the State party to: (a) Ensure the issuance of birth certificates for all children born in its territory, in particular indigenous children, immediately after the birth....

Preservation of identity

24. The Committee recalls its previous recommendations⁶ and urges the State party to:

- (a) Ensure full respect for the preservation of identity for all children and take effective measures to ensure that indigenous children in the child welfare system are able to preserve their identity;
- (b) Restore names on birth certificates where they have been illegally altered or removed;
- (c) Adopt legislative and administrative measures to account for the rights, such as name, culture and language, of children belonging to minority and indigenous populations and ensure that the large number of children in the child welfare system receive an education on their cultural background and do not lose their identity;
- (d) Revise its legislation to ensure that women and men are equally legally entitled to pass their indigenous status to their grandchildren.

Abuse and neglect

26. The Committee is seriously concerned that the child welfare system continues to fail to protect indigenous children and adolescents from violence and that there is no national comprehensive strategy to prevent violence against all children. While taking note of the findings of the Truth and Reconciliation Commission in its report issued in 2015 and the Commission's 94 calls to action, it is concerned about the absence of information on measures taken to implement the calls for action.

27. In the light of its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, and recalling targets 5.2, 16.1 and 16.2 of the Sustainable Development Goals, the Committee urges the State party to:

- (a) Develop and implement a national strategy for the prevention of all forms of violence against all children, allocate the necessary resources to the strategy and ensure that there is a monitoring mechanism;
- (b) Ensure that the recommendations of the Special Rapporteur on violence against women, its causes and consequences, emanating from her visit to Canada in 2018, on the need for a national action plan on violence against women and girls, in particular against indigenous girls, are implemented and that the calls for justice for girls, women and lesbian, gay, bisexual and transgender persons

of the National Inquiry into Missing and Murdered Indigenous Women and Girls are also implemented;

- (c) Further strengthen awareness-raising and education programmes, including campaigns, with the involvement of children, in order to formulate a comprehensive strategy for preventing and combating child abuse and neglect;
- (d) Encourage community-based and family-based programmes aimed at preventing and tackling domestic violence, child abuse and neglect by taking an intersectoral and child-sensitive approach, including appropriate therapy for children who are victims;
- (e) Continue implementation of the 94 calls to action of the Truth and Reconciliation Commission concerning physical and sexual violence, abuse and neglect of Indigenous children in residential boarding schools that lasted for decades.

Children deprived of a family environment

31. The Committee welcomes the coming into force of the Act respecting First Nations, Inuit and Métis children, young people and families, in January 2020, that recognizes indigenous peoples' jurisdiction over child and family services, and takes note of the efforts undertaken by the State party to improve the situation of children in alternative care. However, it remains seriously concerned about the following:
- (a) The persistently high number of children in alternative care;
 - (b) The continuing overrepresentation of indigenous children and children of African descent in alternative care, including foster care, often outside their communities;
 - (c) That different criteria are being used across jurisdictions for making decisions on child removal and placement in care, on the basis of socioeconomic factors that disproportionately affect indigenous children, children of African descent and other children belonging to minority groups;
 - (d) That indigenous and children of African descent are at higher risk of abuse, neglect and violence in alternative care than other children.

Children with disabilities (art. 23)

33. Recalling the Committee's general comment No. 9 (2006) on the rights of children with disabilities, the Committee urges the State party to continue its efforts to implement a human rights-based approach to disability, to ensure that inclusion of children with disabilities is prominent in its work towards a barrier-free Canada through the implementation of the Accessible Canada Act and to:
- (a) Continue to compile data on children with disabilities to inform policies and programmes for them and develop an efficient and harmonized system for disability assessment in order to facilitate access for children with all types of disabilities to accessible services, including to education and health, social protection and legal services, in particular children living in rural areas and on reserves;
 - (b) Strengthen measures for ensuring inclusive education across all provinces and territories, including by adapting curricula and training and assigning specialized teachers and professionals in integrated classes;
 - (c) Strengthen the support provided to children with disabilities and their families, in particular in indigenous communities, with all necessary services and quality care, in order to ensure that financial constraints are not an obstacle to access

to services and that household incomes and parental employment are not negatively affected;

- (d) Strengthen measures to ensure that children with disabilities, in particular in indigenous communities, have access to available, accessible and quality health care, including early detection and intervention programmes within their communities;
- (e) Ensure the meaningful participation of indigenous children with disabilities, in particular those living on reserves, in the design and implementation of standards and programmes and provide the human, technical and financial resources necessary for its application.

Health and health services

34. Noting with concern that in some provinces children's eligibility for public health care is linked to the immigration status of their parents, recalling its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health and taking note of targets 2.2, 3.1, 3.2 and 3.8 of the Sustainable Development Goals, the Committee recommends that the State party take steps to: ... (b) Promptly address the disparities in the health status of indigenous children, children of African descent, children with disabilities, children living in remote or rural areas and children in alternative care.

Mental health

35. The Committee commends the State party for its efforts to promote awareness of mental health issues, including the federal framework for suicide prevention, but it is concerned that the plan does not include child-specific measures. Taking note of target 3.4 of the Sustainable Development Goals, the Committee recommends that the State party: ... (c) Adopt a specific child-focused section of the federal framework for suicide prevention, including a focus on early detection, and ensure that the framework has a clear focus on children, paying particular attention to indigenous children, and that children's perspectives are included in the development of the response and support services provided.

Standard of living

38. The Committee welcomes the steps taken to ensure access to clean and safe drinking water for First Nations communities and to work more closely with the communities to address the issue, but it regrets that there remain many indigenous children that lack access to sustainable safe drinking water. In addition, the Committee notes with concern that: (a) Indigenous communities and communities of Canadians of African descent and children belonging to minority groups in Canada continue to face disproportionate levels of poverty....
39. Taking note of targets 1.1, 1.2 and 1.3 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) In collaboration with indigenous communities, develop plans for addressing water and sanitation conditions on reserves that allow for long-term and sustainable solutions beyond the current strategy that aims to eliminate all long-term drinking water advisories, and provide quantifiable targets, sufficient and consistent budget allocations and a fixed time frame for the initial implementation; ...

- (e) Establish ambitious annual targets to eliminate child poverty, in particular among indigenous children, children of African descent and children belonging to other minority groups, in the poverty-reduction strategies and public monitoring and reporting on outcomes at the national, provincial and territorial levels.

Education, including vocational training and guidance

40. In line with its previous recommendations and taking note of targets 4.1, 4.6, 4.a, 4.b and 4.c of the Sustainable Development Goals, the Committee recommends that the State party: ... (b) Ensure equal access to quality education for all children in the State party, and ensure that indigenous children and children of African descent receive culturally appropriate education that respects their heritage and language...

Administration of child justice

45. Recalling its general comment No. 24 (2019) on children's rights in the child justice system, the Committee urges the State party to bring its child justice system fully into line with the Convention and other relevant international standards. In particular, the Committee urges the State party to: ... (b) Develop an effective action plan towards eliminating the disparity in the rates of sentencing and incarceration of indigenous children and adolescents ... including activities such as training of all legal, penitentiary and law enforcement professionals on the Convention...

5. Chile, CRC/C/CHL/CO/6-7, 22 June 2022

Main areas of concern and recommendations

5. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: freedom of association and peaceful assembly (para. 17), violence against children (para. 19), children deprived of a family environment (para. 25), asylum-seeking, refugee and migrant children (para. 35), indigenous children (para. 37) and administration of child justice (para. 40).

Data collection

9. While noting improvements in the availability of statistical information concerning children, including in the Law of Guarantees, the Committee is concerned about the lack of a coordinated and integrated system of childhood statistics, with comprehensive and disaggregated data. The Committee reiterates its previous observation and recommends that the State party: ... (b) Ensure collection of data disaggregated by age, sex, gender, disability, socioeconomic situation, nationality, ethnic origin, indigenous descent, rural/urban context, migration status and geographical location, for all areas of the Convention...

Non-discrimination

13. Recalling target 10.3 of the Sustainable Development Goals, the Committee recommends that the State party: ... (d) Ensure that children can effectively in practice access education and health services, particularly ... indigenous ... children....

Freedom of association and peaceful assembly

16. The Committee is deeply concerned about:

- (a) The excessive and disproportionate use of force, sexual violence, and torture and other cruel, inhuman and degrading treatment by the carabineros during the protests (social uprising) that began in 2019, with more than 1,000 children affected and the continuous use of force by carabineros during demonstrations, including in schools and among indigenous communities;
- (b) The updating of the carabineros' procedures that involve children not translating into visible improvements in their application, nor the necessary reparation measures having been made for the children affected;
- (c) The level and frequency of institutional violence, and the limited and very slow progress in judicial cases;
- (d) The promotion of laws violating freedom of opinion, of movement and of association and criminalizing social protest, including of children.

17. Recalling its recommendations, the Committee urges the State party to:

- (a) Ensure that protocols, guidance and procedures on dealing with public protests, detention of children, excessive use of force, harassment and sexual violence during peaceful demonstrations comply with the Convention and that children's right to peaceful assembly is implemented in practice at all times;
- (b) Ensure that human rights violations that occurred during the social uprising and any future protests are independently and thoroughly investigated and that perpetrators are expeditiously brought to justice;
- (c) Make the information on the outcome of investigations into acts of sexual violence committed by carabineros against girls during the protests publicly available;
- (d) Adopt comprehensive reparation plans and programmes for child victims of the social uprising;
- (e) Ensure that children can exercise the right to freely express their opinion and associate with peers without receiving violent treatment, and abolish Law No. 21.128 ("Aula Segura") and its application in schools by principals.

Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

18. The Committee takes note of the role of the Office of the Children's Ombudsman and the national human rights institution in monitoring cases of violence against children and in advocating for investigation and reparation. However, the Committee is deeply concerned about: ... (b) High and increasing levels of institutional violence against children, including at schools, public demonstrations and residential homes and against indigenous children;

Health, mental health and health services

29. The Committee recommends that the State party: ... (f) Ensure that indigenous children have access to quality health services, that are culturally sensitive and in their language.

Indigenous children

36. The Committee is seriously concerned about:
- (a) The historical abandonment and neglect experienced by indigenous peoples' children, which places them among the poorest in Chilean society, and the institutional violence carried out by the State party against them;
 - (b) The large number of judicial actions for serious crimes against Mapuche children;
 - (c) Unequal access by indigenous children to health care, education and social protection.
37. Recalling its previous recommendations, the Committee urges the State party to:
- (a) Stop all violence by security forces against indigenous children and their families, including in the Del Biobío Region and La Araucanía, and protect the Mapuche children who witnessed or were direct victims of violence, discrimination and abuse of power;
 - (b) Periodically accompany and monitor public institutions working with Mapuche children;
 - (c) Ensure that all indigenous children are a priority group in public policies and programmes and have de facto access to health, education and social protection services, without discrimination, and that the principle of interculturality is translated into practice in these areas.

6. Tunisia, CRC/C/TUN/CO/4-6, 2 September 2021

Non-discrimination

14. The Committee notes with appreciation the legal prohibition of racial discrimination and that the Constitution ensures the protection of children from discrimination. It is however deeply concerned about the following: ... (e) Persistent de facto discrimination against children in disadvantaged situations, including girls, children born to unmarried parents, children with disabilities, children living in rural or underprivileged areas, children living in poverty, children belonging to racial or religious minority groups, Amazigh children, migrant children, children infected with HIV and children affected by HIV/AIDS.

Birth registration

18. The Committee welcomes the repeal in 2020 of Circular No. 85 of 1965, which had prohibited the civil registration of newborns with an Amazigh or other non-Arabic name, but it is concerned about the administrative and judicial barriers faced by parents who do not register their children within 10 days of birth. Taking note of target 16.9 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Remove all administrative and financial barriers faced by children in gaining access to birth registration and receiving birth certificates, including by allowing for late registration without a judicial appeal;
 - (b) Ensure that all children, including migrant children, children with non-Arabic names and children who were born prior to the repeal of Circular No. 85 of 1965, have access to birth registration and identity documents, regardless of their parents' residency status.

Amazigh children

42. Recalling its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:
- (a) Ensure the right of Amazigh children to intercultural and bilingual education that respects their culture and traditions, including by integrating Amazigh as a second language in schools;
 - (b) Develop initiatives, in cooperation with Amazigh cultural associations, to reconnect Amazigh children with their cultural practices.

7. Costa Rica, CRC/C/CRI/CO/5-6, 4 March 2020

Cooperation with civil society

13. The Committee notes the engagement of civil society organizations promoting children's rights in public policy mechanisms, such as the National Integral Child Protection System. Recalling its previous concluding observations (CRC/C/CRI/CO/4, para. 24), the Committee recommends that the State party facilitate the involvement of children and adolescent organizations, including organizations of ... indigenous ... children, in the formulation, implementation and monitoring of public policies and programmes concerning their rights. This should include the allocation of necessary resources to such organizations and the building of their capacities to engage in social dialogue at the community and national levels, including the Legislative Assembly.

Non-discrimination

16. The Committee, while noting the 2015 constitutional reform recognizing the State party as a multi-ethnic and pluralistic society, and the adoption of the national policy for a society free from racism, racial discrimination and xenophobia for the period 2014–2025, is concerned about: ... (b) Multiple and intersectional discrimination against indigenous ... children...

Right to life, survival and development

19. The Committee, while welcoming the adoption of the Early Childhood National Policy 2015–2021, is concerned about: (a) The child mortality rate of indigenous and Afrodescendent children, in particular the rate in Limón Province, which is higher than the national average....
20. With reference to target 3.2 of the Sustainable Development Goals on ending preventable deaths of children under 5 years of age, the Committee urges the State party to: (a) Implement a comprehensive time-bound strategy to tackle child mortality in Limón Province and other regions where it persists, including measures to eliminate neonatal mortality and deaths of children under 1 year of age, ensuring that measures in the framework of the early childhood policy prioritize indigenous and Afrodescendent children, their well-being and access to basic services....

Respect for the views of the child

21. The Committee observes the paternalistic approach in society restricting the expression of children's views in the family and in public forums, and preventing their meaningful participation in public decision-making processes. With reference to its general comment No. 12 (2009) on the right of the child to be heard, the Committee reiterates its previous concluding observations (CRC/C/CRI/CO/4, para.

34), and recommends that the State party: ... (c) Take measures to ensure ... that linguistic requirements of indigenous ... children are addressed.

Birth registration

22. Taking note of target 16.9 of the Sustainable Development Goals on providing legal identity for all, including birth registration, the Committee recommends that the State party:
- (a) Implement a strategy to ensure that all indigenous ... children ... are registered at birth and provided with personal identification documents;
 - (b) Develop such strategy in consultation with indigenous peoples ..., seeking partnerships to ensure universal birth registration.

Gender-based violence and sexual abuse

28. The Committee is seriously concerned about: ... (b) The vulnerability of children to sexual abuse and exploitation, particularly in the light of a significant number of boys being affected, as well as adolescents, children with disabilities, and girls belonging to indigenous peoples....

Children deprived of a family environment

32. The Committee welcomes measures taken by the State party to support foster families. However, it is concerned about: ... (b) The persistence of institutionalization affecting children in situations of vulnerability, including ... indigenous children....

Health and health services

36. With reference to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health and taking note of target 3.8 of the Sustainable Development Goals on achieving universal health coverage, the Committee recommends that the State party: (a) Intensify its efforts to ensure access to health services by indigenous and Afrodescendent children living in rural and coastal areas, ensuring appropriate and continuous provision of primary and specialized health care, medicine and medical supplies, infrastructure and equipment....

Education, including vocational training and guidance

40. Taking note of targets 4.1, 4.2, 4.3, 4.5, 4.A and 4.C of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Strengthen its measures to address gaps in school enrolment of children in rural and coastal areas, indigenous ... children, and to combat school dropout;
 - (b) Ensure that school curricula and teaching methodologies adapt to the requirements of pupils, regardless of their sex or their cultural, ethnic or disability background;
 - (c) Expedite measures to implement recommendations issued by the Committee on the Elimination of Discrimination against Women (CEDAW/C/CRI/CO/7, paras. 27 (a) and (b)) aimed at improving the enrolment of girls, developing culturally appropriate bilingual education, eliminating stigmatization of pregnant adolescent girls in education and facilitating re-entry to school for young mothers....

Children belonging to indigenous and Afrodescendent peoples

44. With reference to its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:
- (a) Ensure that social services in the State party are responsive and cover the situation of Ngobe-Bugle indigenous children and Afrodescendent children throughout the country;
 - (b) Develop and implement strategies at the municipal and local levels aimed at combating poverty among indigenous and Afrodescendent peoples;
 - (c) Strengthen human, technical and financial resources to ensure the full implementation of intercultural bilingual education and reinforce consultations with indigenous and Afrodescendent children in this regard;
 - (d) Expedite measures to implement Presidential Decree No. 40932-MP-MJP of March 2018, and ensure that indigenous and Afrodescendent children are included in processes to seek free, prior and informed consent of indigenous and Afrodescendent peoples, in connection with measures affecting their lives, and ensure that development projects, hydroelectric projects, business activities, and the implementation of legislative or administrative measures, such as the establishment of protected areas, are subject to consultations and adhere to the United Nations Declaration on the Rights of Indigenous Peoples.

A. Follow-up and dissemination

51. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented. The Committee also recommends that the combined fifth and sixth periodic reports, the written replies to the list of issues and the present concluding observations be made widely available in the languages of the country, including indigenous languages, Costa Rican Sign Language and in accessible formats, particularly Easy Read.

8. Rwanda, CRC/C/RWA/CO/5-6, 28 February 2020

Allocation of resources

9. While noting with appreciation the increased budget allocations for children, the very low levels of corruption and the consultations with children conducted by some districts on planning and budgeting processes, the Committee, in the light of its general comment No. 19 (2016) on public budgeting for the realization of children's rights, recommends that the State party: ...
- (b) Implement a system for tracking and ensuring the efficient use of budgetary allocations for the realization of children's rights, conduct regular assessments of the distributional impact of government investment in sectors supporting the realization of children's rights and identify measures to address any disparities between girls and boys, with particular attention to Batwa children, children with disabilities and children belonging to other vulnerable groups; ...

Data collection

10. The Committee welcomes the establishment, in 2014, of a database on children in vulnerable situations and recommends that the State party:

- (a) Improve its data-collection system and ensure that it covers all areas of the Convention and the Optional Protocols thereto, with data disaggregated by age, sex, disability, nationality, geographic location, ethnic origin and socioeconomic background, in order to facilitate analysis of the situation of all children, especially in the areas of health, violence, sexual exploitation, child labour, trafficking and child justice, and in particular children in street situations and Batwa children; ...

Non-discrimination

15. Taking note of target 10.3 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Ensure the full implementation of relevant laws prohibiting discrimination, including by adequately sanctioning perpetrators and providing child victims of discrimination with appropriate remedies;
 - (b) Ensure full access to education and health and social services for children in disadvantaged or vulnerable situations, including children with disabilities, children in street situations, children affected by HIV/AIDS, children living in poverty or in child-headed households and children from historically marginalized communities, including the Batwa;
 - (c) Provide anti-discrimination training to government and law enforcement officials.

Respect for the views of the child

17. Noting with concern that Law No. 32/2016 does not provide for children to express their views in adoption procedures or judicial decisions concerning custody or divorce, the Committee reiterates its previous recommendations (CRC/C/RWA/CO/3-4, para. 24) and recommends that the State party: ...
- (d) Conduct awareness-raising activities to promote the meaningful and empowered participation of all children within the family, communities and schools, paying particular attention to girls, children with disabilities, children deprived of a family environment and Batwa children, and include children in decision-making in all matters related to children, including environmental matters.

Education, including vocational training and guidance

38. The Committee commends the State party for the high primary school enrolment rates and welcomes the adoption of the education sector strategic plan for the period 2018 – 2025 and the early childhood development policy, but it is deeply concerned about the low secondary school enrolment rates. Taking note of targets 4.1 and 4.2 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Strengthen efforts to eliminate all hidden costs of schooling, in particular the practice of fees for teacher bonuses and educational materials, and address the school dropout rate at the secondary school level, especially among boys and Batwa children; ...

Children belonging to minority or indigenous groups

42. The Committee remains deeply concerned about the persistent denial of the State party of the existence of minority groups and indigenous peoples, in particular the Batwa. The Committee reiterates its previous recommendations (CRC/C/RWA/CO/3-4, para. 57) and urges the State party:

- (a) To develop initiatives to reconnect Batwa children with their ancestral habitats and cultural practices;
- (b) To combat all forms of discrimination faced by Batwa children and ensure that, in law and practice, Batwa children have full and equal access to education, adequate housing, health care and all other services without discrimination;
- (c) To address child poverty, inadequate standard of living and vulnerability among Batwa populations;
- (d) To consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO).

B. GENERAL COMMENTS

1. No. 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25, 2 March 2021

I. Introduction

1. The children consulted for the present general comment reported that digital technologies were vital to their current lives and to their future: "By the means of digital technology, we can get information from all around the world"; "[Digital technology] introduced me to major aspects of how I identify myself"; "When you are sad, the Internet can help you [to] see something that brings you joy".
2. The digital environment is constantly evolving and expanding, encompassing information and communications technologies, including digital networks, content, services and applications, connected devices and environments, virtual and augmented reality, artificial intelligence, robotics, automated systems, algorithms and data analytics, biometrics and implant technology.

[...]

III. General principles

8. The following four principles provide a lens through which the implementation of all other rights under the Convention should be viewed. They should serve as a guide for determining the measures needed to guarantee the realization of children's rights in relation to the digital environment.

A. Non-discrimination

9. The right to non-discrimination requires that States parties ensure that all children have equal and effective access to the digital environment in ways that are meaningful for them. States parties should take all measures necessary to overcome digital exclusion. That includes providing free and safe access for children in dedicated public locations and investing in policies and programmes that support all children's affordable access to, and knowledgeable use of, digital technologies in educational settings, communities and homes.
10. Children may be discriminated against by their being excluded from using digital technologies and services or by receiving hateful communications or unfair treatment through use of those technologies. Other forms of discrimination can arise when automated processes that result in information filtering, profiling or decision-making are based on biased, partial or unfairly obtained data concerning a child.
11. The Committee calls upon States parties to take proactive measures to prevent discrimination on the basis of sex, disability, socioeconomic background, ethnic or national origin, language or any other grounds, and discrimination against minority

and indigenous children, asylum-seeking, refugee and migrant children, lesbian, gay, bisexual, transgender and intersex children, children who are victims and survivors of trafficking or sexual exploitation, children in alternative care, children deprived of liberty and children in other vulnerable situations. Specific measures will be required to close the gender-related digital divide for girls and to ensure that particular attention is given to access, digital literacy, privacy and online safety.

[...]

VI. Civil rights and freedoms

A. Access to information

50. The digital environment provides a unique opportunity for children to realize the right to access to information. In that regard, information and communications media, including digital and online content, perform an important function. States parties should ensure that children have access to information in the digital environment and that the exercise of that right is restricted only when it is provided by law and is necessary for the purposes stipulated in article 13 of the Convention.
51. States parties should provide and support the creation of age-appropriate and empowering digital content for children in accordance with children's evolving capacities and ensure that children have access to a wide diversity of information, including information held by public bodies, about culture, sports, the arts, health, civil and political affairs and children's rights.
52. States parties should encourage the production and dissemination of such content using multiple formats and from a plurality of national and international sources, including news media, broadcasters, museums, libraries and educational, scientific and cultural organizations. They should particularly endeavour to enhance the provision of diverse, accessible and beneficial content for children with disabilities and children belonging to ethnic, linguistic, indigenous and other minority groups. The ability to access relevant information, in the languages that children understand, can have a significant positive impact on equality.

[...]

XI. Education, leisure and cultural activities

A. Right to education

99. The digital environment can greatly enable and enhance children's access to high-quality inclusive education, including reliable resources for formal, non-formal, informal, peer-to-peer and self-directed learning. Use of digital technologies can also strengthen engagement between the teacher and student and between learners. Children highlighted the importance of digital technologies in improving their access to education and in supporting their learning and participation in extracurricular activities.
100. States parties should support educational and cultural institutions, such as archives, libraries and museums, in enabling access for children to diverse digital and interactive learning resources, including indigenous resources, and resources in the languages that children understand. Those and other valuable resources can support children's engagement with their own creative, civic and cultural practices and enable them to learn about those of others. States parties should enhance children's opportunities for online and lifelong learning.

C. JURISPRUDENCE⁴⁴

1. *Chiara Sacchi et al. v. Argentina, Brazil, France, Germany, Turkey, CRC/C/88/D/104/2019 (Inadmissibility Decision), November 2021*⁴⁵

Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019

<i>Communication submitted by:</i>	Chiara Sacchi et al. (represented by counsel Scott Gilmore et al., of Hausfeld LLP, and Ramin Pejan et al., of Earthjustice)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Argentina
<i>Date of communication:</i>	23 September 2019 (initial submission)
<i>Date of adoption of decision:</i>	22 September 2021
<i>Subject matter:</i>	Failure to prevent and mitigate the consequences of climate change
<i>Procedural issues:</i>	Jurisdiction; victim status; failure to exhaust domestic remedies; substantiation of claims; inadmissibility <i>ratione temporis</i>
<i>Substantive issues:</i>	Right to life; right of the child to the enjoyment of the highest attainable standard of health; right of the child to enjoy his or her own culture; best interests of the child
<i>Articles of the Convention:</i>	6, 24 and 30, read in conjunction with article 3 Articles of the Optional Protocol: 5 (l) and 7 (e)–(g)

Facts as submitted by the authors

2. The authors claim that, by causing and perpetuating climate change, the State party has failed to take the necessary preventive and precautionary measures to respect, protect and fulfil the authors' rights to life, health and culture. They claim that the climate crisis is not an abstract future threat. The 1.1°C rise in global average temperature is currently causing devastating heatwaves, forest fires, extreme weather patterns, floods and sea level rise, and fostering the spread of infectious diseases, infringing on the human rights of millions of people globally. Given that children are among the most vulnerable, physiologically and mentally, to these life-threatening impacts, they will bear a far heavier burden and for far longer than adults.

⁴⁴ See also *Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, CRC/C/62/3/Rev.1, 13 October 2021, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2FC%2F62%2F3%2FRev.1&Lang=en.

⁴⁵ This is five different cases, brought against five different states, by children from Argentina, Brazil, France, Germany, India, the Marshall Islands, Nigeria, Palau, South Africa, Sweden, Tunisia and the United States of America. The quoted text is from CRC/C/88/D/104/2019 (Argentina). See also CRC/C/88/D/105/2019 (Brazil), CRC/C/88/D/106/2019 (France), CRC/C/88/D/107/2019 (Germany), and CRC/C/88/D/108/2019 (Turkey). Full text is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC%2FC%2F88%2FD%2F104%2F2019&Lang=en.

Complaint

- 3.1 The authors argue that every day of delay in taking the necessary measures depletes the remaining “carbon budget”, the amount of carbon that can still be emitted before the climate reaches unstoppable and irreversible ecological and human health tipping points. They argue that the State party, among other States, is creating an imminent risk as it will be impossible to recover lost mitigation opportunities and it will be impossible to ensure the sustainable and safe livelihood of future generations.
- 3.2 The authors contend that the climate crisis is a children’s rights crisis. The States parties to the Convention are obliged to respect, protect and fulfill children’s inalienable right to life, from which all other rights flow. Mitigating climate change is a human rights imperative. In the context of the climate crisis, obligations under international human rights law are informed by the rules and principles of international environmental law. The authors argue that the State party has failed to uphold its obligations under the Convention to: (a) prevent foreseeable domestic and extraterritorial human rights violations resulting from climate change; (b) cooperate internationally in the face of the global climate emergency; (c) apply the precautionary principle to protect life in the face of uncertainty; and (d) ensure intergenerational justice for children and posterity.

Article 6

- 3.3 The authors claim that the State party’s acts and omissions perpetuating the climate crisis have already exposed them throughout their childhoods to the foreseeable, life-threatening risks of climate change caused by humans, be they in the forms of heat, floods, storms, droughts, disease or polluted air. A scientific consensus shows that the life-threatening risks confronting them will increase throughout their lives as the world heats up by 1.5°C above the pre-industrial era and beyond.

Article 24

- 3.4 The authors claim that the State party’s acts and omissions perpetuating the climate crisis have already harmed their mental and physical health, with effects ranging from asthma to emotional trauma. The harm violates their right to health under article 24 of the Convention and will become worse as the world continues to warm up. Smoke from the wildfires in Paradise, California, in the United States caused Alexandria Villaseñor’s asthma to flare up dangerously, sending her to hospital. Heat-related pollution in Lagos, Nigeria, has led to Deborah Adegbile being hospitalized regularly due to asthma attacks. The spread and intensification of vector-borne diseases has also affected the authors. In Lagos, Deborah now suffers from malaria multiple times a year. In the Marshall Islands, Ranton Anjain contracted dengue in 2019. David Ackley III contracted chikungunya, a disease new to the Marshall Islands since 2015. Extreme heatwaves, which have increased in frequency because of climate change, have been a serious threat to the health of many of the authors. High temperatures are not only deadly; they can cause a wide range of health impacts, including heat cramps, heatstroke, hyperthermia and exhaustion, and can also quickly worsen existing health conditions. Drought is also threatening water security for many petitioners, such as Raslen Jbeili, Catarina Lorenzo and Ayakha Melithafa.

Article 30

3.5 The authors claim that the State party's contributions to the climate crisis have already jeopardized the millenniums-old subsistence practices of the indigenous authors from Alaska in the United States, the Marshall Islands and the Sapmi areas of Sweden. Those subsistence practices are not just the main source of their livelihoods, but directly relate to a specific way of being, seeing and acting in the world that is essential to their cultural identity.

Article 3

3.6 By supporting climate policies that delay decarbonization, the State party is shifting the enormous burden and costs of climate change onto children and future generations. In doing so, it has breached its duty to ensure the enjoyment of children's rights for posterity and has failed to act in accordance with the principle of intergenerational equity. The authors note that, while their complaint documents the violation of their rights under the Convention, the scope of the climate crisis should not be reduced to the harm suffered by a small number of children. Ultimately, at stake are the rights of every child, everywhere. If the State party, acting alone and in concert with other States, does not immediately take the measures available to stop the climate crisis, the devastating effects of climate change will nullify the ability of the Convention to protect the rights of any child, anywhere. No State acting rationally in the best interests of the child would ever impose this burden on any child by choosing to delay taking such measures. The only cost-benefit analysis that would justify any of the respondents' policies is one that discounts children's lives and prioritizes short-term economic interests over the rights of the child. Placing a lesser value on the best interests of the authors and other children in the climate actions of the State party is in direct violation of article 3 of the Convention.

3.7 The authors request that the Committee find: (a) that climate change is a children's rights crisis; (b) that the State party, along with other States, has caused and is perpetuating the climate crisis by knowingly acting in disregard of the available scientific evidence regarding the measures needed to prevent and mitigate climate change; and (c) that, by perpetuating life-threatening climate change, the State party is violating the authors' rights to life, health and the prioritization of the best interests of the child, as well as the cultural rights of the authors from indigenous communities.

3.8 The authors further request that the Committee recommend: (a) that the State party review and, where necessary, amend its laws and policies to ensure that mitigation and adaptation efforts are accelerated to the maximum extent of available resources and on the basis of the best available scientific evidence to protect the authors' rights and make the best interests of the child a primary consideration, particularly in allocating the costs and burdens of climate change mitigation and adaptation; (b) that the State party initiate cooperative international action – and increase its efforts with respect to existing cooperative initiatives – to establish binding and enforceable measures to mitigate the climate crisis, prevent further harm to the authors and other children, and secure their inalienable rights; and (c) that pursuant to article 12 of the Convention, the State party ensure the child's right to be heard and to express his or her views freely, in all international, national and subnational efforts to mitigate or adapt to the climate crisis and in all efforts taken in response to the authors' communication.

[...]

Oral hearing

8.1 Following an invitation by the Committee and pursuant to rule 19 of its rules of procedure under the Optional Protocol, legal representatives of both parties appeared before the Committee on 3 June 2021 by way of videoconference, answered questions from Committee members on their submission and provided further clarifications.

Authors' oral comments

8.2 The authors reiterate their claim that the State party has failed to take all necessary and appropriate measures to keep global temperatures from warming by 1.5°C above the preindustrial era, thereby contributing to climate change, in violation of their rights. They argue that if the Convention is to protect children from the climate emergency, then the concepts of harm, jurisdiction, causation and exhaustion must be adapted to a new reality. They reiterate their arguments that the harms the authors have experienced, and will continue to experience, were foreseeable in 1990, when the Intergovernmental Panel on Climate Change predicted that global warming of just 1°C could cause the water shortages, vector-borne diseases and sea level rise the authors now face. They argue that if the respondent States parties do not take immediate action to vastly reduce their greenhouse gas emissions, the authors will continue to suffer greatly in their lifetime. They insist that there is a direct and foreseeable causal link between the harm to which they have been exposed and the respondent States parties' emissions, arguing that there is no dispute that the harm they are suffering is attributable to climate change and that the respondent States parties' ongoing emissions contribute to worsening climate change.

8.3 Regarding the issue of exhaustion of domestic remedies, the authors reiterate their argument that the remedies indicated by the State party would not provide them with effective relief. They argue that the constitutional amparo remedy is ill-suited to complex cases like theirs. According to article 2 of the National Amparo Act, the remedy of amparo is not admissible when the determination of the potential validity of the act requires extensive debate or evidence or the declaration of unconstitutionality of laws, decrees or ordinances. The authors note that they do not dispute the existence of a right to a healthy environment under article 41 of the Constitution. Rather, they argue that the remedy of amparo is not a suitable remedy to ensure its protection in the authors' case. They further reiterate their argument that the remedy provided under the General Environment Act is designed to deal with less complex cases and remediation of environmental harm. A remediation action is broader than a remedy of amparo and allows for debate and evidence, but it can address only past or existing and localized harm. It is not a vehicle for transforming the State party's national and international climate policies with the aim of preventing harm that would materialize in the future. In addition, the defence of arraigo, which requires litigants to be domiciled or have real estate in the State party, would preclude 15 out of the 16 authors from participating in an environmental remediation case.

8.4 The authors reiterate their argument that they would also face significant delays in State party courts, both in obtaining a decision and in implementation of the decision. They note that in the case of *Fundación Ciudadanos Independientes c. San Juan*, the plaintiff organization first filed an environmental remediation action in 2009 to prevent environmental harm from the Veladero gold mine. Several

cyanide spills and more than a decade later, there is still no final judgment in the case. The authors further argue that even when plaintiffs obtain a favourable judgment, effective implementation of that judgment is not guaranteed. In 2006, the Supreme Court ordered the Government to submit a clean-up plan for the Matanza-Riachuelo river basin. Despite this court victory, the Matanza-Riachuelo river basin is still one of the most polluted waterways in Latin America, and little has improved for the communities along the river's shores. In addition, because of a strict separation of powers doctrine, domestic courts are unlikely to dictate what national policies on climate change should achieve or direct the federal Government to engage in international cooperation, given the wide discretion granted to the executive branch in the realms of public policies and diplomatic relations.

State party's oral comments

- 8.5 The State party provides additional comments on its commitment to environmental protection and addressing climate change, with regard to both domestic and foreign policy. It reiterates its arguments on the lack of jurisdiction over the authors and the lack of a causal link between the alleged generic damages and any act or omission that could be attributable to the State party or its agents.
- 8.6 With regard to exhaustion of domestic remedies, the State party explains that both constitutionally and statutorily, domestic law has recognized so-called collective rights or “derechos de incidencia colectiva” (rights with a collective impact), and has expanded the standing or locus standi of potential plaintiffs. Depending on the type of remedy sought, directly or indirectly injured parties, the ombudspersons, civil society organizations and national, provincial and municipal authorities are given extraordinary standing to bring claims for environmental damage, thus eliminating barriers to access to justice in environmental matters. The State party also highlights that the costs of initiating proceedings in these matters is not a restriction for the authors, since the court fees amount to the equivalent of less than 50 cents of a United States dollar. Parties need to bear only the corresponding legal fees of their own representation. Nevertheless, if needed, parties, particularly children, are entitled by law to free legal aid and have various other possibilities of representation through the Ombudsperson, civil society organizations or any of the legal clinics at universities or pro bono lawyers at bar associations registered under the National Registry of Children's Lawyers.
- 8.7 With regard to the duration of proceedings, the State party explains that, in line with international standards, the length of domestic proceedings cannot be measured in the abstract, but must be subject to a case-by-case analysis, contemplating the complexity of the matter, the procedural actions taken by the parties and the diligence of the courts involved. It explains that, for example, the delays in the *Fundación Ciudadanos Independientes c. San Juan* case are explained by the complexity of the process, which includes factual and evidentiary complexities (such as the occurrence of facts in Chile); the fact that the number of defendants has progressively increased, at the will of the plaintiff only; and that there is a significant amount of criminal jurisdictional activity involved. The State party explains that, with regard to the coronavirus disease (COVID-19) pandemic, the alleged delay in proceedings is unproven. In fact, not only have plaintiffs been able to continue to bring all kinds of complaints, but also these cases have been given impetus and expediency because of the pandemic. The State party cites a case before the Supreme Court initiated during the domestic quarantine, on 23 June 2020, in which, in less than two months, the Court considered that an inter-jurisdictional

environmental or ecologic resource (the Paraná river delta) had been significantly affected, seriously compromised its functioning and sustainability. The Court considered the conservation of the river delta a priority for both current and future generations (much akin to the authors' argument in their communication) and issued an injunction for the immediate creation of an environmental emergency committee at the federal level.

8.8 The State party explains that since the 1994 constitutional reform, the judiciary has been closely involved in reviewing the constitutionality of public policy, including matters related to the environment. For example, the judiciary decided to suspend a series of authorizations for the felling of trees, modifying the criteria for conducting separate environmental impact assessments and obliging the relevant authorities to conduct an aggregate, comprehensive environmental impact study. It also issued injunctions to cease and redress environmental damage by obliging the relevant authorities to conduct dredging work in the Tarariras stream. The State party refers to several other cases in which the active intervention of the judiciary in public policy matters shows that the principle of the separation of powers is not an obstacle to judicial review when it comes to the protection of environmental rights. The State party therefore argues that there are no barriers in place for the authors to exhaust domestic remedies and give the State party the opportunity to address any alleged violations.

Oral hearing with the authors

9. Following an invitation by the Committee and pursuant to rule 19 of its rules of procedure under the Optional Protocol, 11 of the authors appeared before the Committee on 28 May 2021 by way of videoconference in a closed meeting, without the presence of State representatives. They explained to the Committee how climate change had affected their daily lives and expressed their views about what the respondent States parties should do about climate change and why the Committee should consider their complaints.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure under the Optional Protocol, whether the claim is admissible under the Optional Protocol.

Jurisdiction

10.2 The Committee notes the State party's submission that the communication is inadmissible for lack of jurisdiction. The Committee also notes the authors' argument that they are within the State party's jurisdiction as victims of the foreseeable consequences of the State party's domestic and cross-border contributions to climate change and the carbon pollution knowingly emitted, permitted or promoted by the State party from within its territory. The Committee further notes the authors' claims that the State party's acts and omissions perpetuating the climate crisis have already exposed them throughout their childhoods to the foreseeable, life-threatening risks of climate change caused by humans.

10.3 Under article 2 (1) of the Convention, States parties have the obligation to respect and ensure the rights of "each child within their jurisdiction". Under article 5 (1) of the Optional Protocol, the Committee may receive and consider communications

submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in the Convention. The Committee observes that, while neither the Convention nor the Optional Protocol makes any reference to the term “territory” in its application of jurisdiction, extraterritorial jurisdiction should be interpreted restrictively.

- 10.4 The Committee notes the relevant jurisprudence of the Human Rights Committee and the European Court of Human Rights referring to extraterritorial jurisdiction. Nevertheless, that jurisprudence was developed and applied to factual situations that are very different to the facts and circumstance of this case. The authors’ communication raises novel jurisdictional issues of transboundary harm related to climate change.
- 10.5 The Committee also notes Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the environment and human rights, which is of particular relevance to the issue of jurisdiction in the present case as it clarified the scope of extraterritorial jurisdiction in relation to environmental protection. In that opinion, the Court noted that, when transboundary damage occurs that affects treaty-based rights, it is understood that the persons whose rights have been violated are under the jurisdiction of the State of origin if there is a causal link between the act that originated in its territory and the infringement of the human rights of persons outside its territory (para. 101). The exercise of jurisdiction arises when the State of origin exercises effective control over the activities that caused the damage and consequent human rights violation (para. 104 (h)). In cases of transboundary damage, the exercise of jurisdiction by a State of origin is based on the understanding that it is the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory. The potential victims of the negative consequences of such activities are under the jurisdiction of the State of origin for the purposes of the possible responsibility of that State for failing to comply with its obligation to prevent transboundary damage (para. 102). The Court further noted that accordingly, it can be concluded that the obligation to prevent transboundary environmental damage or harm is an obligation recognized by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority (para. 103).
- 10.6 The Committee recalls that, in the joint statement on human rights and climate change that it issued with four other treaty bodies, it noted that the Intergovernmental Panel on Climate Change had confirmed in a report released in 2018 that climate change poses significant risks to the enjoyment of the human rights protected by the Convention such as the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water and cultural rights (para. 3). Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States’ human rights obligations (para. 10).
- 10.7 Having considered the above, the Committee finds that the appropriate test for jurisdiction in the present case is that adopted by the Inter-American Court of Human Rights in its Advisory Opinion on the environment and human rights. This implies that when transboundary harm occurs, children are under the jurisdiction

of the State on whose territory the emissions originated for the purposes of article 5 (1) of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question. The Committee considers that, while the required elements to establish the responsibility of the State are a matter of merits, the alleged harm suffered by the victims needs to have been reasonably foreseeable to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction.

- 10.8 The Committee notes the authors' claims that, while climate change and the subsequent environmental damage and impact on human rights it causes are global collective issues that require a global response, States parties still carry individual responsibility for their own acts or omissions in relation to climate change and their contribution to it. The Committee also notes the authors' argument that the State party has effective control over the source of carbon emissions within its territory, which have a transboundary effect.
- 10.9 The Committee considers that it is generally accepted and corroborated by scientific evidence that the carbon emissions originating in the State party contribute to the worsening of climate change, and that climate change has an adverse effect on the enjoyment of rights by individuals both within and beyond the territory of the State party. The Committee considers that, given its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions.
- 10.10 In accordance with the principle of common but differentiated responsibilities, as reflected in the Paris Agreement, the Committee finds that the collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location.
- 10.11 Regarding the issue of foreseeability, the Committee notes the authors' uncontested argument that the State party has known about the harmful effects of its contributions to climate change for decades and that it signed both the United Nations Framework Convention on Climate Change in 1992 and the Paris Agreement in 2016. In the light of existing scientific evidence showing the impact of the cumulative effect of carbon emissions on the enjoyment of human rights, including rights under the Convention, the Committee considers that the potential harm of the State party's acts or omissions regarding the carbon emissions originating in its territory was reasonably foreseeable to the State party.
- 10.12 Having concluded that the State party has effective control over the sources of emissions that contribute to causing reasonably foreseeable harm to children outside its territory, the Committee must now determine whether there is a sufficient causal link between the harm alleged by the authors and the State party's actions or omissions for the purposes of establishing jurisdiction. In this regard, the Committee observes, in line with the position of the Inter-American Court of Human Rights, that not every negative impact in cases of transboundary damage gives rise to the responsibility of the State in whose territory the activities causing transboundary harm took place, that the possible grounds for jurisdiction must be justified based on the particular circumstances of the specific case, and that the harm needs to be "significant". In this regard, the Committee notes that the Inter-American Court of Human Rights observed that, in the articles on prevention of

transboundary harm from hazardous activities, the International Law Commission referred only to those activities that may involve significant transboundary harm and that “significant” harm should be understood as something more than “detectable” but need not be at the level of “serious” or “substantial”. The Court further noted that the harm must lead to a real detrimental effect on matters such as, for example, human health, industry, property, environment or agriculture in other States, and that such detrimental effects must be susceptible of being measured by factual and objective standards.

Victim status

- 10.13 In the specific circumstances of the present case, the Committee notes the authors’ claims that their rights under the Convention have been violated by the respondent States parties’ acts and omissions in contributing to climate change and their claims that said harm will worsen as the world continues to warm up. It notes the authors’ claims: that smoke from wildfires and heat-related pollution has caused some of the authors’ asthma to worsen, requiring hospitalizations; that the spread and intensification of vector-borne diseases has also affected the authors, resulting in some of them contracting malaria multiple times a year or contracting dengue or chikungunya; that the authors have been exposed to extreme heatwaves, causing serious threats to the health of many of them; that drought is threatening water security for some of the authors; that some of the authors have been exposed to extreme storms and flooding; that life at a subsistence level is at risk for the indigenous authors; that, due to the rising sea level, the Marshall Islands and Palau are at risk of becoming uninhabitable within decades; and that climate change has affected the mental health of the authors, some of whom claim to suffer from climate anxiety. The Committee considers that, as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection, States have heightened obligations to protect children from foreseeable harm.
- 10.14 Taking the above-mentioned factors into account, the Committee concludes that the authors have sufficiently justified, for the purposes of establishing jurisdiction, that the impairment of their Convention rights as a result of the State party’s acts or omissions regarding the carbon emissions originating within its territory was reasonably foreseeable. It also concludes that the authors have established prima facie that they have personally experienced real and significant harm in order to justify their victim status. Consequently, the Committee finds that it is not precluded by article 5 (1) of the Optional Protocol from considering the authors’ communication. Exhaustion of domestic remedies
- 10.15 The Committee notes the State party’s argument that the communication should be found inadmissible for failure to exhaust domestic remedies. It also notes the State party’s argument that article 41 of the Constitution expressly recognizes the right to a healthy environment, that article 43 recognizes the environmental writ of amparo, and that the General Environment Act contains several provisions that enable actions in environmental matters (writ of redress for collective environmental damage). It further notes the State party’s argument that the Office of the Chief Public Defender and the Office of the Ombudsperson for the

Rights of Children and Adolescents have the mandate to provide free legal aid and representation to children in environmental litigation. Furthermore, it notes the State party's argument that, under domestic law, collective rights or rights with a collective impact are recognized and that, depending on the type of remedy sought, directly or indirectly injured parties, the ombudspersons, civil society organizations and national, provincial and municipal authorities have standing to bring claims for environmental damage, thus eliminating barriers to access to justice in environmental matters.

- 10.16 The Committee notes the authors' claim that the defence of arraigo under article 348 of the Code of Civil Procedure would bar the authors domiciled abroad from pursuing any kind of litigation in the State party. It also notes their argument that the remedy of amparo is ill-suited to their technically complex case involving demands for policy changes and international cooperation as such proceedings do not allow for extensive debate or evidence, or a declaration that particular laws, decrees or ordinances are unconstitutional. It further notes the authors' argument that an action for environmental remediation under article 30 of the General Environment Act, while broader and allowing for debate and evidence, can address only past or existing and localized harms, and that it therefore is not a suitable vehicle for transforming the State party's national and international policies. Moreover, the Committee notes the authors' argument that the Office of the Chief Public Defender, the Office of the Ombudsperson for the Rights of Children and Adolescents, and the Office of the Ombudsperson are discretionary remedies and therefore unlikely to be effective.
- 10.17 The Committee recalls that authors must make use of all judicial or administrative avenues that may offer them a reasonable prospect of redress. The Committee considers that domestic remedies need not be exhausted if, objectively, they have no prospect of success, for example in cases where under applicable domestic laws the claim would inevitably be dismissed or where established jurisprudence of the highest domestic tribunals would preclude a positive result. Nevertheless, the Committee notes that mere doubts or assumptions about the success or effectiveness of remedies do not absolve the authors from exhausting them.
- 10.18 In the present case, the Committee notes that the authors have not attempted to initiate any domestic proceeding in the State party. The Committee also notes the authors' argument that they would face unique obstacles in exhausting domestic remedies as it would be unduly burdensome for them, unreasonably prolonged and unlikely to bring effective relief. It further notes their argument that domestic courts would most likely dismiss their claims, which implicate the State's obligation to engage in international cooperation, because of the non-justiciability of foreign policy and foreign sovereign immunity. Nevertheless, the Committee considers that the State party's alleged failure to engage in international cooperation is raised in connection with the specific form of remedy that the authors are seeking, and that they have not sufficiently established that such a remedy is necessary to bring effective relief. Furthermore, the Committee notes the State party's argument that legal avenues were available to the authors in the form of an environmental writ of amparo under article 43 of the Constitution as well as in the form of a writ of redress for a collective environmental damage under the General Environment Act. It also notes the State party's argument that the authors could have approached the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents in filing such environmental actions under the General Environment Act, and that

legal aid would be available for such litigation. The Committee notes the authors' arguments that the defence of arraigo under article 348 of the Code of Civil Procedure would bar the authors domiciled abroad from pursuing any kind of litigation in the State party. Nevertheless, it notes that the State party has refuted that claim, and that the authors have not provided any examples of non-domiciled plaintiffs being barred from accessing the specific remedies referred to by the State party in filing proceedings similar to the remedies sought by the authors in their specific case. The Committee also notes the authors' argument that the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents are discretionary remedies and therefore unlikely to be effective. Nevertheless, it notes that the authors did not make any attempt to engage these entities in filing a suit on their behalf, and it considers that the fact that the remedy may be discretionary in itself does not exempt the authors from attempting to engage these entities in pursuing a suit, especially in the absence of any information that would demonstrate that this remedy has no prospect of success and in light of existing suits filed on the issue of environmental degradation in the State party. In the absence of any further reasons from the authors as to why they did not attempt to pursue these remedies, other than generally expressing doubts about the prospects of success of any remedy, the Committee considers that the authors have failed to exhaust all domestic remedies that were reasonably effective and available to them to challenge the alleged violation of their rights under the Convention.

10.19 Regarding the authors' argument that foreign sovereign immunity would prevent them from exhausting domestic remedies in the State party, the Committee notes that the issue of foreign sovereign immunity may arise only in relation to the particular remedy that the authors would aim to achieve by filing a case against other respondent States parties together with the State party in its domestic court. In this case, the Committee considers that the authors have not sufficiently substantiated their arguments concerning the exception under article 7 (e) of the Optional Protocol that the application of the remedies is unlikely to bring effective relief.

10.20 The Committee notes the authors' argument that pursuing remedies in the State party would be unreasonably prolonged. It also notes that, while the authors cite some examples of environmental cases in which the State party's courts took several years to reach a decision, they do not provide any further specific information on the length of such proceedings in the State party. It also notes that the State party likewise provides examples of cases of environmental litigation in the State party which were resolved within a reasonable time frame. The Committee concludes that, in the absence of any specific information from the authors that would justify that domestic remedies would be ineffective or unavailable, and in the absence of any attempt by them to initiate domestic proceedings in the State party, the authors have failed to exhaust domestic remedies.

10.21 Consequently, the Committee finds the communication inadmissible for failure to exhaust domestic remedies under article 7 (e) of the Optional Protocol.

11. The Committee therefore decides:

- (a) That the communication is inadmissible under article 7 (e) of the Optional Protocol;
- (b) That the present decision shall be transmitted to the authors of the communication and, for information, to the State party.

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**Committee on
the Elimination
of Discrimination
Against Women**

A. CONCLUDING OBSERVATIONS

1. Honduras, CEDAW/C/HND/CO/9, 1 Nov. 2022

Temporary special measures

20. The Committee remains concerned that the information provided by the State party indicates a lack of adequate understanding of the nature, scope and necessity of temporary special measures aimed at accelerating the substantive equality of women and men, in accordance with article 4 (1) of the Convention. It also notes with concern the absence of temporary special measures other than electoral quotas, in particular to address intersecting forms of discrimination against ... Indigenous women....
21. Recalling its previous recommendation (CEDAW/C/HND/CO/7–8, para. 19) and drawing attention to its general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party take targeted measures, including temporary special measures in accordance with article 4 (1) of the Convention, to accelerate substantive equality of women and men, in particular rural women [and] Indigenous women ... in all areas under the Convention where women are underrepresented or disadvantaged, including political and public life, education, employment and health.

Equal participation in political and public life

28. The Committee notes with concern: (a) The persistence of structural barriers to participation in political and public life faced by women, in particular ... Indigenous women....
29. Recalling its general recommendation No. 23 (1997) on women in political and public life, as well as target 5.5 of the Sustainable Development Goals, the Committee recommends that the State party: (a) Adopt temporary special measures, such as statutory quotas and a gender parity system, in line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, to ensure the equal representation of women, including ... Indigenous women ... in the National Congress, regional and municipal legislative bodies, the Government, the civil service and the foreign service....

Education

34. The Committee notes the increase in the budget allocated to the Ministry of Education and welcomes the initiatives to ensure equal access to quality education for Indigenous and Afro-Honduran children and adolescents. The Committee nevertheless notes with concern:
 - (a) The disproportionately high levels of illiteracy among women, in particular among Indigenous, Afro-Honduran and rural women; ... (f) Barriers preventing Indigenous and rural girls and women from attending virtual education programmes during the period of confinement in the context of the COVID-19 pandemic, in particular caused by the lack of technological equipment....

35. In the light of its general recommendation No. 36 (2017) on the right of girls and women to education and recalling its previous recommendations (CEDAW/C/HND/CO/7-8, para. 33), the Committee recommends that the State party promote the importance of girls' education at all levels, as a basis for their empowerment, and:
- (a) Reduce the high illiteracy rate among women and girls, with a focus on girls living in poverty, rural girls, [and] Indigenous women, through temporary special measures, such as quotas with time-bound targets, to increase the enrolment, retention and completion rates among girls and women in secondary and higher education; ...
 - (c) Promote the enrolment, attendance and retention of girls and women in school, especially at the secondary and higher levels, in particular with regard to girls and women living in poverty, rural girls and women, [and] Indigenous women, ... reduce dropout rates and facilitate the reintegration of pregnant girls and women and adolescent mothers into the education system, including by raising awareness among parents, community leaders and girls and women on the importance of education for their life choices and career prospects; ...
 - (f) Adopt and implement a strategy to guarantee access to technology for Indigenous and rural girls and women, to enable them to benefit from distance learning and enrol in Internet-based education programmes....

Employment

36. The Committee appreciates the information provided by the delegation during the interactive dialogue that a time-use survey was conducted to facilitate understanding of gender differences in the use of time and activities and the strategies women and men use to sustain livelihoods in the State party. However, the Committee notes with concern: ... (d) The high unemployment rate among Indigenous women, rural women and women with disabilities;
37. In line with target 8.5 of the Sustainable Development Goals on the achievement of full and productive employment and decent work for all women and men and recalling its previous recommendations (CEDAW/C/HND/CO/7-8, para. 35), the Committee recommends that the State party: ... (d) Ensure that Indigenous women, rural women and women with disabilities have access to employment and accessible transportation to promote their inclusion in public and private employment....

Economic empowerment

40. The Committee remains concerned about the disproportionately high levels of poverty and the limited access to economic and social benefits for disadvantaged and marginalized groups of women, in particular Indigenous, Afro-Honduran and rural women and women with disabilities. 41. The Committee recommends that the State party:
- (a) Strengthen efforts to reduce poverty among women, with a particular focus on disadvantaged and marginalized groups of women, such as Indigenous, Afro-Honduran and rural women and women with disabilities, promote their access to low-interest loans without collateral and participation in entrepreneurial initiatives to empower them economically and provide them with opportunities to acquire the skills necessary to participate in economic life;
 - (a) Increase women's access to the national social security system and to social protection schemes, especially for women belonging to disadvantaged groups.

Rural and Indigenous women

42. The Committee is concerned about the limited access of rural and Indigenous women to education, employment and health care. It also notes with concern that rural and Indigenous women are underrepresented in decision-making and leadership positions and:
- (a) The lack of consultations with Indigenous women on large-scale projects, such as tourism, agro-industrial and hydroelectric projects undertaken by foreign investors and private enterprises on Indigenous lands and using their natural resources, as well as the adverse impact of climate change on rural and Indigenous women, including intense drought, loss of crops and food and water insecurity;
 - (b) The forced eviction and displacement of Indigenous women and girls, labour exploitation, serious health consequences, and sexual violence and trafficking related to business and development projects on Indigenous lands;
 - (c) The intimidation, harassment and threats against rural and Indigenous women environmental activists participating in peaceful protests to protect their lands and the criminalization of their activities.
43. Recalling its general recommendations No. 34 (2016) on the rights of rural women, No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change and No. 39 (2022) on the rights of Indigenous women and girls, the Committee reiterates its previous concluding observations (CEDAW/C/HND/CO/7–8, para. 43) and recommends that the State party:
- (a) Ensure that economic activities, including logging, development, investment, tourism, extractive, mining and climate mitigation and adaptation programmes, and conservation projects, are implemented only in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the undertaking of adequate consultation processes;
 - (b) Prevent, address, sanction and eradicate all forms of gender-based violence against rural and Indigenous women and girls, including environmental, spiritual, political, structural, institutional and cultural violence that are attributable to extractive industries, and ensure that Indigenous women and girls have timely and effective access to both non-Indigenous and Indigenous justice systems, including protection orders and prevention mechanisms when needed, and the effective investigation of cases of missing and murdered Indigenous women and girls free from all forms of discrimination and bias;
 - (c) Prevent, investigate and punish all forms of political violence against rural and Indigenous women politicians, candidates, human rights defenders and activists at the national, local and community levels, and recognize and respect ancestral forms of organization and the election of representatives.

2. Finland, CEDAW/C/FIN/CO/8, 1 November 2022

Temporary special measures

17. The Committee welcomes the efforts of the State party to strengthen the participation of migrant women in political and public life, education and the labour market. It also takes note of the government resolution of 2015 requiring the boards of large and medium-sized listed companies to have a minimum of 40 per cent of both women and men on their boards. The Committee is, however, concerned that there have been no positive developments towards this minimum quota for women in recent years.
18. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party: ... (c) Continue and further strengthen specific temporary special measures to accelerate the participation of women belonging to disadvantaged groups, such as ... Sami women ... in political and public life, decision-making, education and the labour market.

Gender-based violence against women

23. The Committee welcomes the reform of legislation governing sexual offences and the establishment of the post of independent rapporteur on violence against women. It notes the State party's efforts to prevent gender-based violence against women, including through capacity-building for the police, the establishment of sexual violence referral centres throughout the country and the launch of a national campaign against sexual harassment in 2016. The Committee nevertheless notes with concern: ... (f) The lack of adequate shelters for victims of gender-based violence against women, particularly in the northern region, namely the Sami homeland...
24. Reiterating its previous recommendations (CEDAW/C/FIN/CO/7, para. 19), and recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party: ... (d) Provide adequate shelters for victims of gender-based violence in all regions, including the Sami homeland...

Equal participation in political and public life

27. The Committee welcomes the high percentage of women in the State party's parliament (45.5 per cent), among the State party representatives in the European Parliament (57.1 per cent) and as ambassadors in the civil service (50 per cent). The Committee notes with concern, however, that: ... (c) In the Sami Parliament, only 8 out of 21 members and 1 out of 4 deputy members are women. ...
28. Reiterating its previous recommendations (CEDAW/C/FIN/CO/7, para. 23), and recalling its general recommendation No. 23 (1997) on women in political and public life and its general recommendation No. 25, the Committee recommends that the State party: ... (c) Carry out awareness-raising activities, with a particular emphasis on the region of Åland and the Sami populations, to accelerate women's equal representation in political and public life...

3. Namibia, CEDAW/C/NAM/CO/6, 12 July 2022

Women's rights and gender equality in relation to the pandemic and recovery efforts

10. In line with its guidance note on the obligations of States parties to the Convention in the context of COVID-19, issued on 22 April 2020, the Committee recommends that the State party: ... (b) Promote and facilitate the equal participation of women, including indigenous women and women with disabilities, in the State party's official national recovery programmes and related decision-making.

Women's access to justice

17. The Committee welcomes the establishment of specialized courts to hear cases of gender-based violence (CEDAW/C/NAM/RQ/6, para. 17). However, it notes with concern: ... (c) That although rural and indigenous women receive information on access to the legal aid scheme, there are no specific measures in place to facilitate access to legal complaint mechanisms at the community level (CEDAW/C/NAM/RQ/6, para. 16).
18. The Committee, in line with its general recommendation No. 33 (2015) on women's access to justice, recommends that the State party: ... (c) Ensure that women, in particular rural and indigenous women and women filing for divorce or bringing gender-based violence cases, have effective access to justice in all parts of the State party.

Temporary special measures

23. The Committee welcomes the implementation of the Affirmative Action (Employment) Act (No. 29 of 1998) and of the Affirmative Action Policy on the participation of women in public life, as well as the measures taken to increase the representation by women in management positions and the introduction of a scorecard system to increase affirmative action at the workplace. The Committee is nevertheless concerned about the limited use of temporary special measures in other areas covered by the Convention, where groups of women are underrepresented or disadvantaged, such as: ... (b) The representation of indigenous women in political and public life.
24. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party adopt temporary special measures to accelerate substantive equality and eliminate intersecting forms of discrimination, such as: ... (b) Recruitment campaigns and substantive support mechanisms to encourage indigenous women to join the public service.

Gender-based violence against women

27. The Committee notes the adoption and implementation of the national plan of action on gender-based violence for the period 2019–2023, based on the recommendations made in the National Gender-Based Violence Baseline Study of 2017 (CEDAW/C/NAM/6, paras. 103 and 113). It also welcomes the establishment of gender-based violence protection units and of specialized courts, the existence of a gender-based violence helpline for adults and children and related awareness-raising campaigns. However, it notes with concern: ... (d) The limited access for women, in particular rural and indigenous women and girls, to protection orders, reparations, shelters and psychosocial treatment and counselling.

Equal participation in political and public life

31. The Committee welcomes the measures taken by the State party to build the capacity of women in politics, including parliamentarians, local politicians and members of political parties, as reflected in the State party being ranked twelfth globally by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) for the number of women in parliament and receiving the Gender Is My Agenda Campaign award in 2017 for its progress in promoting parity in decision-making positions. However, the Committee notes with concern: ... (b) The lack of measures to ensure the equal representation of women and men candidates on electoral lists and the limited participation of indigenous women in political and public life.
32. Recalling its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party:
 - (a) Take measures to accelerate gender parity at the national and local levels of government, in particular in decision-making positions in the Cabinet, the judiciary, the public service, the foreign service and in sports commissions, and conduct awareness-raising campaigns and capacity-building to promote gender parity, positive masculinities and the participation of disadvantaged groups of women, including indigenous women and women with disabilities, in political and public life;
 - (b) Amend the Electoral Act to achieve gender parity and adopt temporary special measures, such as quotas, to increase the number of women candidates who are successful in regional elections, as well as the number of indigenous women elected to legislative bodies at all levels.

Nationality

...

36. Recalling its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recommends that the State party: ... (c) ... strengthen efforts to deploy mobile civil registry units to issue birth certificates in rural and remote areas and in indigenous communities...

Education

37. The Committee welcomes the provision of free primary and secondary education, as well as of life skills lessons and age-appropriate education in sexual and reproductive health and rights in the State party. It also notes the dissemination of a career guidance booklet and engagement with girls to increase their interest in non-traditional fields of study. However, the Committee notes with concern: ... (c) Reported cases of corporal punishment and gender-based violence, discrimination and bullying in schools, particularly against indigenous girls...

Health

41. The Committee notes the progress reported in decreasing the mother-to-child transmission of HIV/AIDS and the high availability of HIV/AIDS test kits. However, the Committee notes with concern: ... (e) The limited access for women, including ... indigenous women ... to sexual and reproductive health care...
42. The Committee recalls its general recommendation No. 24 (1999) on women and health and recommends that the State party: ... (e) Ensure safe and appropriate

access to sexual and reproductive health services free from discrimination, and disseminate information and clinical resource material to medical practitioners and to women, including ... indigenous women....

Indigenous women

49. The Committee notes that the Ministry of Land Reform provides seeds and ploughing services to the San community, which receives drought relief in the form of food and financial support for small-scale projects. Nevertheless, the Committee is concerned about reports that San women and girls continue to perform poorly in education and that they have limited access to employment and health services.
50. The Committee recommends that the State party implement measures to ensure that indigenous women and girls, including San women and girls, have adequate access to education, employment, health care and economic empowerment services, in particular in rural areas.

Climate change and disaster risk reduction

51. The Committee is concerned about: (a) The absence of information on the measures taken by the State party to ensure that climate change and energy policies, and specifically the policy on the extraction and export of oil and gas, take into account the differentiated and disproportionate impact of climate change and environmental degradation on women, especially rural and indigenous women....

4. Bolivia, CEDAW/C/BOL/CO/7, 12 July 2022

Positive aspects

4. The Committee welcomes the progress achieved since the consideration in 2015 of the State party's combined fifth and sixth periodic reports (CEDAW/C/BOL/CO/5-6) in undertaking legislative reforms, in particular the adoption of the following: ... (d) Law No. 1152 (2019), on the universal and free Single Health System to provide access to sexual and reproductive health care, with priority given to women, children, adolescents, older adults, persons with disabilities, and members of indigenous campesino and Afro-Bolivian communities;

Constitutional and legal framework

10. In line with article 1 of the Convention and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, the Committee recommends that the State party:
 - (a) Strengthen the enforcement of legislation and policies aimed at eliminating discrimination against women in all areas covered by the Convention;
 - (b) Strengthen the adoption of appropriate measures to ensure the application of the Convention, the Optional Protocol thereto and the Committee's jurisprudence, including by organizing systematic capacity-building programmes for the judiciary, prosecutors, law enforcement officers, members of the Plurinational Legislative Assembly and other officials responsible for its implementation;
 - (c) Reinforce efforts to raise awareness of women's rights and the means to enforce them, targeting specific groups such as indigenous women ... including by facilitating access to information on the Convention in indigenous languages and accessible formats, in cooperation with civil society and the media.

Women's access to justice

11. The Committee notes the efforts made by the State party to reform its judicial system and improve access to justice for women, including the adoption of the protocol for mainstreaming a gender perspective in court judgments, the Justice and Gender Observatory of the Plurinational Constitutional Court, and competitions for judicial decisions with a gender perspective. Nevertheless, the Committee notes with concern: ... (c) Financial, linguistic, physical and geographical barriers to accessing justice faced by indigenous women....

Participation in political and public life

...

22. Recalling its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party: (a) Adopt measures to increase the representation of women, including indigenous women and women of African descent, in decision-making positions in the Government, the judiciary and the private sector....

Education

...

24. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party promote understanding of the importance of education at all levels for girls as a basis for their empowerment and:
 - (b) Ensure that disadvantaged and marginalized groups of girls, in particular indigenous girls, Afro-Bolivian girls, rural girls, girls with disabilities, refugee and migrant girls, have adequate access to good-quality education, as well as their retention in school, in particular at the secondary and tertiary levels and in rural areas, including by:
 - (i) Promoting the enrolment of girls from marginalized groups in educational institutions at all levels;
 - (ii) Ensuring the implementation of regional intercultural curricula and adopting a comprehensive inclusive education policy;
 - (iii) Launching literacy campaigns to reach adult and older women....

Health

27. The Committee notes the measures taken by the State party to expand free sexual and reproductive health services to all women regardless of age through the Single Health System. ... However, the Committee notes with concern: ... (f) The insufficient coverage of the Intercultural Family and Community Health Policy, barriers to accessing affordable health services in rural areas faced by indigenous women, including long distances, lack of access to information and culturally appropriate services, and intersecting forms of discrimination....
28. The Committee recommends that the State party: ... (f) Extend the coverage of the Intercultural Family and Community Health Policy and allocate the resources necessary to ensure access to affordable and culturally appropriate health services for rural women and girls, as well as indigenous and Afro-Bolivian women....

Economic empowerment

29. The Committee welcomes the Productive Development Bank and similar initiatives for women, such as the Seed Capital Fund and the Women Heads of Household Credit. It further notes the Gender Strategy for the Empowerment of Women in the Productive, Industrial and Commercial Sector and the Project for Improving the Empowerment of Women in the Northern Amazon. However, the Committee is concerned about the low proportion of women among the economically active population with access to some form of credit, and insufficient measures to ensure that indigenous and rural women benefit from the implementation of development projects within their territories. It also notes the lack of a gender perspective in programmes such as the Indigenous Development Fund.
30. The Committee recommends that the State party:
- (a) Increase the participation of women, including those employed in the informal economy, in the development of strategies to facilitate women's access to financial credit, such as low-interest loans, as well as to entrepreneurship and independent business opportunities;
 - (b) Strengthen the Indigenous Development Fund by incorporating gender equity policies and facilitate indigenous women's access to financial resources and sustainable productive projects for economic empowerment.

Indigenous and Afro-Bolivian women

33. The Committee notes with concern:
- (a) The limited information on the outcomes of the Plan of Action for the Decade for Bolivian People of African Descent;
 - (b) That indigenous and Afro-Bolivian women face intersecting forms of discrimination based on race, ethnicity and gender, high levels of unemployment and barriers to participate in political and public life and to access employment, economic opportunities and adequate health-care services;
 - (c) The lack of a legal framework and effective mechanisms in place to ensure benefit-sharing and the prior, free and informed consent of indigenous and Afro-Bolivian women to mining activities and extraction of hydrocarbons in their territories;
 - (d) Reports of high levels of gender-based violence, as well as intimidation and reprisals, against indigenous and Afro-Bolivian women human rights defenders, including during the political crisis in 2019 and 2020.
34. The Committee recommends that the State party:
- (a) Ensure a gender and intercultural perspective in its policies concerning indigenous and Afro-Bolivian women, including the Plan of Action for the Decade for Bolivian People of African Descent;
 - (b) Strengthen its legal framework and establish effective mechanisms to ensure that activities of mining companies and extractive industries are subject to the free, prior and informed consent of and adequate benefit-sharing with affected indigenous, Afro-Bolivian and rural women;
 - (c) Investigate and prosecute all acts of gender-based violence, intimidation and reprisals against indigenous and Afro-Bolivian women human rights defenders, and provide effective remedies and reparations to victims of such acts.

5. Gabon, CEDAW/C/GAB/CO/7, 1 March 2022

Disadvantaged and marginalized groups of women

36. The Committee regrets the lack of information on the situation of disadvantaged groups of women in the State party, including poor women and single mothers, women with disabilities, and refugee, migrant and indigenous women. ...
37. The Committee recommends that the State party: (a) Provide information, in its next periodic report, on the outcome of the planned survey to determine the prevalence of sexual violence perpetrated against indigenous women....

Marriage and family relations

38. The Committee welcomes the amendments to the Civil Code and Penal Code, aimed at ensuring the equality of spouses and eliminating discrimination against women, inter alia, with respect to joint administration of marital property, dissolution of marriage, inheritance rights and widowhood practices. It is concerned, however, about the implementation of these provisions in practice, including limited awareness of women and law enforcement actors regarding the legislative changes....
39. Recalling its general recommendation No. 21 (1994) on equality in marriage and family relations and its general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, the Committee recommends that the State party: (a) Strengthen awareness-raising campaigns to disseminate the revised Civil Code, targeting, in particular, women from rural areas and indigenous women and girls, as well as traditional chiefs and parents....

6. Panama, CEDAW/C/PAN/CO/8, 1 March 2022

Women's rights and gender equality in relation to the coronavirus disease pandemic and recovery efforts

9. The Committee welcomes the information provided by the delegation during the dialogue indicating the adoption of a national emergency and social assistance plan that includes digital transfers and covers 51.58 per cent women out of the total number of beneficiaries. It also notes the information on programmes to ensure universal vaccination, in which 51.53 per cent of the beneficiaries are women. The Committee, nonetheless, remains concerned that women have been extremely affected by the coronavirus disease (COVID-19) pandemic and measures taken to contain it, in particular due to: the loss of jobs, including for domestic workers; the reduction of wages; recourse to the informal economy; or the loss of livelihoods for indigenous women in areas where tourism was the main income-generating activity before the pandemic, exacerbating situations of hunger and malnutrition faced by indigenous women. ...
10. The Committee, in line with its guidance note on the obligations of States parties to the Convention in the context of the COVID-19 pandemic, issued on 22 April 2020, recommends that the State party: ... (b) Implement targeted programmes to address situations of hunger and malnutrition exacerbated during the pandemic in indigenous regions, and ensure that measures to mitigate the socioeconomic impact of the pandemic target all groups of women, including: rural women; indigenous and Afrodescendant women and girls living in remote areas; ... (d) Promote and facilitate the equal participation of women, including indigenous women, Afrodescendant women and women with disabilities, in the State party's official national recovery programmes, across all sectors of policy.

Legislative protection from discrimination

11. The Committee takes note of the State party's efforts to develop its legislative and policy framework concerning gender equality and non-discrimination, including recognizing sexual or other types of harassment, bullying in the workplace, racism and sexism as criminal offences. Nonetheless, it remains concerned about: ... (d) Intersecting and de facto discrimination faced by: indigenous and Afrodescendant women....

Women's access to justice and remedies

13. The Committee acknowledges the establishment of free legal aid for survivors of crime irrespective of socioeconomic status and throughout all judicial procedures, and it welcomes measures adopted to expedite judicial proceedings in family courts, including through the use of audio and video technical equipment during judicial hearings, and to increase access by indigenous women to justice through mobile family courts in the Province of Chiriquí. The Committee, nonetheless, remains concerned by: (a) The lack of information on measures to ensure women's access to justice and remedies in all areas of law, including during the COVID-19 pandemic; ... (e) Stigma and discriminatory stereotypes among law enforcement officers, including the police, which impede access to justice for indigenous, Afrodescendant, refugee and asylum-seeking women, including in cases of gender-based violence against women and throughout immigration law enforcement proceedings.
14. The Committee, in line with its general recommendation No. 33 (2015) on women's access to justice, recommends that the State party: ... (e) Strengthen systematic capacity-building for judges, prosecutors, lawyers and law enforcement officials concerning equality and non-discrimination against women, and adopt indicators to ensure that cases of gender-based violence and discrimination against indigenous women ... are managed in a gender-sensitive manner.

National machinery for the advancement of women

15. The Committee welcomes the information about the political and financial autonomy of the National Institute for Women and the establishment of the Network of Government Mechanisms for the Promotion of Equal Opportunities in Panama and other entities for the advancement of women, including the National Women's Council, the National Committee on Violence against Women, and employment and gender directorates (CEDAW/C/PAN/8, paras. 37, 38, 40 and 46). However, it remains concerned about: ... (c) The absence of mechanisms across all sectors of policy to ensure appropriate consultations with and the meaningful participation of women's organizations, including indigenous and Afrodescendant women and women with disabilities, in the national machinery for the advancement of women.

Temporary special measures

17. The Committee is concerned about provisions in the Electoral Code that limit the implementation of parity in lists of candidates to elected positions, in particular by allowing political parties to replace women candidacies with male candidates. It also observes the absence of information about temporary special measures to achieve substantive equality in all areas covered by the Convention by overcoming the marginalization of women subjected to multiple and intersecting forms of discrimination.

18. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party: ... (d) Allocate budgetary resources to develop temporary special measures aimed at accelerating substantive equality and eliminating intersectional discrimination affecting indigenous and Afrodescendant women, migrant, refugee and asylum-seeking women, female heads of households and women with disabilities.

Discriminatory stereotypes and harmful practices

19. The Committee takes note of measures to combat gender stereotypes, in particular the review of the school textbooks to address gender representations of women and discriminatory stereotypes, and to raise public awareness about gender equality. The Committee is nevertheless concerned about: ... (c) The higher prevalence of adolescent pregnancies among indigenous women and girls and the lack of information on measures to foster autonomy in the exercise of their sexual and reproductive rights.
20. Recalling the joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, and its previous recommendations (CEDAW/C/PAN/CO/7, para. 23), the Committee recommends that the State party: ... (c) Adopt a community and school-based comprehensive strategy, engaging men and boys in creating an enabling environment that supports the empowerment of women and girls, with the aim of tackling harmful practices and changing underlying social norms that underpin sexual violence and social norms concerning sexual and reproductive health and adolescent pregnancies, including in rural and indigenous communities....

Gender-based violence against women

21. The Committee welcomes the legislation in the State party recognizing femicide as a criminal offence as well as reforms to increase penalties for different forms of sexual violence, including rape, sexual exploitation and child pornography. It also takes note of the measures included in the Public Policy for Equal Opportunities for Women (Executive Decree No. 244 of 18 December 2012) to prevent gender-based violence against women. However, the Committee remains concerned about: (a) The persistence of various forms of gender-based violence against women in public and private spaces, including the prevalence of domestic violence and sexual violence against adolescent girls, in residential alternative care centres, and affecting women with disabilities, indigenous and Afrodescendant women (CEDAW/C/PAN/8, para. 95)....
22. The Committee, in the light of its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, recommends that the State party: (a) Ensure the actual implementation of all legislation and institutional measures to tackle and eliminate all forms of gender-based violence against women, targeting violence against women who face intersecting forms of discrimination, particularly adolescent girls, women with disabilities, indigenous and Afrodescendant women, and migrant, refugee and asylum-seeking women, establishing benchmarks, indicators of progress and a time frame for monitoring implementation....

Equal participation in political and public life

29. The Committee notes with concern: ... (d) The absence of measures to promote the participation in political and public life of indigenous women, Afrodescendant women and women with disabilities, or in leading positions at the international level.
30. The Committee recommends that the State party: ... (e) Strengthen mechanisms to facilitate women's participation in the international arena; adopt legislation and policy measures that promote diversity and political participation at all levels, including the representation of indigenous and Afrodescendant women, young women, rural women and women with disabilities, in international affairs, including in organizations and in leading positions at diplomatic missions; and implement measures to reduce negative attitudes associated with women in high-level international leadership positions.

Education

33. The Committee is concerned about: (a) The higher illiteracy rates among women compared with men (CEDAW/C/PAN/8, para. 142), which particularly affect indigenous and rural women; ... (e) Barriers preventing indigenous women and girls from attending virtual education programmes during the period of confinement during the COVID-19 pandemic, in particular due to the lack of technology devices.
34. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education and its previous concluding observations (CEDAW/C/PAN/CO/7, paras. 35 and 37), the Committee recommends that the State party: (a) Set up a strategy with measurable indicators and time frames for the assessment of progress with regard to women's education, including in indigenous regions, and ensure that the Ministry of Education collects statistical data about their enrolment, completion and dropout rates, disaggregated by age, ethnicity, disability, socioeconomic condition, and migrant, refugee or asylum-seeking status; ... (e) Expand the coverage and human, technical and financial resources allotted to bilingual education for indigenous women, and adopt and implement a strategy to guarantee access to technology for indigenous girls and women, allowing them to enrol in Internet-based education programmes.

Employment

35. The Committee welcomes the legislation enacted by the State party to address and prevent sexual harassment and other forms of discrimination in the workplace, and information about the establishment of a minimum wage for all workers. Nonetheless, it is concerned about: ... (c) The continuous practice of requiring pregnancy tests for women to access jobs in the public and private sectors, the absence of labour legislation to protect pregnant women from dismissal, and the continuous discrimination against refugee applicants, indigenous women....

Health

37. The Committee observes the implementation of measures related to health, including the National Strategic Plan for the Reduction of Maternal and Perinatal Morbidity and Mortality 2015–2020. However, it notes with concern: (a) The prevalence of maternal mortality among indigenous women, in particular those inhabiting the Ngäbe-Buglé comarca and the Darién province, and the lack of access to health-care facilities in indigenous regions; ... (d) Forced sterilization procedures performed on indigenous women and young girls and women with disabilities, at the request of a third party and without their free, prior and informed consent.

38. The Committee recalls its previous concluding observations (CEDAW/C/PAN/CO/7, paras. 41, 43 and 45), and recommends that the State party:
- (a) Assess the outcomes of the National Strategic Plan for the Reduction of Maternal and Perinatal Morbidity and Mortality 2015–2020, and introduce new strategies and programmes to address the prevalence of maternal mortality among indigenous and Afro-descendant women, including programmes on sexual and reproductive health and rights in the indigenous regions; ...
 - (c) Adopt specific health targets in national and provincial plans aimed at improving access to health services for all women, and in particular for indigenous women, Afro-descendant women ... and monitoring mechanisms that include the cooperation and participation of women and their civil society organizations; ...
 - (e) Ensure adequate access to information for adolescent girls and young women about sexual and reproductive health and rights, including on the prevention of adolescent pregnancy and sexually transmitted infections, and conduct awareness-raising campaigns about modern forms of contraception, ensuring women's and adolescent girls' access to safe and affordable contraception, in particular in rural and remote areas, including indigenous and Afrodescendant communities;
 - (f) Prevent the forced sterilization of indigenous women and women with disabilities, including by eliminating legal provisions allowing for the sterilization of women with disabilities on the basis of impairment and at the request of family members or guardians; ensure that women always provide their free, prior and informed consent regarding sterilization; and establish programmes at the national and regional levels to provide access by women with disabilities to sexual and reproductive health and rights.

Economic and social benefits and economic empowerment of women

39. The Committee observes the initiatives to promote women's entrepreneurship, loan programmes, including agricultural loans, and facilities and cooperatives for agricultural production. However, it is concerned about: ... (d) The situations of poverty and deprivation, including food insecurity, among women, including women heads of households, women with disabilities or those caring for family members with disabilities, and rural, indigenous, Afro-descendant and migrant and refugee women.
40. The Committee recommends that the State party: ... (d) Implement public policies and plans of action with time frames to eliminate poverty among women with disabilities, indigenous women, Afrodescendant women and migrant women, ensuring that they participate in entrepreneurial initiatives that empower them economically and opportunities to acquire necessary skills to participate in various sectors of the economy.

Rural women

41. The Committee is concerned about the absence of information relating to the percentage of rural women beneficiaries of loan programmes, the effective access to loans by indigenous and Afro-descendant women, and the lack of measures to ensure that women recipients of loans receive extension support to ensure repayment of the loans. It is also concerned by the lack of information about mechanisms to ensure rural women's participation in the benefits of agricultural development projects at the provincial level, and by limited access to land ownership.

42. In line with its general recommendation No. 34 (2016) on the rights of rural women, the Committee recommends that the State party:
- (a) Expand access for rural women, including indigenous and Afrodescendant women, to loans with no or very low interest rates, incomegenerating activities and entrepreneurship opportunities, with the aim of combating poverty and promoting the advancement of rural women, and enhance their security of land tenure;
 - (b) Ensure that agricultural development policies, programmes and projects respond to the goal of substantive gender equality and effectively address the situation of rural women, ensuring that they can meaningfully participate in the development and implementation of agricultural and development policies, including with regard to decisions on land use;
 - (c) Develop policies and programmes to ensure the economic empowerment of rural women, work with indigenous and Afrodescendant women in short-, medium- and long-term programmes on poverty alleviation, and ensure rural women's access to basic services, including housing, clean water, sanitation and electricity, as well as to economic opportunities and technological progress.

Indigenous and Afro-descendant women

43. The Committee observes with concern:
- (a) That national agreements between Afro-descendant and indigenous women and incoming governmental and presidential candidates to implement policies for improving the situation of women have not been fulfilled;
 - (b) That indigenous and Afro-descendant women face intersecting racial, ethnic and gender discrimination and prevailing inequalities, including high levels of unemployment, an absence of adequate health-care services, and barriers preventing them from benefiting from economic empowerment and participating in public and political life;
 - (c) That there is a lack of mechanisms to seek the free and informed consent of indigenous and Afro-descendant women and their involvement in decision-making procedures concerning public policies, programmes and investment projects;
 - (d) That no environmental impact assessments are conducted on the consequences for the human rights of indigenous and Afro-descendant women of investment, infrastructure, mining and agroindustry projects in the light of current concerns with environmental degradation and disaster risk reduction.
44. The Committee recommends that the State party:
- (a) Implement decisions in the national agreements between indigenous and Afro-descendant women's organizations and the State party signed by the President of the State party;
 - (b) Address racial discrimination against Afro-descendant and indigenous women, such as discrimination against women and girls who wear natural, African-style hair;
 - (c) Adopt a strategy, including policy programmes at the national and provincial levels, for achieving substantive equality for indigenous and Afro-descendant women in all areas covered by the Convention;
 - (d) Ensure the meaningful participation of indigenous and Afro-descendant women in decision-making processes regarding the use of traditional indigenous lands

and establish effective consultation mechanisms to secure the free, prior and informed consent of indigenous women, and assess and mitigate the impact of megaprojects on the rights of indigenous and Afro-descendant women;

- (e) Protect indigenous women's access to and ownership of collective titles of their lands, protect them from eviction due to the business activities of large corporations in extractive industries, establish the duty for public and private investors to recognize benefit-sharing in relation to development projects and the use of natural resources and lands of indigenous and Afro-descendant women for other purposes, and adopt policies that provide for compensation and reparations to indigenous and Afro-descendant women in regions negatively affected by investment projects.

7. Peru, CEDAW/C/PER/CO/9, 1 March 2022

General context and historical discrimination

9. The Committee acknowledges the efforts by the State party to mainstream gender equality and women's rights in its legislative, regulatory and policy frameworks. The Committee is concerned, however, about the high levels of gender-based violence against women, which have been exacerbated since the onset of the coronavirus disease (COVID-19) pandemic. It notes with concern the inadequate progress made in addressing the disproportionate levels of violence experienced by disadvantaged and marginalized groups of women and girls in all areas of their lives and who are also facing historical and intersecting forms of discrimination, namely indigenous and Afro-Peruvian women.... The Committee regrets the lack of visibility and priority given to women and girls belonging to those groups in all initiatives of the State party to achieve gender equality and women's rights, thereby perpetuating their social and economic exclusion, and denying the rights guaranteed to them under the Convention.
10. The Committee calls upon the State party to actively promote the use of temporary special measures, including through the adoption of quotas, targets and indicators, in all areas of the Convention, to provide urgent redress for women and girls who are subjected to historical and intersecting forms of discrimination, such as indigenous and Afro-Peruvian women..... It further recommends that the State party develop a strategic and holistic response in cooperation with women's groups and civil society organizations to ensure the timely implementation of such temporary special measures.

Access to justice

13. The Committee welcomes the efforts made by the State party to strengthen access to justice for women, including the National Programme on Access to Justice for Vulnerable Persons, 2016–2021. It notes with concern, however, the persistent institutional, structural and practical barriers to women's access to justice, including the following: ... (c) That young women are unable to access the courts or to personally report cases of gender-based violence against women without an adult present, and that indigenous women, rural women, women land right defenders, women with disabilities and lesbian, bisexual and transgender women and intersex persons are often harassed and denied services when seeking to access justice; ... (d) Financial, linguistic, accessible and geographical barriers to gaining access to justice faced by low-income, rural women, Afro-Peruvian and other Afrodescendent women, refugee or asylum-seeking and migrant women, and indigenous women and women with disabilities....

14. In accordance with the Convention and with the Committee's general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party: ... (b) Continue raising awareness among women about their rights under the Convention, targeting in particular women belonging to marginalized groups, including low-income, rural women, Afro-Peruvian and other Afrodescendent women, refugee or asylum-seeking and migrant women, and indigenous women and women with disabilities...

Discriminatory stereotypes and harmful practices

21. The Committee welcomes the efforts made by the State party to eliminate patriarchal attitudes, deeply rooted stereotypes and harmful practices. It nevertheless remains concerned at the pervasiveness of such attitudes and the social legitimization of harmful practices against women and girls in the State party, as manifested in: ... (b) Gender-based violence against women and discrimination against women with disabilities, lesbian, bisexual and transgender women and intersex persons, refugee or asylum-seeking and migrant women and indigenous and Afro-Peruvian women, in particular in the delivery of health services and in their engagement with the justice system.

Gender-based violence against women

23. The Committee welcomes the strengthening of legal provisions to combat gender-based violence against women in the State party, including the adoption of Act No. 30364 on the prevention of violence against women and members of the family group, in 2015; the National Plan against Gender-Based Violence 2016–2021; and the guidelines for an intercultural perspective on the prevention, protection, and support for cases of violence against women, children, adolescents, and indigenous women, lesbian, bisexual and transgender women and intersex persons and women with disabilities, published in 2019. It remains deeply concerned, however, about the high incidence of intimate partner violence against women, exacerbated by the ongoing COVID-19 pandemic, noting that over the past two years the numbers of femicides, sexual violence and disappearances of young women increased exponentially.
24. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party: (a) Enhance mechanisms to monitor the enforcement of laws criminalizing gender-based violence against women and providing for victim support services, in particular with regard to disadvantaged and marginalized groups of women, such as young women, indigenous [women]...; ... (i) Ensure the provision of appropriate, accessible and quality support services responding to the needs of survivors of gender-based violence against women, especially indigenous women....

Trafficking and exploitation of prostitution

27. The Committee notes the State party's efforts to combat trafficking in women and girls, including through the adoption of Act No. 31146 amending criminal law provisions against trafficking in persons to ensure the procedural representation of minors and reparations for victims of trafficking, as well as the National Policy against Trafficking in Persons (2030). It notes with concern, however: ... (b) That indigenous women living in remote areas with limited access to government services; migrant women seeking employment opportunities in the gold mining industry; women from communities residing on the Amazon River; and refugee and migrant women from the Bolivarian Republic of Venezuela are at a particularly high risk of being trafficked;

28. In line with its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, the Committee recommends that the State party: ... (b) Strengthen the capacity of first-line responders to identify cases of trafficking in women and girls in remote areas, in mining communities and along the Amazon River; and in areas of the country hosting refugee and migrant women from the Bolivarian Republic of Venezuela....

Equal participation in political and public life

29. The Committee welcomes the progress made by the State party in increasing women's participation in political and public life, in particular the establishment of the Group for Strengthening Indigenous Political Participation (resolution 085-A2016-P/JNE)....

30. Recalling its general recommendation No. 23 (1997) on women in political and public life, as well as target 5.5 of the Sustainable Development Goals, the Committee recommends that the State party:

- (a) Adopt temporary special measures in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, including statutory quotas for the equal representation of women in decision-making positions in the Government, the civil service and the foreign service;
- (b) Adopt measures to encourage women's equal participation at all levels of decision-making, including on mining ventures, large-scale agricultural initiatives, in the security sector and in managerial positions in the private sector;
- (c) Adopt measures to address discriminatory gender stereotypes and practices within political parties that discourage women, in particular indigenous [women] ... from standing for election at the federal, state or municipal levels....

Education

33. The Committee welcomes the efforts to increase girls' and women's access to education across the State party through the development of a bilingual and intercultural education service model in 2018. It notes with concern, however: (a) That the high illiteracy rates disproportionately affect women and girls from marginalized communities who face intersecting forms of discrimination, such as indigenous ... women and girls....

34. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party promote understanding of the importance of girls' education at all levels as a basis for their empowerment, and:

- (c) Take targeted measures to ensure that disadvantaged and marginalized groups of girls, and in particular indigenous, Afro-Peruvian girls, rural girls and girls with disabilities, refugees and migrants, have adequate access to quality education, as well as their retention in school, including by:
 - (i) Strengthening the educational infrastructure in indigenous communities and rural areas;
 - (ii) Providing free, reliable and safe school transport for girls and women in rural and remote areas;
 - (iii) Facilitating the enrolment of girls from marginalized groups in educational institutions at all levels;

- (iv) Ensuring adequate opportunities for indigenous girls and women to receive instruction in their own languages....

Employment

35. The Committee welcomes the ongoing efforts by the State party to promote the integration of women into the labour market, including through the adoption of the National Action Plan on Business and Human Rights (2021–2025), which seeks to reconcile work and family life, training on good practices and gender equality, fighting harassment and gender-based violence against women in the workplace, and ensuring equal and decent conditions of work for lesbian, bisexual and transgender women and intersex persons. It notes with concern, however: (a) That women facing intersecting forms of discrimination, including indigenous [women] ... have limited access to employment opportunities....
36. The Committee draws attention to its general recommendation No. 13 (1989) on equal remuneration for work of equal value and to target 8.5 of the Sustainable Development Goals and recommends that the State party: ... (b) Establish hiring quotas and employment retention schemes specifically targeted at promoting access by women facing intersecting forms of discrimination, including indigenous [women] ... to formal employment....

Health

37. The Committee notes the measures taken by the State party to prevent early pregnancies, including the National Multisectoral Policy for Children and Adolescents (2030), establishing guidelines aimed at reducing early pregnancies and prioritizing comprehensive sexuality education for basic education students. However, the Committee notes with concern: ... (d) Economic barriers that restrict access to sexual and reproductive health services and information, including emergency contraception, for rural women and girls, as well as indigenous and Afro-Peruvian women....
38. In line with its general recommendation No. 24 (1999) on women and health, the Committee recommends that the State party: ... (d) Intensify inclusive awareness-raising programmes to ensure that women and girls, and in particular those from marginalized groups, have confidential access to modern contraceptives and information on sexual and reproductive health and rights, including their right to make autonomous decisions, and to eliminate discriminatory gender stereotypes and attitudes regarding the sexuality of women and girls; (e) Ensure that no sterilizations are performed without the free, prior and informed consent of the woman concerned, that practitioners performing sterilizations without such consent are adequately punished and that redress and adequate financial compensation are provided without delay to women who are victims of non-consensual sterilizations....

Economic empowerment and social benefits

39. The Committee remains concerned about the disproportionately high levels of poverty and the inequality in access to economic and social benefits faced by disadvantaged and marginalized groups of women, especially indigenous women, Afro-Peruvian and other Afrodescendent women, rural women and women with disabilities.

40. The Committee recommends that the State party:
- (a) Strengthen its national poverty reduction strategy with a particular focus on disadvantaged and marginalized groups of women, in particular indigenous women, Afro-Peruvian and other Afrodescendent women, rural women and women with disabilities, and encourage the active participation of women in the formulation and implementation of poverty reduction strategies;
 - (b) Increase women's access to the national social security system and develop coordinated social protection and compensation programmes for women, especially women belonging to disadvantaged groups.

Rural women

41. The Committee notes with concern:
- (a) The adverse impact of mineral, oil extraction and large-scale agricultural industries on rural women's health and environment, in particular for indigenous, Afro-Peruvian and other Afrodescendent women;
 - (b) The limited access in rural areas to justice, basic services, such as education and health care, including sexual and reproductive health services, support services for victims of gender-based violence against women, adequate water and sanitation, and to the Internet.
42. In line with general recommendation No. 34 (2016) on the rights of rural women, the Committee recommends that the State party:
- (a) Establish a legal framework to regulate and ensure that extractive industries and other business projects are submitted to social and environmental impact studies and implemented only with the free, prior and informed consent of and adequate benefit-sharing with affected indigenous women, Afro-Peruvian and other Afrodescendent women and rural women;
 - (b) Ensure reparations and compensation for women in rural areas whose health and other rights are affected by extractive industry development and ensure their access to affordable, quality health care;
 - (c) Increase the human, technical and financial resources allocated to improve women's access in rural areas to justice and basic services, such as education and digital literacy programmes, health care, including sexual and reproductive health services, support services for victims of gender-based violence against women, adequate water and sanitation, and the Internet.

Women and girls in detention

47. The Committee is concerned about the conditions of detention faced by women deprived of their liberty, in particular the lack of adequate services to address the needs of pregnant women and women with children, girls, lesbian, bisexual and transgender women and intersex persons, migrant women, indigenous women, Afro-Peruvian and other Afrodescendent women, women with disabilities, women living with HIV/AIDS and women with other illnesses, such as tuberculosis, in detention.

8. Uganda, CEDAW/C/UGA/CO/8-9, 1 March 2022

General context

10. In line with its guidance note on the obligations of States parties to the Convention in the context of the COVID-19 pandemic, the Committee recommends that the State party: (a) Implement measures to redress long-standing inequalities between women and men by placing women at the centre of COVID-19 recovery strategies, in accordance with the 2030 Agenda, paying particular attention to unemployed women, women living in poverty, women belonging to ethnic and national minority groups [and] indigenous women....

Visibility of the Convention and the Committee's general recommendations

11. The Committee takes note of the State party's efforts to enhance the visibility of the Convention, including by publishing the Convention in local languages. It is concerned, however, that women, in particular rural women, women belonging to ethnic and national minority groups, [and] indigenous women ... are often not aware of their rights under the Convention or the remedies available to them.

Nationality

35. The Committee welcomes the fact that the State party, as one of the largest host countries in the world, receives approximately 1.5 million refugees and asylum seekers in the State party, more than half of them women and girls, guaranteeing their right to birth registration under the Constitution and enabling foreign women to confer their nationality to their children. The Committee is concerned, however, about delays in birth registrations, in particular in rural and remote areas and within indigenous communities, delays in the registration, issuance and renewal of identity cards for refugee women and girls and the lack of information on measures taken to reduce statelessness.
36. With reference to its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recommends that the State party: (a) Facilitate birth registration and the registration of refugee and asylum-seeking women and girls through the use of modern information and communications technology, simplify and ensure affordable birth registration procedures and deploy more mobile teams to issue birth certificates in rural and remote areas and within indigenous communities....

Education

37. The Committee welcomes the teaching programmes for indigenous girls in local languages....
38. With reference to its general recommendation No. 36 (2017) on the right of girls and women to education, and recalling its previous recommendation (CEDAW/C/UGA/CO/7, para. 32), the Committee recommends that the State party promote the importance of girls' education at all levels, as a basis for their empowerment, and:
... (c) Raise awareness among parents, teachers, traditional and religious leaders, members of indigenous communities and all women, men, girls and boys of the importance of girls' and women's education for their economic empowerment, personal development and autonomy....

Health

41. The Committee takes note of the fact that the HIV/AIDS Prevention and Control Act of 2015 and the various strategies, policies and programmes for the prevention and control of HIV and AIDS embrace human rights principles, including non-discrimination and gender-responsiveness. It also takes note of the establishment, in 2015, of a national menstrual health and hygiene coalition to mobilize resources for the provision of hygiene products to girls and separate sanitary facilities for them in rural and remote areas, indigenous and refugee communities and government-aided schools. ...

9. Russian Federation, CEDAW/C/RUS/CO/9, 30 November 2021

Temporary special measures

20. The Committee notes with concern the limited understanding within the State party of the non-discriminatory nature and importance of temporary special measures for accelerating the achievement of substantive equality between women and men, including statutory quotas, in the public or private sectors, in particular for rural women and women and girls facing intersecting forms of discrimination such as women with disabilities, women belonging to minority groups and indigenous and tribal women.
21. The Committee recommends that, in line with article 4 (1) of the Convention and its general recommendation No. 25 (2004) on temporary special measures, the State party:
 - (a) Adopt and implement temporary special measures and establish time-bound targets to accelerate the realization of substantive equality between women and men in all areas in which women continue to be disadvantaged or underrepresented, including in political and public life and employment;
 - (b) Undertake capacity-building programmes targeting legislators, policymakers, other public officials and employers in the public and private sectors, at both the federal and regional levels, on the non-discriminatory nature and importance of temporary special measures for the achievement of substantive equality between women and men in all areas covered by the Convention in which women are underrepresented or disadvantaged.

Disadvantaged groups of women

44. The Committee notes the adoption of Federal Act No. 11-FZ (2020), establishing a unified list of indigenous peoples in the State party and a procedure for registration. It notes with concern the lack of detailed information on the registration procedure and on the number of indigenous women belonging to indigenous peoples who have registered on the unified list to be able to have access their traditional lands and livelihoods and participate in decision-making processes at the local, regional and federal levels.
45. The Committee recommends that the State party:
 - (a) Adopt measures to facilitate the registration of indigenous women and girls on the unified list of indigenous peoples and ensure their access to education, social benefits and health care;
 - (b) Ensure and protect indigenous women's collective rights to traditional land and resources and to effective participation in decision-making bodies and processes at the local, regional and federal levels.

Disaster risk reduction and climate change

54. The Committee notes with concern the lack of a gender perspective in the formulation and implementation of policies and action plans on climate change and disaster risk reduction, particularly for rural and indigenous women, even though they are disproportionately affected by the effects of climate change and natural disasters.
55. The Committee recommends that, in line with its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the State party review its climate change and energy policies and take into account the negative effects of climate change on the livelihoods of women, especially rural and indigenous women.

10. Indonesia, CEDAW/C/IDN/CO/8, 24 November 2021

Indigenous rural women

45. The Committee welcomes the State party's efforts in building normative frameworks to recognize a certain degree of land rights of masyarakat hukum adat (customary law communities). However, the Committee notes with concern:
 - (a) The fact that only nine *masyarakat hukum adat* are recognized by the State party, and that rural and indigenous women are disproportionately affected by development projects, including the exploitation of natural resources, deforestation and agricultural expansion, and land conflicts caused thereby;
 - (b) That Law No. 11/2020 on job creation undermines environmental protection by removing the requirement of environmental permits and environmental impact assessments, thereby threatening indigenous women's access to land;
 - (c) The absence of information on the integration of a gender perspective into decision-making processes on development projects and the limited participation of women, especially indigenous rural women, in such decision-making and policymaking;
 - (d) Indigenous women's limited access to land ownership, safe water and adequate sanitation.
46. The Committee recommends that the State party:
 - (a) Expedite its efforts to protect indigenous women's right to use natural resources and lands, including by expanding the scope of *masyarakat hukum adat*, and repeal or otherwise amend legislation that undermines indigenous women's right to land use, including Law No. 11/2020 on job creation;
 - (b) Conduct a gender assessment in the context of all environmental impact assessments and ensure that rural and indigenous women can fully contribute to the development of the country, require their free, prior and informed consent to any development project on indigenous lands as well as adequate benefit-sharing agreements, and provide indigenous women affected by such projects with adequate alternative livelihoods, in line with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169);
 - (c) Eliminate customary practices that discriminate against indigenous women in relation to land ownership and ensure indigenous women's access to basic services, safe water and adequate sanitation.

11. Ecuador, CEDAW/C/ECU/CO/10, 24 November 2021

General context

9. The Committee notes with concern that the financial and economic crisis triggered by low oil prices, appreciation of the United States dollar, increasing external financing costs and growing trade conflicts has been exacerbated by the coronavirus disease (COVID-19) pandemic. The Committee also notes with concern that the COVID-19 health crisis has triggered a deep recession, leading to increased poverty, and has revealed structural weaknesses, such as a lack of macroeconomic buffers, a high level of informal employment, a poorly prepared health-care system and large gaps in access to public services. The Committee further notes with concern that the austerity measures adopted by the State party in an effort to consolidate public finances have had a disproportionate impact on women in all spheres of life. It is also concerned about the prevalence of gender-based violence against women, including domestic violence, and the feminization of poverty, which disproportionately affects women and girls belonging to disadvantaged and marginalized groups and those facing intersecting forms of discrimination. The Committee reminds the State party that, even in times of fiscal constraint and economic crisis, specific efforts must be made to advance women's rights, sustain and expand social investment and social protection and integrate a gender perspective into policies and programmes, focusing on disadvantaged and marginalized groups of women and seeking to avoid retrogressive measures.
10. In line with its guidance note on the obligations of States parties to the Convention in the context of COVID-19, issued on 22 April 2020, the Committee recommends that the State party:
 - (a) Undertake a comprehensive study on the consequences of the financial and economic crisis and subsequent austerity measures on women and design an action plan to mitigate the adverse effects of such measures;
 - (b) Ensure the internal redistribution of its resources to overcome the consequences of the financial crisis, according priority to measures that support social inclusion and gender equality, and implement measures to redress pre-existing gender inequalities by placing women and girls at the centre of recovery strategies in line with the 2030 Agenda for Sustainable Development, with particular attention to unemployed women and women living in poverty, women belonging to ethnic minorities, indigenous women, older women, women with disabilities, migrant, refugee and asylum-seeking women, and lesbian, bisexual, transgender women and intersex persons....

Visibility of the Convention, the Optional Protocol thereto and the Committee's general recommendations

11. The Committee notes that, under article 417 of the Constitution, the Convention and other international human rights treaties are directly applicable in the courts. The Committee remains concerned, however, that the provisions of the Convention, the Optional Protocol thereto and the Committee's general recommendations are not sufficiently known in the State party, including by women themselves. The Committee also notes with concern the lack of references to the Convention in court decisions in the State party.
12. The Committee recommends that the State party: ... (b) Continue raising awareness among women about their rights under the Convention, targeting in particular women belonging to disadvantaged groups, including indigenous women,

Ecuadorian women of African descent, Montubio women, migrant, asylum-seeking and refugee women and women with disabilities. ...

Constitutional framework and definition of discrimination against women

13. The Committee commends the State party on its comprehensive legislative and policy framework for the elimination of discrimination against women. However, the Committee remains concerned about: (a) Challenges to the effective implementation of, and the slow progress in bringing about the institutional changes necessary to enforce, such legislation and policies; (b) Intersecting forms of discrimination faced by indigenous, Ecuadorian women of African descent and Montubio women, women with disabilities, migrant women, women asylum seekers and refugee women, and the lack of disaggregated data on the situation of women.
14. In line with article 1 of the Convention and general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and reiterating its previous recommendations ... the Committee recommends that the State party: (a) Strengthen the enforcement of legislation and policies aimed at eliminating discrimination against women in all areas covered by the Convention, including through the adoption of specific time frames, and give priority to the allocation of human and financial resources for their implementation in rural and remote areas and autonomous territories; (b) Adopt specific targets and indicators aimed at addressing intersecting forms of discrimination against women.

Temporary special measures

17. ...It also reiterates its concern about the absence of temporary special measures in the State party's public policy aimed at reducing the multiple and intersectional discrimination faced by women belonging to disadvantaged groups, such as indigenous, Ecuadorian women of African descent and Montubio women ... in areas such as political participation, education, employment and health.
18. In line with its general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party: (a) Ensure full compliance with the temporary special measures provided for in the Democracy Code, including those relating to ethnic and cultural diversity, in the composition of lists, the definition of constituencies and the method of seat allocation, and introduce a parity rule in single-person candidacies; (b) In consultation with women from the most disadvantaged groups, define and implement temporary special measures aimed at reducing discrimination against them in order to accelerate de facto equality between men and women.

Employment

31. The Committee notes that the State party ratified the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization, in 2013. It welcomes the adoption of the National Equality Agenda for Women and LGBTI Persons, 2018–2021, which calls for the redistribution of care work, and article 18 of the 2017 Organic Act on Labour Justice and Recognition of Work in the Home, which establishes penalties for dismissal on discriminatory grounds. It further notes the 2021 court ruling against Furukawa Plantaciones, which was found guilty of modern slavery, and the State party's commitment to ensuring that former workers have access to reparation and to implementing a national action plan on business and human rights. However, the Committee notes with concern: ... (g) The persistently low labour market participation rate of migrant women, women belonging to ethnic minority groups, indigenous women and women with disabilities.

32. Recalling its previous recommendations ... the Committee recommends that the State party: ... (d) Strengthen measures to eliminate occupational segregation, enhance access by women, including migrant women, Ecuadorian women of African descent, Montubio women, women belonging to ethnic minority groups, indigenous women and women with disabilities, to formal employment, and encourage women and girls to choose non-traditional career paths; ... (h) Collect comprehensive data on the participation of migrant women, women belonging to ethnic minority groups, women in autonomous territories, indigenous women and women with disabilities in the labour market and include such information in the next periodic report.

Health

33. The Committee welcomes the adoption of the Organic Health Code, which guarantees universal access to comprehensive health care at any time. ... However, the Committee notes with concern: ... (c) That women and girls with disabilities and belonging to minority groups and indigenous, migrant and asylum-seeking women and girls sometimes encounter difficulties in accessing sexual and reproductive health services and information.
34. In line with its general recommendation No. 24 (1999) on women and health and reiterating its previous recommendations ... the Committee recommends that the State party: ... (c) Ensure that women and girls without sufficient means, including those belonging to disadvantaged and marginalized groups, have free-of-charge access to health care, including sexual and reproductive health services.

Climate change and disaster risk reduction

39. The Committee commends the State party on the measures taken to address the climate crisis. However, the Committee notes with concern:
- (a) The lack of participation of indigenous women in the formulation and implementation of policies and strategies on climate change and disaster risk reduction;
 - (b) The lack of data and research on the gender-specific impact of the climate crisis, which disproportionately affects indigenous women and girls.
40. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party:
- (a) Ensure the effective participation of indigenous women as active agents of change in the formulation and implementation of policies and strategies on climate change and disaster response and risk reduction;
 - (b) Ensure that policies and plans relating to disaster risk reduction and climate change explicitly include a gender perspective and take into account the particular needs of indigenous women.

Indigenous women and girls

45. The Committee notes with concern that numerous foreign and national mining, oil, logging and agribusiness multinationals are threatening the territorial, cultural and socioeconomic integrity of indigenous women and girls in the State party, causing socioenvironmental damages that violate their collective rights. The Committee also notes with concern:

- (a) The lack of legislation to protect the rights of indigenous women and girls to their traditional lands;
 - (b) The limited implementation of the principle of free, prior and informed consent and the lack of consultations and benefit-sharing with indigenous women and girls in relation to development projects affecting their collective rights to land ownership;
 - (c) Continued reports of hate crimes and discrimination against indigenous women and girls.
46. The Committee recommends that the State party:
- (a) Adopt legislation to protect the collective rights of indigenous women and girls to their traditional lands;
 - (b) Require the free, prior and informed consent of and consultations and benefit-sharing with indigenous women and girls in relation to development projects affecting their traditional lands, in accordance with international standards;
 - (c) Take measures to combat hate crimes and discrimination against indigenous women and girls, investigate any such cases and prosecute and punish the perpetrators.

12. Sweden, CEDAW/C/SWE/CO/10, 24 November 2021

Equal participation in political and public life

27. The Committee notes that following the 2018 national, regional and municipal elections, 43 per cent of members elected to municipal councils were women. ...
28. Reiterating its previous recommendations ... and recalling its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party: (a) Continue to take targeted measures to maintain its achievements in ensuring a high rate of representation of women in political and public life.... The Committee also recommends that, in doing so, the State party pay particular attention to underrepresented groups of women, such as Sami women ... among others. ...

Employment

33. The Committee commends the State party for the high level of participation of women in the labour force, and notes that in the *Global Gender Gap Report 2021*, published by the World Economic Forum, the State party was ranked eleventh out of 156 countries for women's economic participation and opportunities. ... The Committee notes with concern: ... (d) The persistently low participation of ... Sami women ... in the labour market....
34. With reference to its previous recommendations ... the Committee recommends that the State party: ... (d) Collect comprehensive data on the participation of ... indigenous women ... in the labour market and include such information in the next periodic report....

Climate change and disaster risk reduction

39. The Committee commends the State party on the measures taken to address the climate crisis. However, the Committee notes with concern:

- (a) That Sami women are not sufficiently included in the formulation and implementation of policies and strategies on climate change and disaster risk reduction;
 - (b) The lack of data and research on the gender-specific impact of the climate crisis potentially affecting the Sami community.
40. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party:
- (a) Ensure the effective participation of Sami women as active agents of change in the formulation and implementation of policies and strategies on climate change and disaster response and risk reduction;
 - (b) Ensure that policies and plans relating to disaster risk reduction and climate change explicitly include a gender perspective and take into account the particular needs of women, in particular Sami women.

Sami women and girls

43. The Committee notes with concern:
- (a) The lack of legislation to protect the rights of Sami indigenous women and girls to their traditional lands;
 - (b) The limited implementation of the principle of free, prior and informed consent and the lack of consultations and benefit-sharing with Sami women and girls in relation to development projects affecting their collective rights to land ownership;
 - (c) Continued reports of hate crimes and discrimination against Sami women and girls.
44. The Committee recommends that the State party:
- (a) Revise its legislation, including the Minerals Act, to ensure that exploration permits are granted in consultation with the Sami parliament;
 - (b) Adopt legislation requiring the free, prior and informed consent of and consultations and benefit-sharing with indigenous women and girls in relation to development projects affecting their traditional lands, in accordance with international standards;
 - (c) Take measures to combat hate crimes and discrimination against Sami women and girls, and investigate and prosecute any such cases;
 - (d) Ratify the Indigenous and Tribal Peoples Convention No. 169 (1989), of the International Labour Organization.

13. South Africa, CEDAW/C/ZAF/CO/5, 23 November 2021

Equal participation in political and public life

39. The Committee welcomes the increase in the number of women elected to the National Assembly following the May 2019 elections (45 per cent). However, it notes with concern that women's representation in local government and in the judiciary remains low, and that no concrete measures have been taken to implement the 50/50 gender representation policy. The Committee also notes with concern that the Traditional and Khoisan Leadership Act (Act No. 3 of 2019) requires a quota of only 30 per cent for women's representation in the National House of Traditional Leaders. The Committee is further concerned about the very low participation in political and public life by women belonging to disadvantaged and marginalized groups.

40. The Committee recommends that the State party: (a) Accelerate the adoption of the women's empowerment and gender equality bill and intensify its efforts to increase women's representation at the decision-making level, in both elected and appointed positions; ... (d) Ensure respect for the required quota for women's representation in the National House of Traditional Leaders and amend the Traditional and Khoisan Leadership Act (Act No. 3 of 2019) to increase the quota, with a view to achieving parity in traditional governance systems.

14. Denmark, CEDAW/C/DNK/CO/9, 8 March 2021

Visibility of the Convention, the Optional Protocol and the Committee's general recommendations

12. The Committee welcomes that its previous concluding observations were translated into Danish and disseminated to all relevant ministries by the Ministry of Foreign Affairs with clear indications of responsibilities for follow-up and implementation of the Convention and the Committee's recommendations and that the Convention and its Optional Protocol have been published online in Danish, and that the Convention and the Committee's jurisprudence are regularly invoked and considered in cases before the Refugee Appeals Board. The Committee nevertheless notes with concern the lack of court cases where the Convention has been invoked and about the general lack of awareness of Government officials and women themselves in the State party, in particular in Greenland and the Faroe Islands, of the Convention, and the Committee's jurisprudence under the Optional Protocol, which may prevent them from claiming their rights under the Convention or from availing themselves of the communications or inquiry procedures under the Optional Protocol.
13. Recalling its previous recommendation (CEDAW/C/DNK/CO/8, para. 10), the Committee recommends that the State party:
- (a) (i) Disseminate and give more publicity to the Convention, the Optional Protocol thereto and the Committee's concluding observations and general recommendations, and its recommendations on individual communications and inquiries under the Optional Protocol; (ii) consider establishing a comprehensive implementation mechanism for the present concluding observations with the participation of the Governments of Denmark, Greenland and the Faroe Islands, while respecting the autonomy of the self-governing territories and the principle of subsidiarity, and involve the Danish Institute for Human Rights, the Human Rights Council of Greenland and a body equivalent to the Human Rights Council of Greenland in the Faroe Islands and non-governmental organizations promoting women's rights and gender equality in this mechanism, taking into account the four key capacities of engagement, coordination, consultation and information management of a national mechanism for reporting and follow-up; and (iii) raise awareness among women of their rights under the Convention and of the legal remedies available to them to claim those rights, including in Greenland and the Faroe Islands...

Temporary special measures

18. The Committee notes the statement by the delegation of the State party that progress made in ensuring gender balance in the Boards of Directors of private companies has been insufficient and that it plans to extend the application of gender equality legislation to management positions. The Committee is nevertheless concerned that women are absent in the Boards of Directors of more than half of the

2,200 largest private Danish companies, that the formula for calculating women's representation in executive boards has been amended in 2016 so that a board with two women and five men would be considered equally gender-representative, and the general reluctance of the State party, including Parliament, to adopt temporary special measures as a means of advancing the achievement of substantive equality of women and men in all areas covered by the Convention and at all levels where women are underrepresented or disadvantaged, in particular in Greenland and the Faroe Islands.

19. Reiterating its previous recommendations (CEDAW/C/DNK/CO/8, para. 16), the Committee recommends that the State party make use of temporary special measures, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, and provide incentives such as gender scorecards, strengthen targeted recruitment and set time-bound goals and quotas in all areas covered by the Convention and at all levels where women are underrepresented or disadvantaged in both the public and the private sectors, including private companies, to significantly increase the number of women members in Board of Directors and women in management positions. The Committee also recommends that the State party implement temporary special measures to accelerate de facto equality of women belonging to disadvantaged groups such as migrant women, older women, women with disabilities, indigenous women, lesbian, bisexual and transsexual women and refugee and asylum-seeking women.

Gender-based violence against women

20. The Committee commends the State party for placing lack of free consent at the centre of its new definition of rape; the adoption of a specific provision on psychological violence and abuse; the establishment of a hotline for victims of sexual violence and of new shelters for women victims of gender-based violence, including domestic and sexual violence; and the strengthening of free psycho-social counselling and assistance provided to women victims, including by increasing funds for non-governmental organizations providing ambulatory counselling services. The Committee appreciates the consideration by the State party of new forms of gender-based violence against women, particularly in the online sphere, and the priority action taken to prevent such violence from occurring to young women. The Committee notes the explanation given by the State party that, despite the use of gender-neutral language, its action plans to combat gender-based violence take into account that women are disproportionately affected by such violence. It nevertheless notes with concern:
 - (a) That the concept of consent is not defined in the new definition of rape, that awareness-raising and education on the new definition are reportedly insufficient, and that the new definition applies neither in Greenland nor in the Faroe Islands; [...]
 - (f) The high level of gender-based violence against women and girls, including sexual and domestic violence, in Greenland, and the fact that the Greenlandic Strategy and Action Plan against Violence 2014-2017 has not been renewed;
 - (g) The overall lack of disaggregated data on gender-based violence against women and girls in Greenland and the Faroe Islands, in particular with respect to women belonging to ethnic or national minorities, women with disabilities, and migrant women;

- (h) That the State party has declared upon ratification that the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence (Istanbul Convention) does not apply to Greenland and the Faroe Islands.
21. Reiterating its previous recommendations (CEDAW/C/DNK/CO/8, para. 18), and recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party:
- (a) Define consent in the new criminal provision on rape, strengthen awareness-raising and education on the new definition of rape, specifically targeting young women and men, and introduce the consent-based definition of rape in Greenland and the Faroe Islands; [...]
 - (f) Evaluate the Greenlandic Strategy and Action Plan against Violence 2014-2017 and adopt a new strategy and action plan to combat gender-based violence, including sexual and domestic violence, against women and girls, including women and girls with disabilities, linking it to the prevention of suicide, substance abuse and the action plan on parental neglect, with clear goals and mechanisms for prevention, monitoring and follow-up, and continue implementing measures under the Alliaq programme, which targets perpetrators of domestic violence, and the expired strategy;
 - (g) Ensure the collection and analysis of data, disaggregated by sex, age, nationality and disability, on gender-based violence against women and girls in Greenland and the Faroe Islands;
 - (h) Extend the application of the Istanbul Convention to Greenland and the Faroe Islands.

Trafficking and exploitation of prostitution

22. The Committee welcomes the efforts by the State party to prevent and combat trafficking in persons, in particular women and girls, including through international cooperation, awareness-raising initiatives, and compensation awarded to victims of trafficking, including for the purpose of exploitation of prostitution, by the Criminal Injuries Compensation Board. The Committee is nevertheless concerned at:
- (a) The lack of comprehensive information and comprehensible data about women and girls victims of trafficking, particularly in Greenland and the Faroe Islands....
23. Recalling its previous recommendations (CEDAW/C/DNK/CO/8, para. 20), and its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, the Committee recommends that the State party:
- (a) Continue to raise awareness about trafficking in persons, in particular women and girls, and systematically collect comprehensive information and relevant statistical data about victims of trafficking, disaggregated by sex, age, nationality, employment and economic status, in particular in Greenland and the Faroe Islands, and report them to the Committee in its next periodic report....

Economic empowerment of women

36. The Committee commends the State party for its efforts undertaken to increase the share of women entrepreneurs, including in most innovative sectors such as artificial intelligence and other areas of technological advancements and for its international cooperation programmes. The Committee takes note of the existing

rules and regulations on the requirements for exploration and mining operations. It notes with concern, however, that:

- (a) The structural disparity between men and women in the digital economy and artificial intelligence impedes the empowerment of women and constitutes a new source of structural discrimination;
- (b) The continuing and expanding extraction of carbon and mineral resources, as well as large infrastructure projects in Greenland, may displace women from their lands and deprive them of their livelihoods;
- (c) Only five per cent of farmland is owned by women.

37. The Committee recommends that the State party:

- (a) Ensure that the 2019 National Strategy for Artificial Intelligence rebalances gender equality between women and men in the digital economy and prevents discrimination for the benefit of women and sustainable change;
- (b) Review its energy and mining policies, especially its policy on the extraction of carbon and mineral resources in Greenland, to ensure that they do not disproportionately adversely affect women, and ensure the participation of women, on an equal basis with men, in decision-making processes on such policies, including in environmental and social impact assessments;
- (c) Review practices that may impede rural women's access to land ownership, and adopt legislation to protect their right to land ownership.

Climate change and disaster risk reduction

38. The Committee commends the State party on the measures taken to address the climate crisis. It is, however, concerned about the lack of data and research on the gender-specific impact of the climate crisis potentially affecting the indigenous population, including women, in Greenland.

39. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party provide the necessary resources to the Danish National Human Rights Institute to finalize its examination of Denmark's international human rights obligations to prevent the negative impact of climate change and that the State party conduct a study on the gender-specific impact of climate change on women in Greenland, in particular women dependent on traditional Inuit livelihoods, and report on the results of the study in its next periodic report. It also recommends that the State party take measures to ensure the participation of women, on an equal basis with men, in decision-making processes related to the climate crisis and consider participating in the Adaptation Fund, established under the Kyoto Protocol of the United Nations Framework Convention on Climate Change, including through financial contributions, with the aim of mainstreaming gender in climate finance.

15. Kiribati, CEDAW/C/KIR/CO/1-3, 11 March 2020

Climate change and disaster risk reduction

45. The Committee welcomes the adoption of the joint implementation plan for climate change and disaster risk management for the period 2014–2023 and the participation of women in the National Expert Group, which conducted the midterm review of the plan and incorporated a gender perspective into it. The Committee

also welcomes the participation of women in consultations on the development of plans and frameworks. However, it notes with concern:

- (a) The limited participation of women in the implementation of climate change and disaster risk management programmes;
- (b) The impact of seawater flooding of agricultural land and the pollution of wells on women's access to food, water, firewood and medicinal plants;
- (c) The limited participation of women in migration policies as part of the State party's long-term adaptation strategy.

46. The Committee urges the State party:

- (a) To ensure the participation of women, including disadvantaged groups of women, in the implementation of climate change and disaster risk management initiatives;
- (b) To take measures to address the impact of climate change specifically on women's access to resources and livelihoods to ensure that they are not disproportionately affected;
- (c) To review the "Migration with dignity" policy and comparable schemes to ensure greater participation of women in employment opportunities abroad and respect women's agency and their mobility choices.

Rural women

47. The Committee welcomes the establishment of the Outer Island Women's Liaison Office in 2012 and of social welfare officer posts in the community councils. However, it is concerned about the barriers that rural women face in gaining access to health care, higher education opportunities and paid employment.

48. The Committee recommends that the State party strengthen its measures to provide skills training and employment opportunities to women on the outer islands and ensure access to health care, including sexual and reproductive health care.

Women's access to land

49. The Committee notes with concern that the State party, in customary law and the Native Lands Ordinance, chapter 16, fails to ensure equal rights to land ownership and inheritance for women and that the views of women are not fully taken into account in decision-making processes relating to the inheritance, leasing and use of land.

50. The Committee recommends that the State party:

- (a) Ensure that women have equal rights to land use, ownership and inheritance by amending the Native Lands Ordinance and repealing discriminatory customary law provisions on women's access to land;
- (b) Conduct systematic training and awareness-raising activities with community leaders, judges, including lay judges, and magistrates to uphold women's land rights;
- (c) Ensure the full and meaningful participation of women in the negotiation of agreements on land leasing and use and ensure that their livelihoods are not negatively affected by such agreements.

B. GENERAL RECOMMENDATIONS

1. General Recommendation No. 39 on Indigenous Women and Girls, 31 October 2022⁴⁶

I. Introduction

1. The present general recommendation provides guidance to States parties on legislative, policy and other relevant measures to ensure the implementation of their obligations in relation to the rights of Indigenous women and girls under the Convention on the Elimination of All Forms of Discrimination against Women. There are an estimated 476.6 million Indigenous Peoples globally, of whom more than half (238.4 million) are women. Discrimination and violence are recurrent phenomena in the lives of many Indigenous women and girls living in rural, remote and urban areas. The present general recommendation applies to Indigenous women and girls both inside and outside Indigenous territories.
2. The present general recommendation takes into account the voices of Indigenous women and girls as driving actors and leaders inside and outside their communities. It identifies and addresses different forms of intersectional discrimination faced by Indigenous women and girls and their key role as leaders, knowledge-bearers and transmitters of culture among their peoples, communities and families, as well as society as a whole. The Committee on the Elimination of Discrimination against Women has consistently identified patterns of discrimination faced by Indigenous women and girls in the exercise of their human rights, and the factors that continue to exacerbate discrimination against them. Such discrimination is often intersectional and based on factors such as sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status.
3. Intersectional discrimination against Indigenous women and girls must be understood in the context of the multifaceted nature of their identity. They face discrimination and gender-based violence, frequently committed by State and non-state actors. These forms of violence and discrimination are widespread and are often treated with impunity. Indigenous women and girls often have an inextricable link and relation to their peoples, lands, territories, natural resources and culture. To ensure compliance with articles 1 and 2 and other relevant provisions of the Convention, State action, legislation and policies must reflect and respect the multifaceted identity of Indigenous women and girls. States parties should also take into consideration the intersectional discrimination experienced by Indigenous women and girls on the basis of factors such as sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status.
4. State action to prevent and address discrimination against Indigenous women and girls throughout their lifespan must integrate a gender perspective, an intersectional perspective, an Indigenous women and girls perspective, an intercultural perspective and a multidisciplinary perspective. A gender perspective takes into consideration the discriminatory norms, harmful social practices, stereotypes and inferior treatment that have affected Indigenous women and girls historically and still affect them in the present. An intersectional perspective

⁴⁶ For full text with footnotes, see https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f39&Lang=en.

requires States to consider the multitude of factors that combine to increase the exposure of Indigenous women and girls to, and exacerbate the consequences of, unequal and arbitrary treatment on the basis of sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status, among other factors. States should take into consideration the interdependence and interconnectedness of all these factors in their adoption of laws, policies, national budgets and interventions related to Indigenous women and girls. Indigenous women and girls suffer intersectional discrimination both inside and outside their territories. Intersectional discrimination against them is structural, embedded in constitutions, laws and policies, as well as government programmes, action and services.

5. An Indigenous women and girls perspective entails understanding the distinction between their experiences, realities and needs in the area of human rights protection and those of Indigenous men, based on their sex and gender differences. It also involves considering the status of Indigenous girls as developing women, which requires interventions to be appropriate to their age, development and condition. An intercultural perspective involves considering the diversity of Indigenous Peoples, including their cultures, languages, beliefs and values, and the social appreciation and value of this diversity. Lastly, a multidisciplinary perspective requires an appreciation of the multifaceted identity of Indigenous women and girls and of how law, health, education, culture, spirituality, anthropology, economy, science and work, among other aspects, have shaped and continue to shape the social experience of Indigenous women and girls and to promote discrimination against them. These perspectives and approaches are key to preventing and eradicating discrimination against Indigenous women and girls and to achieving the goal of social justice when their human rights are violated.
6. The prohibition of discrimination under articles 1 and 2 of the Convention must be strictly applied to ensure the rights of Indigenous women and girls, including those living in voluntary isolation or initial contact, to self-determination and to access to and the integrity of their lands, territories and resources, culture and environment. The prohibition of discrimination should also be implemented to ensure their rights to effective and equal participation in decision-making and to consultation, in and through their own representative institutions, in order to obtain their free, prior and informed consent before the adoption and implementation of legislative or administrative measures that may affect them. This set of rights lays the foundation for a holistic understanding of the individual and collective rights of Indigenous women. The violation of any of these or related rights constitutes discrimination against Indigenous women and girls.
7. In implementing the present general recommendation, the Committee calls upon States parties to take into consideration the challenging context in which Indigenous women and girls exercise and defend their human rights. They are heavily affected by existential threats connected to climate change, environmental degradation, the loss of biodiversity and barriers in gaining access to food and water security. Extractive activities carried out by business enterprises and other industrial, financial, public and private actors often have a devastating impact on the environment, air, land, waterways, oceans, territories and natural resources of Indigenous Peoples and may infringe the rights of Indigenous women and girls. Indigenous women and girls are at the forefront of the local, national and international demand and action for a clean, safe, healthy and sustainable environment. Many Indigenous women who are

environmental human rights defenders face killings, harassment, criminalization and the ongoing discrediting of their work. States parties have an obligation to ensure that State actors and business enterprises take measures without delay to guarantee a clean, healthy and sustainable environment and planetary system, including the prevention of foreseeable loss and damage, socioeconomic and environmental violence, and all forms of violence against Indigenous women who are environmental human rights defenders and their communities and territories. States parties also have an obligation to address the effects of colonialism, racism, assimilation policies, sexism, poverty, armed conflicts, militarization, forced displacement and the loss of territories, sexual violence as a tool of war, and other alarming human rights abuses frequently perpetrated against Indigenous women and girls and their communities.

II. Objectives and scope

8. The Committee considers self-identification, according to international standards, to be a guiding principle in international law in determining the status of rights holders as Indigenous women and girls. However, the Committee recognizes that some Indigenous women and girls may prefer not to disclose their status owing to structural and systemic racism and discrimination, as well as colonial and colonization policies. The present general recommendation and the rights under the Convention are applicable to all Indigenous women and girls, inside and outside their territories; in their countries of origin, in transit and in their countries of destination; and as migrants, as refugees during their forced or involuntary displacement cycle and as stateless persons.
9. Gender-based violence, including psychological, physical, sexual, economic, spiritual, political and environmental violence, is adversely affecting the lives of many Indigenous women and girls. Indigenous women often suffer violence in the home, in the workplace and in public and educational institutions; while receiving health services and navigating child welfare systems; as leaders in political and community life; as human rights defenders; when deprived of liberty; and when confined to institutions. Indigenous women and girls are disproportionately at risk of rape and sexual harassment; gender-based killings and femicide; disappearances and kidnapping; trafficking in persons; contemporary forms of slavery; exploitation, including exploitation of prostitution of women; sexual servitude; forced labour; coerced pregnancies; State policies mandating forced contraception and intrauterine devices; and domestic work that is not decent, safe or adequately remunerated. The Committee highlights, in particular, the gravity of discrimination and gender-based violence against Indigenous women and girls with disabilities who are living in institutions.
10. The Committee calls upon States parties to promptly engage in data collection efforts to fully assess the situation of Indigenous women and girls and the forms of discrimination and gender-based violence that they face. States must undertake efforts to collect data, disaggregated by a range of factors, including sex; age; Indigenous origin, status or identity; and disability status, and collaborate with Indigenous women and their organizations, as well as academic institutions and non-profit organizations, in that regard. The Committee also underscores that Indigenous Peoples must have control over data collection processes in their communities and over how the data are stored, interpreted, used and shared.

11. One of the root causes of discrimination against Indigenous women and girls is the lack of effective implementation of their rights to self-determination and autonomy and related guarantees, as manifested, inter alia, in their continued dispossession of their lands, territories and natural resources. The Committee acknowledges that the vital link between Indigenous women and their lands often forms the basis of their culture, identity, spirituality, ancestral knowledge and survival. Indigenous women face a lack of legal recognition of their rights to land and territories and wide gaps in the implementation of existing laws to protect their collective rights. Governments and third-party actors frequently carry out activities related to investment, infrastructure, development, conservation, climate change adaptation and mitigation initiatives, tourism, mining, logging and extraction without securing the effective participation and obtaining the consent of the Indigenous Peoples affected. The Committee has a broad understanding of the right of Indigenous women and girls to self-determination, including their ability to make autonomous, free and informed decisions concerning their life plans and health.
12. The Committee acknowledges that Indigenous women and girls have struggled and continue to struggle against forced assimilation policies and other large-scale human rights violations, which may in certain instances amount to genocide. Some of these assimilation policies – in particular the forced placement in residential schools and institutions and the displacement of Indigenous Peoples from their territories in the name of development – have resulted in killings, disappearances, sexual violence and psychological abuse, and may amount to cultural genocide. It is critical for States parties to address the consequences of historic injustices and to provide support and reparations to the affected communities as part of the process of ensuring justice, reconciliation and the building of societies free from discrimination and gender-based violence against Indigenous women and girls. The Committee highlights, in particular, the need for States to act proactively to protect the rights of Indigenous women and girls living in urban settings, where they face racism, discrimination, assimilation policies and gender-based violence.

III. Legal framework

13. The rights of Indigenous women and girls derive from the articles of the Convention, as further developed in the Committee's general recommendations, and from specific international instruments for the protection of the rights of Indigenous Peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Convention, 1989 (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. The Committee considers the Declaration an authoritative framework for interpreting State party and core obligations under the Convention on the Elimination of All Forms of Discrimination against Women. All of the rights recognized in the Declaration are relevant to Indigenous women, both as members of their peoples and communities and as individuals, and, ultimately, in relation to the guarantees against discrimination in the Convention itself. In addition, all core international human rights treaties contain relevant protections for the rights of Indigenous women and girls.
14. In addressing the rights of Indigenous girls, the Committee also makes reference to the Convention on the Rights of the Child and to the Committee on the Rights of the Child general comment No. 11 (2009) on indigenous children and their rights. States parties have an obligation to protect Indigenous girls from all forms of discrimination. The creation of an enabling and safe environment for the leadership and effective participation of Indigenous girls is paramount to the full enjoyment of

their rights to territories, culture and a clean, healthy and sustainable environment. The Committee on the Elimination of Discrimination against Women recognizes, moreover, the status of Indigenous girls as developing women, which calls for a State response tailored to their best interests and needs and the adaptation of government procedures and services to the age, development, evolving capacities, and condition of Indigenous girls.

15. The Convention on the Elimination of All Forms of Discrimination against Women should also be interpreted in a manner that takes into consideration the 2030 Agenda for Sustainable Development, in which States agreed that the achievement of gender equality and the empowerment of women and girls is paramount to sustainable development and the end of poverty. The Beijing Declaration and Platform for Action is also an important reference document in the present general recommendation. The Committee also makes reference to the resolutions adopted by the Commission on the Status of Women related to Indigenous women.

IV. General obligations of States parties in relation to the rights of Indigenous women and girls under articles 1 and 2 of the Convention

A. Equality and non-discrimination, with a focus on Indigenous women and girls and intersecting forms of discrimination

16. The prohibition of discrimination in articles 1 and 2 of the Convention applies to all rights of Indigenous women and girls under the Convention, including, by extension, those set out in the Declaration, which is of fundamental importance to the interpretation of the Convention in the current context. The prohibition of discrimination is an important pillar and foundational principle of international human rights law. Indigenous women and girls have the right to be free from all forms of discrimination on the basis of their sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status, among other factors.
17. Discrimination against Indigenous women and girls and its effects should be understood in both their individual and collective dimensions. In its individual dimension, discrimination against Indigenous women and girls takes intersecting forms and is carried out by both State and non-State actors, including those in the private sphere, on the basis of sex; gender; Indigenous origin, status or identity; race; ethnicity; disability; age; language; socioeconomic status; and HIV/AIDS status; among other factors. Racism, discriminatory stereotypes, marginalization and gender-based violence are interrelated violations experienced by Indigenous women and girls. Discrimination and gender-based violence threaten the individual autonomy, personal liberty and security, privacy and integrity of all Indigenous women and girls and may also harm the collective and its well-being. As indicated in general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, Indigenous women as individuals can suffer discrimination in the name of ideology, tradition, culture, religious and customary laws and practices. In addition, Indigenous women, including those with disabilities, often face the arbitrary removal and abduction of their children. They also face discriminatory and gender-biased decisions concerning the custody of their children – whether married or unmarried – or alimony following divorce. Indigenous women and girls as individuals have the right to be free from discrimination and human rights violations throughout their life cycle and to choose their own paths and life plans.

18. In its collective dimension, discrimination, together with gender-based violence, against Indigenous women and girls threatens and disrupts the spiritual life, connection with Mother Earth, cultural integrity and survival, and social fabric of Indigenous Peoples and communities. Discrimination and gender-based violence have a harmful effect on the continuance and preservation of the knowledge, cultures, views, identities and traditions of Indigenous Peoples. The failure to protect the rights to self-determination, collective security of tenure over ancestral lands and resources, and effective participation and consent of Indigenous women in all matters affecting them constitutes discrimination against them and their communities.
19. As indicated in the preamble to the Declaration, collective rights are indispensable for the existence, well-being and integral development of Indigenous Peoples, including Indigenous women and girls. The individual rights of Indigenous women and girls should never be neglected or violated in the pursuit of collective or group interests, as respect for both dimensions of their human rights is essential.
20. Discrimination against Indigenous women and girls is perpetuated by gender stereotypes but also by forms of racism fuelled by colonialism and militarization. These underlying causes of discrimination are reflected directly and indirectly in laws and policies that impede the access of Indigenous women and girls to land use and ownership, the exercise of their rights over their territories, natural and economic resources, and their access to credit, financial services and income-generating opportunities. The underlying causes also impede the recognition and protection of and support for collective and cooperative forms of land ownership and use. Legal protections for the land rights of Indigenous women remain weak, which frequently exposes them to dispossession, displacement, confinement, expropriation and exploitation. The lack of legal title to the territories of Indigenous Peoples increases their vulnerability to illegal incursions and to the implementation of development projects without their free, prior and informed consent by both State and non-State actors. Indigenous women and girls – in particular those who are widows, heads of households or orphans – disproportionately face barriers in gaining access to land, resulting in the loss of their livelihoods and threatening their culture, their intrinsic link to their environment, their food and water security and their health.
21. Indigenous women and girls worldwide still do not enjoy equality before the law under article 15 of the Convention. In many parts of the world, Indigenous women lack the capacity to conclude contracts and administer property independent of their husband or a male guardian. They also experience challenges in owning, holding, controlling, inheriting and administering land, in particular when they are widowed and have to care for their families on their own. Inheritance laws – in both the State and Indigenous legal systems – frequently discriminate against Indigenous women. Indigenous women with disabilities commonly experience the denial of legal capacity, which leads to further human rights violations, including in the areas of access to justice, institutionalized violence and forced sterilization. Contrary to article 9 of the Convention, many laws still discriminate against Indigenous women and girls in relation to the transmission of their nationality and Indigenous status to their children when they marry non-Indigenous persons. These laws can result in transgenerational discrimination and forced assimilation, which fall within the scope and meaning of discrimination against women as defined in article 1 of the Convention. 19 Therefore, States must ensure that Indigenous women and girls

can acquire, change, retain or renounce their nationality and/or Indigenous status, transfer it to their children and spouse and have access to information on these rights, as part of ensuring their rights to self-determination and self-identification.

22. The Committee, in its general recommendation No. 34 (2016) on the rights of rural women, underscored the importance of the rights of Indigenous women to land and collective ownership, natural resources, water, seeds, forests and fisheries under article 14 of the Convention. These rights are also guaranteed to Indigenous women as members of their peoples and communities by the Declaration and related international legal norms. The key barriers to these rights are the incompatibility of national laws with international law; the ineffective implementation of laws at the national and local levels; discriminatory gender stereotypes and practices, in particular in rural areas; lack of political will; and the commercialization, commodification and financialization of land and natural resources. Indigenous customary laws, misogyny and existing institutions may also be barriers. Indigenous women with disabilities often face intersecting forms of discrimination on the basis of their sex; gender; disability; and Indigenous origin, status or identity, reflected in the denial of their full legal capacity, which further increases their risk exposure to exploitation, violence and abuse and undermines their rights to land, territories and resources. Moreover, lesbian, bisexual, transgender and intersex Indigenous women and girls regularly face intersecting forms of discrimination. The Committee is concerned about the forms of inequality, discrimination and gender-based violence that affect Indigenous women and girls in the digital space, including the Internet, social media and all technology platforms.
23. The Committee recommends that States parties:
- (a) Develop comprehensive policies to eliminate discrimination against Indigenous women and girls, centred around the effective participation of those living inside and outside Indigenous territories, and pursue collaboration with Indigenous Peoples more broadly. The policies should include measures to address intersectional discrimination faced by Indigenous women and girls, including persons with disabilities and those with albinism; older women; lesbian, bisexual, transgender and intersex women; women and girls in situations of poverty; women living in rural and urban areas; forcibly displaced, refugee and migrant women inside and outside their countries; and women and girls who are widows, heads of households or orphaned owing to national and international armed conflicts. States parties should collect data, disaggregated by age and disability status, on the forms of gender-based discrimination and violence faced by Indigenous women and girls, and undertake these efforts in ways that respect the languages and cultures of Indigenous Peoples;
 - (b) Provide, in their periodic reports to the Committee, information on legislative, judicial, administrative, budgetary, and monitoring and evaluation measures, as well as other measures, specific to Indigenous women and girls;
 - (c) Repeal and amend all legislative and policy instruments, such as laws, policies, regulations, programmes, administrative procedures, institutional structures, budgetary allocations and practices, that directly or indirectly discriminate against Indigenous women and girls;
 - (d) Ensure that Indigenous women are equal before the law and have equal capacity to conclude contracts and administer and inherit property, and also ensure the recognition of the legal capacity of Indigenous women with disabilities and support mechanisms for the exercise of legal capacity;

- (e) Adopt legislation to fully ensure the rights of Indigenous women and girls to land, water and other natural resources, including their right to a clean, healthy and sustainable environment, and that their equality before the law is recognized and respected, as well as ensuring that Indigenous women in rural and urban areas have equal access to ownership, title, possession and control of land, water, forests, fisheries, aquaculture and other resources that they have owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession;
- (f) Ensure that Indigenous women and girls have adequate access to information on existing laws and remedies to claim their rights under the Convention. Information should be accessible in their own languages and in culturally appropriate formats of communication, such as community radio. Information should also be made available for Indigenous women and girls with disabilities in Braille, easy to read, sign language and other modes;
- (g) Guarantee that Indigenous women and girls are protected from discrimination by both State and non-State actors, including businesses and companies, inside and outside their territories, especially in the areas of political participation, representation, education, employment, health, social protection, decent work, justice and security;
- (h) Adopt effective measures to legally recognize and protect the lands, territories, natural resources, intellectual property, scientific, technical and Indigenous knowledge, genetic information and cultural heritage of Indigenous Peoples, and take steps to fully ensure respect for their rights to free, prior and informed consent; to self-determination of their own life plan; and to effective participation, in particular marginalized groups of Indigenous women and girls, such as those with disabilities, in decision-making on matters affecting them;
- (i) Adopt effective measures to eliminate and prevent all forced assimilation policies and other patterns of denials of cultural and other rights vested in Indigenous Peoples, including the prompt investigation, accountability, justice and reparations for past and present assimilation policies and practices that significantly compromise Indigenous cultural identity, and establish and ensure that truth, justice and reconciliation bodies are vested with adequate and sufficient resources.

B. Access to justice and plural legal systems

24. Access to justice for Indigenous women requires a multidisciplinary and holistic approach that reflects an understanding that their access is linked to other human rights challenges that they face, including racism, racial discrimination and the effects of colonialism; sex- and gender-based discrimination; discrimination on the basis of socioeconomic status; disability-based discrimination; barriers in gaining access to their lands, territories and natural resources; the lack of adequate and culturally pertinent health and education services; and disruptions and threats to their spiritual lives. As indicated by other global human rights mechanisms, Indigenous Peoples must have access to justice that is guaranteed both by States and through their Indigenous customary and legal systems.
25. The Committee reiterates that the right of Indigenous Peoples to maintain their own judicial structures and systems is a fundamental component of their rights to autonomy and self-determination. At the same time, Indigenous justice systems and their practices should be consistent with international human rights standards, as

indicated in the Declaration. Accordingly, the Committee considers the Convention an important reference for both non-Indigenous and Indigenous justice systems in addressing cases related to discrimination against Indigenous women and girls.

26. In its general recommendation No. 33 (2015) on women's access to justice, the Committee recognized six essential components of access. These interrelated components – justiciability, availability, accessibility, good quality, provision of remedies for victims, and accountability of justice systems – are also applicable in the case of Indigenous women and girls, who should be provided with access to justice and remedies with a gender perspective, an intersectional perspective, an Indigenous women and girls perspective, an intercultural perspective and a multidisciplinary perspective, as defined in paragraphs 4 and 5 of the present general recommendation.
27. According to the six essential components, States must ensure that all justice systems, both Indigenous and non-Indigenous, act in a timely fashion to offer appropriate and effective remedies for Indigenous women and girls who are victims and survivors of discrimination and gender-based violence. Doing so entails having available interpreters, translators, anthropologists, psychologists, health-care professionals, lawyers, cultural mediators with experience, and Indigenous spiritual and medicinal authorities, as well as training, incorporating a gender perspective, on the realities, cultures and views of Indigenous women and girls. Justice systems should also have in place methods to collect evidence that are appropriate and compatible with their culture and views. Justice officials should be consistently trained on the rights of Indigenous women and girls and the individual and collective dimensions of their identity, with the goal of instilling in the officials a substantial degree of Indigenous cultural competence. In that regard, it is key to respect the different conceptions of justice and processes that non-Indigenous and Indigenous systems have, and to actively listen to and collaborate with Indigenous Peoples. Justice can be a process of reconciliation and healing for them, with the goal of restoring harmony to their territories and communities. States should also proactively recruit and appoint Indigenous women justices.
28. States parties should ensure the establishment, maintenance and funding of courts and judicial and other bodies throughout their territories in urban, rural and remote areas. Indigenous justice systems should also be easily available, adequate and effective. Information on how to avail themselves of judicial avenues in both the non-Indigenous and Indigenous justice systems should be available to and disseminated among Indigenous women and girls. Basic judicial services and free legal aid services should be available in close proximity to Indigenous women and communities. States must adopt measures to ensure that Indigenous women know where to seek justice and that justice systems are accessible, fair and affordable.
29. Indigenous women face obstacles in their access to both non-Indigenous and Indigenous justice systems which can be particularly acute in the case of Indigenous women and girls with disabilities. They are routinely denied their right to a legal remedy. As a result, many cases of discrimination and gender-based violence against Indigenous women and girls end in impunity. The barriers that they encounter in gaining access to justice and reparations include a lack of information in Indigenous languages on the legal remedies available in both non-Indigenous and Indigenous justice systems. Other barriers include the costs of legal assistance and the lack of free legal aid; disrespect of due process guarantees; absence of interpreters, including for sign language; court fees; long distances to courts; reprisals and

retribution against those who report crimes; lack of identity cards and forms of identification; and lack of training for justice officials on the rights and specific needs of Indigenous women and girls. Indigenous women and girls with disabilities frequently face barriers with regard to the physical accessibility of buildings that house law enforcement agencies and the judiciary, and to the accessibility of critical information, transportation, communications, procedures and support services.

30. In non-Indigenous justice systems, Indigenous women and girls frequently face racism, structural and systemic racial discrimination, and forms of marginalization, and often have to participate in procedures that are not culturally appropriate and do not take into account Indigenous traditions and practices. Judicial structures tend to reflect ongoing colonialism. Obstacles include the remoteness of Indigenous territories, which force Indigenous women and girls to travel long distances to file complaints; illiteracy; and lack of knowledge of existing laws and judicial avenues. Indigenous women are often not provided with the interpretation services that are necessary for them to fully participate in legal proceedings, and there is a lack of culturally appropriate methods of evidence collection. Among justice officials, there is a dearth of training on the rights of Indigenous women and girls in their individual and collective dimensions. Indigenous women and girls also have limited access to specialized medical care when they suffer acts of rape and sexual violence.
31. Often, Indigenous justice systems are male dominated, and they discriminate against women and girls, providing limited space for them to participate, voice their concerns and hold decision-making positions. The Committee has expressed its concern in the past about the influence of gender stereotypes on the activity of Indigenous legal systems. In general, the Committee has recommended that both Indigenous and non-Indigenous justice systems adopt measures to comply with international human rights standards.
32. Indigenous women also tend to be overrepresented in prisons, affected by arbitrary pretrial detention and face discrimination, gender-based violence, inhumane treatment and forms of torture when they are in conflict with the law. These problems are aggravated by deficiencies in the legal support provided by legal aid counsel. The Committee highlights the right of every Indigenous girl who is in conflict with the law to a fair trial, equality before the law and the equal protection of the law.
33. The Committee recommends that States parties:
 - (a) Ensure that Indigenous women and girls have effective access to adequate non-Indigenous and Indigenous justice systems, free from racial and/or gender-based discrimination, bias, stereotypes, retribution and reprisals;
 - (b) Adopt measures to ensure that Indigenous women and girls with disabilities have physical access to law enforcement and judiciary buildings, information, transportation, support services, and procedures critical to their access to justice;
 - (c) Provide continuous training to judges and all law enforcement officials in both the non-Indigenous and Indigenous justice systems on the rights of Indigenous women and girls and the need for an approach to justice that is guided by gender, intersectional, Indigenous women and girls, intercultural and multidisciplinary perspectives, as defined in paragraphs 4 and 5. Training on Indigenous justice should be part of training for all legal professionals;
 - (d) Recruit, train and appoint Indigenous women justices and other court personnel in both non-Indigenous and Indigenous justice systems;

- (e) Ensure equal access to justice for all Indigenous women and girls, including through the provision of procedural accommodations and adjustments for those who need them owing to age, disability or illness, which may include sign language interpretation and other communication support, as well as longer time frames for submissions;
- (f) Ensure that justice systems include interpreters, translators, anthropologists, psychologists and health-care professionals specialized and trained in the needs of Indigenous women and girls, giving priority to qualified Indigenous women, and provide information on legal remedies in both the non-Indigenous and Indigenous justice systems in Indigenous languages and in accessible formats. Awareness-raising campaigns should be undertaken to make known these legal remedies and avenues, as well as the means to report cases of structural and systemic violence. Follow-up mechanisms are critical in cases of gender-based violence and discrimination against Indigenous women and girls;
- (g) Ensure that Indigenous women and girls without sufficient means and whose legal capacity has been removed have access to free and quality legal aid, including in cases of gender-based violence against women. States parties should financially support non-governmental organizations that provide free and specialized legal assistance to Indigenous women and girls;
- (h) Guarantee that judicial institutions, remedies and services are available in urban areas and in proximity to Indigenous territories;
- (i) Adopt criminal justice, civil and administrative measures and policies that consider the historical conditions of poverty, racism and gender-based violence, which have affected and continue to affect Indigenous women and girls;
- (j) Adopt measures to ensure that all Indigenous women and girls have access to information and education on existing laws, the legal system and how to gain access to both non-Indigenous and Indigenous justice systems. These measures can take the form of awareness-raising campaigns, community trainings, and legal and mobile clinics that offer this information;
- (k) Ensure that Indigenous women and girls effectively enjoy the rights to a fair trial, equality before the law and equal protection of the law; (l) Ensure that integral reparations for human rights violations are a key component of the administration of justice in both non-Indigenous and Indigenous systems, including consideration for spiritual and collective harm.

V. Obligations of States parties in relation to specific dimensions of the rights of Indigenous women and girls

A. Prevention of and protection from gender-based violence against Indigenous women and girls (arts. 3, 5, 6, 10 (c), 11, 12, 14 and 16)

34. Gender-based violence against Indigenous women and girls is a form of discrimination under article 1 of the Convention and, therefore, engages all obligations under the Convention. Under article 2 of the Convention, States parties must adopt measures without delay to prevent and eliminate all forms of gender-based violence against Indigenous women and girls. Similarly, article 22 of the Declaration requires States to pay particular attention to the full protection of the rights of Indigenous women and to ensure their right to live free from violence and discrimination. The prohibition of gender-based violence against women is a principle of customary international law and applies to Indigenous women and girls.

35. Gender-based violence disproportionately affects Indigenous women and girls. Available statistics indicate that Indigenous women are more likely to experience rape than non-Indigenous women. It is estimated that one in three Indigenous women is raped during her lifetime. While there is a growing body of evidence of the magnitude, nature and consequences of gender-based violence globally, knowledge of its incidence against Indigenous women is limited and tends to vary considerably by issue and region. The Committee highlights the need for States to engage in data collection efforts, in collaboration with Indigenous organizations and communities, to understand the scope of the problem of gender-based violence against Indigenous women and girls. It also highlights the need for discrimination, stereotypes and social legitimization of gender-based violence against them to be addressed by States.
36. The Committee is alarmed at the many forms of gender-based violence committed against Indigenous women and girls, which occurs in all spaces and spheres of human interaction, including the family, community, public spaces, the workplace, educational settings and the digital space. Violence can be psychological, physical, sexual, economic, political or a form of torture. Spiritual violence is frequently perpetrated against Indigenous women and girls, harming the collective identity of their communities and their connection to their spiritual life, culture, territories, environment and natural resources. Violence against Indigenous women and girls with disabilities and older Indigenous women often occurs in institutions, in particular those that are closed and segregated. Indigenous women and girls are frequently victims of rape, harassment, disappearances, killings and femicide.
37. Forced displacement is a major form of violence that affects Indigenous women and girls, severing their connection to their lands, territories and natural resources and permanently harming their life plans and communities. They are also adversely affected by environmental violence, which can take the form of environmental harm, degradation, pollution or State failures to prevent foreseeable harm connected to climate change. Other forms of violence affecting them include the exploitation of prostitution; contemporary forms of slavery, such as domestic servitude; forced surrogacy; the targeting of older unmarried women as witches or carriers of bad spirits; the stigmatization of married women who cannot bear children; and female genital mutilation. The Committee underscores, in particular, the problem of trafficking in persons affecting Indigenous women and girls, resulting from the militarization of Indigenous territories by national armies, organized crime, mining and logging operations and drug cartels, as well as the expansion of military bases on Indigenous lands and territories.
38. Gender-based violence against Indigenous women and girls is drastically underreported, and perpetrators regularly enjoy impunity, owing to Indigenous women's and girls' extremely limited access to justice, as well as biased or flawed criminal justice systems. Racism, marginalization, poverty, and alcohol and substance abuse increase the risk of gender-based violence against them. They suffer gender-based violence perpetrated or tolerated by both State and non-State actors. State actors include members of governments, armed forces, law enforcement authorities and public institutions, including in the health and education sectors and in prisons. Non-State actors include private individuals, businesses, private companies, paramilitary and rebel groups, illegal actors, and religious institutions.
39. States parties have a due diligence obligation to prevent, investigate and punish perpetrators and to provide reparations to Indigenous women and girls who

are victims of gender-based violence. This obligation is applicable to both non-Indigenous and Indigenous justice systems. Due diligence should be implemented with gender, intersectional, Indigenous women, intercultural and multidisciplinary perspectives, as defined in paragraphs 4 and 5, and bearing in mind the gendered causes and impacts of the violence experienced by Indigenous women.

40. Gender-based violence against Indigenous women and girls undermines the collective spiritual, cultural and social fabric of Indigenous Peoples and their communities and causes collective and sometimes intergenerational harm. Sexual violence against Indigenous women and girls has been used by a plurality of actors during armed conflicts and times of unrest as a weapon of war and as a strategy to control and harm Indigenous communities.
41. States should have an effective legal framework and adequate support services in place to address such gender-based violence. Such frameworks must include measures to prevent, investigate, punish perpetrators, and provide assistance and reparations to Indigenous women and girls who are victims, as well as services to address and mitigate the harmful effects of gender-based violence. This general obligation extends to all areas of State action, including legislative, executive and judicial branches, at the regional, national and local levels, as well as privatized services. It requires the formulation of legal norms, including at the constitutional level, and the design of public policies, programmes, institutional frameworks and monitoring mechanisms aimed at eliminating all forms of gender-based violence against Indigenous women and girls, whether committed by State or non-State actors.
42. The Committee recommends that States parties:
 - (a) Adopt and effectively implement legislation that prevents, prohibits and responds to gender-based violence against Indigenous women and girls, incorporating gender, intersectional, Indigenous women and girls, intercultural, and multidisciplinary perspectives, as defined in paragraphs 4 and 5. Legislation and its implementation should also adequately consider the life cycle of all Indigenous women and girls, including those with disabilities;
 - (b) Recognize, prevent, address, sanction and eradicate all forms of gender-based violence against Indigenous women and girls, including environmental, spiritual, political, structural, institutional and cultural violence, as well as violence attributable to extractive industries;
 - (c) Ensure that Indigenous women and girls have timely and effective access to both non-Indigenous and Indigenous justice systems, including protection orders and prevention mechanisms, when needed, and the effective investigation of cases of missing and murdered Indigenous women and girls, free from all forms of discrimination and bias;
 - (d) Repeal all laws that prevent or deter Indigenous women and girls from reporting gender-based violence, such as guardianship laws that deprive women of legal capacity or restrict the ability of women with disabilities to testify in court; the practice of so-called “protective custody”; restrictive immigration laws that discourage women, including migrant and non-migrant domestic workers, from reporting such violence; and laws allowing for dual arrests in cases of domestic violence or for the prosecution of women when the perpetrator is acquitted;
 - (e) Ensure that support services, including medical treatment, psychosocial counselling and professional training, and reintegration services and shelters are available, accessible and culturally appropriate for Indigenous women and girls who are victims of gender-based violence. All services should be designed

with intercultural and multidisciplinary perspectives, as defined in paragraph 5, and be vested with sufficient financial resources;

- (f) Provide resources for Indigenous women and girl survivors of gender-based violence to have access to the legal system to report cases of such violence. Resources can include transportation, legal aid and representation, and access to information in Indigenous languages;
- (g) States should act with due diligence to prevent all forms of violence, inhumane treatment and torture against Indigenous women and girls who are deprived of liberty. States must ensure that when these acts do occur, they are appropriately investigated and sanctioned. States should also adopt measures to ensure that Indigenous women and girls who are deprived of liberty know where and how to report these acts. States should further prioritize policies and programmes to promote the social reintegration of Indigenous women and girls who have been deprived of liberty, with respect for their culture, views and languages;
- (h) States must adhere to their obligations under international human rights law and international humanitarian law in situations of armed conflict, including the prohibition of all forms of discrimination and gender-based violence against civilians and enemy combatants, as well as of harm to land, natural resources and the environment;
- (i) Systematically collect disaggregated data and undertake studies, in collaboration with Indigenous communities and organizations, to assess the magnitude, gravity and root causes of gender-based violence against Indigenous women and girls, in particular sexual violence and exploitation, to inform measures to prevent and respond to such violence.

B. Right to effective participation in political and public life (arts. 7, 8 and 14)

- 43. Indigenous women and girls tend to be excluded from decision-making in local, national and international processes, as well as in their own communities and Indigenous systems. Under article 7 of the Convention, they have the right to effective participation at all levels in political, public and community life. This right includes participation in decision-making within their communities, as well as with ancestral and other authorities; consent and consultation processes over economic activities carried out by State and private actors in Indigenous territories; public service and decision-making positions at the local, national regional and international levels; and their work as human rights defenders.
- 44. Indigenous women and girls face multiple and intersecting barriers to effective, meaningful and real participation. Such barriers include political violence; lack of or unequal educational opportunities; illiteracy; racism; sexism; discrimination based on class and economic status; language constraints; the need to travel long distances to gain access to any form of participation; the denial of access to health-care services, including sexual and reproductive health care and rights; and the lack of access to, economic support for and information on legal, political, institutional, community and civil society processes to vote, run for political office, organize campaigns and secure funding. The barriers to participation can be particularly high in armed conflict contexts, including in transitional justice processes, in which Indigenous women and girls and their organizations are often excluded from peace negotiations or attacked and threatened when they do try to participate. States parties should act promptly to ensure that all Indigenous women and girls have access to computers, the Internet and other forms of technology to facilitate their full inclusion in the digital world.

45. The Committee acknowledges the threats faced by Indigenous women human rights defenders, whose work is protected by the right to participate in political and public life. At particular risk are Indigenous women and girls who are environmental human rights defenders in the course of advancing their land and territorial rights, and those opposing the implementation of development projects without the free, prior and informed consent of the Indigenous Peoples concerned. In many cases, Indigenous women and girl human rights defenders face killings; threats and harassment; arbitrary detentions; forms of torture; and the criminalization, stigmatization and discrediting of their work. Many Indigenous women and girls' organizations face obstacles to their recognition as legal entities at the national level, the lack of which challenges their access to funding and their ability to work freely and independently. The Committee considers that States parties should adopt immediate gender-responsive measures to publicly recognize, support and protect the life, liberty, security and self-determination of Indigenous women and girl human rights defenders, and to ensure safe conditions and an enabling environment for their advocacy work, free from discrimination, racism, killings, harassment and violence.
46. The Committee recommends that States parties:
- (a) In accordance with the general recommendations No. 23 (1997) on women in political and public life and No. 25 (2004) on temporary special measures, and articles 18, 19, 32.1 and 44 of the Declaration, promote the meaningful, real and informed participation of Indigenous women and girls in political and public life and at all levels, including in decision-making positions, which may include temporary special measures, such as quotas, targets, incentives and efforts to ensure parity in representation;
 - (b) Establish accountability mechanisms to prevent political parties and trade unions from discriminating against Indigenous women and girls, and ensure that they have effective access to gender-responsive judicial remedies to report such violations when they occur. It is also critical to train public servants on the right of Indigenous women and girls to effectively participate in public life;
 - (c) Disseminate accessible information among Indigenous women and girls, as well as in society in general, on opportunities to exercise their right to vote, participate in public life and stand for election, and promote their recruitment into public service, including at the decision-making level. Measures to facilitate accessibility for women and girls with disabilities can include the use of sign language, easy read and Braille;
 - (d) Act with due diligence to prevent, investigate and punish all forms of political violence against Indigenous women politicians, candidates, human rights defenders and activists at the national, local and community levels, and recognize and respect ancestral forms of organization and the election of representatives;
 - (e) Create, promote and ensure the access of Indigenous women to political office through campaign financing; skills training; incentives; awareness-raising activities for political parties to nominate them as candidates; and adequate health-care and childcare facilities, as well as support services for caring for older persons, adopt the necessary legislative measures and reforms to ensure the right of political participation of Indigenous women and girls, and create incentives and monitoring mechanisms, as well as penalties for failure by political parties to implement temporary special measures to increase the political participation of Indigenous women and girls;

- (f) Ensure that economic activities, including those related to logging, development, investment, tourism, extraction, mining, climate mitigation and adaptation programmes, and conservation projects are only implemented in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the adequate consultation processes. It is key that these economic activities do not adversely impact human rights, including those of Indigenous women and girls;
- (g) In line with general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations and Security Council resolution 1325 (2000) and subsequent resolutions, ensure and create spaces for Indigenous women and girls to participate as decision makers and actors in peacebuilding efforts and transitional justice processes;
- (h) Take proactive and effective steps to recognize, support and protect the life, integrity and work of Indigenous women human rights defenders, and ensure that they conduct their activities in safe, enabling and inclusive environments. State measures should include the creation of specialized government mechanisms to protect women human rights defenders with their genuine and meaningful participation and in collaboration with Indigenous Peoples.

C. Right to education (arts. 5 and 10)

47. Indigenous women and girls face multiple barriers to enrolment, retention, and completion at all levels of education and in non-traditional fields. Some of the most important educational barriers for them include: the lack of education facilities designed, established or controlled by Indigenous Peoples; poverty; discriminatory gender stereotypes and marginalization; limited cultural relevance of educational curricula; instruction solely in the dominant language; and the scarcity of sexuality education. Indigenous women and girls frequently must travel long distances to schools and are at risk of gender-based violence en route and upon arrival. While at school, they may experience sexual violence, corporal punishment or bullying. Gender-based violence and discrimination in education is particularly acute when forced assimilation policies are implemented in schools. Indigenous girls with disabilities face particular barriers to access and retention, including lack of physical accessibility; school officials' refusal to enrol them; and reliance on segregated schools for children with disabilities. Forced and/or child marriages, sexual violence and adolescent pregnancies, the disproportionate burden of family responsibilities, child work, natural disasters and armed conflicts can also hamper Indigenous girls' access to school.
48. The Committee recommends that States parties:
- (a) Ensure that Indigenous women and girls fully enjoy the right to education by:
 - (i) Guaranteeing their equal access to quality education at all levels of education, including by supporting Indigenous Peoples to realize the rights guaranteed in articles 14 and 15 of the Declaration;
 - (ii) Addressing discriminatory stereotypes related to Indigenous origin, history, culture and the experiences of Indigenous women and girls;
 - (iii) Creating scholarship and financial aid programmes to promote Indigenous women's and girls' enrolment, including in non-traditional fields such as science, technology, engineering and mathematics and information and communication technology (ICT), and recognize and protect Indigenous

- knowledge and the contributions of Indigenous Peoples, including women, to science and technology;
- (iv) Creating interdisciplinary support systems for Indigenous women and girls to reduce their unequal share of unpaid care work and combat child marriage and to assist victims in reporting acts of gender-based violence and labour exploitation. Social support systems should be operationally effective, accessible and culturally responsive;
- (b) Ensure quality education that is inclusive, accessible and affordable for all Indigenous women and girls, including those with disabilities. States should remove barriers and provide adequate resources and facilities to ensure that Indigenous women and girls with disabilities have access to an education. States should guarantee the availability of age-appropriate sexual education based on scientific research;
 - (c) Promote the adoption of curricula that reflect Indigenous education, languages, cultures, history, knowledge systems and epistemologies. These efforts should extend to all schools, including those in the mainstream. The adoption of curricula should be done with the participation of Indigenous women and girls.

D. Right to work (arts. 11 and 14)

49. Indigenous women have limited access to decent, safe and adequately remunerated employment, which undermines their economic autonomy. They contribute significantly to the agricultural sector but are overrepresented in subsistence agriculture; low-skilled, part-time, seasonal, low-paid or unpaid jobs; and home-based activities. A significant number of Indigenous women and girls also engage in domestic work with low remuneration and unsafe working conditions. Their overrepresentation in informal employment translates into weak income, benefits and social protection. They also face discriminatory gender stereotypes and racial prejudice in the workplace, including frequent prohibition from wearing their attire or using their languages. Indigenous women often face forms of gender-based violence and harassment at work, and their treatment can amount to forced labour and forms of slavery. States should create equal opportunities for Indigenous women and girls to gain access to the needed education and training necessary to increase their employment prospects and to facilitate their transition from the informal to the formal economy. States should also guarantee that Indigenous Peoples and women continue to pursue and benefit from their occupations, without discrimination.
50. The Committee recommends that States parties:
- (a) Ensure equal, safe, just and favourable conditions of work and income security for Indigenous women and girls, including by:
 - (i) Expanding and promoting vocational and professional training opportunities for them;
 - (ii) Expanding opportunities for Indigenous women to run businesses and become entrepreneurs. States should support Indigenous-women-led businesses and help Indigenous communities to generate wealth by improving access to capital and business opportunities;
 - (iii) Facilitating their transition from the informal to the formal economy, if desired;
 - (iv) Protecting the occupational health and safety of Indigenous women in all forms of work;

- (v) Expanding the coverage of social protection and provide adequate childcare services for Indigenous women, including those who are selfemployed;
 - (vi) Guaranteeing that Indigenous Peoples and women can continue to pursue and benefit from their occupations, without discrimination, and also guaranteeing the collective rights to the land on which these occupations take place;
 - (vii) Fully incorporating the right to just and favourable conditions of work and the principle of equal pay for work of equal value into legal and policy frameworks, paying special attention to Indigenous women and girls who are working legally. States parties should promote entrepreneurship by ensuring that Indigenous women have equal access to loans and other forms of financial credit, without collateral, to enable them to create their own businesses and advance their economic autonomy;
- (b) Take steps to prevent discrimination, racism, stereotypes, genderbased violence and sexual harassment against Indigenous women in the workplace and to establish and enforce effective reporting and accountability mechanisms, including through regular labour inspections;
 - (c) Ensure that Indigenous women and girls have access to vocational and professional skills training, including in science, technology, engineering and mathematics, as well as ICT and other fields from which Indigenous Peoples have historically been excluded.

E. Right to health (arts. 10 and 12)

51. Indigenous women and girls have limited access to adequate health-care services, including sexual and reproductive health services and information, and face racial and gender-based discrimination in health systems. Their right to free, prior and informed consent is often not respected in the health sector. Health professionals are often race- and gender-biased, insensitive to the realities, culture and views of Indigenous women and do not speak Indigenous languages, and they rarely offer services respecting the dignity, privacy, informed consent and reproductive autonomy of Indigenous women. Indigenous women frequently experience difficulties in securing access to sexual and reproductive health information and education, including about family planning methods, contraception and access to safe and legal abortion. They are often victims of gender-based violence in the health system, including obstetrics violence; coercive practices, such as involuntary sterilizations or forced contraception; and barriers to their ability to decide on the number and spacing of their children. Indigenous midwives and birth attendants are often criminalized, and technical knowledge is undervalued by non-Indigenous health systems. Pandemics have a disproportionate impact on Indigenous women and girls, and States parties must ensure access to culturally acceptable health-care services, testing and vaccination during such emergencies.
52. The Committee recommends that States parties:
- (a) Ensure that quality health services and facilities are available, accessible, affordable, culturally appropriate and acceptable for Indigenous women and girls, including those with disabilities, older women, and lesbian, bisexual, transgender and intersex women and girls, and ensure that free, prior and informed consent, confidentiality and privacy are respected in the provision of health services;

- (b) Guarantee that Indigenous women and girls receive prompt, comprehensive and accurate information, in accessible formats, on sexual and reproductive health services and affordable access to such services, including safe abortion services and modern forms of contraception;
- (c) Ensure that health information is widely disseminated in Indigenous languages, including through conventional and social media;
- (d) Ensure the recognition of Indigenous health systems, ancestral knowledge, practices, sciences and technologies, and prevent and sanction the criminalization thereof;
- (e) Provide gender-responsive and culturally responsive training, with gender and intercultural perspectives, as defined in paragraphs 4 and 5, to health professionals, including community health workers and birth attendants, who treat Indigenous women and girls, and encourage Indigenous women to enter the medical profession;
- (f) Adopt steps to prevent all forms of gender-based violence, coercive practices, discrimination, gender stereotypes and racial prejudice in the provision of health services.

F. Right to culture (arts. 3, 5, 13 and 14)

53. Culture is an essential component of the lives of Indigenous women and girls. It is intrinsically linked to their lands, territories, histories and community dynamics. There are many sources of culture for Indigenous women and girls, including languages, dress and the way they prepare food, practice Indigenous medicine, respect sacred places, practice religion and their traditions, and transmit the history and heritage of their communities and peoples. Indigenous women have a right not only to enjoy their culture but also to challenge aspects of their culture that they consider discriminatory, such as outdated laws, policies and practices contrary to international human rights law and gender equality. According to article 12 of the Convention on the Rights of the Child, Indigenous Girls also have the right to express their views and to participate in cultural matters affecting them, either directly or through a representative, in accordance with their age and maturity. States should also ensure that Indigenous women and girls can participate fully in sports and recreational activities, free from all forms of discrimination.
54. The dispossession, lack of legal recognition and unauthorized use of Indigenous territories, lands and natural resources, as well as environmental degradation, including biodiversity loss, pollution and climate change, are direct threats to the self-determination, cultural integrity and survival of Indigenous women and girls, as are the unauthorized use and appropriation of their technical knowledge, spiritual practice, and cultural heritage by State actors and third parties. States should protect and preserve Indigenous languages, culture and knowledge, including through the use of digital tools; sanction the unauthorized appropriation and use of such languages, culture and knowledge; and respect and protect the lands, territories and sacred places of Indigenous Peoples.
55. The Committee recommends that States parties:
- (a) Ensure the individual and collective rights of Indigenous women and girls to maintain their culture, identity and traditions and to choose their own path and life plans;

- (b) Respect, protect and expand the rights of Indigenous Peoples to land, territories, resources and a safe, clean, sustainable and healthy environment as a precondition for preserving the culture of Indigenous women and girls;
- (c) Act with due diligence to prevent, investigate, punish transgressors and provide reparations to victims in cases of unauthorized use or appropriation of the cultural knowledge and heritage of Indigenous women and girls without their free, prior and informed consent and adequate benefit-sharing;
- (d) Collaborate with Indigenous Peoples, including women, to develop culturally appropriate education programmes and curricula;
- (e) Study the relationship between technology and culture, as digital tools can be important in transmitting and preserving Indigenous languages and culture. Where digital tools are used to support the transmission and preservation of Indigenous cultures, they should be made accessible to and be culturally appropriate for Indigenous women and girls;
- (f) Recognize and protect Indigenous women's intellectual property; cultural heritage; scientific and medical knowledge; forms of literary, artistic, musical and dance expressions; and natural resources. In adopting measures, States parties must take into account the preferences of Indigenous women and girls. Measures can include the recognition, registration and protection of the individual or collective authorship of Indigenous women and girls under national intellectual property rights regimes and should prevent the unauthorized use of their intellectual property, cultural heritage, scientific and medical knowledge, forms of literary, artistic, musical and dance expressions; and natural resources by third parties. States should also respect the principle of free, prior and informed consent of Indigenous women authors and artists and the oral or other customary forms of transmission of their traditional knowledge, cultural heritage and scientific, literary or artistic expressions;
- (g) Act with due diligence to respect and protect the sacred places of Indigenous Peoples and their territories, and hold those who violate them accountable.

G. Rights to land, territories and natural resources (arts. 13 and 14)

56. Land and territories are an integral part of the identity, views, livelihood, culture and spirit of Indigenous women and girls. Their lives, well-being, culture and survival are intrinsically linked to the use and enjoyment of their lands, territories and natural resources. The limited recognition of ownership of their ancestral territories; the absence of titles to their lands and legal protection of their traditions and heritage; and the lack of recognition of Indigenous Peoples' land and native title rights at the treaty, constitutional and legislative levels in many countries undermine and fuel disrespect for their rights by State and private actors, specifically the rights to collective ownership, possession use and enjoyment of land and resources. Lack of recognition of Indigenous land rights can lead to poverty; food and water insecurity; and barriers to access to natural resources needed for survival, and can create unsafe conditions, which give rise to gender-based violence against Indigenous women and girls. States are required under international law to delimit, demarcate, title and ensure security of title to Indigenous Peoples' territories to prevent discrimination against Indigenous women and girls.
57. The Committee recommends that States parties:
- (a) Recognize the rights of Indigenous Peoples and women to individual and collective ownership and control over lands encompassed by their customary

land tenure systems, and develop policies and laws that adequately reflect this recognition in the local and national economies;

- (b) Recognize legally the right to self-determination and the existence and rights of Indigenous Peoples to their lands, territories and natural resources in treaties, constitutions and laws at the national level;
- (c) Require the free, prior and informed consent of Indigenous women and girls before authorizing economic, development, extractive and climate mitigation and adaptation projects on their lands and territories and affecting their natural resources. It is recommended to design free, prior and informed consent protocols to guide these processes;
- (d) Prevent and regulate activities by businesses, corporations and other private actors that may undermine the rights of Indigenous women and girls to their lands, territories and environment, including measures to punish, ensure the availability of remedies, grant reparations and prevent the repetition of these human rights violations;
- (e) Adopt a comprehensive strategy to address discriminatory stereotypes, attitudes and practices that undermine Indigenous women's rights to land, territories and natural resources.

H. Rights to food, water and seeds (arts. 12 and 14)

58. Indigenous women and girls have a key role in their communities in securing food, water and forms of livelihood and survival. The dispossession of their territories, forced displacement and lack of recognition of Indigenous land rights limits their opportunities to achieve food and water security and to manage these needed natural resources. The implementation of extractive and other economic activities and development projects can cause food and water contamination, disruption and degradation and can obstruct key forms of ancestral farming. Climate change and other forms of environmental degradation also threaten food security and contaminate and disrupt water supplies. States should adopt urgent measures to ensure that Indigenous women and girls have adequate access to sufficient food, nutrition and water. Of particular concern is the increasing commercialization of seeds, which are an essential part of the ancestral knowledge and cultural heritage of Indigenous Peoples. This commercialization of seeds often occurs without benefit-sharing with Indigenous women. The proliferation of transgenic or genetically modified crops is of concern to Indigenous Peoples and often occurs without the participation of Indigenous women or girls.

59. The Committee recommends that States parties:

- (a) Ensure adequate access of Indigenous women and girls to sufficient food, water and seeds, and acknowledge their contribution to food production, sovereignty and sustainable development;
- (b) Protect ancestral forms of farming and sources of livelihood for Indigenous women, and ensure the meaningful participation of Indigenous women and girls in the design, adoption and implementation of agrarian reform schemes and the management and control of natural resources;
- (c) Exercise due diligence to prevent, investigate and punish gender-based violence committed against Indigenous women and girls when they are performing agricultural work, procuring food and fetching water for their families and communities, and ensure that they have access to the benefits of scientific progress and technological innovation to be able to achieve food

and water security and that they are compensated for their contributions and technical knowledge. Their scientific contributions should also be recognized by States parties.

I. Right to a clean, healthy and sustainable environment (arts. 12 and 14)

60. The right to a clean, healthy and sustainable environment encompasses a safe and stable climate; safe and adequate food and water; healthy ecosystems and biodiversity; a non-toxic environment; participation; access to information; and access to justice in environmental matters. Indigenous women and girls refer to “Mother Earth”, a concept that reflects the vital link that they have with a healthy environment and their lands, territories and natural resources. Human-caused pollution, contamination, deforestation, burning of fossil fuels and loss of biodiversity threaten that link. The failure of States to take adequate action to prevent, adapt to and remediate these serious instances of environmental harm constitutes a form of discrimination and violence against Indigenous women and girls that needs to be promptly addressed. Moreover, States should take steps to recognize the contribution of Indigenous women through their technical knowledge of biodiversity conservation and restoration, including them in decision-making, negotiations and discussions concerning climate action and mitigation and adaptation measures. States should also act promptly to support the work of Indigenous women and girls who are environmental human rights defenders and ensure their protection and security.
61. The Committee recommends that States parties:
- (a) Ensure that laws and policies related to the environment, climate change and disaster risk reduction reflect the specific impacts of climate change and other forms of environmental degradation and harm, including the triple planetary crisis;
 - (b) Ensure that Indigenous women and girls have equal opportunities to meaningfully and effectively participate in decision-making related to the environment, disaster-risk reduction and climate change;
 - (c) Ensure that effective remedies and accountability mechanisms are in place to hold those responsible for environmental harm accountable, and ensure access to justice for Indigenous women and girls in environmental matters;
 - (d) Ensure the free, prior and informed consent of Indigenous women and girls in matters affecting their environment, lands, cultural heritage and natural resources, including any proposal to designate their lands as a protected area for conservation or climate change mitigation purposes or carbon sequestration and trading or to implement a green energy project on their lands, and any other matter having a significant impact on their human rights.

2. General Recommendation No. 38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, 20 November 2020

IV. Root causes of trafficking in women and girls

[...]

A. Socioeconomic injustice

20. Trafficking in women and girls is rooted in sex-based and gender-based discrimination, gender-based structural inequality and the feminization of poverty. The women and girls who are most vulnerable to being trafficked are those belonging to marginalized groups, such as women and girls living in rural and remote areas, those belonging to indigenous and ethnic minority communities, women and girls with disabilities, women and girls with an irregular migration status, as well as those who are displaced, stateless or at risk of statelessness, refugee and asylum-seeking women and girls, including those whose claims have been rejected, women and girls living in or coming from conflict or post-conflict settings and girls without care or in alternative care, and their life experiences are marked by serious rights deprivation. Members of those groups often experience social, political and economic exclusion, resulting in their being more likely to be impoverished, uneducated or undereducated, unregistered or undocumented and unemployed or underemployed, to carry the burden of household and childcare responsibilities, to face restricted access to State benefits, protection and services, to experience intimate partner and domestic violence, abuse and neglect in the family environment, to be in care institutions and to be subjected to child, forced and servile marriage or deprivations due to widowhood. Such situations can be aggravated by the additional burden of an impairment or severe illness that is a consequence of trafficking, including sexual exploitation.

C. VIEWS ADOPTED UNDER OP I

1. *Matson et al. v. Canada*, CEDAW/C/81/D/68/2014, 11 March 2022⁴⁷

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 68/2014

<i>Communication submitted by:</i>	Jeremy Eugene Matson (not represented by counsel)
<i>Alleged victims:</i>	The author and his children, I.D.M. and A.M.M.
<i>State party:</i>	Canada
<i>Date of communication:</i>	18 October 2013 (initial submission)
<i>References:</i>	Transmitted to the State party on 4 July 2014 (not issued in document form)
<i>Date of adoption of views:</i>	14 February 2022
<i>Subject matter:</i>	Entitlement to Indian status as First Nations descendants in the maternal line

Facts as submitted by the author

⁴⁷ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2FC%2F81%2FD%2F68%2F2014&Lang=en.

Determination by the State party as to who qualifies as indigenous

- 2.1 The author submits that, since the adoption of the Indian Act of 1876, with its provisions on registration as an “Indian”, the State party has discriminated against indigenous women and their descendants, denying them indigenous status, the right to determine their indigenous identity and their fundamental right to belong to a group of indigenous people.
- 2.2 The Indian Act is the legislative regime that has been imposed on First Nations to regulate their relationship with the Government. Under the Act, the federal Government maintains a status list (Indian Register) of persons identified as a “status Indian”. That status is a condition for gaining access to rights and benefits, such as health-care services, financial support for education, the right to reside on indigenous territories and the rights to hunt and fish on indigenous traditional lands. Most significantly, such status confers the ability to transmit it to one’s children, as well as a sense of acceptance within indigenous communities.
- 2.3 Prior to 1985, the Indian Act contained provisions that were explicitly discriminatory against indigenous women, taking away their status if they married non-status men and making the transmission of status to descendants dependent on the male line.
- 2.4 In 1981, in response to a complaint brought by Sandra Lovelace, a Mi’kmaq woman, the Human Rights Committee found that the provisions of the Indian Act were discriminatory. The Committee’s views led to the Act being amended with the intention of restoring Indian status to women who had been disenfranchised for marrying non-indigenous men. Those amendments, known as Bill C-31 of 1985, failed to remedy fully the legacy of discrimination and in fact perpetuated further discrimination against the descendants of women who had lost their status. Bill C-31 created section 6 of the Indian Act, an entitlement and registration scheme comprising two main categories: section 6 (1), for individuals with two parents with status, whose children would have status regardless of whom they partnered with; and section 6 (2), for individuals with only one parent with status, whose children would be eligible for status only if the other parent of their children also had status. That rule, known as the “second generation cut-off”, was applied to all children born after 1985 and retroactively to all children of people regaining status. As a consequence, the grandchildren of women who had been disenfranchised could have status only if both of their parents had status. Although women would no longer lose their status because of whom they married, the new provisions created an unequal ability to pass status on to descendants. Under the new rules, children with only one status parent had a different form of status from that of children with two status parents. As a result of that unilateral determination by the State party as to who was a status Indian, thousands of indigenous women and their children were excluded from registration and denied their right to determine their own identity. The law was discriminatory against women, because the same rules did not apply to indigenous men.
- 2.5 In 1989, Sharon McIvor, an indigenous woman, launched a legal challenge to the discriminatory provisions under the amended Indian Act. As a result of the amendments of 1985, she and her son had become eligible for status; however her son’s children were not entitled to registration, because their mother was not indigenous. Ms. McIvor submitted that persons whose grandfathers had been indigenous, rather than their grandmothers, were entitled to registration. Almost 20 years later, the Supreme Court of British Columbia ruled that the amendments of 1985 continued to perpetuate the historical disadvantage experienced by indigenous women and

those who traced their status through the maternal line. The federal Government appealed; the British Columbia Court of Appeal found that the amendments of 1985 had infringed upon equality rights, because they had merely postponed the second generation cut-off by one generation. As a result, amendments to the Act were adopted under Bill C-3 of 2011, according to which all grandchildren of women who had lost status by marrying someone without status regained their eligibility for status, provided that they were born after 1951. However, Bill C-3 gave them only the limited form of status that made their ability to pass on status to their own children dependent on the status of the other parent. That restriction did not apply to status Indians of parallel generations who, because they traced their descent from the male line, were not affected by the disenfranchisements of the past. The reforms were carried out without adequate consultation with indigenous peoples, and the views of indigenous peoples' organizations and leading advocates for indigenous women's rights, who had called for a process of broader reform to eliminate all forms of discrimination, were ignored.

Implication of the legislation for the lives of the author and his children

- 2.6 The author resides in Kelowna, British Columbia, outside of his traditional First Nation territory. He is from a long line of leaders of the Capilano Community, part of the Squamish Nation. The author's paternal grandmother was Nora Johnson, born in 1907, an indigenous woman and the daughter of two indigenous parents from the Squamish Nation. When Ms. Johnson was a child, the State party forcibly took her away from her family and placed her in a residential school. In 1927, she married a non-indigenous man. As a consequence, she ceased to be considered by the State party as indigenous. Her son (the author's father) married a non-indigenous woman in 1976; the author was born in 1977, and he was not entitled to registration as a status Indian.
- 2.7 As a result of the amendments of 1985, the author's paternal grandmother was entitled to registration as a status Indian under paragraph 6 (1) (c) of the Indian Act, but, because she had married a non-indigenous man, she was able to pass status on to her son (the author's father) under section 6 (2) only. The author's parents (a section 6 (2) status Indian father and a non-indigenous mother) applied for registration on the author's behalf, but it was denied because of the second generation cut-off rule.
- 2.8 As a consequence of the amendments of 2011, the author's father was deemed to have been entitled to registration under section 6 (1) of the Indian Act, and, as a result, the author became eligible to entitlement and registration for the first time. He applied for status for himself and his children, who were born to a non-indigenous woman. The Indian Registrar registered the author under section 6 (2), the more restrictive form of status, and denied the registration of his children. By comparison, descendants of status Indian grandfathers would never have lost their status and would therefore have been able to pass on their status to their children.

Access to justice

- 2.9 In 2008, the author filed a discrimination complaint under the Canadian Human Rights Act. The Canadian Human Rights Commission found that the complaint had merit and forwarded it to the Canadian Human Rights Tribunal for a hearing. However, in 2012, the Federal Court of Appeal ruled, in *Public Service Alliance of Canada v. Canada Revenue Agency*, that the Tribunal did not have jurisdiction to consider complaints of discrimination concerning an act of Parliament. The

Commission filed an appeal to the Supreme Court of Canada, which was denied. As a consequence, on 24 May 2013, the Tribunal, concluding that the complaint essentially sought to challenge legislation, rather than a discriminatory practice, ruled that it could not hear the author's complaint concerning the provisions of the Indian Act.

[...]

Issues and proceedings before the Committee

Consideration of admissibility

- 17.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4) of the Committee's rules of procedure, it is to do so before considering the merits of the communication.
- 17.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.
- 17.3 The Committee takes note of the State party's argument that the communication should be declared inadmissible under article 2 of the Optional Protocol, because, as a man, the author cannot claim to be a victim. The Committee also takes note of the author's contentions that article 2 of the Optional Protocol does not require individuals submitting a communication and claiming to be victims of gender-based discrimination to be women, that the author and his children are victims because they are matrilineal indigenous descendants and that the State party discriminates against indigenous women and their descendants under the Indian Act. The Committee recalls that article 2 of the Optional Protocol establishes that communications may be submitted by or on behalf of "individuals", without limiting the victim status to "women". The Committee notes that the author claims, on his own behalf and on behalf of his daughter and son, that they are all victims of violations in their capacity as descendants of an indigenous woman who lost her indigenous status and the right to determine her own identity, owing to gender inequalities in the Indian Act, which was unilaterally established by the State party. In that regard, the alleged violations stem from the gender of the author's grandmother and would not have existed had the author's indigenous status originated from his grandfather. The Committee notes that the author claims that he and his children are victims of the consequences of gender-based discrimination originally perpetuated against his grandmother. The Committee observes that, by having posthumously granted the author's grandmother, Ms. Johnson, adjusted registration status under new paragraph 6 (1) (a.1), the State party has recognized the discrimination suffered by Ms. Johnson herself. The Committee is of the view that the historical gender-based discrimination against Ms. Johnson still affects her descendants, taking into consideration that they allege that they cannot enjoy their fundamental rights to be freely recognized as indigenous people and cannot freely transmit their status to their children. In that regard, the Committee is of the view that the descendants, women and men (such as the author and his children), of indigenous women who lost their indigenous status and the right to determine their own identity owing to gender inequalities unilaterally established by the State party, qualify as direct victims under the Optional Protocol, given that the harm invoked is a direct result of the gender-based discrimination against their matrilineal ascendants. The Committee recalls that the transgenerational harm of

some human rights violations perpetrated against women has been analysed in a joint statement of the Committee and the Committee on the Rights of the Child. In the light of the foregoing, the Committee on the Elimination of Discrimination against Women considers that it is not precluded, by virtue of the requirements of article 2 of the Optional Protocol, from considering the present communication, not only in relation to the author's daughter, I.D.M., but also in relation to the author and his son.

- 17.4 The Committee takes note of the State party's initial argument that the communication should be declared inadmissible for lack of exhaustion of domestic remedies, given that the author's complaint lodged in 2008 under the Canadian Human Rights Act was still pending. In 2015, the Canadian Human Rights Commission had applied for judicial review of the ruling of the Canadian Human Rights Tribunal, according to which it could not hear a complaint concerning the provisions of the Indian Act. The Committee observes that the Federal Court subsequently dismissed the judicial review, as did the Federal Court of Appeal, and that, in 2017, the Supreme Court of Canada granted leave to appeal but finally declined to rule on the case in 2018. The Committee notes that it took 10 years for the author's complaint to reach the Supreme Court, which ultimately declined to rule on the case.
- 17.5 The Committee takes note of the State party's claim that the author did not exhaust domestic remedies because he failed to also bring a constitutional claim of discrimination under the Canadian Charter of Rights and Freedoms, having the possibility of seeking pro bono legal representation or donations to fund his defence or to apply to a legal aid programme or the Court Challenges Program. Nonetheless, the Committee also takes note of the author's submission that the rule on exhaustion of domestic remedies does not apply if the application of such remedies is unlikely to bring effective relief, as recognized by the Committee in *Kell v. Canada*, and that, in particular, a Charter remedy would have been ineffective and unreasonably prolonged, given that Ms. McIvor, for example, was obliged to wait for 26 years to receive a partial remedy. According to the author, it is very expensive to sustain such legal action, given that he has a very low annual income and is a beneficiary of a Canadian disability pension plan, and considering that the Court Challenges Program does not have sufficient funding. The Committee observes that three constitutional claims on the same issue resulted in three sets of legislative reforms, in 1985, 2011 and 2019, that allegedly maintain the provisions that are discriminatory on the basis of gender raised by the author in the present communication. The Committee is therefore of the view that the constitutional claim referred to by the State party would have been unreasonably prolonged and unlikely to bring effective relief to the author and his children. The Committee therefore concludes that it is not precluded, by virtue of the requirements of article 4 (1) of the Optional Protocol, from considering the present communication.
- 17.6 The Committee takes note of the State party's argument that the communication should be declared inadmissible under article 4 (2) (b) of the Optional Protocol under the provisions of the Convention, because the distinction alleged by the author is not on the basis of sex, but rather on the basis of lineage, which is not grounds of discrimination under the Convention. Nevertheless, the Committee notes that the State party has acknowledged on several occasions the gender-based inequities in the registration provisions of the Indian Act (see paras. 14.3 and 16.1 above) and that Bill S-3 itself was initially called "An act to amend the Indian

Act to eliminate sex-based inequities in Indian registration” (see para. 11.1 above). Moreover, the Committee considers that the communication relates to distinctions between individuals depending on their maternal or paternal lineage, thereby conferring on the Committee the competence to examine it. The Committee therefore considers that it is not precluded, by virtue of the requirements of article 4 (2) (b) of the Optional Protocol, from considering the present communication.

- 17.7 The Committee takes note of the State party’s argument that the communication should be declared inadmissible under article 4 (2) (e) of the Optional Protocol, because the facts on which the alleged discrimination is based – the author’s grandmother’s loss of entitlement in 1927 – occurred prior to the entry into force of the Optional Protocol for Canada. The Committee also takes note of the author’s argument, referring to reports of the Inter-American Commission on Human Rights, the Special Rapporteur on the rights of indigenous peoples and the Committee itself, that the alleged violations are ongoing and also emanate from the amendments of 2011 and 2019. The Committee observes that, although the starting date of the alleged discrimination is 1927, before the entry into force of the Optional Protocol for the State party, the loss of entitlement of the author’s grandmother has current consequences for her descendants. Moreover, the legislative amendments that allegedly perpetuate the effects of the discrimination came into force after 2003, that is, after the Optional Protocol had entered into force for the State party. Therefore, the alleged failure of the State party to protect the complainant and his children against the alleged violations occurred after the State party’s recognition of the Committee’s competence under the Optional Protocol. In such circumstances, the Committee considers that it is not precluded *ratione temporis* under article 4 (2) (e) of the Optional Protocol from considering the complainant’s allegations regarding violations of his and his children’s rights.
- 17.8 Having found no impediment to the admissibility of the communication, the Committee proceeds to its consideration of the merits.

Consideration of the merits

- 18.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

Article 1

- 18.2 The author alleges that the State party discriminated against him and his children, as the grandchild and great-grandchildren of a woman subjected to differential treatment on the basis of her gender. The author considers that that constitutes discrimination, due to their indigenous status being based on their maternal indigenous lineage and not on a paternal indigenous lineage. The author maintains that the ongoing discrimination under the Indian Act has plagued his maternal indigenous bloodline since 1927, allowing four generations to be exposed to gender-based discrimination and violating his and his children’s fundamental rights to belong to an indigenous people and to transmit their cultural identity according to their own traditional practices. The State party argues that the sex-based distinction between maternal and paternal lines has been removed with the amendments of 2019 and that great-grandchildren from a maternal line have an equal opportunity for Indian status as do great-grandchildren of a paternal line

with the same birth and marriage dates. The State party indicates that, in 2019, the author was registered with status under paragraph 6 (1) (a.3) and his children are entitled to registration under section 6 (2), because of a differential treatment that they receive on the basis of the date of the adoption of a new legislative scheme governing entitlement to registration, which no longer constitutes gender-based discrimination under article 1 of the Convention. It also submits that, at its core, the communication concerns the criteria for the determination of who is eligible to be registered as an Indian, indicating that the legislation seeks to ensure that those who are eligible for Indian status have a sufficient degree of descent from the historical First Nations peoples. According to the State party, there is no human right to be registered as indigenous.

18.3 The Committee observes that, because the author is a disenfranchised matrilineal indigenous descendant, he was denied status as indigenous and the right to fully determine his own identity until 2011, when he could recover only limited status, being then unable to pass on his cultural identity to his children. Only in 2019 – owing to his grandmother’s posthumously adjusted registration under new paragraph 6 (1) (a.1) – could the author’s status be upgraded from registration under section 6 (2) to registration under paragraph 6 (1) (a.3). As a consequence, the author’s children were recognized as indigenous under status 6 (2) only, which still does not give them the right to freely pass on their indigenous status to their children. The Committee observes that the cut-off rules are unilaterally established by the State party and currently apply only to descendants of indigenous women who previously lost their indigenous status and the right to determine their own identity, resulting in differentiation in status in comparison with descendants of indigenous men; the cut-off rules are therefore precisely what is affecting the author and his children, whose indigenous status comes from their maternal and not paternal lineage. Indeed, the Committee also observes that the amendments of 2011 allowed the grandchildren of disenfranchised women to regain eligibility, provided that they were born after 1951, and only under a limited status that made their ability to pass on status to their own children dependent on the status of the other parent. The Committee further observes that the amendments of 2019 replaced the 1951 cut-off date with the 1985 cut-off date. The Committee is of the view that the cut-off rules established by the State party affect in a discriminatory manner the descendants of indigenous women who had been disenfranchised in comparison with the descendants of status Indian men who, because they traced their descent from the male line, were never affected by the disenfranchisements of the past. As noted by Human Rights Watch, the latter cut-off rule was discriminatory to people whose parents from an indigenous maternal lineage were married after 1985 (see para. 15.4 b above). In the present case, the discriminatory treatment of the author’s grandmother was based on gender, as acknowledged by the State party. Considering that that is the basis of the ongoing effects on the author and his children, namely, the lack of full recognition as indigenous by the State party, thereby affecting their right to freely transmit that status and their cultural identity, the Committee concludes that, even if not currently based on the gender of the descendants themselves, but on dates of birth or marriage, the Indian Act perpetuates in practice the differential treatment of descendants of previously disenfranchised indigenous women, which constitutes transgenerational discrimination, falling within the scope and meaning of article 1 of the Convention.

18.4 The Committee considers that, contrary to the State party’s assertion, indigenous

peoples do have the fundamental right to be recognized as such, as a consequence of the fundamental self-identification criterion established in international law. Article 9 of the United Nations Declaration on the Rights of Indigenous Peoples, endorsed by Canada, affirms that indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. It is essential to combating and preventing forced assimilation; indeed, according to article 8 of the Declaration, indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture, and, as a consequence, States must provide effective mechanisms for the prevention of, and redress for, any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities. Moreover, the Committee observes that, according to the Inter-American Court of Human Rights, the identification of an indigenous community, from its name to its membership, is a social and historical fact that is part of its autonomy, and therefore States must restrict themselves to respecting the corresponding decision made by the community, i.e., the way in which it identifies itself. In the present communication, the Committee considers that the unequal criteria by which men and women are permitted, according to the State party, to transmit their indigenous identity to their descendants, is an element which is precisely contrary to this fundamental right to self-identification.

Articles 2 and 3

- 18.5 The author alleges that the 1985 cut-off date introduced in the amendments of 2019 is as arbitrary as the previous 1951 cut-off date, because it still displaces or disentitles indigenous women's descendants from registration. Indeed, the long-standing distinction between the status afforded to descendants of the paternal line, compared with those of the maternal line, which has contributed to the stigmatization of matrilineal descendants, is still present in the most recent version of the Indian Act. The author submits that the reforms were carried out without adequate consultation with indigenous peoples and that the State party ignored the views of indigenous peoples' organizations and leading advocates for indigenous women's rights who called for a process of broader reform to fully and finally eliminate all discriminatory provisions of the Act concerning registration status. The Committee notes that the State party argues that it has fully met its obligations under articles 2 and 3 of the Convention, because there is no more gender-based discrimination, but a differentiation based only on birth and marriage dates, and because the level of consultations with indigenous peoples is not relevant to the question of whether the registration provisions are discriminatory against women.
- 18.6 The Committee observes that, prior to 1985, the Indian Act contained provisions that were explicitly discriminatory against indigenous women by taking away their Indian status if they married non-status men. The author's paternal grandmother, the daughter of a leader of the Squamish Nation, lost her Indian status because she married a non-indigenous man after having been forcibly placed by the State party in a residential school. When the author was born, he was not entitled to Indian status.
- 18.7 The Committee notes that, although the amendments of 1985 allowed for women who had been disenfranchised for marrying non-indigenous men to have their indigenous status restored, they perpetuated further discrimination against those women's descendants by creating a registration scheme to classify "Indians" into two main categories and by creating a second generation cut-off rule that

applied only to maternal descendants of the indigenous women who had been disenfranchised. As a result, the author's paternal grandmother recovered her Indian status but was able to pass on only limited status to her son (the author's father). The author's registration was therefore denied at that time.

18.8 The Committee observes that the amendments of 2011 allowed for the grandchildren of disenfranchised women to regain eligibility, provided that they were born after 1951, under a limited status that made their ability to transmit status to their own children dependent on the status of the other parent. Once again, that restriction did not apply to status Indians who, because they traced their descent from the male line, were not affected by the disenfranchisements of the past. As a result, the author was registered for Indian status the first time, but only under the more restrictive form of such status; he could not pass on his status to his children. By comparison, descendants from a single status Indian grandfather would never have lost status and therefore would be able to pass on their status. The Committee observes that the State party itself recognized that, with the amendments of 2011, for the first time, the author was eligible for status under section 6 (2), i.e., although he had received status, he would not be eligible to transmit his status to his children, but that, on the contrary, the grandchildren of indigenous men who had married non-indigenous women prior to 1985 had status under section 6 (1), rather than 6 (2); unlike the author's children, a great-grandchild of an indigenous man was also eligible to be registered.

18.9 The Committee notes that, with the amendments of 2019, because of his grandmother's adjusted registration under new paragraph 6 (1) (a.1), the author was registered under new paragraph 6 (1) (a.3). His children, whose status has now been recognized for the first time, are registered only under section 6 (2), which confers more limited status, because their parents were married after the 1985 cut-off date. Therefore, they are not allowed to freely transmit their status to their own children, unless their children's other parent also possesses Indian status. The Committee observes that, according to the report of the Special Representative of the Minister of Crown-Indigenous Relations, all persons who are currently eligible to be registered under the section 6 (2) provision should be entitled under section 6 (1). The Committee also observes that specialists in indigenous rights are of the view that, because the amendments of 2019 were adopted without the proposed amendment that would have given indigenous women and their descendants equal status with indigenous men and their descendants, they do not adequately resolve the discrimination faced by the descendants of disenfranchised indigenous women. According to those specialists, although the amended law does not explicitly discriminate against indigenous women, it fails to effectively remedy the earlier discriminatory policy; if the author's grandmother had retained full status, on an equal basis with men of her generation in similar circumstances, then the author's children would be eligible under section 6 (1) and would be able to pass on their status to their children, regardless of the status of their future partner, as patrilineal descendants are able to do.

18.10 The Committee therefore considers that the 1985 cut-off rule under the amendments of 2019, even if not currently based on the gender of the descendants themselves, perpetuates in practice the differential treatment of descendants of previously disenfranchised indigenous women. As a result of the disenfranchisement of his maternal ancestor, the author cannot freely transmit his indigenous status, and his indigenous identity, to his children and, as a consequence, his children in turn

will not be able to transmit freely their status to their own children. The Committee notes that the State party has acknowledged that, according to the Department of Indigenous Services, the new cut-off date will likely require legislative changes (see para. 16.2), precisely because of the current inequities based on the previous, explicit gender-based discrimination. The Committee is therefore of the view that the consequences of the denial of Indian status to the author's maternal ancestor has not yet been fully remedied, being precisely the source of the current discrimination faced by the author and his children. As a consequence, the Committee concludes that the State party has breached its obligations under articles 2 and 3 of the Convention.

- 18.11 The Committee reminds the State party that failure to consult indigenous peoples and indigenous women whenever their rights may be affected constitutes a form of discrimination.
19. Acting under article 7 (3) of the Optional Protocol, and in the light of the foregoing, the Committee is of the view that the State party has failed to fulfil its obligations under the Convention and has thereby violated the rights of the author and his children under articles 1, 2 and 3 thereof.
20. The Committee makes the following recommendations to the State party:
 - (a) Concerning the author and his children: provide appropriate reparation to them, including recognizing them as indigenous people with full legal capacity, without any conditions, to transmit their indigenous status and identity to their descendants;
 - (b) In general:
 - (i) Amend its legislation, after an adequate process of free, prior and informed consultation, to address fully the adverse effects of the historical gender inequality in the Indian Act and to enshrine the fundamental criterion of self-identification, including by eliminating cut-off dates in the registration provisions and taking all other measures necessary to provide registration to all matrilineal descendants on an equal basis to patrilineal descendants;
 - (ii) Allocate sufficient resources for the implementation of the amendments of the law.
21. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all sectors of society, in particular the Squamish Nation.

• VI •

**Committee
Against Torture
and Other
Cruel, Inhuman
or Degrading
Treatment or
Punishment**

A. CONCLUDING OBSERVATIONS

1. Nicaragua, CAT/C/NIC/CO/2, 7 December 2022

Violence against indigenous peoples and people of African descent

29. The Committee is concerned about reports of violent attacks, some resulting in death, against indigenous peoples and people of African descent and the alleged reluctance of the authorities to investigate these incidents. Also of concern are reported attempts to criminalize these groups and stigmatize defence organizations working to protect their rights,⁶³ as well as the lack of information on the status of the investigation of complaints filed with the police (arts. 2, 12 to 14 and 16).
30. The State party should ensure that allegations of violent attacks against indigenous peoples and people of African descent are investigated. Their physical integrity must also be protected, and care must be taken to ensure that indigenous peoples, people of African descent and organizations that defend their rights are protected from threats and intimidation and are allowed the freedom that they need for their work. The State party should also take measures to provide the victims with redress, including compensation and rehabilitation.

2. Australia, CAT/C/AUS/CO/6, 5 December 2022

Pending follow-up issues from the previous reporting cycle

7. In its previous concluding observations, the Committee requested the State party to provide information on the implementation of the Committee's recommendations on: violence against women, indigenous people in the criminal justice system, non-refoulement and mandatory immigration detention, including of children.³ While noting with appreciation the replies submitted by the State party on 26 November 2015⁴ and referring to the letter dated 29 August 2016 from the Chair of the Committee and the Rapporteur for follow-up to concluding observations addressed to the Permanent Representative of Australia to the United Nations Office and other international organizations in Geneva,⁵ the Committee considers that the recommendations in paragraphs 9 and 12 have been partially implemented and that the recommendations contained in paragraphs 15 and 16 have not yet been implemented. Those issues are covered in paragraphs 22, 26, 28 and 34 of the present concluding observations.

Pretrial detention

15. While taking note of the information provided by the State party on the measures taken to address the question of pretrial detention, which has led to an increasing number of detainees, the Committee is concerned about the almost constant increase in the number of persons being held in pretrial detention during the period under review, with a reported increase of 16 per cent from June 2020 to December 2021, which has been largely driven by increases in the rate of pretrial detention of indigenous peoples (arts. 2, 11 and 16).

16. The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods, taking into account the principles of necessity and proportionality. It should also intensify efforts to significantly reduce the number of pretrial detainees by making more use of alternatives to detention, in particular with regard to Aboriginal and Torres Strait Islander adults and children, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders (the Bangkok Rules).

Gender-based violence, including violence against indigenous women and girls

21. While noting the various measures taken to address gender-based violence, including the establishment by the Council of Attorneys-General of a family violence working group of senior justice officials, in 2017, the Committee remains seriously concerned about:
- (a) Continued and consistent reports of high levels of violence against women and girls, including domestic violence, which disproportionately affects indigenous women and women with disabilities and has significantly increased during the coronavirus disease (COVID-19) pandemic;
 - (b) High levels of underreporting by victims in cases of domestic and sexual violence;
 - (c) The insufficient and uneven geographic repartition of shelters for survivors of gender-based violence throughout the territory of the State party (arts. 2 and 16).
22. The State party should:
- (a) Ensure that all cases of gender-based violence – in particular against indigenous women and girls and women and girls with disabilities, and especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention – are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims receive redress, including adequate compensation;
 - (b) Strengthen capacity-building for law enforcement officers on gender-sensitive responses to family violence;
 - (c) Reinforce efforts to change behaviours and attitudes that lead to violence against women and encourage reporting by launching awareness-raising campaigns on reporting mechanisms and remedies;
 - (d) Ensure that survivors of gender-based violence, including domestic violence, are able to safely report such cases, have access to safe and adequately funded shelters and receive the necessary medical care, psychosocial support and legal assistance that they require;
 - (e) Allocate adequate resources for the implementation of the National Plan to End Violence against Women and Children (2022–2032) and enhance efforts to ensure the availability of support services for victims of gender-based violence;
 - (f) Compile statistical data throughout all jurisdictions, disaggregated by the age and ethnic or national origin or nationality of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence.

Conditions of detention

31. While appreciating the measures taken by the State party to improve conditions of detention in general, the Committee remains concerned about reports that, despite remedial measures taken by authorities, the number of detainees remains high while the number of personnel remains relatively low in many places of deprivation of liberty. ... It is further concerned at reported arbitrary practices, in particular the continued use of prolonged and indefinite solitary confinement, which disproportionately affects indigenous peoples and inmates with intellectual or psychosocial disabilities, abusive strip-searches, as well as excessive use of various means of physical or chemical restraint. ... (arts. 2, 11 and 16).

Indigenous peoples in the criminal justice system

33. While noting the measures taken by the State party to address the situation of indigenous peoples in custody, in particular the adoption, in 2021, of the Justice Policy Partnership, which seeks to address the overrepresentation of First Nations Australians in places of detention and the crisis regarding the deaths of Aboriginals and Torres Strait Islanders in custody, the Committee is concerned that indigenous men, women and children continue to be disproportionately affected by incarceration, reportedly representing approximately 30 per cent of the total prisoner population, while constituting 3.8 per cent of the total population. The Committee echoes the concerns raised by the State party that recent inmate population growth has been largely driven by increases in the rate of incarceration of members of indigenous peoples, leading to their overrepresentation in the prison population. In this respect, the Committee notes that the delegation acknowledged that a transformational change is required to reverse this trend and that, in order to achieve that change, the State party needs to implement comprehensive measures that include, inter alia, legislative and policy reforms. The Committee remains, however, concerned at reports that mandatory sentencing and imprisonment for petty crimes, such as fine defaults, still in force in several jurisdictions continue to contribute to such disproportionately high rates of incarceration of indigenous peoples. It is also concerned that access to culturally sensitive legal assistance services, including interpretation and translation services, for marginalized and disadvantaged peoples, such as Aboriginal and Torres Strait Islander peoples, remains insufficient (arts. 2, 11 and 16).
34. The State party should increase its efforts to address the overrepresentation of indigenous peoples in prisons, including by identifying its underlying causes, by revising regulations and policies leading to their high rates of incarceration, such as the mandatory sentencing laws and imprisonment for fine defaults, and by enhancing the use of non-custodial measures and diverting programmes. It should take all necessary measures to give judges the necessary discretion to determine relevant individual circumstances. It should also give due consideration to the recommendations, made in 2018, of the Australian Law Reform Commission's inquiry into the incarceration of Aboriginal and Torres Strait Islander peoples and of the Royal Commission into the Protection and Detention of Children in the Northern Territory. Finally, the State party should ensure that adequate, culturally sensitive, qualified and accessible legal services are available to Aboriginals and Torres Strait Islanders.

Deaths in custody

35. While taking note of the information provided by the State party's delegation, the Committee regrets the lack of comprehensive information and statistical data on the total number of deaths in custody for the period under review, disaggregated by place of detention, the sex, age and ethnic or national origin or nationality of the deceased and the cause of death. It is also concerned about the allegations that causes of death in custody include excessive use of force, lack of health care and suicide, and regrets the insufficient information on investigations carried out in that regard. The Committee is also concerned that, during the period under consideration, the reported number of deaths in custody seems to have risen due, inter alia, to increased rates of incarceration, in particular of indigenous peoples (arts. 2, 11 and 16).
36. The State party should: (a) Ensure that all deaths in custody are promptly, effectively and impartially investigated by an independent entity, including by means of independent forensic examinations and, where appropriate, apply the corresponding sanctions, in line with the Minnesota Protocol on the Investigation of Potentially Unlawful Death; (b) Assess and evaluate the existing programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons, and review the effectiveness of strategies for the prevention of suicide and self-harm; (c) Compile detailed information on the cases of death in all places of detention in all jurisdictions and their causes and the outcome of the investigations into the deaths.

Juvenile justice

37. The Committee is seriously concerned about:
- (a) The very low age of criminal responsibility, as it is set at 10 years;
 - (b) The persistent overrepresentation of indigenous children and children with disabilities in the juvenile justice system;
 - (c) Reports that children in detention are frequently subjected to verbal abuse and racist remarks and restrained in ways that are potentially dangerous;
 - (d) The practice of keeping children in solitary confinement, in particular at the Banksia Hill youth detention centre in Western Australia, the Don Dale youth detention centre in the Northern Territory and the Ashley youth detention centre in Tasmania, which contravenes the Convention and the Nelson Mandela Rules;
 - (e) The high number of children in detention, both on remand and after sentencing;
 - (f) Children in detention not always being separated from adults;
 - (g) Children's lack of awareness about their rights and how to report abuses.
38. The State party should bring its child justice system fully into line with the Convention and:
- (a) Raise the minimum age of criminal responsibility, in accordance with international standards;
 - (b) Take all necessary measures to reduce the incarceration rate of indigenous children and ensure that children with disabilities are not detained indefinitely without conviction and that their detention undergoes regular judicial review;
 - (c) Explicitly prohibit force, including physical restraints, as a means of coercion or disciplining children under supervision, promptly investigate all cases of abuse and ill-treatment of children in detention and adequately sanction the perpetrators;

- (d) Immediately end the practice of solitary confinement for children across all jurisdictions; (e) Actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service;
- (e) Ensure, in cases in which detention is unavoidable, that children are detained in separate facilities and, for pretrial detention, to ensure that detention is regularly and judicially reviewed;
- (f) Provide children in conflict with the law with information about their rights, ensure that they have access to effective, independent, confidential and accessible complaint mechanisms and protect complainants from any risk of reprisals.

Psychiatric institutions and forensic disability closed centres

39. While noting with appreciation the establishment, in 2019, of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, the Committee is seriously concerned about:

- (a) Laws, policies and practices that result in the arbitrary and indefinite detention and forced treatment of persons with disabilities, and that such laws, policies and practices disproportionately affect Aboriginal and Torres Strait Islander persons with disabilities and persons with intellectual or psychosocial disabilities;
- (b) The fact that persons with intellectual or psychosocial disabilities who are considered unfit to stand trial or not guilty due to “cognitive or mental health impairment” can be detained indefinitely or for terms longer than those imposed in criminal convictions;
- (c) The use of chemical and physical restraints and seclusion under the guise of “behaviour modification” and restrictive practices against persons with disabilities, including children;
- (d) The reported abuse of young Aboriginal and Torres Strait Islander persons with disabilities by fellow patients and staff, the use of prolonged solitary confinement, particularly of persons with intellectual or psychosocial disabilities, and the lack of effective, independent, confidential and accessible channels for lodging complaints (arts. 2, 11 and 16).

40. The State party should:

- (a) Repeal any law or policy and cease any practice that enables the deprivation of liberty on the basis of impairment and that enables forced medical interventions on persons with disabilities, particularly Aboriginal and Torres Strait Islander persons with disabilities and persons with intellectual or psychosocial disabilities;
- (b) Stop committing persons with intellectual or psychosocial disabilities who are considered unfit to stand trial or not guilty due to “cognitive or mental health impairment” to custody and for indefinite terms or for terms longer than those imposed in criminal convictions;
- (c) Establish a nationally consistent legislative and policy framework for the protection of all persons with disabilities, including children, from the use of psychotropic medications, physical restraints and seclusion under the guise of “behaviour modification” and the elimination of restrictive practices against persons with disabilities, including children;
- (d) Take all necessary measures to protect persons with disabilities, including young Aboriginal and Torres Strait Islander persons with disabilities and persons

with intellectual or psychosocial disabilities, from abuse by fellow prisoners and prison staff and ensure that persons with disabilities cannot be held in solitary confinement;

- (e) Establish an effective, independent, confidential and accessible national oversight, complaint and redress mechanism for persons with disabilities who have experienced violence, abuse, exploitation and neglect in all settings, including all those not eligible for the National Disability Insurance Scheme.

Use of electrical discharge weapons (tasers)

- 49. While appreciating the information provided by the State party on the regulations governing the use of electrical discharge weapons (tasers) and related specific training for law enforcement officials, the Committee is concerned at reports of cases of inappropriate or excessive use, including on children and young persons, and their disproportionate use against indigenous peoples and members of minority groups (arts. 2 and 16).
- 50. The State party should adopt the necessary measures to effectively ensure that, in all jurisdictions, the use of electrical discharge weapons (tasers) is strictly compliant with the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution and that they are used exclusively in extreme and limited situations – in which there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only. In that respect, the State party should expressly prohibit their use on children and pregnant women. In addition, the State party should ensure that all allegations of excessive or inappropriate use of these weapons are promptly, impartially and thoroughly investigated.

3. Bolivia, CAT/C/BOL/CO/3, 29 December 2021

Racially motivated violence

- 20. The Committee is concerned about acts of racially motivated violence reportedly committed during the 2019–2020 crisis, including the attacks, threats and ill-treatment, for which organized groups were responsible, faced by indigenous women. The Committee also notes with concern information that it has received concerning police clampdowns on demonstrators, mostly indigenous people and campesinos, in Betanzos, Yapacaní, Montero, Sacaba and Senkata (arts. 2, 12, 13 and 16).
- 21. The State party should: (a) Systematically investigate all forms of hate crime, including racially motivated violence, prosecute perpetrators and, if they are found guilty, punish them with penalties commensurate with the seriousness of the offence; (b) Provide training on hate crimes to law enforcement officers to prevent torture, ill-treatment and excessive use of force; (c) Strengthen the work of the National Committee against Racism and All Forms of Discrimination established pursuant to Act No. 045 of 8 October 2010 on the Elimination of Racism and All Forms of Discrimination.

Detention conditions in prisons and excessive use of pretrial detention

- 34. The Committee regrets that overcrowding is still a major problem in the prison system. It therefore welcomes the efforts made by the State party to improve material conditions in places of detention and reduce overcrowding, such as the organization of workshops on easing the burden on the legal system, the holding of

virtual hearings, the increases in capacity at the prisons in Cochabamba and Tarija, the construction of new prisons and the extensions to existing facilities in Riberalta, Beni, San Pablo, La Paz and Palmasola, inter alia, and the granting of amnesties and pardons following the measures adopted in response to the coronavirus disease (COVID-19) pandemic. However, it is concerned about: ... (d) The insufficient information provided on measures and/or protocols adopted to address the specific needs of women, minors, indigenous persons, persons with disabilities, older persons and lesbian, gay, bisexual, transgender and intersex persons deprived of their liberty (arts. 2, 11 and 16).

B. JURISPRUDENCE

1. Gallardo et al v. Mexico, CAT/C/72/D/992/2020, 7 February 2022⁴⁸

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 992/2020

<i>Communication submitted by:</i>	Damián Gallardo Martínez, on his own behalf and on that of his four minor children (M.M.B.H., L.K.G.C., X.K.G.C. and E.R.K.G.C.); Yolanda Barranco Hernández (his partner); Gregorio Gallardo Vásquez and Felicitas Martínez Vargas (his parents); and his five siblings, Florencia, Felicita, Idolina, Violeta and Saúl Gallardo Martínez (represented by Consorcio para el Diálogo Parlamentario y la Equidad Oaxaca, the World Organization against Torture and the Mexican Commission for the Defence and Promotion of Human Rights) Alleged victims: The complainants and the four minors
<i>State party:</i>	Mexico
<i>Date of complaint:</i>	17 May 2019 (initial submission)
<i>Date of adoption of decision:</i>	18 November 2021
<i>Subject matter:</i>	Arbitrary detention and torture
<i>Procedural issues:</i>	Failure to exhaust domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; State party's obligation to prevent acts of torture; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right to reparation and compensation; statements obtained under torture
<i>Articles of the Convention:</i>	1, 2, 11, 12, 13, 14 and 15

Facts as submitted by the complainants

2.1 The complainants are members of the indigenous Ayuujk people of Santa María Tlahuitoltepec from the Mixe region in the state of Oaxaca. Mr. Gallardo Martínez is a teacher and defender of indigenous peoples' rights and the right to education. As part of his activities in defence of human rights, he has, for several years, promoted community education in the indigenous communities of the Mixe and Zapoteca regions in the Sierra de Oaxaca.

⁴⁸ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/72/D/992/2020&Lang=en.

Torture and ill-treatment, from the time of his arbitrary detention until his release more than five years later

- 2.2 On 18 May 2013, at 1.30 a.m., Mr. Gallardo Martínez was arrested by seven federal police officers while he was at home asleep in his bedroom together with his partner, Yolanda Barranco Hernández, and their minor daughter, M.M.B.H. The officers broke down the door of his home, beat him and dragged him half-naked to a van. During the journey, which lasted for approximately two hours, the officers forced him to assume degrading and painful positions, threatened to rape and kill his daughter and his partner and to murder his parents, pretended to execute him with a weapon, beat him and caused him to choke.
- 2.3 At the end of the journey, Mr. Gallardo Martínez was held incommunicado and tortured for approximately 30 hours in a secret detention centre. He was beaten so that he would divulge information about other people involved in the education rights movement; when he did not give in, the officers continued to subject him to psychological torture by showing him photographs of his daughter and partner and claiming that they would rape and kill them, thus making him believe that they were in detention, if he refused to provide information about other persons involved in the social movement in the state of Oaxaca or if he did not agree to take part in committing the crimes of which he was later accused. Mr. Gallardo Martínez was forced to sign blank sheets of paper, which were later used as alleged evidence of self-incrimination. During the 30 hours that he spent in incommunicado detention, Mr. Gallardo Martínez was also deprived of water and sleep and prevented from defecating, was beaten on his testicles, stomach, back, face and head, was choked and was forced to witness acts of torture against other detainees.
- 2.4 On 19 May 2013, Mr. Gallardo Martínez was finally transferred to the Office of the Assistant Attorney General for the Investigation of Organized Crime, in Mexico City. A doctor from the Office for the Coordination of Forensic Investigations and Expert Witness Services of the Counsel General's Office noted that Mr. Gallardo Martínez was exhibiting "reddish ecchymosis of 1.5 cm in diameter in the left zygomatic region" and an "increase in volume on the dorsal side of the right foot". Thus, the complainants point out that the State itself noted the injuries, although the internal medical report unduly and deliberately omitted to establish when the injuries were sustained and how they occurred. At the Office of the Assistant Attorney General, officers once again threatened to kill his partner, daughter and parents; he was deprived of water, food and sleep, and was given unauthorized injections.
- 2.5 Late in the day, his sister Florencia Gallardo Martínez received a call informing her that Mr. Gallardo Martínez was in detention. She travelled to the premises of the Office of the Assistant Attorney General and, after waiting for several hours, was able to see her brother for five minutes; at that point, she noted the bruising that he had sustained.
- 2.6 That same day he was also assigned a public defender, who only came to sign a ministerial statement that Mr. Gallardo Martínez had made under torture that day.
- 2.7 Moreover, on 19 May 2013, his arrest for alleged offences of child abduction and involvement in organized crime was made public by means of a public conference, which was broadcast by national media outlets, in violation of the principle of presumption of innocence. This caused irreparable damage to his reputation, which endures even to this day.

Even today, despite having been acquitted after having spent more than five years in detention, the media continue to make him out to be a criminal and many press releases and articles linking him to the alleged crimes for which he was prosecuted continue to circulate.

- 2.8 On 20 May 2013, a doctor attached to the Counsel General's Office again examined Mr. Gallardo Martínez, noting "the presence of pain upon applying pressure to the posterior cervical region" and diagnosing "post-traumatic cervical pain and post-traumatic lower-back pain".
- 2.9 Mr. Gallardo Martínez was only able to appoint a private lawyer on 21 May 2013. Thanks to his lawyer's intervention, he was able to expand his statement and, in so doing, reject the ministerial statement submitted on 19 May 2013 on the grounds that it had been made under torture.
- 2.10 On 22 May 2013, based on his alleged self-incriminating confessions, he was formally indicted for the offences of involvement in organized crime and the kidnapping of two minors, nephews of one of the most important businesspeople in Mexico and close to former President Enrique Peña Nieto, and was transferred to Puente Grande maximum security prison in Guadalajara, Jalisco. It was in criminal case No. 136/2013 before the Sixth Criminal Court of El Salto, Jalisco, that the Federal Prosecution Service finally requested the dismissal of the case at the investigation stage, which had lasted for more than five years.
- 2.11 However, from 22 May 2013 to 28 December 2018, Mr. Gallardo Martínez remained in detention at the maximum security prison in Jalisco. During all those years, his relatives could not easily visit him. As indigenous persons with limited means at their disposal, they had difficulty in travelling to the detention centre because it was located at the other end of the country, thousands of kilometres away. Moreover, when they did manage to make the journey, they were often discriminated against and prevented from entering the centre.
- 2.12 On 22 May 2013, Mr. Gallardo Martínez also underwent a third medical examination by personnel attached to the Counsel General's Office, who noted that he was experiencing "pain in the cervical and dorsal region without any sign of external injury, greeny purple ecchymosis measuring 3 cm by 1.5 cm on the anterior face of the proximal third of the left arm; reddish ecchymosis measuring 6 cm by 3 cm on the dorsum of the right foot, accompanied by a discrete increase in volume" and "dermoepidermal excoriations on the left arm".
- 2.13 Until the day of his release following the dismissal of the criminal proceedings finally requested by the Public Prosecution Service – 5 years, 7 months and 10 days after his arrest – Mr. Gallardo Martínez was subjected to acts of torture. Since his admission to the maximum security prison on 22 May 2013, he was beaten on his back, kicked in the buttocks and screamed at in his ear, subjected to a body cavity search (oral and anal) while completely naked and had his hair shaved off. In the days that followed, the fleshy growth in both of his eyes worsened; this had a particularly serious impact on his eyesight that necessitated immediate surgery to avoid irreparable damage to his sight. Mr. Gallardo Martínez repeatedly requested the prison authorities to provide him with specialized medical care. When he did not receive an answer, he asked the judge to intervene and request that an ophthalmologist be allowed to visit him, a visit which was never authorized. Given the seriousness of the medical condition, Mr. Gallardo Martínez was finally operated on in the prison on 20 June 2017, by a prison doctor. Since he was refused

the necessary post-operative care, he had to undergo surgery again in 2018. In general terms, during his time in detention, Mr. Gallardo Martínez was forced to live in overcrowded conditions (six inmates in an area measuring 2m by 4m), placed in solitary confinement, deprived of sleep and confined to his cell for 22 hours per day.

- 2.14 On 9 September 2014, a medical and psychological opinion, based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), concluded that there was a high degree of consistency between chronic post-traumatic stress and depressive disorders and the torture described. The opinion noted that the injury to the dorsum of the foot was still visible (“post-traumatic cystic tumour measuring approximately 3 cm by 2 cm located below the malleolus on the far edge of the dorsum of the right foot”) and that “the size, shape and assessment of said injury is fully consistent with the account given”. The opinion also stated that the blows were meted out “with conscientious and scrupulous care to ensure that no traces were left” and were intended to “bend the will to the extreme, isolate, cause psychological terror, continually inflict physical pain, weaken body and psyche and cause emotional pain, trigger panic and convince of the aggressors’ capacity to inflict pain and death”. The opinion concluded that “the examinee has been subjected to acts of torture. There is consistency between the sources of information on physical and psychological findings, the life history of the examinee, ... the results of the diagnostic tests carried out, as backed up by specialist literature, and the signs, symptoms, syndromes and conditions and sequelae exhibited by the examinee”. The opinion recommended the provision of specialized psychological assistance. The prison authorities and the judge were repeatedly requested to provide such psychological assistance, but it never materialized.
- 2.15 On 18 March 2016, a psychological report was issued by a psychologist from the Executive Commission for Victim Support. Her findings included the presence of anxiety, depression and post-traumatic stress disorder.
- 2.16 On 30 March 2016, another medical opinion was issued by the Executive Commission for Victim Support. It included a diagnosis of post-traumatic stress disorder, anxiety, sequelae of an injury to the left shoulder and right ankle caused by blows, and pain upon moving the right foot.

Domestic remedies

- 2.17 On 18 May 2013, Florencia Gallardo Martínez, the sister of Mr. Gallardo Martínez, filed an application for amparo on the grounds of disappearance, incommunicado detention and torture and risk of deprivation of life.
- 2.18 On 19 May 2013, Ms. Gallardo Martínez also reported her brother’s incommunicado detention and disappearance to the National Human Rights Commission.² It was on the basis of that complaint that, on 20 March 2017, the Commission issued recommendation 5/2018, which attributes to the federal authorities responsibility for unlawful entry, excessive use of force, arbitrary detention, violation of legal security and failure to investigate complaints of torture. On 28 February 2018, the Commission filed a complaint with the internal affairs unit of the federal police and, on 30 August 2018, a second complaint with the Specialized Unit for the Investigation of Crimes Committed by Public Servants against the Administration of Justice of the Counsel General’s Office. No progress has been made in relation to either complaint.

- 2.19 On 24 May 2013, Ms. Gallardo Martínez also filed a criminal complaint for torture with the General Directorate for Crimes Committed by Public Servants of the Office of the Special Prosecutor for Internal Affairs against staff of the Counsel General's Office. A preliminary investigation³ was initiated but, to date, no progress has been made.
- 2.20 In July 2013, Mr. Gallardo Martínez appealed the detention orders issued against him for the crimes of kidnapping and involvement in organized crime, and filed an application for amparo for each alleged crime. The appeals were decided in May 2015; procedural violations were found to have occurred and an order was issued for a new decision to be handed down to remedy the procedural irregularities in question.
- 2.21 On 28 May 2014, the complainants filed a complaint against the federal police officers with the Office of the Special Prosecutor for the Investigation of Torture of the Counsel General's Office, and a preliminary investigation⁴ was opened, although, to date, no progress has been made.
- 2.22 In June 2016, Mr. Gallardo Martínez filed an application for amparo whereby it was agreed that his hair would not be shaved without his consent because doing so undermined his right to express himself. In retaliation, on 30 and 31 July 2016, he was placed in solitary confinement.
- 2.23 On 6 March 2017, Mr. Gallardo Martínez led a hunger strike, in which more than 100 detainees participated, to protest against prison conditions and treatment constituting torture or cruel, inhuman and degrading treatment (solitary confinement, confinement to a cell for 22 hours per day, forcing inmates to remain in awkward positions for a prolonged period, exhaustive searches and lack of adequate medical care). In retaliation, Mr. Gallardo Martínez was subjected to further harassment.
- 2.24 In March 2017, Mr. Gallardo Martínez made an urgent request to join the National Protection Mechanism for Human Rights Defenders and Journalists. Receipt of this request was not acknowledged until an appeal was filed in August 2017, which was eventually dismissed eight months later. After his release and, owing to his high-risk status as a result of the "media lynching" to which he had been subjected, he again requested to join the Mechanism. Although his request was accepted informally in March 2019, to date, he has not received any formal notification that he is now a member of the mechanism, let alone benefited from protection measures.

International pronouncements on the case

- 2.25 On 22 April 2014, the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association issued urgent appeal 3/2014 in response to the violations reported by the complainant. On 26 August 2014, the Working Group on Arbitrary Detention issued Opinion No. 23/2014, in which it confirmed the arbitrary character of Mr. Gallardo Martínez's detention and recommended that he be released immediately. On 24 January 2017, the Special Rapporteur on the situation of human rights defenders published the final report on his mission to Mexico, in which he called for the release of Mr. Gallardo Martínez.

Context. Criminalization of social protest

- 2.26 The complainants claim that the criminal proceedings brought against Mr. Gallardo Martínez are part of a pattern of torture and criminalization of social protest. In Oaxaca in particular, the criminalization of social protest intensified in 2013 to quell resistance to so-called “structural reforms” by the Oaxaca teachers’ union; at least 141 instances of arbitrary detention of defenders of the right to education were documented. The complainants submit that this new wave of repression was characterized by recourse to criminal offences seldom before used to bring prosecutions: in the past, the crimes of terrorism, sabotage and conspiracy were used but, since 2013, the State has been charging activists with offences such as kidnapping, involvement in organized crime and money-laundering. These false accusations made it difficult to provide support, mount a legal defence and arrange family visits because the accused were transferred to maximum security prisons far from their places of origin. In addition, the Government invested millions to ensure that these accusations made the headlines, which seriously discredited the activists.
- 2.27 The complainants submit that there are, in fact, several pieces of exculpatory evidence ruling out the alleged participation of Mr. Gallardo Martínez in the offences with which he was charged. On 6 March 2014, an exercise involving playing back and listening to audio recordings confirmed that there was no audio-based evidence of the alleged negotiation between Mr. Gallardo Martínez and the family of the kidnapped children. Furthermore, on 13 March 2015, the First Collegiate Court of the Third Circuit of the state of Jalisco, in a decision handed down in connection with indirect amparo application No. 48/2014, ordered the exclusion from the evidence of the ministerial statement by a third party incriminating Mr. Gallardo Martínez, on the grounds that it had been obtained under torture. Moreover, on 14 July 2015, while the arresting police officers were being questioned, it was confirmed that he had not been arrested in flagrante delicto, as claimed during the criminal proceedings, but at his home, in his bedroom with his daughter and partner. Likewise, on 28 July 2016, municipal authorities and two members of the community gave statements confirming that, on 14 January 2013, the date of the kidnapping of the children of which he was accused, Mr. Gallardo Martínez was out working in different communities in Oaxaca. Lastly, on 21 June 2017 and 3 January 2018, on-site investigations confirmed that the address at which the police officers had supposedly arrested him in flagrante delicto does not exist.
- 2.28 After his having spent five years and seven months in prison on account of criminal proceedings that never progressed beyond the investigation stage, the Public Prosecution Service requested that the case be dismissed, and Mr. Gallardo Martínez was subsequently acquitted and released.

[...]

Issues and proceedings before the Committee

[...]

Consideration of the merits

- 7.1 The Committee has examined the complaint in the light of all the information submitted to it by the parties, in accordance with article 22 (4) of the Convention.
- 7.2 Before proceeding to examine the complainants’ allegations as they relate to the articles of the Convention which they have invoked, the Committee must determine whether the acts to which Mr. Gallardo Martínez was subjected constitute acts of torture within the meaning of article 1 of the Convention.

- 7.3 The Committee takes note of the complainants' allegations that, during Mr. Gallardo Martínez's arrest, he was beaten and dragged half-naked to a van in which, for approximately two hours, police officers forced him to assume degrading and painful positions, threatened to rape and kill his daughter and his partner and to murder his parents, pretended to execute him with a weapon and caused him to choke. The Committee also takes note of the complainants' allegations that, once the journey had ended, Mr. Gallardo Martínez was held for approximately 30 hours in a secret detention centre, where he was deprived of water and sleep and prevented from defecating, was again beaten on the testicles, stomach, back, face and head, was choked, was forced to witness acts of torture against other detainees, and was forced to listen as death threats were made against his relatives. In addition, while he was in detention at the premises of the Office of the Assistant Attorney General for the Investigation of Organized Crime, he was given unauthorized injections, and, again, officers threatened to kill his partner, daughter and parents, and he was deprived of water, food and sleep. The complainants claim that this treatment was meted out to force Mr. Gallardo Martínez to confess to an alleged crime, and he signed blank sheets of paper that were subsequently used as alleged evidence of self-incrimination. Lastly, during the five years and seven months he spent in Puente Grande maximum security prison in Guadalajara, he was again beaten on his back, kicked in the buttocks and screamed at in the ear; subjected to body cavity searches (anal); forced to live in overcrowded conditions, placed in solitary confinement, confined to his cell for 22 hours per day and deprived of sleep; and denied adequate and timely surgery.
- 7.4 The Committee also notes that the State party has argued that the injuries noted by the doctors attached to the Counsel General's Office could have been sustained during his arrest or if he had gone over on his ankle without, however, providing any further information. The Committee notes, however, that a medical and psychological opinion based on the Istanbul Protocol concluded that Mr. Gallardo Martínez had been subjected to acts of torture intended to "bend the will to the extreme" and "convince of the aggressors' capacity to inflict pain and death" (see para. 2.14 above), and that doctors from the Executive Commission for Victim Support diagnosed him with anxiety, depression, post-traumatic stress disorder, sequelae of the injury to his left shoulder and right ankle, and noted that he experienced pain upon moving his right foot (see paras. 2.15 and 2.16 above). The Committee considers that the facts described by the complainants regarding the conditions in which Mr. Gallardo Martínez was arrested and subsequently detained, and the circumstances in which he was held during his time in detention constitute acts of torture under article 1 of the Convention.
- 7.5 The complainants allege a violation of article 2 of the Convention because the State party failed in its obligation to prevent the acts of torture described during his arrest and subsequent periods in detention. The Committee notes that Mr. Gallardo Martínez was detained by police officers without an arrest warrant and without being in flagrante delicto, and that he was unable to communicate with his partner for almost two days and with an independent lawyer for four days. During this time, he was interrogated under torture by the officers and forced to sign confessions, and an official from the Public Prosecution Service only came to sign a ministerial statement that Mr. Gallardo Martínez had made under torture. The Committee also notes that, despite the injuries noted during the medical examinations, and despite appeals having been filed against the detention orders issued against him, the authorities decided to keep him in detention on the basis of his alleged

confession, simply ordering that a new decision be issued to remedy the procedural irregularities in question (see para. 2.20 above). The Committee recalls its concluding observations on the seventh periodic report of Mexico, in which it urged the State party to take effective measures to ensure that detainees enjoy the benefits of all fundamental safeguards in practice, from the outset of their deprivation of liberty, in line with international standards, including, in particular: the right to receive legal assistance without delay; the right to obtain immediate access to an independent doctor; the right to be informed of the reasons for their detention; the right to have their detention recorded in a register; the right to inform a family member of their detention without delay and the right to be brought before a judge without delay. In the light of the above circumstances and the lack of information provided by the State party about these events, the Committee considers that the State party has failed to fulfil its obligation to take effective measures to prevent acts of torture as set out in article 2(1) of the Convention.

- 7.6 The Committee also notes the complainants' argument that article 11 of the Convention was violated because of the State party's failure to put in place mechanisms to assess compliance with existing laws and regulations, which paved the way for serious irregularities in the recording of the detention and the lack of access to a lawyer and to an independent doctor. The Committee notes that the State party did not respond to this allegation. The Committee recalls its concluding observations on the seventh periodic report of Mexico, in which it urged the State party to ensure the systematic review of interrogation and arrest procedures, in accordance with article 11 of the Convention. For these reasons, the Committee concludes that the State party has violated article 11 of the Convention.
- 7.7 With regard to articles 12 and 13 of the Convention, the Committee takes note of the complainants' allegations that the competent authorities failed to carry out a prompt, immediate and thorough investigation into the acts of torture, despite the complainants' having sought various judicial remedies since 2013, an investigation having been initiated ex officio by the local representation of the Counsel General's Office in the state of Oaxaca in 2016, and despite recommendation 5/2018 of the National Human Rights Commission and the complaints submitted by the Commission in 2018 to the internal affairs unit of the federal police and the Specialized Unit for the Investigation of Crimes Committed by Public Servants against the Administration of Justice of the Counsel General's Office. The complainants also allege that, not only has the State party failed to show that it has taken reasonable steps to advance the investigation and to punish those responsible, but that the authorities have sought to intimidate them each time they have approached them to enquire as to the status of the investigations, that they have no access to official information on the status of one of the preliminary investigations and that an attempt is being made to close the other one (see para. 5.6 above). The Committee also takes note of the State party's argument that it is not responsible for violations of articles 12 and 13 of the Convention, since the investigation is not an obligation of result, but of means.
- 7.8 The Committee recalls that article 12 of the Convention requires States parties to ensure that its competent authorities proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. The Committee notes that, although Mr. Gallardo Martínez had visible injuries when he was examined by doctors attached to the Counsel General's Office on 19, 20 and 22 May 2013 (see paras. 2.4, 2.8 and 2.12 above), no immediate investigation was initiated.

- 7.9 The Committee further recalls that the investigation alone is not sufficient to demonstrate the State party's fulfilment of its obligations under article 12 of the Convention, if it can be shown not to have been conducted promptly and impartially. It recalls that promptness is essential to ensure that the victim may not continue to be subjected to torture because, in general, the physical traces of torture soon disappear. The Committee notes that, in the present case, the complainants filed formal appeals in respect of the acts of torture, which, more than eight years later, have not led to the advancement of the investigation or to the punishment of those responsible; rather the case is still at the preliminary investigation stage, without any justification for the excessive delay in the investigations having been offered or any timely information on the status of the investigations having been provided to the complainants. The Committee further notes that neither the investigation opened ex officio by the local representation of the Counsel General's Office in the state of Oaxaca in 2016, nor the two complaints filed by the National Human Rights Commission in 2018 have served to advance the investigations.
- 7.10 In the light of the above, the Committee concludes that the State party has failed to fulfil its obligations under articles 12 and 13 of the Convention.
- 7.11 The Committee takes note of the complainants' claims that the damage caused to Mr. Gallardo Martínez and the members of his family, who are also complainants, has not been repaired. The Committee recalls its general comment No. 3 (2012), which states that immediate family or dependants of the victim¹⁹ are also considered to be victims, in the sense that they are entitled to full reparation. The Committee notes that the State party has begun the process of recognizing some of Mr. Gallardo Martínez's family members as indirect victims (see para. 5.7 above). The Committee also recalls that the general comment mentions the necessary measures of restitution, compensation, rehabilitation, satisfaction and the right to the truth, and stresses the need for States parties to provide the means necessary for as full a rehabilitation as possible for anyone who has suffered harm as a result of a violation of the Convention, which should be holistic and include medical and psychological care as well as legal and social services. In view of the lack of a prompt and impartial investigation of the complaints submitted in respect of the acts of torture reported, and all the issues highlighted in the previous paragraphs, the Committee concludes that the State party has failed to comply with its obligations under article 14 of the Convention, to the detriment of Mr. Gallardo Martínez and the other complainants.
- 7.12 Lastly, the Committee takes note of the complainants' allegations that article 15 of the Convention was violated because Mr. Gallardo Martínez was forced to sign an alleged confession of involvement in criminal acts for fear that the threats against his family would be carried out. The Committee notes that the alleged confession, together with another statement by a third party, also obtained under torture, were the basis on which the Public Prosecution Service decided to keep Mr. Gallardo Martínez in detention for five years and seven months, before finally closing the case (see para. 5.8 above). Accordingly, the Committee considers that the facts before it disclose a violation by the State party of its obligation to ensure that any statement made under torture cannot be used in proceedings.
8. The Committee, acting under article 22(7) of the Convention, decides that the facts before it disclose a violation of article 2, read alone and in conjunction with articles 1, 11, 12, 13, 14 and 15 of the Convention, to the detriment of Mr. Gallardo Martínez, and of article 14, to the detriment of the other complainants.

9. In accordance with rule 118(5) of its rules of procedure, the Committee urges the State party to: (a) initiate an impartial, thorough, effective and independent investigation into the acts of torture; (b) prosecute, try and punish appropriately the persons found guilty of the violations; (c) award full reparation, including fair and adequate compensation, to the complainants, and provide as full a rehabilitation as possible to Mr. Gallardo Martínez, ensuring that it is respectful of his worldview as a member of the Ayuujk indigenous people; (d) make a public apology to the complainants, the modalities of which should be agreed with them; (e) take the steps necessary to provide guarantees of non-repetition in connection with the facts of the present complaint, including ensuring the systematic review of interrogation and arrest procedures, and the cessation of the criminalization of the defence of indigenous peoples' rights; and (f) publish the present decision and disseminate it widely, including in a widely read newspaper in the state of Oaxaca. The Committee hereby requests the State party, in accordance with rule 118 (5) of its rules of procedure, to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

2. Flor Agustina Calfunao Paillalef v. Switzerland, CAT/C/68/D/882/2018, 2 January 2020⁴⁹

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 882/2018

<i>Communication submitted by:</i>	Flor Agustina Calfunao Paillalef (represented by counsel, Pierre Bayenet)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	17 August 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 23 August 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	5 December 2019
<i>Subject matter:</i>	Deportation to Chile
<i>Procedural issues:</i>	None
<i>Substantive issue:</i>	Risk of torture or cruel, inhuman or degrading treatment or punishment if deported to country of origin (non-refoulement)
<i>Articles of the Convention:</i>	3 and 22

Facts as submitted by the complainant *Substantive issue:*

Defending the rights of the Mapuche indigenous people from Switzerland

2.1 The complainant was born in Chile in the traditional territory of the Mapuche indigenous people, in Los Laureles, a hamlet of the Juan Paillalef community in the municipality of Cunco, Araucanía region. The complainant is a member of the Mapuche indigenous people, which is asserting its rights to its traditional territory in the face of timber, hydroelectric and mining concessions granted by Chile to

⁴⁹ Full text available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT/C/68/D/882/2018&Lang=en.

domestic and international companies, road construction without the consent of the indigenous people and the occupation of the land by large non-indigenous landowners. The demands of the Mapuche are being met with violent reactions both from the Chilean authorities, including the militarized police known as Carabineros, and from individuals who have formed private armed militias. The Mapuche people are victims of assassinations, torture, the criminalization of their demands, set-ups involving judicial officials and the police, and the use of Act No. 18.314, the Counter-Terrorism Act, against their leaders. According to the complainant, the Mapuche are persecuted not for what they do but for who they are. For example, members of the complainant's family have had their houses set on fire on several occasions; one of the complainant's uncles was killed and his body was thrown into a burning house before the investigation was completed; the Mapuche are often detained and then released; they are assaulted; and some of them are serving long prison sentences under the Counter-Terrorism Act. The complainant states that there are approximately 80 court cases against her community, which is experiencing constant violence.

- 2.2 In 1996, the complainant moved to Geneva. She has since been active at the international level in the defence and promotion of the rights of the Mapuche people. For example, she is involved with the various United Nations treaty bodies and participates in the sessions of the Human Rights Council and the Expert Mechanism on the Rights of Indigenous Peoples in order to expose the violations suffered by the Mapuche people. In 2011, the traditional Mapuche authorities granted the complainant the title of Ambassador for the Collective and Individual Rights of the Mapuche People of the Mapuche Permanent Mission to the United Nations Office at Geneva; she has continued participating in the meetings of international bodies in that capacity.
- 2.3 Since 1996, the complainant has returned to Chile only three times, on short trips in 1998, 2003 and 2008. On her most recent trip, she was accompanied by representatives of the non-governmental organizations (NGOs) Paz y Tercer Mundo – Mundubat and Entrepueblos to pick up her 10-year-old niece, Remultray Cadin Calfunao, whose parents and brothers were in prison.

Application for asylum in Switzerland

- 2.4 On 19 November 2008, the complainant submitted an application for asylum for her niece and herself with the Federal Office for Migration (which in 2014 became the State Secretariat for Migration). She attached a video, photos, court records, copies of laws and reports from international organizations to document the political persecution that their family has endured as a result of its claims to the ancestral lands of the Mapuche people. The application also included records of visits by the International Committee of the Red Cross to the Mapuche prisoners in her family and a report from the association Mapundial stating that the complainant could not return to Chile without fearing for her freedom and her physical and psychological integrity.
- 2.5 On 18 August 2010, the Federal Office for Migration rejected the complainant's application for asylum and issued an order for her deportation by 30 September 2010. In its decision, the Federal Office for Migration notes that Mapuche people in Chile who are trying to maintain their traditional way of life are involved in violent clashes with the Chilean security apparatus; however, it states that the complainant has been living in Switzerland since 1996 and that she "could therefore have applied for asylum much earlier had she really needed the protection of our country". In addition, while the Federal Office for Migration acknowledges that, in the past, some

defendants have been wrongly convicted by military courts hearing cases involving civilians, it is of the view that proceedings are now conducted publicly, allowing the media to draw attention to procedural irregularities. The Federal Office for Migration also notes that Chile is, in principle, able to afford protection to victims, observing that, in the case of the fire at the complainant's family home, the judge decided not to bring charges given the lack of evidence and the absence of any provision in the Chilean legal system for a case to be brought against a person or persons unknown. Lastly, the Federal Office for Migration finds that there is no concrete evidence that the complainant might suffer the same fate as other tortured Mapuche persons and that there is therefore no well-founded fear of persecution justifying asylum.

- 2.6 On 20 September 2010, the complainant, on her own behalf and that of her niece, appealed the decision of the Federal Office for Migration; however, on 21 July 2011, the appeal filed on behalf of the complainant's niece was removed from the court's list, her niece having returned to Chile to rejoin her mother, who had been released from prison. On 6 February 2013 the complainant informed the Swiss authorities that her activities as Ambassador of the Mapuche Permanent Mission to the United Nations, in the context of which she works to expose the conduct of the Chilean State, could put her at risk in the event of her deportation.
- 2.7 On 11 June 2013, the Federal Administrative Court dismissed the complainant's appeal, noting that, apart from a few isolated cases of police violence or miscarriages of military justice in cases involving Mapuche activists, there was no systematic repression and the complainant had not alleged any personal threat.
- 2.8 On 7 October 2013, the complainant submitted a request for reconsideration to the Federal Office for Migration on the grounds of worsening repression in Araucanía. She attached numerous supporting documents from university professors, NGOs and the InterAmerican Commission on Human Rights, which had brought an action before the InterAmerican Court of Human Rights in respect of criminal proceedings against seven Mapuche leaders, alleging that they constituted systematic repression of the Mapuche political movement.
- 2.9 On several occasions during the consideration of this final appeal, the complainant informed the State Secretariat for Migration of episodes of violence and ill-treatment suffered by members of her family in retaliation for having asserted their fundamental rights. On 17 September 2015, for example, the complainant noted that on 18 February 2015 her sister had been seriously injured in a suspicious car accident, in respect of which a complaint had been filed, with the description of an individual who had threatened her some months earlier; that on 6 July 2015 her nephew had been assaulted by the police; and that on 16 July 2015 he had been hit on the head with a glass bottle by a private individual and had for a few minutes been unconscious. On 4 November 2015, the complainant also informed the State Secretariat for Migration that her sister had been arrested and beaten by Carabineros upon her return from Washington D.C., where, on 19 October 2015, at the 156th session of the Inter-American Commission on Human Rights, she had reported the constant persecution of her family. As a result, the Commission requested the adoption of precautionary measures (No. 46-14 of 26 October 2015) in respect of the complainant's sister and six other members of her family, in the light of the serious and urgent risk to their personal integrity; in its resolution it requested Chile to take the necessary measures to preserve their life and personal integrity. On 6 June 2016, the complainant, attaching the complaint filed by her sister, also informed the State party's authorities that armed men had wrecked her sister's and her

nephew's homes in the Juan Paillalef community. Lastly, on 28 February 2017, the complainant stated that the community had suffered further violence in January 2017. Houses in the community had been hit by gunfire; although the police had been alerted by telephone, they had not come to the scene, so, after more shots had been fired, members of the family had decided to fell a tree to prevent access to their community and thereby protect themselves. The police had then turned up to remove the tree and arrest the complainant's sister for blocking the road. While attempting to defend his mother, the complainant's nephew had been hit by 38 bullet fragments. The complainant attached the complaint lodged by her family, a medical report and a copy of the cooperation agreement that she had entered into with the World Organization against Torture and the International Federation for Human Rights, whereby they would cover the costs in Switzerland of her nephew's surgical operation.

- 2.10 On 15 May 2017, the State Secretariat for Migration rejected the complainant's request for reconsideration and set her departure for 19 June 2017. Although it noted the existence of State repression, especially by Carabineros, who applied disproportionately severe measures and sometimes took individuals into police custody, the State Secretariat for Migration concluded that such police custody was immediately challenged by lawyers and human rights defenders before the courts, which, in accordance with the law, ordered the individuals' immediate release. The State Secretariat added: "It seems that these disproportionately severe measures are being applied only in Araucanía, the home region of the Mapuche. They are therefore of a regional nature. Consequently, [the complainant] could avoid such possible acts of violence by settling and staying in another part of the country." Lastly, the State Secretariat was of the view that the international prominence of Mapuche issues had the effect of protecting Mapuche leaders and activists, in particular, as the Chilean authorities could not afford to cause them serious harm for political reasons without provoking fierce protest.
- 2.11 On 13 June 2017, the complainant appealed the decision of the State Secretariat for Migration before the Federal Administrative Court, stating that international pressure had no protective effect, since persecution that had been condemned at the international level continued nonetheless, and recalling that not even the precautionary measures requested by IACHR had had the effect of protecting her family members. They were still being oppressed, arrested and imprisoned, and the aggressors were never punished. On 16 January 2018, the complainant informed the Swiss authorities that her sister had been violently arrested and detained for her opposition to the construction of a road through the traditional lands of the Mapuche people.
- 2.12 On 11 July 2018, the Federal Administrative Court dismissed the complainant's appeal, stating that the Mapuche people were not victims of collective persecution and that the problems encountered by the complainant's family merely reflected measures taken by the Chilean authorities against members of her family as a result of their activism, having nothing at all to do with the complainant. By letter of 19 July 2018, the State Secretariat for Migration gave the complainant a deadline of 16 August 2018 to leave Switzerland. On 14 August 2018, the complainant was informed that her request for an extension of her departure deadline, filed in the hope of regularizing her status, had been rejected.

Issues and proceedings before the Committee

[...]

Consideration of the merits

- 8.3 In assessing whether there are substantial grounds for believing that the alleged victim would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment, the Committee recalls that, under article 3(2) of the Convention, States parties must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country to which he or she would be returned. While the Committee is not of the view that there is currently in Chile a consistent pattern of gross, flagrant or mass violations of human rights, it nevertheless notes the specific nature of the present case and the complainant's allegations that, for asserting their fundamental rights, the Mapuche people face widespread and systematic violations of their fundamental rights, ill-treatment and political persecution. The Committee also notes the State party's arguments that not every Chilean Mapuche runs the risk of persecution and that the Chilean State denies the discriminatory use of the Counter-Terrorism Act against Mapuche activists. The Committee nevertheless observes that the State party has also acknowledged that Mapuche people who are trying to maintain their traditional way of life are involved in violent clashes with the Chilean security apparatus, that there have been miscarriages of military justice in trials of Mapuche activists, as well as police violence in Araucanía with disproportionately severe acts of repression by the State, and that, in general, the situation of some Mapuche leaders in Araucanía is troubling in many respects.
- 8.4 In addition, the Committee also notes that, according to the Special Rapporteur on the rights of indigenous peoples, the present situation of indigenous people in Chile is the outcome of a long history of marginalization, discrimination and exclusion, mostly linked to various oppressive forms of exploitation and plundering of their land and resources. More specifically, the broadcast "Chili, la révolte mapuche", to which the State party refers in its observations, mentions "constant monitoring" and "systematic repression" in the rural areas inhabited by the Mapuche, who know that the "slightest misplaced comment could send them directly to prison". The Committee notes that this is the current situation, since the President of Chile, according to that broadcast mentioned by the State party, has made it a priority to respond with force and to clamp down on any Mapuche protest. In addition, the Committee on the Rights of the Child has urged Chile to "take immediate steps to stop all violence by the police against indigenous children and their families". In the same vein, the Committee on the Elimination of Discrimination against Women mentions reports of excessive use of force by Chilean State agents against Mapuche women in Araucanía and calls on Chile to ensure that all forms of gender-based violence against Mapuche women committed by State agents at all levels, including the police, are duly and systematically investigated. In the past, the Committee against Torture has itself noted the extraction of confessions from Mapuche activists under duress; police brutality and excessive use of force; impunity for human rights violations; and the use of the Counter-Terrorism Act to suppress demonstrations by Mapuche leaders demanding the return of their ancestral lands and collective recognition as an indigenous people. The Committee notes that similar observations have been made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The Committee on the Elimination of Racial Discrimination, for its part,

has expressed reiterated concern about the disproportionate extent to which the Counter-Terrorism Act has been used against members of the Mapuche people in respect of acts related to their assertion of their rights and about the undue and excessive use of force against members of Mapuche communities, including children, women and older persons, by Carabineros and members of the investigative police during raids and other police operations. It is also concerned about the impunity with which such abuse is committed. It therefore recommends that, “as a matter of urgency”, the Counter-Terrorism Act be amended to specify exactly what terrorist offences it covers and to ensure that it is not applied to members of the Mapuche community for acts that take place in connection with the expression of social demands. In addition, the Inter-American Court of Human Rights ordered Chile to set aside the criminal convictions of Mapuche individuals and activists upholding the rights of indigenous peoples for acts wrongly categorized by Chile as acts of terrorism. Finally, in the recent universal periodic review, it was recommended that Chile should investigate all accusations of unlawful killings, excessive force, abuse and cruel, inhuman or degrading treatment by law enforcement officers, including against indigenous Mapuche persons, and refrain from applying the Counter-Terrorism Act in the context of social protests by Mapuche people seeking to claim their rights. In accordance with the categorization that emerged from the universal periodic review of Chile, the Committee against Torture concludes that Mapuche leaders are subjected to widespread torture and other cruel, inhuman and degrading treatment or punishment, from which protection should be provided under article 3 of the Convention.

- 8.5 Moreover, additional grounds must exist to indicate that the complainant would be personally at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment, in her specific circumstances. Thus, in the present case, the Committee must also determine whether the complainant is personally at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if deported to Chile. The Committee recalls its general comment No. 4 (2017), according to which the non-refoulement obligation exists whenever there are “substantial grounds” for believing that the person concerned would be in danger of being subjected to torture in a State to which he or she is facing deportation, either as an individual or as a member of a group that may be at risk of being tortured in the State of destination. The Committee’s practice in such circumstances has been to determine that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”.
- 8.6 The Committee recalls that paragraph 28 of its general comment No. 4 (2017) refers to torture and cruel, inhuman or degrading treatment or punishment to which “an individual or the individual’s family were exposed”. On account of their actions in defence of their fundamental rights, both the complainant’s sister and her nephew were tortured and assaulted on several occasions. Her nephew needed surgery, which was paid for in Switzerland by the World Organization against Torture and the International Federation for Human Rights. According to health professionals, her family members present a combination of physical injuries and psychological disorders forming a clinical pattern typical of that exhibited by victims of organized violence. The Committee also notes that the Inter-American Commission on Human Rights has requested precautionary measures in respect of various members of the complainant’s family. In addition, the Committee takes note of the complainant’s argument that the award “Femme exilée, femme engagée”, which she was granted by the city of Geneva, bears witness to her politically sensitive activities in Switzerland,

which involve the systematic reporting of human rights violations to international bodies and thus make her an activist like her sister. Her commitment to defending the fundamental rights of the Mapuche indigenous people would thus result in her suffering the same fate as the members of her family and community who defend the rights of the Mapuche people and are the targets of disproportionate, brutal and repeated attacks by the Chilean State and private armed militias. The Committee observes that the complainant also fears that the Counter-Terrorism Act will be used against her and that her fears are considered justified by many experts, who note in particular that her repeated criticism of the Chilean State, like much Mapuche activism, may be understood as a threat to national security and thus as “terrorism”. Lastly, the Committee notes the complainant’s argument that she was not covered by the precautionary measures requested by the InterAmerican Commission on Human Rights simply because she was not in Chile at the time.

- 8.7 The Committee notes the State party’s arguments that there is no well-founded fear of persecution justifying asylum, and no personal risk, since the measures taken by the Chilean authorities against members of her family as a result of their activism have nothing to do with the complainant, and that the complainant makes no mention of any acts of torture or ill-treatment to which she herself has been subjected. The Committee also notes the State party’s argument that, while the complainant’s rights advocacy work has given her some visibility on the international stage, she does not demonstrate how her political or other peaceful activities as Ambassador of the Mapuche Permanent Mission to the United Nations have made her a target of the Chilean authorities. In addition, the Committee notes that the State party considers the complainant to be far less politically active than her sister or other family members, whose activism and political activities led to a request for precautionary measures by the Inter-American Commission on Human Rights.
- 8.8 The Committee is nonetheless of the view that the complainant’s ethnic background, the persecution of Mapuche leaders in Araucanía – a fact acknowledged by the State party itself –, the acts of persecution and torture suffered by several members of her family and her conspicuous protest activities at the international level are sufficient, taken together, to establish that she would personally run a foreseeable and real risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment if she were deported to Chile.
- 8.9 In view of the complainant’s arguments in paragraph 3.7, the Committee also considers it necessary to point out that States parties should refrain from deporting individuals to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment at the hands of non-State entities. Moreover, ill-treatment inflicted by private individuals that Chile is unable to stop, acquiesces to or allows by failing to intervene is conduct for which the State, by providing its tacit consent, bears responsibility. Impunity for such acts leads to the recurrence of violence. The Committee has made clear, as stated in paragraph 18 of general comment No. 2 (2007) on the implementation of article 2, that where State authorities know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate and prosecute such non-State officials or private actors, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible for consenting or acquiescing to such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide

remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction constitutes a form of encouragement and/or de facto permission.

- 8.10 Given the complainant's personal and family situation, it is reasonable to assume that deporting her to Chile would put her at risk of torture or other cruel, inhuman or degrading treatment or punishment. The Committee notes that the principle of the benefit of the doubt, as a preventive measure against irreparable harm, must also be taken into account in adopting decisions on individual communications, given that the spirit of the Convention is to prevent torture, not to redress it once it has occurred. The Committee also reiterates that the deportation of a person or a victim of torture to an area of a State where the person would not be exposed to torture, unlike in other areas of the same State, is not reliable or effective and that such a measure makes even less sense in the case of an indigenous victim who is attached to his or her community and land.
9. The Committee, acting under article 22(7) of the Convention, concludes that the deportation of the complainant to Chile would constitute a breach of article 3 of the Convention by the State party.
10. The Committee considers that the State party is required by article 3 of the Convention to reconsider the complainant's asylum application in the light of its obligations under the Convention and the present observations. The State party is also requested to refrain from deporting the complainant while her application for asylum is being considered.

• VII •

**Committee on
the Rights
of Persons with
Disabilities**

A. CONCLUDING OBSERVATIONS

1. Indonesia, CRPD/C/IDN/CO/1, 12 October 2022

Women with disabilities (art. 6)

12. The Committee notes with concern: ... (c) The lack of a specific intersectional analysis for women and girls with disabilities, including those from indigenous groups, ethnic and religious minorities, and rural areas and remote islands, across all policy areas, including education, family, employment, justice and health.
13. The Committee, recalling its general comment No. 3 (2016) on women and girls with disabilities, and Goal 5 of the Sustainable Development Goals, recommends that the State party: ... (c) Include an intersectional analysis for women and girls with disabilities, including those from indigenous groups, ethnic and religious minorities, and rural areas and remote islands, across all policy areas, including education, family, employment, justice and health.

Situations of risk and humanitarian emergencies (art. 11)

22. The Committee is gravely concerned about the lack of information about the situation in West Papua and how the State party is protecting and safeguarding West Papuans with disabilities in the context of ongoing armed clashes in conflict areas. CRPD/C/IDN/CO/1 5
23. The Committee recommends that the State party end the conflict in West Papua, take steps to pass the pending bill on indigenous peoples, conduct an independent investigation into the situation in West Papua, including in relation to persons with disabilities, ensure that unrestricted humanitarian aid and relief reaches West Papuans with disabilities, including internally displaced people with disabilities, and implement protection measures to safeguard West Papuans with disabilities.

Freedom of movement and nationality (art. 18)

42. The Committee observes with concern the lack of sufficient information, facilities, and infrastructure that guarantee that children and adults with disabilities, including persons with intellectual or psychosocial disabilities, can easily obtain documents of citizenship (resident identification card, birth certificate, passport, national identification number, marriage certificate and divorce certificate), resulting in people with disabilities, including indigenous peoples with disabilities, not having identification cards or family cards.
43. The Committee recommends that the State party ensure access to documents of citizenship, including identity documents and civil registry documents, for persons with disabilities, including indigenous peoples with disabilities, to ensure that they can obtain personal identification cards and family cards.

Health (art. 25)

54. The Committee notes with concern: (a) Information about physical barriers faced by persons with disabilities in gaining access to health services and equipment, particularly in rural and remote areas; (b) The lack of access to sexual and reproductive

health services and age-appropriate education for children and adults with disabilities, particularly for indigenous persons with disabilities and women and girls with disabilities, including persons with intellectual or psychosocial disabilities...

55. Taking into account the linkages between article 25 of the Convention and targets 3.7 and 3.8 of the Sustainable Development Goals, the Committee recommends that the State party: (a) Strengthen action plans to ensure the accessibility and availability of health services and equipment for persons with disabilities, particularly in rural and remote areas; (b) Provide children and adults with disabilities, in particular indigenous persons with disabilities and women and girls with disabilities, with access to sexual and reproductive health services and age-appropriate education....

Adequate standard of living and social protection (art. 28)

58. The Committee notes with concern the high number of persons with disabilities, including indigenous people with disabilities, living in poverty and without a regular source of income, and the absence of a comprehensive social protection system guaranteeing to persons with disabilities and their families access to an adequate standard of living, including resources to cover expenses related to disability.
59. Recalling the linkages between article 28 of the Convention and target 10.2 of the Sustainable Development Goals, the Committee recommends that the State party: (a) Develop social protection and poverty reduction strategies targeting persons with disabilities; (b) Set up a universal social protection scheme to ensure an adequate standard of living for persons with disabilities, including through systems of compensation in the form of allowances to cover disability related costs; (c) Include a disability perspective in programmes to promote an adequate standard of living, in particular programmes to increase access to public housing for persons with disabilities, including for those who want to leave institutions.

Statistics and data collection (art. 31)

64. The Committee notes with concern:
- (a) Serious shortcomings regarding data and statistics on the situation of persons with disabilities at the national, provincial, city and regency and subdistrict levels, including a lack of disaggregated data and uniform methodology and interpretation;
 - (b) The lack of disaggregated data, including in relation to the situation of women and girls with disabilities, children with disabilities and indigenous persons with disabilities....
 - (c) The lack of comprehensive quantitative and qualitative research about the situation of persons with disabilities, including women and girls with disabilities and indigenous persons with disabilities.
65. The Committee recommends that the State party:
- (a) Strengthen the data-collection system in order to comprehensively collect disaggregated data on persons with disabilities at the national, provincial, city and regency and subdistrict levels, using uniform methodology and interpretation, including the Washington Group short set of questions on functioning for the national census;
 - (b) Broaden data collection on persons with disabilities to include disaggregated fields, such as age, sex, race, ethnicity, gender identity, sexual orientation and indigenous status;

- (c) Develop a comprehensive research programme to facilitate quantitative and qualitative research on the situation of persons with disabilities and promote the use of disability-inclusive research methodologies;
- (d) Ensure that all data-collection systems and procedures respect the confidentiality and privacy of persons with disabilities.

2. New Zealand, CRPD/C/NZL/CO/2-3, 26 September 2022

General principles and obligations (arts. 1–4)

5. The Committee is concerned about:
 - (a) The lack of recognition, across all government portfolio areas, that disability is a whole-of-government responsibility, the lack of engagement with organizations of persons with disabilities outside the ministry of disability portfolio, and the lack of appropriate resourcing for organizations of persons with disabilities to build capacity to meaningfully engage in legislative and policy processes;
 - (b) The underrepresentation of Māori persons with disabilities in legislative and policy processes to implement the Convention.
6. The Committee recommends that the State party:
 - (a) Develop strategies to strengthen commitment across all government portfolio areas to ensure disability is recognized as a cross-cutting issue, that meaningful partnerships are developed with organizations of persons with disabilities to ensure close consultation and active involvement in legislative and policy processes to implement the Convention, including co-design, co-production and co-evaluation, and that organizations of persons with disabilities are appropriately resourced to build capacity to participate in partnerships across government portfolio areas;
 - (b) Develop legislative and policy frameworks that reflect the Treaty of Waitangi, the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples to ensure that Māori persons with disabilities are closely consulted and actively involved in decision-making processes and that their right to self-determination is recognized.

Equality and non-discrimination (art. 5)

7. The Committee is concerned about:
 - (a) The lack of an explicit provision within the Human Rights Act of 1993 to recognize the denial of reasonable accommodation as a form of discrimination;
 - (b) Multiple and intersectional forms of discrimination, including for Māori and Pasifika persons with disabilities;
 - (c) The high number of complaints received by the Human Rights Commission on the ground of disability and the significant length of time for the resolution of complaint cases submitted to the New Zealand Human Rights Commission and the Human Rights Review Tribunal.
8. The Committee, recalling its general comment No. 6 (2018) on equality and non-discrimination, recommends that the State party:
 - (a) Amend the Human Rights Act of 1993 to include an explicit recognition of the denial of reasonable accommodation as a form of discrimination and include a legislative definition of reasonable accommodation consistent with the meaning provided in article 2 of the Convention;

- (b) Adopt the legal and other measures necessary to provide for explicit protection from multiple and intersectional forms of discrimination, including discrimination based on the intersection between disability and other identities and life status, such as age, sex, gender, race, indigenous status...

Women with disabilities (art. 6)

- 9. The Committee is concerned about:
 - (a) The lack of a comprehensive intersectional approach to ensure that issues for women and girls with disabilities, including for Māori, Pasifika persons, and migrant women and girls with disabilities, are mainstreamed in both gender and disability legislative and policy areas;
 - (b) The lack of a representative organization of women and girls with disabilities to advance and promote their human rights.
- 10. The Committee recalls its general comment No. 3 (2016) on women and girls with disabilities, and Sustainable Development Goal 5, and recommends that the State party:
 - (a) Strengthen measures and policy mechanisms, including within the gender impact statement and the disability perspective statement, to ensure that the issues for women and girls with disabilities, including for Māori, Pasifika persons and migrant women and girls with disabilities, are comprehensively addressed within gender and disability legislative and policy areas;
 - (b) Develop strategies and measures, including financial resourcing, to support women and girls with disabilities to develop their own representative organization.

Children with disabilities (art. 7)

- 11. The Committee is concerned about:
 - (a) The lack of measures and standing mechanisms to ensure that children with disabilities, including Māori children with disabilities, are able to express their views in legislative and policy development and decision-making processes;
 - (b) The lack of disaggregated data collected on children with disabilities, including by the Ministry of Education and Oranga Tamariki (Ministry for Children), to inform implementation of national frameworks on children, such as the child and youth well-being strategy.
- 12. The Committee, recalling the joint statement of the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities on the rights of children with disabilities, issued in 2022, recommends that the State party:
 - (a) Establish measures and standing mechanisms to ensure that children with disabilities, including Māori children with disabilities, are able to express their views on an equal basis with other children;
 - (b) Strengthen the collection of comprehensive disaggregated data on children with disabilities, including on Māori children with disabilities, to inform effective early intervention, particularly in the fields of education, care and protection, and youth justice.

Freedom from exploitation, violence and abuse (art. 16)

31. The Committee is concerned that:
- (a) Rates of violence against persons with disabilities are much higher than those experienced by the rest of the population, and women and girls with disabilities, including Māori and Pasifika women and girls with disabilities, experience high levels of gender-based violence;
 - (b) The National Strategy to Eliminate Family Violence and Sexual Violence is gender-neutral in relation to its focus on persons with disabilities.
32. The Committee recalls its general comment No. 3 (2016) on women and girls with disabilities and recommends that the State party, in close consultation with and with the active involvement of persons with disabilities, in particular women and girls with disabilities, including Māori and Pasifika women and girls with disabilities...

Freedom of expression and opinion, and access to information (art. 21)

43. The Committee is concerned about:
- (a) Gaps in the provision of government information in accessible formats, such as Easy Read, sign language, Braille, and tactile, augmentative and alternative means of communication;
 - (b) The shortage of New Zealand Sign Language interpreters, including trilingual interpreters who can interpret between New Zealand Sign Language, English and Te Reo Māori.
 - (c) The limited television channels that provide captioning and audio description with funding only provided on a yearly basis;
 - (d) The lack of specific initiatives to increase the provision of accessible information and communications for Māori persons with disabilities.
44. The Committee recommends that the State party:
- (a) Strengthen implementation of the Accessibility Charter by expanding its coverage to local authorities and district health boards, and increasing funding and capacity for the provision of accessible information and communication formats and technologies;
 - (b) Implement incentives and increase funding for the training and employment of sign language interpreters, including trilingual interpreters who can interpret between New Zealand Sign Language, English and Te Reo Māori, and adopt a national standardized accreditation framework for sign language;
 - (c) Adopt legislation to ensure captioning and audio description is provided on television channels with funding security;
 - (d) Develop specific initiatives to increase the provision of culturally appropriate, accessible information and communications for Māori persons with disabilities.

Respect for home and the family (art. 23)

45. The Committee is concerned about: ... (d) The lack of specific policies and guidelines concerning parents with disabilities within Oranga Tamariki (Ministry for Children) and a limited human rights understanding of disability, resulting in the removal of children, including newborn babies, from their parents with disabilities, particularly parents with intellectual disabilities and Māori parents with disabilities.
46. The Committee recalls the joint statement issued by it with the Committee on the Rights of the Child on the rights of children with disabilities, and recommends

that the State party: ... (d) Take immediate action within Oranga Tamariki (Ministry for Children) to implement the recommendations from the 2020 Ombudsman report, entitled “A matter of urgency”, and increase disability, gender and culturally appropriate expertise, policies and guidelines that adhere to the Convention in order to ensure that newborn babies and children are not removed from parents with disabilities, particularly parents with intellectual disabilities and Māori parents with disabilities, on the basis of impairment.

Education (art. 24)

47. The Committee is concerned about: ... (c) The high proportion of Māori children with disabilities in residential specialist schools.
48. Recalling its general comment No. 4 (2016) on the right to inclusive education and target 4.5 and 4.a of the Sustainable Development Goals, the Committee recommends that the State party: ... (c) Develop specific culturally appropriate strategies to address the high proportion of Māori children with disabilities in residential specialist schools, including the provision of supports to remain with whānau (extended family networks) in their local communities.

Health (art. 25)

49. The Committee is concerned about the poorer health outcomes and life expectancy, compared with the general population, experienced by persons with disabilities, in particular persons with intellectual disabilities, and Māori and Pasifika persons with disabilities.
50. The Committee recommends that the State party progress development of the Health of Disabled People Strategy and strengthen and expedite measures within the New Zealand Disability Strategy, the Health Services and Outcomes Kaupapa Inquiry and the Pathways to Pacific Health and Well-being Strategy, to increase access to health services and improve health outcomes for persons with disabilities.

Work and employment (art. 27)

51. The Committee is concerned about:
- (a) The continued low rate, compared with the general population, of labour force participation and the low rate of employment of persons with disabilities in the open labour market;
 - (b) The continued segregated employment programmes for persons with disabilities (“business enterprises”) and the use of minimum wage exemption permits.
52. The Committee recommends that the State party:
- (a) Expedite the development of the Disability Employment Action Plan in close consultation with and with the active involvement of persons with disabilities, including women with disabilities, Māori with disabilities and Pasifika persons with disabilities....

Adequate standard of living and social protection (art. 28)

53. The Committee is concerned about:
- (a) The disproportionate levels of poverty among persons with disabilities, who are twice as likely to live in poverty than the general population, and for Māori persons with disabilities, who are three times as likely to live in poverty, and the

protracted implementation of the recommendations from the Welfare Expert Advisory Group report....

Participation in political and public life (art. 29)

55. The Committee is concerned about the lack of support for persons with disabilities to form their own sustainable organizations and build their capacity to represent persons with disabilities, and in particular the lack of organizations to represent Māori persons with disabilities, Pasifika persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons with disabilities, children with disabilities and women and girls with disabilities.
56. The Committee recommends that the State party develop strategies and measures, including financial resources to support persons with disabilities to form sustainable representative organizations, including to support the development of organizations of Māori persons with disabilities, Pasifika persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons with disabilities, children with disabilities, and women and girls with disabilities.

Statistics and data collection (art. 31)

57. The Committee notes with concern the serious shortcomings with regard to data and statistics on the situation of persons with disabilities across all life domains, including in health, education, employment and justice. It also notes with concern the lack of disaggregated data, including in relation to the situation of Māori persons with disabilities, Pasifika persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons with disabilities, children with disabilities and women and girls with disabilities.
58. The Committee recommends that the State party, in conjunction with Statistics New Zealand, develop a national disability data framework to ensure appropriate, nationally consistent measures for the collection and public reporting of disaggregated data on the full range of obligations contained in the Convention, especially with regard to Māori persons with disabilities, Pasifika persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons with disabilities, children with disabilities and women and girls with disabilities.

National implementation and monitoring (art. 33)

59. The Committee is concerned about:
 - (a) Information received indicating that the State party is not responding to or incorporating the recommendations contained in reports of the Independent Monitoring Mechanism;
 - (b) The lack of resources, including financial support available to support the Disabled People's Organisations Coalition to fulfil its mandate as one partner of the Independent Monitoring Mechanism, including to engage broadly with the disability community, to participate in Convention implementation activities and forums with government agencies and other stakeholders and to effectively communicate with persons with disabilities, including translation into Māori as an official language.

3. Venezuela, CRPD/C/VEN/CO/1, 20 May 2022

General principles and obligations (arts. 1–4)

5. While the Committee takes note of the State party's intention to amend existing laws in accordance with the Convention, it is concerned by the lack of implementing regulations for the 2007 Act on Persons with Disabilities and the fact that the bill on the protection, care and dignified treatment of persons with disabilities is still under discussion.
6. The Committee recommends that the State party ensure that any legislative amendments are in conformity with the principles enshrined in the Convention, in line with the human rights-based model of disability and mainstream the rights of persons with disabilities; and that it ensure the active participation of organizations of persons with disabilities at all stages of the related discussions and drafting process, regardless of their political affiliation.
7. The Committee, recalling its general comment No. 7 (2018), recommends that the State party promote the effective and independent participation of organizations of persons with disabilities, including organizations for women, children, older persons, indigenous persons and persons of African descent, in decision-making in all processes that concern them.

Equality and non-discrimination (art. 5)

9. The Committee recommends that the State party:
 - (a) Adopt a law on the prevention and elimination of discrimination, based on general comment No. 6 (2018) and the commitments made at the Global Disability Summit 2022, that expressly refers to disability-based discrimination and that mainstreams recognition of multiple and intersectional discrimination, particularly against women, children, indigenous persons and persons of African descent with disabilities, persons with psychosocial or intellectual disabilities and persons living with leprosy, in all spheres of life...

Children with disabilities (art. 7)

12. The Committee is concerned about:
 - (a) The lack of information on and monitoring and assessment of the situation of children with disabilities who were in institutions that were subsequently closed down;
 - (b) The fact that children with disabilities, including those who are deaf, blind, deafblind or of short stature, are not specifically included, in a cross-cutting manner, in domestic legislation and that their opinions are not properly taken into account in matters that concern them, especially in indigenous communities and rural areas.

4. Mexico, CRPD/C/MEX/CO/2-3, 20 April 2022

General principles and obligations (arts. 1–4)

...

7. The Committee is concerned about the absence of a national plan on the implementation of the Convention.
8. The Committee recommends that the State party issue a comprehensive national plan on the implementation of the Convention on the federal and state levels that includes the mechanisms required to implement it, with a particular focus on indigenous persons with disabilities.

Women with disabilities (art. 6)

17. The Committee is concerned about the lack of specific measures to empower women and girls with disabilities, in particular indigenous women and girls with disabilities, and to ensure that all human rights and fundamental freedoms of women and girls with disabilities are fully and equally protected by the State party.
18. The Committee recommends that the State party take note of the Committee's general comment No. 3 (2016) on women and girls with disabilities in its implementation of efforts aimed at achieving Sustainable Development Goal 5, and that it take measures to empower women and girls with disabilities, in particular indigenous women and girls with disabilities. In addition, the Committee, with reference to recommendations made in paragraph 14 (a) of its previous concluding observations, recommends that the State party put into effect the legislation and all of the programmes and actions targeting women and girls with disabilities, including support measures, to prevent multiple and intersecting discrimination against women and girls with disabilities in all aspects of life, in both urban and rural areas, and to ensure their effective participation in the design and implementation of these measures.
19. The Committee is concerned that legislation on the federal and state levels does not provide protection from intersectional discrimination faced by women and girls with disabilities in rural areas, including indigenous women and girls with disabilities, and by migrant and refugee persons with disabilities.
20. The Committee recommends that the State party adopt and implement laws at the federal and state levels preventing multiple and intersectional forms of discrimination against women and girls with disabilities, and mainstream a gender and age perspective into its disability-related legislation and policies.

Children with disabilities (art. 7)

23. The Committee is concerned about: (a) The institutionalization of children with disabilities, and about the limited scope of specific measures taken to ensure that the rights of children with disabilities are protected, particularly in rural and remote areas, in indigenous communities and in migrant and refugee populations...
24. The Committee recommends that the State party: (a) Ensure that children with disabilities, especially those in rural and remote areas, in indigenous communities and in migrant and refugee populations, receive effective and appropriate protection, care and support, and are included in the community...

Accessibility (art. 9)

27. The Committee notes with concern that the State party's current legal framework on accessibility for persons with disabilities does not contain binding legal rules addressing all areas covered by article 9 of the Convention, including the respective processes, complaints procedures and evaluation mechanisms.
28. The Committee recommends that the State party: ... (d) Revise the existing national accessibility plan in light of the new laws on accessibility, and render it applicable to the physical environment, transport, information and communications, including information and communications systems and technologies, and other services and facilities open or provided to the public, in particular for persons with disabilities living in remote, rural and indigenous communities.

Situations of risk and humanitarian emergencies (art. 11)

31. The Committee notes a lack of specific protocols for the evacuation of persons with disabilities in situations of risk, humanitarian emergencies and the occurrence of natural disasters.
32. The Committee recommends that the State party:
 - (a) Develop specific protocols for evacuation in situations of risk, humanitarian emergencies and the occurrence of natural disasters, that are adapted to the specific situations of each state, providing clarity of the whereabouts of persons with disabilities and their specific requirements;
 - (b) Design and disseminate, in accessible formats, such as Braille, sign language, Easy Read and audio and video transcription, in all of the State party's official languages, including those used by the indigenous communities, information on early warning mechanisms in case of risk and humanitarian emergency, protection systems, and institutional and community crisis response networks, and identify adequate places of refuge and shelters accessible to persons with disabilities in urban and rural areas...

Access to justice (art. 13)

37. With reference to paragraph 25 of its previous concluding observations, the Committee is concerned about limited access to justice of persons with disabilities, particularly those from indigenous communities. ... The Committee notes with concern that, in particular, women with disabilities face financial, linguistic and geographic restrictions of their right to access to justice, as well as a lack of reasonable and procedural accommodation. It is further concerned about restrictions of the right of women with disabilities, in particular women with disabilities in indigenous communities, to access to justice in cases of gender-based violence and in cases of women who are under guardianship or are institutionalized, including disregard for the testimony of women and girls with intellectual or psychosocial disabilities.
38. The Committee recommends that the State party:
 - (a) Adopt and implement age-appropriate and gender-sensitive legal measures guaranteeing access to justice for persons with disabilities, including women CRPD/C/MEX/CO/2-3 7 with disabilities in indigenous communities, such as procedural accommodations, accessible and affordable legal aid, counselling and personal assistance; remove barriers to the physical environment, to information and to prosecution services in criminal cases; and ensure that federal and state prosecutors adapt their directives and their practice accordingly...

Protecting the integrity of the person (art. 17)

45. The Committee is concerned about continuing practices of forced sterilization, contraception and abortion, particularly affecting women and girls with intellectual or psychosocial disabilities both inside and outside of institutions and indigenous women and girls. The Committee has received very disturbing reports of forced sterilization in Casa Hogar Esperanza.
46. The Committee reiterates the recommendations made in paragraph 38 of its previous concluding observations urging the State party to launch administrative and criminal investigations into the judicial and health authorities and institutions that recommend, authorize or perform forced sterilizations, contraception and abortion on girls, adolescents and women with disabilities and to guarantee access to justice and reparation for victims.

Education (art. 24)

...

55. With reference to paragraph 48 of its previous concluding observations, the Committee recommends that the State party:
 - (a) Establish, in law and policy, an inclusive education system at all levels — primary, secondary, post-secondary and life-long learning — including support measures, the provision of reasonable accommodation, adequate funding and training for educational staff;
 - (b) Adopt measures to ensure that all children with disabilities, in particular girls with disabilities, receive an education in mainstream school settings, including children with intellectual and psychosocial disabilities, blind-deaf children and children with disabilities from indigenous communities...

Adequate standard of living and social protection (art. 28)

62. The Committee is concerned about the high poverty level of persons with disabilities, and about a lack of measures specifically designed for persons with disabilities in the special programme for indigenous and Afro-Mexican people for 2020–2024.
63. The Committee recommends that the State party create a national plan specifically addressing the high level of poverty among persons with disabilities, including its financing and a time schedule for its implementation; implement it; and monitor its implementation.

B. GENERAL COMMENTS

1. No. 8 (2022) on the right of persons with disabilities to work and employment, CRPD/C/GC/8, 9 September 2022

Prohibition of discrimination on the basis of disability (art. 27 (1) (a))

...

21. Protection from discrimination also extends to discrimination by association, which may occur when family members or a person who is associated with a person with disability is discriminated at work because of this relationship and the denial of the rights of the person has a direct or an indirect impact on the life of persons with disabilities

Persons with disabilities are often disproportionately affected by multiple and intersectional discrimination. The diversity of persons with disabilities means that they face diverse barriers to realizing the right to work and follow different pathways into employment throughout their working lives. Multiple discrimination occurs when a person experiences discrimination on two or more grounds, leading to discrimination that is compounded or aggravated, and intersectional discrimination occurs when several grounds interact with each other at the same time in such a way as to be inseparable. The concepts of multiple and intersectional discrimination reflect the fact that individuals do not experience discrimination as members of a homogeneous group but, rather, as individuals with multidimensional layers of identities, statuses and life circumstances. Intersecting layers of identity include age, race, indigenous, national or social origin, refugee, migrant or asylum-seeking status, political or other opinion, religion, sex, sexual orientation and gender identity.

• VIII •

**Comers
and Members
of Their Families**

A. CONCLUDING OBSERVATIONS

1. Chile, CMW/C/CHL/CO/2, 11 May 2021

Indigenous migrant women

35. The Committee is concerned at the lack of information on:
- (a) The situation of indigenous migrant women deprived of their liberty by the investigative police, the Carabineros, the Prison Service, the criminal justice system and the hospital system (in the case of drug mules who ingest packages of drugs);
 - (b) The number of complaints received and investigated for cases of torture or cruel, inhuman or degrading treatment or punishment of indigenous migrant women, including the nature of the charges and the sanctions imposed.
36. The Committee recommends that the State party safeguard the rights of indigenous migrant women deprived of their liberty and provide information on:
- (a) The number and circumstances of indigenous migrant women deprived of their liberty by the investigative police, the Carabineros, the Prison Service, the criminal justice system and the hospital system (in the case of drug mules who ingest packages of drugs);
 - (b) The number of complaints received and investigated for cases of torture or cruel, inhuman or degrading treatment or punishment of indigenous migrant women, including the nature of the charges and the sanctions imposed.

2. Argentina, CMW/C/ARG/CO/2, 4 February 2020

Non-discrimination

28. The Committee takes note of the work done by the National Institute to Combat Discrimination, Xenophobia and Racism, including its awareness-raising campaigns on the rights of persons of African descent, indigenous peoples and migrant workers. The Committee is concerned, however, about the persistent messages linking migrants with crime and insecurity, both from the authorities and from the media.

3. Colombia, CMW/C/COL/CO/3, 27 January 2020

Right to an effective remedy

27. The Committee notes that, under article 100 of the Constitution, aliens enjoy the same civil rights and guarantees as those granted to Colombians, and that the Constitutional Court in its judgment T-956 of 2013 determined that due legal process must be recognized within the framework of the minimum guarantees that must be provided to all migrants, regardless of whether their migration status is regular or irregular. The Committee remains concerned about limited access to justice and reparation for the victims of abuses and violations of the rights recognized under the Convention, particularly in the case of indigenous communities in border areas.

28. The Committee recommends that the State party:

- (a) Ensure that legal assistance is based on non-discrimination and is easily accessible and free of charge;
- (b) Launch an immediate investigation when crimes and rights violations are brought to its attention and provide access to reparation by means of accessible information and effective legal assistance;
- (c) Provide assistance with legal defence, interpretation services, the right to individual consideration, gender-sensitive interviewing, interculturality, procedural facilities, the right of appeal, and reparation and/or compensation to the victim and the family.

Indigenous peoples

52. The Committee notes with concern reports that persons – particularly agricultural workers – who belong to indigenous communities on the border between the Bolivarian Republic of Venezuela and Colombia and who regularly cross the border in order to work in the State party are at risk of being subjected to abuse, forced labour and debt bondage. The Committee is concerned about the consequences of this migration, considering that indigenous migrant workers from the Yukpa and Wayuu indigenous peoples and the Warao cross-border community are especially vulnerable.

53. The Committee invites the State party to contemplate measures to protect the rights of this group of migrant workers, in accordance with the provisions of the Convention, taking into account their particular situations of interculturality, the health risks to which they have been exposed and the need to guarantee their effective enjoyment of rights, despite their living in hard-to-reach areas that are now clandestine migration routes, which further increases their vulnerability.

· IX ·

Committee
on Enforced
Disappearances

1. Report on visit to Mexico, CED/C/MEX/VR/1, 22 May 2022 (Findings)

III. Context and trends observed

A. The phenomenon of disappearances in Mexico

...

21. Indigenous communities have also been affected by disappearances. These occur mainly in the context of social and territorial conflicts linked to the implementation of mining or energy megaprojects or following the removal or grabbing of land for economic exploitation by organized crime groups or other private actors, with varying degrees of involvement or acquiescence by public officials. In addition, several victims made allegations of acquiescence in relation to disappearances of indigenous persons that had occurred after they had been forcibly recruited.

2. Colombia, CED/C/COL/OAI/1, 2 June 2021

[...]

C. Investigations of disappearances perpetrated without the authorization, support or acquiescence of State agents

22. The Committee notes with concern the limited progress in the investigation of disappearances perpetrated by organized illegal armed groups, in particular those related to chop houses (casas de pique), to the forced recruitment of children, mostly in indigenous communities and in communities of Colombians of African descent, and to cross-border disappearances (arts. 3, 12 and 25). 23. The Committee recommends that the State party intensify its efforts to prevent and investigate promptly, thoroughly and impartially all the acts defined in article 2 of the Convention that are committed by organized armed groups without the authorization, support or acquiescence of State agents and to prosecute and punish those responsible.

D. Protection of complainants and/or of persons participating in the investigation of an enforced disappearance

24. The Committee is still concerned about the killings, threats and reprisals faced by human rights defenders, indigenous peoples, communities of persons of African descent and victims of enforced disappearance and their relatives and representatives, including those appearing before the Special Jurisdiction for Peace, as well as about the high levels of impunity for these acts. It is also concerned about information regarding:
 - (a) shortcomings in the implementation of protection programmes, including failures to ensure that the programmes meet the needs of the intended beneficiaries, particularly women and members of indigenous communities and communities of persons of African descent; and
 - (b) the lack of resources of the National Protection Unit, which limits its effectiveness, particularly in rural areas (arts. 12 and 24).

25. The Committee urges the State party to redouble its efforts to prevent the acts of violence, threats and reprisals faced by complainants, witnesses, relatives of disappeared persons and their defenders, as well as by those who take part in the investigation of cases of enforced disappearance. In particular, it recommends that the State evaluate and review the current protection model with a view to ensuring:
- (a) That people's lives and safety are protected;
 - (b) That the protection measures taken by the State authorities are implemented quickly and effectively, ensuring the coordination of the authorities and the participation of the intended beneficiaries in risk assessments and in decisions on the protection measures to be taken and guaranteeing the application of a differential approach that takes into account the person's sex, gender identity, sexual orientation, age, ethnic origin, disability and vulnerability
 - (c) That investigations are exhaustive, impartial and effective, that perpetrators are prosecuted and duly punished and that victims obtain full reparation;
 - (d) That the institutions mandated to provide protection have the human, financial and technical resources to carry out their mandates effectively.

· X ·

Human Rights Council

A. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES: ADVICES AND REPORTS

1. Advice No. 15 on treaties, agreements and other constructive arrangements, including peace accords and reconciliation initiatives, and their constitutional recognition, A/HRC/51/50, 28 July 2022⁵⁰

1. States should fully recognize indigenous peoples as peoples entitled to self-determination as affirmed by the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), as grounded in articles 1 of the Charter of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and as reaffirmed in several international and regional human rights instruments and by treaty bodies and special procedures mandates. Preferably, this recognition should be affirmed in State constitutions to guarantee the highest level of domestic protection and provide continuity and immunity against instability, political change and/or regression of rights, including in domestic legislation and policies.
2. States should, in conjunction with indigenous peoples, incorporate an implementation framework of the Declaration into domestic law. States should consider the Declaration as the minimum standard for achieving indigenous peoples' enjoyment of their rights, which does not preclude more ambitious initiatives.
3. States should take steps to advance and achieve the realization of the right of indigenous peoples to have recognized, observed and enforced treaties, agreements and other constructive arrangements concluded with them or their successors, as set out in article 37 of the United Nations Declaration on the Rights of Indigenous Peoples and article XXIV of the American Declaration on the Rights of Indigenous Peoples. They should honour and respect them in good faith, according to their spirit and intent and avoid taking unilateral initiatives that could undermine the status of these agreements and the rights affirmed therein. Implementation of such agreements is fundamental for the enjoyment by indigenous peoples of their right to self-determination.
4. States should take the necessary measures to build real and genuine partnerships with indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith, through the establishment, on equal standing, of treaties, agreements and other constructive arrangements.
5. Where the dominant legal framework does not include indigenous legal systems, States should recognize the legal personality of indigenous peoples so that agreements reached with them can be formalized in a manner that ensures indigenous peoples' juridical personality and equal footing in the negotiation, conclusion, implementation and enforcement of such agreements.

⁵⁰ Full report available at: <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F50&Language=E&DeviceType=Desktop&LangRequested=False>.

6. In agreement-making processes, States should engage in meaningful dialogue, considering indigenous peoples as partners instead of beneficiaries, and define together, by mutual consent and equal participation, the negotiation framework and terms of the agreement, including monitoring, implementation and conflict-resolution mechanisms.
7. In directing efforts to establish agreements with indigenous peoples, States should consider the possibility of engaging in accordance with the traditional legal system, customs and practices of indigenous peoples, even if they lie outside the legal framework of the State. This should be done with respect for their practices of establishing relations and should in no way be used to delegitimize agreements concluded on those bases.
8. In all phases of agreement-making, establishing, monitoring, implementing and conflict-resolution, respect for the full body of human rights of indigenous peoples must be placed at the centre.
9. In negotiating agreements with indigenous peoples, States should be aware of imbalances of power and respect the time and conditions necessary for indigenous peoples to define and strengthen their own internal decision-making institutions, without interference or attempts to influence their composition or positions.
10. States should ensure that indigenous peoples have the resources and capacity to effectively engage in a negotiation process and should allocate sufficient resources to allow them to fully participate, prepare themselves and contract experts, if they so wish, without using such assistance as leverage to control their positions.
11. Negotiation and consent-based processes must comply with the principle of free, prior and informed consent, as articulated in the Declaration and progressively interpreted by regional and international human rights systems.
12. If required by indigenous peoples, States should accept the role of third-party mediators at the negotiation table. These parties should be independent and their involvement, composition and mandate should be defined and agreed to by indigenous peoples. States should ensure that mediating parties have the means to undertake their task and have sufficient expertise and knowledge of indigenous peoples' rights and context, as well as international human rights law.
13. When treaties, agreements and other constructive arrangements between States and indigenous peoples have been concluded in a colonial context, successor States should take over these obligations, as stated in article 37 of the Declaration. They should honour, implement and enforce them and avoid taking unilateral initiatives, such as extinguishment, aimed at undermining the enjoyment of the rights agreed upon in those instruments.
14. States should assume and implement treaties, agreements and other constructive arrangements in accordance with their spirit and intent, as understood by indigenous peoples concerned and with the flexibility required of a living agreement that has a long history and continues to apply in changing contexts. Agreements should always be interpreted in the manner most favourable to indigenous peoples and consistent with the rights enshrined in the Declaration.
15. States should establish monitoring and implementation mechanisms, in partnership with indigenous peoples, to guarantee the effective execution of agreements and should ensure the independence, economic sustainability and technical capacity of such mechanisms, as well as mandates with sufficient capacity. To achieve that

goal, adequate funding must be ensured, without undermining the independence of the institutions involved, and with employment of well-trained and well-qualified officials working with a human rights-based and indigenous peoples' rights-based approach. Indigenous peoples who are parties to the agreement must be represented in these institutions in equal measure and at all levels.

16. States should ensure that there is institutional capacity and political will within the organs of the State to understand the meaning of treaties, agreement and other constructive arrangements with indigenous peoples and to enforce them in their respective areas. This should include seeking constructive solutions if conflicting protocols jeopardize the implementation of an agreement.
17. States should establish appropriate arbitrator mechanisms, in partnership with indigenous peoples, to address claims about violations of agreements, resolve disputes and redress and remedy grievances. These mechanisms should be independent and impartial and their decisions should be binding and enforceable. Indigenous approaches to dispute resolution and indigenous laws should be included in the methods of conflict resolution. Conflict resolution mechanisms must be guided by international human rights law, including the rights of indigenous peoples.
18. States should provide adequate and continuous capacity-building training in human rights law, the rights of indigenous peoples, treaty-making processes and indigenous cultures, traditions and perspectives to those mechanisms and institutions designed to establish, monitor and implement agreements as well as to those in charge of resolving related disputes.
19. States should promote, in all facets of society, understanding of: the historical processes related to indigenous peoples, colonization and their repercussions; the historical and persistent discrimination faced by indigenous peoples; and the meaning and importance of agreements and the rights of indigenous peoples. Initiatives aimed at achieving those objectives may include the integration or reinforcement of those subjects in school programmes and social campaigns.
20. Indigenous peoples should never be stigmatized, criminalized or attacked by State authorities or officials for exercising their rights as set forth in consensual agreements concluded with States or for protesting against violations of those rights. States should clearly recognize the legitimacy of those claims and reaffirm respect for the freedom of expression as a pillar of a healthy, plural and democratic civic space.
21. Access to justice should be ensured for indigenous peoples without restriction or discrimination. The duration of judicial procedures should be reasonable and justified. Before any possible treaty violation, especially if it entails possible damages, the precautionary principle should be applied so as not to allow the violation to worsen and the damage to become permanent.
22. Judicial resolutions on treaty disputes should be respected and enforced, including immediate cessation of the infringing action and effective reparation in line with article 28 of the Declaration.
23. Indigenous peoples are encouraged to consider treaties, agreements or other constructive arrangements as a means of building and strengthening relationships with States in a manner that is better suited to their objectives and according to their own decision-making organizations.

24. A mandate for a special rapporteur on the implementation of indigenous peoples' treaties, agreements and constructive arrangements should be created.
25. United Nations agencies and mechanisms should, in their regular work and duties, support the implementation of concluded treaties, agreements and constructive arrangements.
26. When treaties are considered to be of international concern, indigenous peoples should have access to international bodies for dispute resolution, including existing United Nations treaty bodies.
27. The recommendations issued by the Special Rapporteur Miguel Alfonso Martínez and those made at the three United Nations expert seminars should be followed up and implemented, including the recommendations for the establishment of an international mechanism to handle disputes related to treaties, agreements and constructive arrangements and for the establishment of an international section or body to register and publish all treaties concluded between indigenous peoples and States, giving due attention to securing access to indigenous oral versions of those instruments.

2. Advice No. 14 on the rights of the indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples, A/HRC/48/74, 9 August 2021⁵¹

1. States should increase and ensure the enjoyment by indigenous children of their individual and collective rights, including by ratifying the Convention on the Rights of the Child and its optional protocols, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and other key human rights treaties, and signing the United Nations Declaration on the Rights of Indigenous Peoples. States should incorporate those instruments into national law including through national implementation plans, with the participation of, and in consultation with, indigenous peoples, including children.
2. States and indigenous peoples should ensure the meaningful participation and consultation of indigenous children in decision-making processes and use the Declaration and the best interests of the child as a framework for all decisions that may impact them.
3. Indigenous peoples, with the support of States, should invest in the leadership of women and girls in indigenous communities, particularly in decision-making structures.
4. States should ratify and implement the Paris Agreement on Climate Change, including through concrete actions to mitigate the effects of climate change, with the aim of fostering the highest attainable standard of health for indigenous children and their right to a healthy environment.
5. States and indigenous peoples should make all efforts to protect the medicinal plants, animals and minerals necessary for the health of indigenous peoples and protect their traditional territories to ensure both present and future enjoyment of the rights of indigenous children, including through their symbiotic relationship with their lands, territories and resources.

⁵¹ Full report available at: <https://www.undocs.org/HomeMobile?FinalSymbol=A%2FHRC%2F48%2F74&Language=E&DeviceType=Desktop&LangRequested=False>.

6. States should take measures to ensure free and equitable access to social services for all indigenous children, paying particular attention to the rights and special needs of girls, lesbian, gay, bisexual, transgender, intersex and two-spirit children, children with disabilities and those in remote or nomadic settlements and urban settings, and take measures to address discrimination against them, including through public information campaigns.
7. States should take measures to improve birth registration processes and remove registration as a precondition for accessing health-care services.
8. States should take measures to support indigenous families, including urban and homeless indigenous children, ensuring minimum standards, such as heating, electricity, water and sanitation, are met.
9. States should support and provide, to the best of their ability, indigenous and community-led childcare systems.
10. States should take concrete measures to reduce the overrepresentation of indigenous children in alternative care and justice systems, and provide training on the rights and cultures of indigenous children for relevant actors, including law enforcement and prison officials, judges and social workers. They should also provide adequate support, including psychosocial support, for those who have been removed from their communities and/or are in State institutions.
11. States should ensure the meaningful participation and consultation of indigenous peoples, including children, in all child welfare and adoption systems, with the aim of establishing indigenous-led child welfare systems for indigenous children.
12. States should take steps to redress intergenerational trauma and the impact of removing children from their communities, and take immediate measures to reduce and aim to eradicate the removal of indigenous children from their families and communities, and to reunite all families separated by migration.
13. States should support the development of traditional restorative justice systems, in consultation with indigenous peoples, and make use of them to the extent possible for indigenous children accused of wrongdoing.
14. States should take all appropriate measures to ensure the realization of the highest attainable standard of health for indigenous children, including measures to eliminate discrimination in the provision of health care. They should ensure that all indigenous peoples, including those living in remote and urban settings, have access to holistic health care that incorporates traditional knowledge and medicines, including those relating to physical, mental, spiritual and environmental health. States should ensure adequate provision of culturally appropriate health care and supplies for indigenous girls, including sanitary products and sexual and reproductive health-care services.
15. States, in consultation and cooperation with indigenous peoples, should immediately take steps to reduce the suicide rate of indigenous children, including the provision of adequate resources for culturally appropriate prevention programmes.
16. States should ensure that every indigenous child has access to high-quality, culturally appropriate primary and secondary education, including in their traditional languages when possible, and take urgent measures to overcome the additional barriers faced by indigenous girls. Special measures should be taken to ensure access to adequate education in remote and nomadic communities, including through providing resources for improved Internet and radio connections

and the delivery of education remotely, and to accessible formats for indigenous children with disabilities.

17. States should consult with indigenous peoples, including children, on school curricula and take measures to ensure the inclusion of accurate representations of the history of indigenous peoples, including through the removal of stereotypes. They should support capacity-building programmes to ensure culturally appropriate provision of services, the recruitment of indigenous teachers and indigenous-led education efforts. States should also ensure that indigenous educational traditions and knowledge are respected in national standards.
18. In accordance with General Assembly resolution 74/135, States, in partnership with indigenous peoples, should consider establishing national mechanisms with adequate funding to implement the International Decade of Indigenous Languages (2022–2032), including through the provision of educational materials in indigenous languages.
19. States should take the necessary measures to protect indigenous children, particularly girls, against violence and combat the immunity of perpetrators, ensuring accountability. They should work with indigenous peoples to ensure coordination between authorities to develop and implement action plans to support indigenous families and protect children against neglect, violence and sexual abuse, and ensure that victims are provided with all the necessary support, including psychosocial support.
20. States and indigenous peoples should work together to find innovative ways to maintain cultures without practices that harm children; engage against harmful practices, particularly those carried out against indigenous girls; and ensure that cultural practices are undertaken with the best interests of the child in mind, including through human rights-centred awareness-raising campaigns and legislation.
21. States should ensure that all development activities that are contemplated, including in the extractive industries, which may impact indigenous peoples, are undertaken according to the principle of free, prior and informed consent. States should ensure that they consult with indigenous peoples, including children and women, and carry out development activities in line with the United Nations Guiding Principles on Business and Human Rights, with the infrastructure in place to ensure that indigenous children are not negatively impacted.
22. States should, in consultation with indigenous peoples, take specific measures to protect indigenous children from economic exploitation, including work that is likely to be hazardous, interfere with their education or be harmful to their physical, mental or spiritual health or development.
23. States should ensure the effective collection, publication and use of disaggregated data and indicators related to indigenous peoples, including identifying and remedying gaps in protection for indigenous children.
24. COVID-19 recovery plans should include provision for the additional barriers to the enjoyment by indigenous children of their rights, including those related to their physical, mental and spiritual health, education and protection.

3. Advice No. 13 on the right to land of indigenous peoples, A/HRC/45/38, 15 July 2020⁵²

1. States should recognize indigenous peoples as indigenous peoples. They should also recognize indigenous peoples' right to their lands, territories and resources in line with the United Nations Declaration on the Rights of Indigenous Peoples and the development of this right as expressed by regional and international human rights bodies. Moreover, States have an obligation to implement other attendant rights, including the rights to life and to live in dignity.
2. States should implement the advice provided in other studies of the Expert Mechanism on the Rights of Indigenous Peoples relating to land rights, in particular the study on free, prior and informed consent and the studies on the participation of indigenous peoples. States should also implement international, regional and national decisions on indigenous peoples' rights.
3. States should ensure that, through consultation with indigenous peoples, the type of land tenure (ownership, usufruct or variations of both) granted to them conforms with the needs, way of life, customs, traditions and land tenure systems of the indigenous peoples concerned and is respected and ensured.
4. States should establish, in consultation with indigenous peoples, the legislative and administrative measures and appropriate and effective mechanisms necessary to facilitate the ownership, use and titling of indigenous lands, territories and resources, including lands that indigenous peoples have come to occupy because of past relocations. This should be done with respect for indigenous peoples' customs, traditions and land systems, including recognition of indigenous peoples' own land tenure as a source of property and land rights. This may require measures for inter-State dialogues in instances where indigenous peoples reside across borders. States should abolish all laws, including those adopted during periods of colonization, that purport to legitimize, or have the effect of facilitating, the dispossession of indigenous peoples' lands.
5. States should ensure that indigenous peoples that have retained ownership of the resources on their lands and territories have the right to extract and develop them, at least on the same basis as other landowners have the right to extract and develop resources from their lands.
6. States should apply the rights in the Declaration to reform their national, regional and local laws in such a way as to recognize indigenous peoples' own customs, traditions and land tenure systems, in particular their collective ownership of lands, territories and resources.
7. States should ensure that indigenous peoples have the right to maintain and strengthen their spiritual relationship with the lands, territories and resources, including the waters and seas, in their possession and no longer in their possession but which they owned or used in the past.
8. States should use indigenous peoples' own traditional dispute mechanisms, such as arbitration, when possible rather than litigate through the courts.
9. States should ensure effective access for indigenous peoples to relevant judicial procedures.

⁵² Full report available at: <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F38&Language=E&DeviceType=Desktop&LangRequested=False>.

10. States should ensure that indigenous women have access on an equal basis with indigenous men to ownership and/or use of and control over their lands, territories and resources, including by revoking or amending discriminatory laws, policies and regulations, by protecting them against discrimination and dispossession, 2 and by supporting them, where necessary, in the management of their lands.
11. States should establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, having due regard for indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used (Declaration, art. 27).
12. States should ensure that indigenous peoples who have unwillingly lost possession of their lands, or whose lands have been confiscated, taken, occupied or damaged without their free, prior and informed consent, are entitled to restitution and if restitution is not possible other appropriate redress bearing in mind that compensation should not be limited to financial awards but should also take the form of alternative similar lands (Declaration, art. 28).
13. States should ensure that companies assume responsibility for effectively and immediately cleaning up lands, territories and resources polluted by their development activities, in collaboration and coordination with affected indigenous peoples.
14. Multinational companies should be aware of the presence of indigenous peoples, in all countries in which they carry out activities, and respect their rights, in particular their land rights, in accordance with international principles.
15. States should take measures to ensure the representation of indigenous peoples in all aspects of public life, beyond those forums that deal exclusively with indigenous issues, including in the executive, in the parliament and in the judiciary, as well as in regional and international bodies.
16. States should ensure urgent and particular attention to protecting the land rights of indigenous peoples in voluntary isolation and respecting the principle of no contact. Additional positive protection measures should also be applied, including the establishment of buffer areas, control of access and surveillance, and contingency plans, including health plans, for cases of accidental or forced contact.⁵
17. States should ensure that all those working on indigenous issues in the State, including legislators, and State officials, including regional or local enforcement officials and members of the judiciary, are familiar with the rights of indigenous peoples.
18. States should take measures, including those recommended by the Special Rapporteur on the rights of indigenous peoples, to end violence against and persecution of defenders of indigenous land and provide redress for harm suffered.
19. Indigenous peoples should consider building public awareness about their land rights to prevent illegal incursions on or the misappropriation of indigenous land. They should also consider collaborating with and offering training to the media on indigenous land rights, particularly when engaging in strategic litigation. Such measures should be supported by State institutions.
20. Indigenous peoples should consider how to enhance political support for the implementation of their land rights.
21. Indigenous peoples should build their own capacity on their rights under the Declaration and on how to enforce them at the national, regional and international

levels through, for example, the indigenous fellowship programme of the Office of the United Nations High Commissioner for Human Rights and by seeking grants from the United Nations Voluntary Fund for Indigenous Peoples to attend international events on indigenous rights. States should also provide support to ensure that full access to such opportunities is viable.

22. States and international financial institutions should continue to cooperate in promoting investments that allow for the demarcation and protection of indigenous lands.
23. States and indigenous peoples should consider and implement innovative agreements for co-management of lands in cases where transfer of title is not desirable or possible.

4. Report on Self-Determination under the UN Declaration on the Rights of Indigenous Peoples, A/HRC/48/75, 4 August 2021⁵³

I. Introduction

[...]

2. The present report builds upon other United Nations studies and reports on self-determination and should be read in conjunction with other reports of the Expert Mechanism, in particular its reports on the right to participate in decision-making, recognition, reparation and reconciliation, land rights and free, prior and informed consent, in which it expounded on the right to self-determination as the fundamental norm upon which indigenous rights are grounded. As expressed by the Special Rapporteur on the rights of indigenous peoples, the right of self-determination is a foundational right, without which indigenous peoples' human rights, both collective and individual, cannot be fully enjoyed. The present report is focused on the development of the right to self-determination since the adoption of the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

[...]

III. Legal framework

8. The fundamental norm of the United Nations Declaration on the Rights of Indigenous Peoples is the right to self-determination recognized in article 3: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The right to self-determination is manifested in articles 4, 5, 18, 19, 20 and 33 of the Declaration, which expound on its implementation at the domestic level. Without article 3, none of the other rights can be wholly fulfilled.
9. The international history of self-determination is briefly described above. It is also recognized in the African Charter on Human and Peoples' Rights and in the American Declaration on the Rights of Indigenous Peoples of 2016. Prior to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights invoked common article 1 of the Covenants in cases relating to indigenous peoples and in their consideration of State party reports, mainly in the context of indigenous land rights, economic rights, the right to participation and indigenous institutions.

⁵³ Full report available at: <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F75&Language=E&DeviceType=Desktop&LangRequested=False>.

However, the challenge for the Human Rights Committee's jurisprudence is that cases are considered in the context of individual, as opposed to collective, rights. Recently, the Committee on the Elimination of Racial Discrimination recommended that a State party take steps towards the extraconstitutional recognition of indigenous peoples, including by implementing the fundamental right to self-determination of indigenous peoples and the establishment of shared governance. The Committee on the Elimination of Discrimination against Women has also recommended a constitutional amendment to recognize explicitly the rights of indigenous women, in particular their right to self-determination, in line with the United Nations Declaration on the Rights of Indigenous Peoples, and expressed its concern about the general lack of recognition of the right of indigenous peoples to self-determination in the State party concerned. The Inter-American Court of Human Rights has also underpinned indigenous people's rights, though use of common article 1 of the Covenants in its interpretations of its judgments in cases on indigenous rights.

10. Cultural self-determination, as one of the four main pillars of article 3, also includes language, ceremonial and cultural heritage, spirituality and sports rights, and its meaning is expanded upon throughout the Declaration (arts. 11–16, 31 and 34). The Committee on Economic, Social and Cultural Rights characterizes culture as a broad, inclusive concept encompassing all manifestations of human existence, among other things ways of life, language, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. For the Committee, the right to take part in cultural life is also interdependent on other rights enshrined in the International Covenant on Economic, Social and Cultural Rights, including the right of all peoples to self-determination. The Human Rights Committee, in interpreting article 27 of the International Covenant on Civil and Political Rights, has expressed the positive duties incumbent on States to protect indigenous peoples' cultural rights and the requirement to interpret the right to culture consistently with the right to self-determination in the context of indigenous peoples' issues. While there are references to ceremonies and spirituality in the United Nations Declaration on the Rights of Indigenous Peoples, the American Declaration on the Rights of Indigenous Peoples contains a formal recognition of indigenous spirituality.
11. Language rights are integral elements of the right to self-determination. The Committee on Economic, Social and Cultural Rights has stressed that indigenous languages are a paramount part of cultural rights and are also a key factor for the enjoyment of all economic, social and cultural rights. 16 The Committee urged States parties to take all measures necessary to promote and protect indigenous languages and to ensure that indigenous peoples could practice their languages without discrimination, and reiterated the need to urgently recognize indigenous languages and facilitate their active presence in education systems, including, when feasible, education of and in those languages.
12. Article 4 is particularly significant, given that it explicitly refers to the exercise of the right to self-determination in the related context of autonomy and self-government. Autonomy, as defined by the Special Rapporteur on the rights of indigenous peoples, is the power that indigenous peoples have to organize and direct their lives, according to their own values, institutions and mechanisms, within the framework of the State of which they are part. Indigenous peoples' collective right

to self-governance is also addressed in article VI of the American Declaration on the Rights of Indigenous Peoples. There are many references in the United Nations Declaration on the Rights of Indigenous Peoples, in addition to articles 3 and 4, relating to indigenous peoples' right to their own institutions, to administer their autonomy and self-governance and to participate fully, if they so choose, in the political, economic, social and cultural life of the State (arts. 5, 18, 20 and 34).

13. Self-determination is exercised as a collective right belonging to the indigenous group, membership of which is based on self-identification and collective acceptance of group members without discrimination. The Declaration attests to indigenous peoples' right to belong to an indigenous community or nation (art. 9) and to determine their own identity or membership, in accordance with their traditions and customs (art. 33). Recently, the Committee on Economic, Social and Cultural Rights urged a State to adopt a law recognizing indigenous peoples on the basis of self-identification and protecting their rights, including the right to ownership of the lands that they traditionally occupy or use as sources of livelihood and the respect for their free, prior and informed consent in decision-making processes affecting their rights and interests. The Committee on the Elimination of Racial Discrimination has recommended that, in line with its general recommendation No. 23 (1997) on the rights of indigenous peoples, in defining who is eligible to vote for members of an indigenous parliament, the State accord due weight to the rights of the indigenous people to self-determination, to determine their own membership and not to be subjected to forced assimilation. The International Labour Organization and the African Commission on Human and Peoples' Rights also indicated that, self-identification was key in the debate at the national and regional levels regarding the legal recognition of indigenous peoples.
14. All the rights in the Declaration are indivisible, interdependent and grounded in the overarching right to self-determination. 23 The exercise of self-determination is therefore indispensable for indigenous peoples' enjoyment of all their other rights, including, importantly, land rights (arts. 25–28, 30 and 32) and political participation (arts. 18–20 and 34). The Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination have also made the connection between land rights and self-determination. The connection between self-determination and the right to participation in the decision-making process and to the free, prior and informed consent of indigenous peoples in matters affecting them has also been analysed in previous reports of the Expert Mechanism. In a case in Ecuador in 2019, a first instance court, whose judgment was subsequently upheld, indicated that: "The relationship between the right to self-determination and indigenous peoples' participation in decision-making is an ongoing process, as this ensures that indigenous peoples continue to participate in decision-making and retain control over their destinies, which means that institutions must be designed to enable indigenous peoples to make decisions in relation to their internal and local affairs, and also to participate collectively in external decision-making processes, in accordance with relevant human rights standards." It reaffirmed that the basis for prior consultation is self-determination.
15. The right to self-determination has an internal and external dimension. The former is determined by the physical dimensions of the State and the rights of all peoples to pursue freely their economic, social and cultural development, including by taking part in the conduct of public affairs without outside interference. For the first time, the Human Rights Committee made a specific reference to internal self-determination

under article 1 of the International Covenant on Civil and Political Rights in landmark cases against Finland in 2019 and cited the Declaration as an authority in its analysis of indigenous rights. In its decisions, the Committee noted that the Sami Parliament ensured an internal self-determination process that was necessary for the continued viability and well-being of the indigenous community as a whole. It found that Finland had improperly intervened in the Sami's rights to political participation regarding their specific rights as an indigenous people, finding a violation of articles 25 and 27 of the Covenant, as interpreted in the light of article 1.

16. A primary manifestation of “external” determination is the right of indigenous peoples, in particular those divided by international borders, to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders (art. 36 (1)).
17. External self-determination may also include indigenous peoples’ right to determine their place in the international community based upon the principle of equal rights. From an indigenous perspective, participation by indigenous peoples in the international indigenous movement is an example of the exercise of external self-determination. That includes expressions of indigenous peoples at the United Nations and other international forums where they can express their world views and perspectives on the international level, external to their own communities. The “importance of ensuring that indigenous peoples’ voices, the very people whose self-determination is affirmed by the Declaration, are heard in the international community through participation in international policy forums and decision-making bodies” is recognized.
18. For indigenous peoples in voluntary isolation the right to self-determination should be understood as the guarantee of respect for their decision to remain in isolation. Their right to life may be violated if their right to self-determination is denied. Isolation is a strategy of collective preservation, allowing them to maintain their own systems of thought, cultures, languages and traditions and to survive the threats caused by any forced contact with the outside world. The Special Rapporteur on the rights of indigenous peoples, referred to the principle of no contact as an expression of indigenous peoples’ right to self-determination. That right is supplemented by article 8 of the Declaration, which recognizes that indigenous peoples have the right not to be subjected to forced assimilation. Article XXVI of the American Declaration on the Rights of Indigenous Peoples specifically recognizes that indigenous peoples in voluntary isolation or initial contact have the right to remain in that condition and to live freely and in accordance with their cultures and that States should, with the knowledge and participation of indigenous peoples and organizations, adopt appropriate policies and measures to recognize, respect and protect the lands, territories, environment and cultures of those peoples, as well as their life and individual and collective integrity

VII. Challenges in achieving self-determination

35. The non-recognition of indigenous peoples as indigenous peoples has a negative effect on the implementation of their rights under the Declaration, none more so than the right to self-determination. The constitutional recognition of indigenous peoples provides legal authority for the realization of their right to self-determination. Failure to legally recognize indigenous peoples obviates that right. In some States, the ongoing urgency to address the violent repression of indigenous peoples leaves

little space for the realization of the right to self-determination. In many States, there are no debates about the principles of autonomy or pluralism to develop frameworks for indigenous self-determination, and they are often seen as a threat to the national security and territorial integrity of the State and as being against national developmental interests, rather than as a potential means of ensuring those rights.

[...]

39. There is a direct link between self-determination and indigenous peoples' rights over their own lands and resources. Indigenous peoples with recognized land and resource rights and peoples with treaties, agreements or other constructive arrangements with States have had greater success in conducting beneficial relations with private sector natural resource companies on the basis of free, prior and informed consent than have peoples without recognized rights. The Harvard Project on American Indian Economic Development has concluded "that when Native nations make their own decisions about what development approaches to take, they consistently outperform external decision-makers" in areas such as governmental form, natural resources management, economic development, health care and social services.
40. Some indigenous peoples see the denial of their right to self-determination, frequently through lack of respect for treaty and other relationships, as a root cause of atrocities, such as residential schools, murdered and missing indigenous women and girls or stolen children, as well as the negative impacts on health, economic and social well-being and justice. Some suggest that lasting peace cannot be secured without the realization of self-determination and suggest increased self-determination as a means of moving towards achieving Sustainable Development Goal 16, with the objective of promoting inclusive and peaceful societies and reducing inequalities. Others point to the need to respect the right to self-determination as a crucial step towards reconciliation.

[...]

XI. Conclusions and recommendations

61. The recognition of indigenous peoples' collective right to self-determination in the Declaration cannot be underestimated. Indigenous people's status as "peoples" enables them to speak of their issues beyond the borders of the State, at international forums. That external aspect of self-determination, although it extends beyond borders, does not affect the territorial integrity of the State. States should support the participation of indigenous peoples in such forums and ensure their protection from possible reprisals.
62. Self-determination is a foundational right, without which other political, civil, economic, social and cultural rights are meaningless. Self-determination relates to indigenous peoples' right to decide on their own political future, within their own institutions, to take part in the political life of the State and to direct their political, economic, social and cultural development. Some of the information received however relates to self-determination efforts being imposed by States, rather than being at the initiative and direction of indigenous peoples – and sometimes without their participation.
63. There is a direct correlation between the extent of recognition of indigenous peoples as indigenous peoples by States and the extent to which States respect, protect

and fulfil indigenous peoples' right to self-determination. The greater the level of recognition, the more profound implementation of the right. That is clear at the regional level, where there are huge disparities in the implementation of that right. In some States, the recognition of indigenous peoples has facilitated their own, sometimes advanced, systems of governance, free, prior and informed consent, indigenous-led protocols and control and demarcation of their lands. In other States, there has been limited discourse on the implementation of that right, with it often being seen as a threat to the territorial integrity of the State and development, rather than as a way forward.

64. States should recognize indigenous peoples as indigenous peoples and their concomitant right to self-determination, preferably through a constitutional framework and in an exercise of effective participation and indigenous consultation carried out in accordance with the Declaration. States should adapt to the needs of each particular community, given that each one is very different and contemplating different forms of self-determination. They should build the political will within the State to acknowledge and affirm indigenous peoples' right to self-determination.
65. Self-government and autonomy are important constituent elements of the right to self-determination for indigenous peoples and have been a significant gain for indigenous peoples that have realized them. States should recognize in legislation indigenous peoples' own legal systems and institutions, normative and legal practices (customs and traditions) and autonomous and governmental systems and provide adequate funding and resources to support indigenous peoples in their pursuit of self-determination. Indigenous peoples should develop the competencies within their own communities on legislative, executive and judicial functions.
66. Self-determination is a broad concept and an ongoing process that can only be fully realized through the implementation of the full panoply of rights, notably, the rights to land, territories and resources, political participation, consultation and free, prior and informed consent and cultural rights.
67. States should recognize the land, participation and consultation rights of indigenous peoples, as set out in the report of the Expert Mechanism. They should harmonize legislation to make it consistent with the right to self-determination of indigenous peoples and their right to their land, territory and resources, including laws on development projects, demarcation and agrarian reform. The protection of the rights of peoples in voluntary isolation and initial contact should be included.
68. States should respect indigenous peoples' right to define their own development. As the Expert Mechanism advised in its report on free, prior and informed consent, States and the private sector should promote, support and respect indigenous peoples' own protocols, as an essential means of preparing the State, third parties and indigenous peoples to enter into consultation and cooperation and for the smooth running of the consultations.
69. States should implement with indigenous peoples their treaties, their agreements and constructive arrangements in a context of self-determination, and, in situations of shared sovereignty, States should trust indigenous peoples to govern and make sound decisions.
70. States should support the effective participation, political and otherwise, of indigenous peoples in the overall functioning of the State. That can be achieved through a constitutionally recognized indigenous role and through a duty to consult and cooperate with the indigenous peoples concerned.

71. States should promote the practice of traditional sports among indigenous peoples, ensuring that indigenous peoples themselves preserve their sports through the maintenance of control by and access to indigenous peoples and non-interference by the State.
72. States should establish national action plans for implementing the Declaration and ensure that such plans are grounded in the right of indigenous peoples to self-determination.
73. Indigenous peoples are encouraged to develop indigenous-led initiatives to define, revitalize and strengthen their self-determination, and States should support such initiatives, in order to understand, respect and enable the exercise of self-determination by indigenous peoples.
74. States should ensure the effective involvement of indigenous peoples in international forums, including in non-indigenous-specific bodies, such as the United Nations human rights treaty bodies. Indigenous peoples should be encouraged to participate actively in regional and international standard-setting bodies to litigate on the right to self-determination in order to contribute to the ongoing development of international human rights law. States should establish a process, with the equal participation of States and indigenous peoples, to consider ways to enhance the participation of indigenous peoples in the work of the Human Rights Council.
75. States, in conjunction with indigenous peoples, should promote and support the ongoing development, use and maintenance of indigenous languages, including through formal education systems. In particular, it is essential to safeguard indigenous peoples' identities and cultures. At the international level, States should actively support the International Decade of Indigenous Languages, 2022–2032, through financial contributions and other means.
76. Without prejudice to the ongoing consultative process referred to in General Assembly resolution 71/321, aimed at enhancing the participation of the representatives and institutions of indigenous peoples in United Nations meetings, States should support ongoing efforts to ensure the meaningful, effective and enhanced participation of indigenous peoples in the United Nations through their own representative institutions in all meetings relevant to them. In particular, it is important to include indigenous peoples in meetings of the Human Rights Council on issues affecting them.

5. Repatriation of ceremonial objects, human remains and intangible cultural heritage under the United Nations Declaration on the Rights of Indigenous Peoples, A/HRC/45/35, 21 July 2020⁵⁴

I. Introduction

[...]

3. In its resolution 42/19, adopted in September 2019, the Human Rights Council encouraged the development of a process to facilitate the international repatriation of indigenous peoples' sacred items and human remains through the continued engagement of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization, the Expert Mechanism, the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum

⁵⁴ Full report available at: <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F35&Language=E&DeviceType=Desktop&LangRequested=False>.

on Indigenous Issues, States, indigenous peoples and all other relevant parties in accordance with their mandates.

4. The present report addresses efforts to implement the Declaration, including the rights of indigenous peoples to self-determination and non-discrimination, as well as to practise their cultural, spiritual and religious traditions, customs and ceremonies. In article 12 of the Declaration, the General Assembly recognized that indigenous peoples have the right to the use and control of their ceremonial objects and the right to the repatriation of their human remains, while in article 31, it recognized their rights to maintain, control, protect and develop their cultural heritage, traditional knowledge and other resources. In the Declaration, the Assembly also recognized that States should seek to enable the access to and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned, and provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent.

[...]

6. In accordance with the Declaration, the Expert Mechanism recommends that stakeholders take a human rights-based approach to the repatriation of indigenous peoples' ceremonial objects, human remains and intangible cultural heritage. This approach requires recognition of indigenous peoples' rights to self-determination, culture, property, spirituality, religion, language and traditional knowledge. The Declaration also recognizes the applicability of indigenous peoples' own laws, traditions and customs, which entail both rights and responsibilities towards ceremonial objects, human remains and intangible cultural heritage.
7. In the present report, the Expert Mechanism notes that reliance on the Declaration, particularly articles 11, 12 and 31, among others, can help indigenous peoples, States, museums and other stakeholders to apply the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by UNESCO in 1970, as well as other international instruments and national laws, to the specific context of indigenous peoples. The Declaration should be the main instrument guiding the assessment of indigenous peoples' claims and the development of transparent mechanisms for repatriation at the national and international levels. These mechanisms are necessary to redress past harms, protect rights and foster healing and cooperation among indigenous peoples, States, museums, universities, scientific institutions, United Nations agencies and others in the future.

II. Background

8. Indigenous peoples have their own laws, customs and traditions concerning the treatment of ceremonial objects, human remains and intangible cultural resources. In many instances, ceremonial objects are considered inalienable, meaning they cannot be transferred outside of the indigenous community or cultural society or away from the spiritual leader responsible for caring for them. These items may be treated as living beings, provided with food, shelter, songs and prayers by their caretakers. With respect to human remains, indigenous peoples, like many others, typically honour their dead with funerals and other ceremonies. Indigenous spiritual teachings require that the dead must remain at rest and undisturbed in their burial

places; intergenerational respect for these places is often maintained through ceremonial practices honouring those who have passed. Intangible resources, such as religious songs, plant knowledge and human, plant and animal DNA, are similarly important for the individual and collective cultural rights and responsibilities of indigenous peoples.

[...]

14. Indigenous peoples suffer violations of their rights to religion, culture, spirituality, education and traditional knowledge when their cultural items, human remains and intangible cultural heritage are improperly acquired, used and kept by others. The damages incurred include loss of human dignity, difficulty carrying out spiritual practices without the necessary religious items, and the inability to honour their cultural obligations to care for the dead and for ceremonial objects. As Edward Halealoha Ayau, a leading advocate for the repatriation of human remains to Hawaii pointed out, refusal to repatriate human remains leads to spiritual, psychological and intellectual harm, on top of the *kaumaha* (trauma) caused by the realization that the ancestors were stolen. Often, indigenous people who work on repatriation matters experience intergenerational trauma and a heavy emotional burden. Yet they undertake that work because they have customary obligations to their cultures and to facilitate the healing of entire communities.

[...]

16. International repatriation requires the navigation of complex legal, jurisdictional, political and diplomatic challenges. For indigenous peoples, determining the whereabouts of their ceremonial items, human remains and intangible cultural heritage on a global scale can be a daunting task in terms of information, costs and human resources. While national museums or other institutions may already have working relationships with indigenous peoples in their own countries, they may not be familiar with State agencies working on indigenous issues or have contact information for indigenous peoples in other countries. These issues can be remedied with better information, as well as supportive intermediaries.

III. Legal, ethical and political framework on the repatriation of ceremonial objects and human remains

17. Indigenous peoples have their own laws and customs and traditions concerning cultural objects, human remains and cultural heritage. Many indigenous laws are held and transmitted in the oral tradition of the people. ... In all instances, indigenous peoples' own laws, customs and traditions must be followed by all participants with respect to treatment of ceremonial objects, human remains and cultural heritage.
18. Stakeholders must also assess national laws which, in many cases, limit deaccessioning. ...
19. While governments and museums often assert that such laws prohibit them from repatriating items to indigenous peoples, many laws have room for interpretation. ...
20. Moreover, as discussed in section V below, some national laws already require repatriation of human remains and ceremonial items to indigenous peoples.
21. With regard to international repatriation, a number of instruments dealing with illicit acquisition, trafficking and repatriation of cultural property may be helpful. The Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 calls on States to take special measures to protect cultural property and to

avoid misappropriating or damaging such property during times of armed conflict or occupation. The Convention recognizes the vulnerability of cultural property during wartime and the principle that damage to the cultural property of any people means “damage to the cultural heritage of all mankind”. The Convention does not apply retroactively, but may be helpful to indigenous peoples who have been dispossessed of cultural property in conflicts since 1954 or who find themselves in conflict situations in the future.

22. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 extends protection for cultural property beyond wartime. It has provisions on certification, anti-trafficking and repatriation. Cultural property is defined in article 1 as “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science” and which belongs to one of several categories. International cooperation is recognized in article 2 as one of the most efficient means of protecting cultural property. Article 3 provides that the import, export or transfer of ownership of cultural property effected contrary to the provisions of the Convention are illicit.
23. Several of the provisions of that Convention, including those in articles 5, 6 and 7, are preventative in nature, calling for States to take measures to prevent illicit trafficking of their own and others’ cultural property. Article 9 provides that any State party to the Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials can call upon other States parties who are affected. Indigenous peoples may seek to work with States under those provisions.
24. That Convention also contains remedial provisions for restitution or repatriation of items acquired after 1970, calling for States parties to take appropriate steps to recover and return cultural property imported after the entry into force of the Convention (art. 7) and to cooperate in facilitating the restitution of illicitly exported cultural property (art. 13).
25. While that Convention does not apply retroactively, article 15 permits special agreements for restitution between parties regarding cultural property removed from their territories before the entry into force of the Convention. Article 15 is thus of particular importance for indigenous peoples who may seek repatriation of cultural property acquired before 1970. Another relevant UNESCO mechanism is the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, which is tasked with cultural property matters that fall outside the scope of the 1970 Convention. Since the Intergovernmental Committee is not associated with a specific convention, its services, including mediation, are available to all UNESCO Member States.
26. The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995 applies not only to States and national museums, but also to other possessors of stolen cultural objects, potentially including auction houses, collectors and dealers. The UNIDROIT Convention provides in article 3 that “the possessor of a cultural object which has been stolen shall return it”. It also emphasizes the duty of purchasers and others to inquire into provenance.
27. Unlike the Convention for the Protection of Cultural Property in the Event of Armed Conflict or the two UNESCO Conventions, the UNIDROIT Convention makes specific reference to tribal and indigenous peoples. Pursuant to article 5, the impairment of the traditional or ritual use of an object by a tribal or indigenous community is one of the reasons that the Convention recognizes for courts to order return of

an illegally exported cultural object. While article 7 contains certain exceptions for items transferred during their creator's lifetime, return is still required "where a cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community".

28. These instruments should be read in conjunction with relevant provisions from international human rights treaties relating to equality, non-discrimination, freedom of religion and cultural rights, including article 27 of the International Covenant on Civil and Political Rights. They should also be applied in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous peoples have the right to self-determination (arts. 3–4); to culture (arts. 5, 8, 11–15 and 31); to lands, territories and resources (arts. 10, 25–30 and 32); and to languages (arts. 13–14 and 16), all of which are inextricably linked to ceremonial objects, human remains and intangible cultural heritage.
29. Of particular relevance in the repatriation context, are articles 11, 12 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples....

[...]

33. The Recommendation concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society, adopted by UNESCO in 2015, sets out global guidelines for the protection and promotion of museums and collections, and outlines their responsibilities in protecting heritage in all its forms. In paragraph 18, it deals specifically with the cultural heritage of indigenous peoples and relationship-building between museums and indigenous peoples.
34. The UNESCO policy on engaging with indigenous peoples, published in 2018, includes the right to repatriation of human remains and ceremonial objects as one of the policy provisions emanating from the Declaration that UNESCO commits to respect, protect and promote.
35. The Code of Ethics of the International Council of Museums provides that "museums should be prepared to initiate dialogue for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level" (para. 6.2).
36. In 2018, the European Parliament adopted a wide-ranging resolution calling on the European Union and its member States to address indigenous peoples' rights. It specifically expressed support for indigenous peoples' requests for international repatriation and the establishment of an international mechanism to fight the sale of indigenous artefacts taken from them illegally, including through financial assistance under the European Instrument for Democracy and Human Rights.

IV. Repatriation and intangible cultural heritage

37. An emerging issue in repatriation concerns the intangible cultural heritage of indigenous peoples, such as their languages, ceremonies, songs, scientific information, and other expressions of knowledge, identity and culture. As with ceremonial objects and human remains, indigenous peoples have their own laws on and customs and traditions for the treatment of those resources. While many property law systems classify aspects of cultural heritage as "intellectual" or "intangible" properties, those distinctions are not necessarily meaningful for indigenous peoples, to whom these are all interconnected aspects of the living

world. In the case of genetic resources, human blood and tissue are often used to extract valuable information leading to patents, illustrating the linkages between the tangible and intangible realms.

38. Indigenous peoples have suffered myriad human rights violations in the realm of intangible cultural heritage, including corporate exploitation of indigenous peoples' traditional ecological knowledge for patents on pharmaceuticals; fashion designers' appropriation of textile designs; and musical entertainers' sampling of indigenous spiritual songs. The appropriation of indigenous peoples' cultural heritage causes a range of spiritual, cultural, religious and economic harm caused by others' appropriation. The same is true of unauthorized use of blood samples and DNA for scientific research.
39. Most national legal systems fail to recognize indigenous peoples' laws and treat such resources either as part of the public domain or – perhaps even worse – subject to the intellectual property ownership of non-indigenous parties who file claims for them. Indigenous peoples are concerned about loss of knowledge, privacy, sustainability and biodiversity, as well as the injustice of others profiting from their inventions and knowledge. It is also difficult for indigenous peoples to trace the taking of their intangible cultural heritage.
40. Claims for repatriation in this context are complicated by the ways that the law of property disaggregates interests among tangible and intangible aspects. When it comes to DNA or traditional ecological knowledge, researchers who acquired various raw materials or know-how from indigenous peoples may have subsequently obtained patents, research grants and product lines. Claims to return the blood or seeds originally taken are legally distinguishable from claims for participation in patent benefits. By the same token, even if a museum possesses and considers repatriating a ceremonial object such as a drum, recordings of the drum music may be owned and have been copyrighted by another party. This is true even if the relevant indigenous people consider the drum and its sound, along with the traditional knowledge used to make the drum from the wood and sinew of the local landscape, and the voices of those who carried and sang with it, all to embody and express the eternal heartbeat of the people.

[...]

VI. Conclusions and recommendations: developing international guidance and processes

84. The General Assembly, in its resolution 69/2, in response to advocacy from indigenous peoples, committed themselves to developing, in conjunction with the indigenous peoples concerned, fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains at the national and international levels.
85. In addition, in its resolution 42/19, the Human Rights Council encouraged the development of a process to facilitate the international repatriation of indigenous peoples' sacred items and human remains through the continued engagement of all relevant stakeholders in accordance with their mandates. The Council emphasized the importance of partnerships and specific roles for UNESCO, WIPO and the mechanisms of the United Nations that focus on indigenous peoples. The Expert Mechanism calls on Member States and all stakeholders to heed the calls of the General Assembly and the Human Rights Council for the development of such processes and mechanisms.

86. A framework for the international repatriation of ceremonial objects, human remains and intangible cultural heritage should be firmly based on the United Nations Declaration on the Rights of Indigenous Peoples, in particular the rights to equality, non-discrimination, self-determination, participation and consultation, pursuant to articles 2, 3, 8, 18 and 19. All stakeholders must take a human rights-based approach to indigenous peoples' repatriation claims in order to effectuate remedies and promote the living cultures, religions, spiritualities, technologies and other rights of indigenous peoples, pursuant to articles 11, 12 and 31. There is a wealth of examples of museums, universities and other institutions and indigenous peoples finding common ground as caretakers of ancestral remains and ceremonial objects and learning about one another's worldviews. This has led to meaningful relationships, deep healing on both sides and the start of new collaborations through repatriation processes and cultural exchanges.
87. States should enact or reform legislation on repatriation in accordance with the Declaration on the Rights of Indigenous Peoples, in particular articles 11, 12 and 31, with the full and meaningful participation of indigenous peoples and the safeguard of free, prior and informed consent. This includes statutes, regulations and policies on museum collections, deaccession and repatriation. In case of ambiguities or challenges in implementation, the Declaration can be used as an interpretive tool. All such programmes for repatriation must be fully funded so that museums and indigenous peoples do not bear the burden that States have to comply with their human rights obligations.
88. States must recognize that indigenous peoples have their own concerns about human remains, ceremonial objects and cultural heritage and, when making claims for protection or repatriation, consider not only national interests but indigenous peoples' own rights. Terms like "cultural property", "cultural objects" and "cultural heritage" must be understood to include the ceremonial objects, human remains, spiritual and other properties of indigenous peoples. Similarly, a determination of whether an item is "illicit" or "stolen" property must include analysis not only of State laws, but the laws of indigenous peoples that set out standards of alienability, ownership, treatment and custody of ceremonial objects, human remains and spiritual, intellectual and other properties.
89. As parties seek to comply with the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, they should work in partnership with not only the International Criminal Police Organization (INTERPOL), national police forces, civil society and the International Council of Museums, but also indigenous peoples' institutions specializing in cultural property and repatriation, such as the Association on American Indian Affairs in the United States of America and indigenous peoples' mechanisms of the United Nations. With regard to repatriation of human remains, ceremonial objects and indigenous spiritual, intellectual and other properties, States must consult and seek the free, prior and informed consent of indigenous peoples, ensuring participation through their own representative institutions. The Expert Mechanism specifically urges States and indigenous peoples to enter into agreements regarding the ultimate return of these items to indigenous peoples' territories, consistent with their own laws, customs and traditions, and/or alternative dispositions affirmatively requested by indigenous peoples.

90. UNESCO should consider ways of providing advice on repatriation to indigenous peoples and promoting opportunities under the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Some concrete measures that UNESCO could take include capacity-building for States parties and other stakeholders on repatriations under the United Nations Declaration on the Rights of Indigenous Peoples; developing databases of indigenous peoples' ceremonial objects and human remains held by State museums, universities and other repositories that are accessible to the indigenous peoples concerned and also maintaining respectful protocols, such as not showing photographs of human remains and sacred items; and considering the establishment of an international indigenous repatriation review committee comprised of indigenous peoples, museum professionals, human rights experts and others to provide advice and assistance on these claims.
91. As the main international organization with a mandate to address issues related to traditional knowledge, traditional cultural expressions and genetic resources, the World Intellectual Property Organization has an essential role in the protection and repatriation of indigenous peoples' intangible cultural heritage. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore should consider explicitly addressing repatriation and continue its efforts to facilitate indigenous peoples' meaningful participation in this process. WIPO should strengthen its efforts to implement the rights articulated in the Declaration and build the capacity of indigenous peoples to better protect their traditional knowledge and traditional cultural expressions.
92. Museums, universities and other collecting institutions must become partners in ensuring that articles 11, 12 and 31 of the Declaration are respected and upheld. Museums must develop relationships of collaboration and trust, and seek out and respect indigenous peoples' knowledge, protocols, traditional laws and customs regarding items in their collections. Stakeholders such as UNESCO, the International Council of Museums, the Expert Mechanism, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples can assist museums in advancing a human rights-based approach to these issues, and achieving a better understanding of their legal and ethical obligations, and of indigenous peoples' expectations and worldviews. Partnerships of this type are essential in order to decolonize museums.
93. Indigenous peoples themselves also have a duty to advocate for the repatriation of their ceremonial objects, human remains and cultural heritage. Repatriation requires active community advocacy and involvement if it is to be carried out under indigenous peoples' terms. Indigenous peoples should also consider identifying and, if culturally appropriate, codifying their own laws, customs and traditions on ceremonial items, human remains and intangible cultural heritage in order to assist States and museums to implement article 11 of the Declaration.
94. The Expert Mechanism acknowledges and encourages examples of indigenous peoples working in solidarity with one another on repatriation. Examples include support from the Sámi for the repatriation of Yaqui ceremonial objects from Sweden and the support of Māori for the repatriation of human remains to Rapa Nui. Indigenous peoples should support each other with capacity-building and sharing of experiences, including the development of repatriation and reburial protocols and the establishment and management of indigenous peoples' own museums and cultural centres.

95. Indigenous peoples have shown an exemplary willingness to pursue reconciliation with museums and other cultural institutions, which often involves revisiting painful intergenerational histories of colonialism, loss of dignity, forced relocation, military occupation and loss of lands, territories and resources. Repatriation processes and the establishment of meaningful relationships with museums contribute to the healing of past injustices and the protection and intergenerational transmission of indigenous peoples' living cultures.
96. The Expert Mechanism commits itself to working closely with all stakeholders in order to facilitate the strengthening and development of mechanisms for the repatriation of indigenous peoples' ceremonial objects, human remains and intangible cultural heritage.

B. EXPERT MECHANISM ON THE RIGHT TO DEVELOPMENT⁵⁵

1. Second revised text of the draft convention on the right to development, A/HRC/WG.2/24/2, 30 November 2022⁵⁶

Preamble

The States Parties to the present Convention,

Guided by the purposes and principles of the Charter of the United Nations, especially those relating to the achievement of international cooperation in solving international problems of an economic, social, cultural, environmental or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction of any kind,

Recalling the obligation of States under articles 1 (3), 55 and 56 of the Charter of the United Nations to take joint and separate action in cooperation with the Organization for the promotion of higher standards of living, full employment and conditions of economic and social progress and development; solutions of international economic, social, health and related problems; international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction of any kind,

[...]

Recalling the provisions of all international human rights treaties, as well as other international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas,

[...]

Recalling the reaffirmation of the right to development in several international declarations, resolutions and agendas, including the ... the United Nations Declaration on the Rights of Indigenous Peoples...

[...]

Taking note of the regional human rights instruments and the subsequent practices relating thereto that specifically recognize and reaffirm the right to development, including the African Charter on Human and Peoples' Rights, the Inter-American

⁵⁵ <https://www.ohchr.org/en/hrc-subsiaries/expert-mechanism-on-right-to-development>.

⁵⁶ <https://www.ohchr.org/en/calls-for-input/2023/call-comments-and-textual-suggestions-second-revised-text-draft-convention>.

Democratic Charter, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Arab Charter on Human Rights, the Human Rights Declaration of the Association of Southeast Asian Nations, the American Declaration on the Rights of Indigenous Peoples, and the Abu Dhabi Declaration on the Right to Development,

[...]

Have agreed as follows:

Part I

Article 1

Object and purpose

The object and purpose of the present Convention is to promote and ensure the full, equal and meaningful enjoyment of the right to development by every individual and all peoples everywhere, and to guarantee its effective operationalization and full implementation at the national and international levels.

[...]

Article 3

General principles

To achieve the object and purpose of the present Convention and to implement its provisions, the States Parties shall be guided by, inter alia, the principles set out below:

- (a) Development centred on the individual and peoples: the individual and peoples are the central subjects of development and must be the active participants and beneficiaries of the right to development;
- (b) Principles common to all human rights: the right to development should be realized in a manner that integrates the principles of the universality, inalienability, indivisibility, interdependence and interrelatedness of all human rights, as well as of equality, non-discrimination, empowerment, participation, transparency, accountability, equity, inclusion, accessibility and subsidiarity;
- (c) Human rights-based development: as development is a human right that is indivisible from and interrelated and interdependent with all other human rights, the laws, policies and practices of development, including development cooperation, must be normatively anchored in a system of rights and corresponding obligations established by international law;
- (d) Contribution of development to the enjoyment of all human rights: development, as described in the present Convention, is essential for the improvement of living standards and the welfare of individuals and peoples and contributes to the enjoyment of all other human rights;
- (e) Principles of international law concerning friendly relations and cooperation among States: the realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations;
- (f) Self-determined development: the priorities of development are determined by individuals and peoples as rights holders in a manner consistent with the provisions of the present Convention. The right to development and the right to self-determination of peoples are integral to each other and mutually reinforcing;

- (g) Sustainable development: development must be achieved in all its dimensions, including, economic, social and environmental, in a balanced and integrated manner and in harmony with nature. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations; and the right to development cannot be realized if development is unsustainable;
- (h) Right to regulate: the realization of the right to development entails the right for States Parties, on behalf of the rights holders, to take regulatory or other related measures to achieve sustainable development on their territory in accordance with international law, and consistent with the provisions of the present Convention;
- (i) National and international solidarity: the realization of the right to development requires an enabling national and international environment created through a spirit of cooperation and unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals everywhere. This principle includes the duty to cooperate with complete respect for the principles of international law;
- (j) South-South and triangular cooperation as a complement to North-South cooperation: South-South and triangular cooperation contribute to the realization of the right to development. They are not a substitute for, but rather a complement to, North-South cooperation;
- (k) Universal duty to respect human rights: everyone has the duty to respect all human rights, including the right to development, in accordance with international law;
- (l) Right and responsibility of individuals, peoples, groups and organs of society to promote and protect human rights: in accordance with international law, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of the right to development at the national and international levels. Individuals, peoples, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the right to development can be fully realized.

Part II

Article 4

Right to development

1. Every individual and all peoples have the inalienable right to development, by virtue of which they are entitled to participate in, contribute to and enjoy civil, cultural, economic, environmental, political and social development that is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms.
2. Every individual and all peoples have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

Article 5

Relationship with the right of peoples to self-determination

1. The right to development implies the full realization of the right of all peoples to self-determination.
2. All peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue the realization of their right to development.
3. All peoples may, in pursuing the realization of their right to development, freely dispose of their wealth and sustainably use their natural resources based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence. Nothing in the present Convention shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their wealth and natural resources in a manner consistent with international law and the provisions of the present Convention.
4. The States Parties to the present Convention, including those having responsibility for the administration of Non-Self-Governing Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations and international law.
5. States Parties shall take resolute action to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and discrimination, colonialism, domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to otherwise recognize the fundamental right of peoples to self-determination.
6. Nothing contained in the present Convention shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory, without distinction of any kind. Each State Party shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State.

Article 6

Relationship with other human rights

1. States Parties reaffirm that all human rights, including the right to development, are universal, inalienable, interrelated, interdependent, indivisible and equally important.
2. States Parties agree that the right to development is an integral part of human rights and must be realized in conformity with the full range of civil, cultural, economic, environmental, political and social rights.

[...]

Part III

Article 8

General obligations of States Parties

1. States Parties shall respect, protect and fulfil the right to development for all, without discrimination of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, age or other status, in accordance with obligations set forth in the present Convention. ...

[...]

Article 17

Indigenous Peoples

1. Indigenous Peoples have the right to freely pursue their development in all spheres, in accordance with their own needs and interests. They have the right to determine and develop priorities and strategies for exercising their right to development.
2. In accordance with international law, States Parties shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
3. States Parties shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

2. Operationalizing the right to development in achieving the Sustainable Development Goals, A/HRC/48/63, 6 July 2021⁵⁷

I. Introduction

[...]

7. The present study assumes significance, since the first six years of the implementation of the Sustainable Development Goals have been disappointing overall. By the end of 2019 and even before the COVID-19 pandemic struck, progress on many targets had decelerated compared with previous years² and most of the Goals were already unlikely to be met by 2030.³ Unsurprisingly, almost all the means of implementation targets had been grossly underrealized since 2015. That downward spiral has further accelerated since the beginning of 2020 with the world brought to its knees by the COVID-19 pandemic.
8. These alarming results, prior to, during and most likely after the COVID-19 pandemic, are the inevitable consequence of the failure to operationalize the right to development in achieving the Sustainable Development Goals, in particular the means of implementation. Implementation has been underpinned by a business-as-usual approach to development viewed through the lens of privilege or charity. If the Goals are to have any prospect of success, their implementation must be based on the normative framework of the right to development, as elaborated in the 1986 Declaration on the Right to Development, in which development is viewed as a human right of all persons and peoples, with corresponding duties for States with

⁵⁷ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F63&Language=E&DeviceType=Desktop&LangRequested=False>.

respect to the means of implementation, including most importantly the duty of international cooperation.

9. The 2030 Agenda itself provides the normative justification for operationalizing the right to development in achieving the Sustainable Development Goals by categorically stipulating that it is informed by the Declaration on the Right to Development. In it, the General Assembly also reaffirmed the right to development by reaffirming the outcomes of the major United Nations conferences and summits listed therein, each of which in turn reaffirmed the right to development. All the principles of the 1992 Rio Declaration on Environment and Development, are specifically reaffirmed, including that: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” Finally, the 2030 Agenda is also grounded in the United Nations Millennium Declaration, which incorporated a categorical commitment to making the right to development a reality for everyone. The consensual assertions by States that the 2030 Agenda reaffirms the right to development, is informed by the Declaration on the Right to Development and is grounded in the Declaration should be seen as a mandate that operationalizing the right to development should constitute the basis for realizing the Sustainable Development Goals.

[...]

V. Operationalizing the right to development for realizing the means of implementation of the Sustainable Development Goals

[...]

A. Identifying development priorities and setting national targets

[...]

29. The right of persons and peoples to participate in and contribute to development is a defining feature of the right to development and is fundamental to its operationalization. All laws, policies and practices aimed at realizing the Sustainable Development Goals must be designed and implemented with the participation and contribution of rights holders. Failure to ensure multi-stakeholder participation, or free, prior and informed consultation with persons and peoples who might be positively or negatively impacted, or the failure to obtain consent in the case of indigenous peoples, will result in a violation of their right to development. The right to participate in and contribute to development is often violated when it is not operationalized from the start. It is especially important at the stage of prioritization and national target-setting, including at the national level, as part of a periodic review.

C. OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS⁵⁸

1. Third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, 17 August 2021⁵⁹

Preamble

The States Parties to this (Legally Binding Instrument),

(PP1) Reaffirming the principles and purposes of the Charter of the United Nations;

(PP2) Recalling the nine core International Human Rights Instruments adopted by the United Nations, and the eight fundamental Conventions adopted by the International Labour Organization;

(PP3) Recalling also ... the UN Declaration on Human Rights Defenders, the UN Declaration on the Rights of Indigenous Peoples...

[...]

(PP13) Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons;

[...]

SECTION II

Article 6.

Prevention

6.1 States Parties shall regulate effectively the activities of all business enterprises within their territory, jurisdiction, or otherwise under their control, including transnational corporations and other business enterprises that undertake activities of a transnational character.

[...]

6.4 States Parties shall ensure that human rights due diligence measures undertaken by business enterprises shall include:

[...]

c. Conducting meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, including trade unions, while giving special attention to those facing heightened risks of business-related human rights abuses, such as women, children, persons with disabilities, indigenous peoples, people of African descent, older persons, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;

⁵⁸ <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>.

⁵⁹ <https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf>.

- d. Ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent....

[...]

SECTION III

Article 15.

Institutional Arrangements Committee

15.1 There shall be a Committee established in accordance with the following procedures:

- a. The Committee shall consist of, at the time of entry into force of the present (Legally Binding Instrument), (12) experts. After an additional sixty ratifications or accessions to the (Legally Binding Instrument), the membership of the Committee shall increase by six members, attaining a maximum number of (18) members. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence in the field of human rights, public international law or other relevant fields.

[...]

International Fund for Victims

15.7 States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument), to provide legal and financial aid to victims, taking into account the additional barriers faced by women, children, persons with disabilities, Indigenous peoples, migrants, refugees, internally displaced persons, and other vulnerable or marginalized persons or groups in seeking access to remedies. This Fund shall be established at most after (X) years of the entry into force of this (Legally Binding Instrument). The Conference of States Parties shall define and establish the relevant provisions for the functioning of the Fund.

Article 16.

Implementation

16.1 States Parties shall take all necessary legislative, administrative or other action including the establishment of adequate monitoring mechanisms to ensure effective implementation of this (Legally Binding Instrument)

[...]

16.4 In implementing this (Legally Binding Instrument), States Parties shall address the specific impacts of business activities on while giving special attention to those facing heightened risks of human rights abuse within the context of business activities, such as, but not limited to, women, children, persons with disabilities, indigenous peoples, people of African descent, older persons, migrants, refugees and internal displaced persons.

16.5 The application and interpretation of these Articles shall be consistent with international law, including international human rights law and international humanitarian law, and shall be without any discrimination of any kind or on any ground, without exception.

· XI ·

**Special
Procedures
of the Human
Rights Council**

A. REPORTS OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

1. Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge, A/HRC/51/28, 09 August 2022⁶⁰

I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, pursuant to Human Rights Council Resolution 42/20. The Special Rapporteur provides a brief summary of his activities since his previous report to the Council and a thematic study on the situation of indigenous women and the development, application, preservation and transmission of scientific and technical knowledge.
2. The report focuses on the role of indigenous women as scientific and technical knowledge keepers in the context of international human rights law and identifies the current threats and intersecting challenges that they face because of their gender and identity as indigenous people. The report highlights best practices led by indigenous peoples and States and concludes with recommendations for ensuring and protecting the ability of indigenous women to develop, apply, maintain and transmit knowledge.

[...]

IV. International legal framework

13. The development, application, preservation and transmission of indigenous women's knowledge is inextricably linked to the way they use their territory, lands and resources. Indigenous knowledge is transmitted through indigenous languages, storytelling, collective practices and ceremonies. For that reason, the recognition and legal protection of indigenous scientific knowledge is required to protect the collective dimension of its manifestation and the loci of its production. In that context, the protection of collective indigenous rights, such as the rights to self-determination, autonomy, lands and resources, is foundational to protecting indigenous knowledge effectively. Also, the protection of indigenous women's knowledge operationalizes the right to be free from assimilation, as established in several international instruments, including article 8 of the United Nations Declaration on the Rights of Indigenous Peoples and article X of the American Declaration on the Rights of Indigenous Peoples.
14. A comprehensive international legal framework is needed to protect indigenous women's self-determined development and ownership and control of their scientific and technical knowledge. Until that time, there are a number of international bodies and mechanisms that can be used to support their rights. Indigenous women are entitled to internationally recognized human rights, including the individual and collective right to the protection of scientific and technical knowledge in accordance with the legal standards set out in a number of international instruments.

⁶⁰ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F28&Language=E&DeviceType=Desktop&LangRequested=False>.

A. United Nations Declaration on the Rights of Indigenous Peoples

15. Article 11 of the Declaration recognizes the right of indigenous peoples to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, visual and performing arts and literature. Article 31 recognizes the rights of indigenous peoples to maintain, control, develop and protect traditional knowledge as well as manifestations of science, technologies and cultures, including seeds, medicines and knowledge of the properties of fauna and flora. The right to traditional medicines, health practices and the conservation of vital medicinal plants, animals and minerals are specifically identified in article 24. Although all the provisions of the Declaration apply equally to both women and men, article 22 recognizes that particular attention shall be paid to the special needs of women.

B. United Nations human rights treaties

16. The right to culture is affirmed in article 27 of the International Covenant on Civil and Political Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights. The Committee on Economic Social and Cultural Rights has elaborated on this right in its general comment No. 21 (2009), notably recognizing the collective aspect of the cultural rights of indigenous peoples by stating that the values of cultural life “may be strongly communal” and “can only be expressed and enjoyed as a community by indigenous peoples” and that: “Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures” (paras. 15, 36 and 37). Articles 29 and 30 of the Convention on the Rights of the Child recognize the right of indigenous children to enjoy their own culture, religion and language. The Convention on the Elimination of All Forms of Discrimination against Women further recognizes that women are entitled to be free from discrimination.

C. Indigenous and Tribal Peoples Convention, 1989 (No. 169)

17. The Indigenous and Tribal Peoples Convention, 1989 (No. 169), establishes in article 5 that “the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals”. Article 23 states that: “Handicrafts, rural and community-based industries, and subsistence economy and ‘traditional’ activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development.”

D. Regional human rights instruments

18. Article 17 of the African Charter on Human and Peoples’ Rights states that every individual may freely take part in the cultural life of his community and that it shall be the duty of the State to promote and protect the morals and traditional values recognized by the community.
19. Article XIII of the American Declaration of the Rights and Duties of Man also guarantees the right to culture while the American Declaration on the Rights of Indigenous Peoples recognizes right of indigenous peoples to cultural identity and integrity in article XIII and the right to preserve, use, develop, revitalize

and transmit to future generations their systems of knowledge, language, and communication in article XIV. Articles XVI and XVIII protect indigenous spirituality and health systems and practices respectively. Finally, article XXVIII protects the cultural heritage and collective intellectual property of indigenous peoples that “includes, inter alia, traditional knowledge and traditional cultural expressions, including traditional knowledge associated with genetic resources, ancestral designs and procedures, cultural, artistic, spiritual, technological, and scientific expressions, tangible and intangible cultural heritage, as well as knowledge and developments of their own related to biodiversity and the utility and qualities of seeds, medicinal plants, flora, and fauna”.

E. Convention on Biological Diversity

20. The Convention on Biological Diversity (1992) affirms the need to respect, preserve and maintain the knowledge, innovations and practices of indigenous peoples embodying traditional lifestyles (art. 8 (j)).¹¹ The Convention protects biological resources and recognizes that the projected decline in biodiversity will have a particularly detrimental effect on indigenous peoples. It recognizes the need to strengthen further the integration of gender, the role of indigenous peoples and the level of stakeholder engagement and acknowledges that there has been an increase in recognition of the value of traditional knowledge and customary sustainable use, both in global policy forums and in the scientific community. However, despite progress in some countries, there is limited information indicating that traditional knowledge and customary sustainable use have been widely respected and/or reflected in national legislation related to the implementation of the Convention, or on the extent to which indigenous peoples and local communities are effectively participating in associated processes.
21. The Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in 1995 called on Governments to encourage, subject to national legislation and consistent with the Convention on Biological Diversity, the effective protection and use of the knowledge, innovations and practices of women of indigenous communities and safeguard the existing intellectual property rights of those women as protected under national and international law.

F. World Intellectual Property Organization

22. The World Intellectual Property Organization (WIPO) protects the intellectual property of indigenous peoples and aims to encourage and empower indigenous peoples to use intellectual property tools strategically, if they so wish, in order to protect their traditional knowledge and cultural expressions for their own benefit and in line with their specific social, cultural and developmental needs. A number of WIPO conventions can be used to protect the intellectual property of indigenous women including the Berne Convention for the Protection of Literary and Artistic Works (1979); the WIPO Performances and Phonograms Treaty (1996); and the Beijing Treaty on Audiovisual Performances (2012).

G. United Nations Educational, Scientific and Cultural Organization

23. The United Nations Educational, Scientific and Cultural Organization promotes cultural heritage and the equal dignity of all cultures, affirming that cultural diversity is a defining characteristic of humanity.¹⁵ The preamble of the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) recognizes that

communities, in particular indigenous communities, groups and individuals, play an important role in the production, safeguarding, maintenance and recreation of the intangible cultural heritage, enriching cultural diversity and human creativity. Finally, article 7 (a) of the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions enacts measures to promote cultural expressions, paying special attention to the needs of women and indigenous peoples.

H. United Nations Framework Convention on Climate Change

24. The Local Communities and Indigenous Peoples Platform was established in 2015 by the twenty-first Conference of the Parties to the United Nations Framework Convention on Climate Change. The Platform facilitates collaboration between the parties to the Paris Agreement on Climate Change and indigenous peoples to understand, amplify and disseminate the knowledge and expertise of indigenous peoples and enable them to contribute more meaningfully to global calls for adaptation and mitigation actions “in a holistic and integrated manner” as the effects of climate change are compounded.
25. The mandate of the Platform emphasizes local and indigenous knowledge as the foundation of the exchange of experience and best practices, with a view to applying, strengthening, protecting and preserving the traditional knowledge systems of indigenous peoples, as well as their technologies, practices and efforts related to addressing and responding to climate change, taking into account the free, prior and informed consent of the holders of such knowledge, innovations and practices.
26. Importantly, the Platform has taken gender into consideration in fulfilling its mandate with an emphasis put on guaranteeing equal participation from both male and female indigenous peoples’ representatives in the implementation of the work plan of the Platform and in leadership roles within it.

I. International Fund for Agricultural Development

27. The International Fund for Agricultural Development (IFAD) has acknowledged that indigenous women, in particular, are full of untapped potential as stewards of natural resources and biodiversity and commits to valuing “indigenous peoples’ knowledge and practices in investment projects” and to building “on these assets by supporting pro-poor research that blends traditional knowledge and practices with modern scientific approaches”. IFAD has created the Indigenous Peoples Assistance Facility to provide small grants to support projects designed and implemented by indigenous peoples to “build on indigenous peoples’ culture, identity, knowledge and natural resources” and “implement grass-root development projects based on their own perspectives”.

[...]

IX. Conclusions and recommendations

102. Indigenous women face exceptional impediments to the development, preservation, use and transmission of their scientific knowledge. Because of their relationship with the land and natural environment and the marginalization they face for being women and indigenous, they are disproportionately affected by the loss of lands, territories and resources owing to climate change, the development of megaprojects and the creation of protected areas.

103. The loss of indigenous languages is a key impediment to the transmission of indigenous women's knowledge. Indigenous languages are disappearing at a critical rate and with them invaluable knowledge and culture is being lost around the world. Indigenous women urgently call for indigenous language education programmes to be developed and resourced and measures taken, in consultation with them, to support intergenerational knowledge transmission.
104. Indigenous women are often absent from decision-making processes, as international and national institutions overlook their contributions and exclude their knowledge from the design of programmes and policies, for example through exclusion of indigenous medicine from State health-care systems. Indigenous women face great challenges in occupying the spaces that are needed to preserve their knowledge.
105. In the absence of culturally appropriate legal frameworks that conform to international human rights standards, indigenous women's knowledge is exploited or misused by external interests, including the tourism, pharmaceutical and fashion industries. Likewise, indigenous women's knowledge has been lost and stolen, as in the case of the misappropriation of medicinal plants, human remains and other cultural artefacts taken from burial or cultural sites by collectors, anthropologists, curators or biologists.
106. Indigenous women have shown great resilience in the face of significant environmental, social and political obstacles to the development, use and transmission of their scientific knowledge, much of which has already been lost. To guard against future loss, States must work with indigenous women to promote self-advocacy and implement initiatives led by them to address such obstacles. It is also incumbent on the international community to take action to protect and preserve indigenous women's knowledge as an irreplaceable repository of scientific and technical information. Finally, United Nations agencies are called upon to align their work with the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples (art. 42) and mobilize financial cooperation and technical assistance (art. 41).
107. The Special Rapporteur recommends that States:
- (a) Adopt the terminology "indigenous scientific and technical knowledge" in place of "traditional" or "customary" knowledge;
 - (b) Ensure effective legal protection of indigenous women's rights to lands, territory and resources, and promote their participation in the management and regulation of their lands and resources, including their participation in administrative and legislative processes to obtain their free, prior and informed consent to projects impacting their lands and resources;
 - (c) Adopt, in collaboration with indigenous women, affirmative measures to guarantee their equal and full political participation, including the establishment or strengthening of institutions for indigenous women in leadership roles, the recognition of their organizations as legal and public interlocutors and the provision of spaces for their participation. Also ensure that government institutions and services are culturally and gender-responsive to embrace indigenous women's knowledge;
 - (d) Incorporate indigenous knowledge into decision-making with respect to environmental programmes and the management of protected areas, including in conducting environmental and social impact evaluations for land

- use. Recognize the role of indigenous women in environmental conservation through specific funds and the promotion of women's full and equal participation and leadership in all governance and decision-making in the pursuit of climate justice, conservation and sustainable environmental solutions;
- (e) Develop, in consultation with indigenous women, culturally appropriate education programmes to preserve and revitalize indigenous languages and ensure intergenerational knowledge transmission. That should include indigenous women-led and family-centred early childhood education systems to further transference of knowledge to the next generations. Also include intercultural education models, in coordination with indigenous peoples, by including indigenous women's knowledge in the school curricula at all levels of education;
 - (f) Create and support national, regional and local platforms for indigenous women to exchange and preserve their knowledge;
 - (g) Recognize indigenous women as the legitimate rights holders of their knowledge and adopt, in consultation with indigenous peoples and in accordance with international human rights standards, national legal and policy frameworks that protect indigenous women's knowledge and intellectual property, including their scientific products, agricultural, spiritual and artisanal knowledge and medicine, and establish safeguards against the misappropriation of their knowledge and lack of benefit sharing;
 - (h) Improve access to high-quality, culturally appropriate and non-discriminatory health care for indigenous women that is respectful of indigenous knowledge and cultural practices. Provide human and financial resources to recognize and promote indigenous scientific knowledge as part of State health systems, including support for indigenous women's knowledge of midwifery, maternal health and early childhood care in order to ensure intercultural health services;
 - (i) Recognize indigenous knowledge as a preferential requirement during the hiring process for professionals, such as park rangers, teachers and midwives;
 - (j) Institute or strengthen efforts to prevent and respond to widespread violence against indigenous women and girls, including the implementation of culturally sensitive programmes, prioritizing support for indigenous women-led, community-based anti-violence strategies;
 - (k) Combat all forms of violence, intimidation and threats against indigenous women defending their lands, territories and resources and halt the criminalization of indigenous conservation and agricultural practices;
 - (l) Design, in collaboration with indigenous peoples, effective restorative mechanisms, which may include restitution and compensation for damage or loss, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent, or in violation of their laws;
 - (m) Recognize indigenous place names by renaming geographic locations;
 - (n) Incorporate the United Nations Declaration on the Rights of Indigenous Peoples into national law. Ratify, if pending, and implement the Convention on Biological Diversity, the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant instruments that protect the rights of indigenous peoples.

108. The Special Rapporteur recommends that international organizations:

- (a) Adopt the terminology “indigenous scientific and technical knowledge” in place of “traditional” or “customary” knowledge;
- (b) Ensure the meaningful participation of indigenous women in the achievement of the Sustainable Development Goals, and the post-2020 global biodiversity framework;
- (c) Include indigenous women’s knowledge in technical panels, platforms and forums that address, inter alia, climate change solutions, biodiversity loss, language loss and health policy;
- (d) Promote and strengthen indigenous women’s participation in the design of programmes, actions and policies concerning indigenous scientific knowledge and access to genetic resources.

109. The Special Rapporteur recommends that indigenous peoples:

- (a) Strengthen indigenous women’s access to land and resources in their jurisdiction;
- (b) Support the political participation of indigenous women in decision-making related to, inter alia, the use of indigenous lands and resources and culturally appropriate policies and programmes to respond to social problem;
- (c) Recognize, protect and promote the role of indigenous women as holders and transmitters of knowledge and languages;
- (d) Support indigenous women’s organizations for political empowerment, leadership and skills training to increase their ability to play a fundamental role in their communities and secure knowledge transmission.

2. The rights of indigenous peoples living in urban areas, A/76/202, 21 July 2022⁶¹

I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, pursuant to Human Rights Council resolution 42/20. He considers herein the situation of indigenous peoples living in urban areas, the specific causes and consequences of urbanization and the initiatives undertaken by indigenous peoples and States to ensure that the rights and specific needs of indigenous peoples are addressed. He concludes by recommending greater accountability for State and non-State actors in order to remove existing obstacles and urges States to adopt positive measures, including legislation, policies and programmes, that provide collective protection mechanisms for indigenous peoples living in urban areas.

[...]

III. Indigenous peoples living in urban areas

3. A significant number of the world’s indigenous peoples live in urban environments, and there is a need to tackle issues of poverty, racism, racial discrimination and marginalization and to strengthen support for those peoples. Urban migration may occur when indigenous peoples move to urban areas in search of employment and

⁶¹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F202&Language=E&DeviceType=Desktop&LangRequested=False>.

education opportunities, but so too as a result of forced evictions, land dispossession, militarization or environmental degradation and natural disasters exacerbated by climate change.

4. Indigenous peoples living in urban areas continue to experience the legacy of colonization and intergenerational trauma and face a unique set of challenges to their sense of identity, culture and connection to lands and resources. The Special Rapporteur examines herein the drivers of migration to urban areas, including the impact on indigenous peoples who occupy traditional territories that have transformed into metropolitan areas over time. He assesses the challenges and opportunities arising from the process of urbanization and highlights examples of good practices whereby indigenous peoples and States seek to address the needs of indigenous peoples living in urban areas and guarantee their effective enjoyment of their individual and collective rights, as provided for in international human rights law, in particular the United Nations Declaration on the Rights of Indigenous Peoples.

[...]

IV. Conclusions and recommendations

74. Indigenous peoples' migration and relocation to urban areas occur in the context of historical and current colonization and structural racial discrimination, as well as the disproportionate impact of climate change. The potential loss of identity, language and culture and disconnect from traditional lands and community notwithstanding, indigenous peoples are resilient and adapting to urban life and forging new paths, often with the help of indigenous-led initiatives. States should fulfil their international human rights obligations to ensure that indigenous peoples, including those living in urban areas, fully and effectively enjoy their individual and collective rights, in conformity with international human rights standards, in particular the United Nations Declaration on the Rights of Indigenous Peoples. In that context, Member States should:
 - (a) Ratify the core human rights treaties and ILO Convention No. 169 and take effective measures to incorporate the United Nations Declaration on the Rights of Indigenous Peoples into legislation and policies, including local legislation, policies and programmes in urban areas;
 - (b) Integrate the indigenous rights framework into public policy and urban planning to guarantee the individual and collective rights of indigenous peoples living in urban areas;
 - (c) Adopt legislative and policy measures prohibiting forced eviction and displacement and ensuring that involuntarily displaced indigenous peoples have the right to return to their traditional lands and territories;
 - (d) Ensure the participation of indigenous peoples living in urban areas in decision-making relating to urban planning and public life, with specific guarantees for the direct participation of women, persons with disabilities, children, young people, older persons and lesbian, gay, bisexual, transgender and intersex persons;
 - (e) Ensure the participation of indigenous peoples living in urban areas in the planning and implementation of dedicated spaces and services that address their socioeconomic needs and to maintain and strengthen their political, legal, economic, social and cultural institutions;

- (f) Coordinate with indigenous peoples to provide economic development opportunities in urban contexts, including access to government tenders and contracts and civil service delivery;
- (g) Take effective measures to support the development of small businesses and other entrepreneurial efforts undertaken by indigenous peoples living in urban areas;
- (h) Enact policies, in consultation with indigenous peoples, to address employment and training needs for indigenous peoples in conjunction with education programmes to promote transferable skill sets and culturally specific workforce development;
- (i) Adopt effective measures to support and diversify employment opportunities and job training programmes; (j) Promote culturally specific policy development for indigenous peoples in health care, education, housing and employment in an urban context;
- (j) Guarantee recognition of and financial support for community-based education, the implementation of intercultural education addressing structural racial discrimination and the adoption of curricula contextualized by the experiences of indigenous educators;
- (k) Implement family-friendly policies related to the workplace and improve access to early childhood education;
- (l) Support agencies that offer technical assistance to strengthen the capacity of indigenous organizations in urban contexts;
- (m) Develop and implement policies to address the lack of security of tenure experienced by indigenous peoples living in urban areas, in particular to prohibit forced evictions;
- (n) Take effective measures to ensure that all indigenous households, regardless of their tenure status or income level, are entitled and have effective access to essential services, including potable water, sanitation, electricity and health care;
- (o) Ensure effective access to health-care services, including COVID-19 testing, treatment and vaccination;
- (p) Adopt effective and appropriate measures for indigenous peoples with disabilities, especially women and girls, so that they have access to education, health care, including reproductive health, and justice;
- (q) Regularly collect and publish disaggregated data on indigenous peoples living in urban areas.

3. Protected areas and indigenous peoples' rights: the obligations of States and international organizations, A/77/238, 19 July 2022⁶²

I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, pursuant to Human Rights Council resolution 42/20. He provides herein a brief summary of his activities since his previous report to the General Assembly (A/76/202/Rev.1) and considers the implications of protected areas for the rights of indigenous peoples.

⁶² <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F238&Language=E&DeviceType=Desktop&LangRequested=False>.

2. The Special Rapporteur considers it urgent and timely to revisit the issue of protected areas and the rights of indigenous peoples, which was addressed by the previous mandate holder in 2016, and assess recent developments with a focus on the obligations of States and international organizations to respect, protect and promote indigenous peoples' rights.

[...]

III. Protected areas and the rights of indigenous peoples: the obligations of States and international organizations

4. For centuries, indigenous peoples' scientific knowledge, land tenure systems and sustainable management of resources have preserved and conserved the planet. Respect for indigenous peoples' collective rights is therefore a fundamental step towards the sustainable and effective achievement of conservation goals. However, indigenous peoples continue to be dispossessed of their lands, territories and resources for conservancies, climate change programmes, national parks, game reserves and cultural heritage protection.
5. In the present report, the Special Rapporteur assesses relevant developments since the 2016 report on this topic by the previous mandate holder (A/71/229), in particular with regard to: (a) the last stages of the negotiations on the post-2020 global biodiversity framework, which should accelerate the implementation of the Convention on Biological Diversity; (b) the designation of United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage sites; and (c) the impacts of initiatives related to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries (REDD-plus).

[...]

IV. International legal standards

1. International human rights law

14. The standards relating to indigenous peoples' rights in the context of conservation and protected areas have developed through international human rights law, international labour law and international environment law and were examined in the report of the previous mandate holder to the General Assembly on conservation in 2016 (A/71/229, paras. 20–32). Fundamental legal sources include the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and other universal and regional human rights instruments. Such instruments recognize indigenous peoples' rights to their traditional lands and resources, self-government, self-determination, participation, consultation, free, prior and informed consent, and restitution. These rights form the basis of indigenous peoples' collective identity and their physical, economic and cultural survival.
15. The United Nations Declaration on the Rights of Indigenous Peoples highlights the responsibility of the United Nations system to continuously promote and protect these rights. Under article 41 of the Declaration, the organs and specialized agencies of the United Nations system and other intergovernmental organizations, including UNESCO, the United Nations Environment Programme and the secretariat of the Convention on Biological Diversity, are required to contribute to the full realization of the Declaration through the mobilization of financial cooperation and technical assistance and the establishment of ways and means of ensuring participation of indigenous peoples on issues affecting

them. Under article 42, United Nations specialized agencies, including at the country level, and States shall promote respect for the full application of the provisions of the Declaration and follow up on its effectiveness.

2. International environmental law

16. In addition to the laws and policies directly affirming indigenous peoples' rights, a number of international environmental treaties regulate the management of lands, including the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. All three conventions derive from the Earth Summit held in Rio de Janeiro, Brazil, in 1992 and address interdependent issues. Predating them are the UNESCO Convention for the Protection of the World Cultural and Natural Heritage of 1972 and the Convention on Wetlands of International Importance especially as Waterfowl Habitat of 1971. In the present report, the Special Rapporteur will focus on the Convention on Biological Diversity and the World Heritage Convention because they both deal with the designation of protected areas.
17. Under article 8 (j) of the Convention on Biological Diversity, the States parties are required to respect, preserve and maintain knowledge, innovations and practices of indigenous peoples relevant for the conservation of biological diversity, to promote their wider application with the approval of knowledge holders and to encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices. Although the human rights of indigenous peoples are not explicitly recognized in the Convention, the Conference of the Parties to the Convention has supported numerous initiatives relating to the rights of indigenous peoples, including the Ad Hoc Open-ended Inter-sessional Working Group on Article 8 (j) and related provisions, established in 1998. The Working Group has developed a number of guidelines to strengthen the inclusion of indigenous peoples in decision-making, including the Mo'otz Kuxtal and Rutzolijirisaxik Voluntary Guidelines, adopted in 2016 and 2018, respectively.

[...]

VIII. Conclusions and recommendations

66. Deforestation and worsening climate change are understandable impetuses to increase the number of protected areas. However, increasing the number protected areas cannot effectively address the causes or consequences of climate change; major changes in cultures of consumption and huge reductions in emissions are ultimately required. In the meantime, indigenous peoples should not be made to pay the costs of inaction on consumption and emissions by non-indigenous societies. There can be no shortcuts to sustainable and effective conservation; it needs to be done together with those who have protected these areas of rare biodiversity for thousands of years. Indigenous peoples must be recognized not only as stakeholders, but as rights holders in conservation efforts undertaken in their lands and territories. Their way of life and knowledge need to be preserved and protected, together with the lands that they inhabit. Respect for the rights of indigenous peoples, and not their exclusion from their territories in the name of conservation, will ultimately benefit the planet and its peoples as a whole.

67. Tangible progress in the recognition of indigenous peoples' rights has been made since the report of the previous mandate holder on this topic in 2016, giving hope for the universal acceptance of new conservation approaches that assert the rights of indigenous peoples. However, better recognition of indigenous peoples' rights urgently needs to be translated into action. States and all other conservation actors, as well as financial institutions, must apply new conservation models, while immediately addressing historical and contemporary wrongs caused to indigenous peoples by conservation projects.
68. It is imperative that, in the post-2020 global biodiversity framework, genuine commitment to a human rights-based approach to conservation be demonstrated by including express recognition thereof in the final text to be adopted at the fifteenth session of the Conference of the Parties to the Convention on Biological Diversity.
69. The Special Rapporteur recognizes the efforts of UNESCO, notably the adoption of the policy on engaging with indigenous people and revisions to the Operational Guidelines for the Implementation of the World Heritage Convention. These are concrete steps in the right direction, but further steps must be taken to implement these policies within the World Heritage Committee and on the ground at World Heritage sites. As the previous mandate holder noted (see A/71/229), it is possible for the nomination of sites for, and their inclusion in, the World Heritage List to be carried out constructively and with the consent of the indigenous peoples affected, ensuring that such procedures would in practice provide an effective contribution to conservation and the protection of human rights. Indigenous peoples should be the ones to nominate and manage their own sites and should fully and effectively participate in processes related to World Heritage sites to ensure respect for their rights, livelihoods and self-determined development.
70. The Special Rapporteur wishes to make the following recommendations. States should:
- (a) Recognize indigenous peoples' special and unique legal status;
 - (b) Provide indigenous peoples with legal recognition of their lands, territories and resources; such recognition should be given with due respect for the legal systems, traditions and land tenure systems of the indigenous peoples concerned;
 - (c) Apply a strict rights-based approach to the creation or expansion of existing protected areas;
 - (d) Only extend protected areas to overlap with indigenous territories when indigenous peoples have given their free, prior and informed consent;
 - (e) Ensure that indigenous peoples have the right of access to their lands and resources and undertake their activities in accordance with their world view, which has ensured the sustainable conservation of the environment for generations, and halt the criminalization of indigenous peoples carrying out sustainable activities linked to their way of life, activities that may be forbidden to non-indigenous peoples;
 - (f) Protect indigenous peoples from encroachment on their ancestral lands and strictly forbid logging and extractive activities in protected areas;
 - (g) Accept official country visits by special procedures to investigate alleged human rights violations at World Heritage sites and in other protected areas.

71. Member States, United Nations agencies, donors and all actors involved in conservation should:
- (a) Allocate funding to support indigenous-led conservancies, and create intercultural channels of communication to encourage the full participation of indigenous peoples in the management of protected areas and the inclusion of indigenous knowledge systems in conservation;
 - (b) Implement efforts to ensure that indigenous peoples, including indigenous women, are well represented in decision-making processes, and adopt a rights-based approach at each stage of the design, implementation and assessment of conservation measures;
 - (c) Learn from indigenous knowledge systems to determine, together with indigenous peoples, conservation protocols related to sacred areas or spaces and important species;
 - (d) Protect and promote the role of indigenous women in preserving, transmitting, applying and developing indigenous scientific knowledge related to conservation and the protection of biodiversity;
 - (e) Include, in collaboration with indigenous peoples, the knowledge and rights of indigenous peoples in conservation-related education curricula;
 - (f) Institute and apply indigenous hiring preferences when recruiting officials for the management of protected areas and environmental protection;
 - (g) In consultation with indigenous peoples, ensure transparent and equitable benefit-sharing for their contributions to biodiversity protection on their lands and territories, and ensure that funding directed towards indigenous peoples is managed by them;
 - (h) Support the development of the capacity of indigenous peoples to participate in and influence international conservation processes, including the post-2020 global biodiversity framework, the nomination and management of World Heritage sites, and the planning and monitoring of, and reporting on, REDD-plus and other conservation and climate change mitigation projects;
 - (i) Adopt a culturally appropriate human-rights based approach when planning and implementing conservation projects, including REDD-plus initiatives, taking into consideration indigenous peoples' distinct and special relationship to land, waters, territories and resources, and ensure that indigenous peoples receive culturally appropriate funding for climate finance opportunities;
 - (j) Establish or strengthen grievance mechanisms that are independent, accessible and culturally appropriate for indigenous peoples;
 - (k) Protect indigenous peoples living in voluntary isolation and initial contact by taking into account their nomadic lifestyle and voluntary isolation as a right of indigenous peoples.
72. UNESCO should apply a strong human rights-based approach to the inclusion of sites in the World Heritage List. Such an approach should include:
- (a) Human rights impact assessments carried out together with indigenous peoples before the nomination process begins;
 - (b) The revision of the World Heritage Committee's rules of procedure to ensure the effective participation of indigenous peoples and United Nations human rights experts in decision-making processes affecting indigenous peoples before the Committee makes its final decision;

- (c) Periodic reporting on, and reviews of, the human rights situation at World Heritage sites and measures to reconsider World Heritage status if requirements are not met;
- (d) The establishment of an independent grievance mechanism for violations at World Heritage sites.

4. Visit to Costa Rica, A/HRC/51/28/Add.1, 13 July 2022⁶³

I. Introduction

1. The present report reviews the situation of the indigenous peoples of Costa Rica, drawing on information received by the Special Rapporteur during his visit to the country from 6 to 17 December 2021 and taking into account the observations made by his predecessor in 2011,¹ the communications issued by mandate holders and the recommendations of other international and regional human rights mechanisms.

[...]

IV. Key challenges pending

A. *Self-determination, self-government and participation*

19. The Indigenous Act (Act No. 6172) recognizes that indigenous peoples have full legal capacity (art. 2) and establishes that indigenous territories must be governed by indigenous peoples according to traditional community-based structures or the laws of the Republic governing them (art. 4). However, the councils and authorities recognized by the indigenous peoples themselves, under their own law and within indigenous territories, are not currently recognized as having legal personality.
20. The Special Rapporteur points out that legal recognition of the indigenous peoples' own authorities was hampered by the enactment of Executive Decree No. 8487 of 10 May 1978, which established, without the consent of the indigenous peoples, comprehensive development associations and imposed them as the sole form of governance within the 24 indigenous territories.
21. The Special Rapporteur received repeated claims that the comprehensive development associations, as imposed State institutions that report to the executive branch, are not suited to guaranteeing representation for indigenous peoples, which have their own system of government. The Special Rapporteur also received information from representatives of indigenous peoples, civil society and State institutions emphasizing that the comprehensive development associations were unsuitable as a system to allow indigenous peoples to exercise their right to self-government, since they are not, as public-interest entities, designed to hold major powers, such as that of governing a people.
22. According to the relevant judicial decision, the comprehensive development associations are the indigenous peoples' official representatives, meaning that any initiative or project by official or private persons or bodies must be handled by them.⁶ The attribution of powers to institutions that do not represent the indigenous peoples has given rise to abuses and violations of indigenous peoples' collective and individual rights. Of particular concern are reports of non-indigenous persons participating in the institutions; the failure to apply indigenous peoples' internal laws when electing their representatives; the improper use of these laws either to

⁶³ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F28%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>.

appoint only supporters to or to expel opponents from comprehensive development associations; the inequitable redistribution of State funds allocated to indigenous peoples; and indigenous peoples' exclusion from the processes of devising and implementing projects in the 24 territories. The Special Rapporteur also received accounts of instances of lands being returned to non-indigenous persons by the comprehensive development associations and of conflicts, sometimes violent, with the indigenous peoples' own authorities.

23. The Special Rapporteur was also informed that, although the comprehensive development associations do not have the power to set up their own security bodies, an unlawful security and sanctions body has been established in Cabagra to implement the comprehensive development association's decisions in the territory. Under indigenous peoples' right to autonomy, only indigenous authorities themselves may establish their own institutions, including security bodies.
24. Many communities complain that the comprehensive development associations sometimes exercise their power arbitrarily in authorizing the processing of permits for health services, the administration of water and electricity and the award of socioeconomic grants, among other things. This prevents the full enjoyment by members of the indigenous peoples of their economic, social and cultural rights.
25. The Special Rapporteur recalls that recognition of the rights to self-determination and self-government enables indigenous authorities to fulfil their role of freely determining their political status and freely pursuing their economic, social and cultural development, including maintenance of order, balance and harmony within society. Unfortunately, the Special Rapporteur was able to verify that this role had been subverted, particularly in the south of the country, by the imposition of comprehensive development associations, which has weakened the indigenous peoples' own authorities, creating intracommunity conflict and weakening the social fabric of the community as a whole.
26. The Special Rapporteur explains that, under international human rights law, the definition of "indigenous peoples" is based on individual self-identification and acceptance by the community as one of its members. Based on the principles of self-determination and self-government, only the indigenous people in question may establish the criteria for membership of that people, in accordance with its own law. The Special Rapporteur therefore considers a major step forward the promulgation in 2019 of Decree No. 41903-MP officially approving the database of persons of Terraba/Bröran ethnicity as a means of identifying genealogical patterns in the Bröran people and declaring it to be in the public interest, a joint initiative undertaken by the people's council of elders and the Supreme Electoral Tribunal.
27. The Special Rapporteur was informed that the National Commission on Indigenous Affairs, which is responsible for protecting indigenous peoples' interests, is another institution imposed on indigenous peoples by the State and is ineffective.
28. Over the years, representatives of the indigenous peoples have submitted various, unsuccessful, proposals for a legal reform that would protect indigenous territories and recognize and protect the indigenous peoples' own self-government authorities. For example, the bill on the autonomous development of indigenous peoples was submitted in 1994 to address the issue of governance and land in a manner consistent with international standards. Enactment was delayed owing to a lack of political will and to private sector opposition. In addition, the political debate

was marked by tensions that culminated, in August 2010, in the forcible removal of a group of indigenous persons from the Legislative Assembly during a peaceful protest in favour of enactment of the bill. Several human rights mechanisms, such as the universal periodic review mechanism and the Special Rapporteur, have recognized the centrality of the issue of indigenous governance and urged Costa Rica to enact the bill, which was shelved in 2018.

29. The Special Rapporteur was able to verify the scant representation of indigenous peoples in national and local State institutions. For example, no indigenous person has ever been appointed to a senior role in the judiciary or the legislature. Positive measures must be taken to ensure the inclusion, representation and participation of indigenous peoples, at all levels, in State institutions and political parties.

B. Right to lands, territories and natural resources

30. Notwithstanding the legislative stride represented by the Indigenous Act (Act No. 6172), which recognizes indigenous territories as “inalienable and imprescriptible, non-transferable and exclusively for the indigenous peoples who live in them”, the Special Rapporteur has received allegations of serious violations of indigenous peoples’ rights on their lands, territories and natural resources.
31. The Special Rapporteur recalls that, for indigenous peoples, their territories are the place where their identity, culture and social system are passed on to the next generation. It is very worrying that much indigenous territory remains in the hands of non-indigenous persons, with none of the effective indemnification recommended by OHCHR and various other human rights mechanisms.
32. According to reports received, the presence of non-indigenous persons in indigenous territories has sometimes caused the indigenous peoples to lose their identity, knowledge, language and food sovereignty, to the detriment of their individual and collective rights. It has also corroded the indigenous peoples’ social fabric, fostering division and conflict within those peoples.
33. In 2016, Costa Rica launched the National Plan for the Recovery of Indigenous Territories, led by the Rural Development Institute. The Special Rapporteur notes that, although this plan encourages the land titling, to date, no restitution has taken place. At the various meetings held with indigenous peoples, mention was made of a number of obstacles preventing this plan from ensuring the effective, fair and equitable restitution of their territories.
34. While the Special Rapporteur acknowledges the allocation of 3.2 billion colones and the preparation of 310 administrative case files by the Government for compensation proceedings, these efforts are insufficient.
35. According to information received, the National Plan for the Recovery of Indigenous Territories has created an ineffective land restitution procedure under which requirements additional to those associated with ordinary administrative eviction proceedings must be met. The comprehensive development associations’ power to request administrative evictions of possessors *mala fide* caused delays and procedural irregularities, since the associations lacked indigenous representation. Questions have also been raised about the Rural Development Institute’s procedure for identifying bona fide and mala fide title holders, on the one hand, and indigenous and non-indigenous persons, on the other, as the Institute does not have sufficient experts to enable it to discharge this duty.

36. The Special Rapporteur is also concerned about delays in implementing the National Plan for the Recovery of Indigenous Territories attributable to the proceedings that may be brought before the Administrative Tribunal at any stage of the process. Furthermore, the Special Rapporteur is worried about reports received about some final judgments in favour of non-indigenous persons handed down by the Administrative Tribunal due to ignorance of the legal framework on indigenous peoples' land rights, and about failures to carry out administrative evictions of non-indigenous persons.
37. Against this backdrop, he is concerned about reports received on judicial decisions relating to forced evictions of indigenous families from their own lands, subsequent threats and violence from non-indigenous persons opposed to the indigenous peoples' land claims – as in the case of the China Kichá indigenous territory – and the failure to adequately investigate indigenous peoples' ownership rights to lands recognized in the Indigenous Act.
38. Although the Special Rapporteur recognizes the importance of protecting nonindigenous persons' rights, in particular when they are in a precarious social position, it is essential that the relevant protocol provided for in the National Plan for the Recovery of Indigenous Territories, not become an instrument for postponing restitution of the indigenous people's lands.
39. The peoples with whom the Special Rapporteur met reported that, in 2011, owing to the lack of political will in State institutions to indemnify them for their lands, which is demonstrated by, among other things, the failure to enact the bill on the autonomous development of indigenous peoples and the ineffectiveness of the National Plan for the Recovery of Indigenous Territories, they were obliged to start organized de facto requisitions of their own lands, since those lands are their only means of earning a living and keeping their culture alive.
40. The Special Rapporteur is concerned about documented acts of violence, such as threats against persons requisitioning lands and two murders of indigenous leaders (see section D), which are under investigation. He is also worried about reported violations of the right of access to basic services, such as water and electricity, on requisitioned plots of land.
41. Indigenous peoples reiterated that requisitioned plots of land are their only source of subsistence, all the more so during the coronavirus disease (COVID-19) pandemic. The Special Rapporteur was able to see that development schemes have been implemented on the requisitioned plots, fostering the recovery of indigenous identity and food self-sufficiency. One example of this is the Crun Shurín plot in the Terraba territory, where sustainable agriculture schemes support at least 26 families and 80 persons.
42. The Special Rapporteur received worrying reports about the environmental and social damage associated with monocultures and agrochemicals, for example, in the Canton of Buenos Aires, including the contamination of soil and water by companies.

[...]

D. Protection of indigenous human rights defenders

47. The Special Rapporteur received worrying reports about attacks on indigenous leaders and human rights defenders, especially in the south of the country, where they have been subjected to intimidation and death threats – including with firearms

– and have had their homes and crops burned in the context of defending their lands, territories and natural resources, without the State having taken appropriate and culturally relevant protection measures. The most common underlying cause is indigenous people's lack of land tenure security.

48. Social conflict has escalated after over 40 years of indigenous territories' being occupied by non-indigenous persons without the introduction of an effective State policy on land restitution, which has led to some farmers systematically resorting to violence, particularly in the south (Cabagra, China Kichá, Salitre and Terraba).
49. Attacks on indigenous peoples have not stopped despite the action taken in response to early warnings and the international community's continuous calls for indigenous peoples' rights to be protected, including the precautionary measures imposed by the Inter-American Commission on Human Rights in favour of the Teribe (Bröran) and Bribri indigenous peoples of Salitre⁹. According to one report, a total of 86 acts of violence against indigenous peoples were documented in 2020.
50. The Special Rapporteur is concerned about the murder of the indigenous leaders Sergio Rojas, in 2019, and Jehry Rivera, in 2020, along with the attempted murder of Minor Ortiz, a Bribri of the Tubölwak clan, and the numerous, persistent threats against and attempts on the life of Pablo Sibar, the leader of the Bröran people; they were all beneficiaries of the above-mentioned precautionary measures.
51. He also finds regrettable the accounts received on the continued threats, violence and acts of racism against indigenous persons involved in requisitioning land, including women and children, for example, in the territories of China Kichá and Maleku. Following the Special Rapporteur's visit to the country, he is concerned about the information received on the attempted murder of a Cabecar indigenous leader for defending his land in Bajo Chirripo, Canton of Matina, Province of Limón, on 30 December 2021, and about the persistent threats and even attacks against persons requisitioning land in China Kichá in 2022. There is no information about the measures taken by law enforcement agencies to prevent these events from recurring or about the outcome of the investigations, prosecutions or how the judiciary has held the perpetrators to account.
52. The impunity for the murder of the indigenous leader Sergio Rojas is particularly worrying. The Special Rapporteur hopes that this impunity will not recur in relation to the murder of the indigenous leader Jehry Rivera, the trial for which was set for October 2021 but, to date, has not taken place. It is especially worrying that, to date, the State has not connected the murder of the two leaders with the conflict over the restitution of indigenous lands and that none of the culprits have been sentenced. Impunity fosters a climate of violence and insecurity for indigenous peoples.
53. The Special Rapporteur also received information about a lack of adequate individual and collective protection measures that include an intercultural and gender perspective and have been the subject of proper consultations and agreed with the affected indigenous peoples.
54. A further cause for concern is the information provided to the Special Rapporteur in China Kichá about the alleged excessive use of force by the police against indigenous persons involved in requisitioning land in March 2020.

[...]

VI. Conclusions and recommendations

90. The Special Rapporteur wishes to underscore the openness and cooperativeness of the Government and various State institutions. They acknowledge the challenges identified and the need to undertake a reform process, in order to advance the protection of indigenous peoples' rights, and are prepared to accept the observations constructively. The Special Rapporteur acknowledges the new Government's political will and the progress it has made; he urges the Government to continue making progress.
91. The Special Rapporteur points out that the structural causes of violations of indigenous peoples' rights are the lack of an appropriate land restitution policy and of a legal framework ensuring recognition of indigenous peoples and their own authorities. He is particularly concerned about the structural racism that permeates State institutions, in particular at the local level; the failure to realize indigenous peoples' economic, social and cultural rights; and the lack of effective measures to protect human rights defenders.
92. The Special Rapporteur underscores that the State must work together cooperatively with the indigenous peoples on applying all the recommendations included in this report.

Legal and institutional framework

93. The Special Rapporteur recommends that the State:
 - (a) Comprehensively revise the current legal framework by incorporating the recognition of indigenous peoples and their collective rights, including the right to indigenous justice at the constitutional and legal levels, and adjustments to the terminology relating to peoples and territories;
 - (b) Respect each people's membership criteria based on its self-identification processes and guarantee explicit and formal recognition of indigenous peoples in domestic law by means of constitutional, statutory or judicial measures, in accordance with the principle of self-identification and self-determination;
 - (c) Provide the indigenous peoples with appropriate redress for human rights violations relating to the lack of indemnification in respect of their lands, for ignorance of their self-governance structures and for imposition of the comprehensive development associations;
 - (d) Foster constructive dialogue with the indigenous peoples, in order to carry out a comprehensive and participatory legislative reform that meets international human rights standards, with a view to guaranteeing self-determination and recognition of each people's own institutions, in accordance with their specific characteristics;
 - (e) Provide indigenous peoples' own institutions with the financial and technical resources necessary to ensure that they function properly, in coordination and consultation with the peoples themselves;
 - (f) Draw up a national action plan on business and human rights that complies with the United Nations Guiding Principles on Business and Human Rights, in consultation with stakeholders, including the indigenous peoples, and in accordance with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the United Nations Declaration on the Rights of Indigenous Peoples.

Self-determination, self-government and political participation

94. The Special Rapporteur recommends that the State:

- (a) Guarantee the legal personality of each indigenous territory's own governance institutions in accordance with the principle of self-identification, even though the indigenous peoples existed before the State and the granting of legal personality is merely a declaratory rather than a constitutive act and is not a condition for the exercise of their rights;
- (b) Refrain from making the granting of legal personality to a given indigenous people subject to formalistic or excessive requirements;
- (c) Create, in consultation with the indigenous peoples, an agile, simple and effective mechanism for granting legal personality to indigenous authorities, in accordance with international standards;
- (d) Evaluate, in consultation and coordination with the indigenous peoples, any changes to domestic political and administrative divisions that might be necessary, in order for those peoples' autonomous territories to actually function;
- (e) Amend, in consultation with the indigenous peoples, Executive Decree No. 8487, in order to ensure that the use of comprehensive development associations in indigenous territories is optional and not compulsory, as it has been to date, in anticipation of a comprehensive legislative reform that includes the restructuring of the associations in the indigenous territories, in cases where the association has been accepted by the indigenous authorities;
- (f) Foster and enhance indigenous peoples' direct participation in all areas of decision-making and take positive measures, in accordance with the international human rights framework, to encourage indigenous persons' participation in all State institutions and political parties;
- (g) Reform, in consultation with the indigenous peoples, the National Commission on Indigenous Affairs.

95. The Special Rapporteur recommends that the indigenous peoples: (a) Foster internal dialogue between different parties or persons representing different positions within the indigenous authorities, in order to reach a joint position on governance and autonomy, including through mediation by authorized external actors, if that is deemed necessary.

Right to lands, territories and natural resources

96. The Special Rapporteur recommends that the State:

- (a) Allocate sufficient financial and human resources to the National Plan for the Recovery of Indigenous Territories and set out, in partnership with the indigenous peoples, a strategy for prioritizing land restitution that includes:
 - (i) Identification and monitoring of obstacles and progress;
 - (ii) Accountability for moving the Plan forward, including measurement of lands.
- (b) Ensure that the evictions resulting from the implementation of the National Plan for the Recovery of Indigenous Territories are conducted in accordance with international standards;
- (c) Adopt an appropriate financial plan for compensating possessors bona fide within reasonable time frames;
- (d) Work with indigenous authorities on ad hoc land restitution plans for each territory that prioritize administrative evictions of non-indigenous persons who

are making threats and causing violence within the territories, including the indigenous territories protected by precautionary measure No. 321/12 of the Inter-American Commission on Human Rights;

- (e) Publicly recognize the legitimacy of requisitioned plots of land and guarantee their possessors' right of access to basic services, such as water.

Consultation and free, prior and informed consent

97. The Special Rapporteur recommends that the State:

- (a) Allocate to the Technical Unit for Indigenous Consultation the financial resources and technical staff it needs to duly handle requests for consultations;
- (b) Provide each territory with appropriate resources to enable it to establish its own indigenous territorial consultation body competent to handle requests for consultations;
- (c) Ensure that indigenous people's own authorities participate in all consultations, including those held by the General Mechanism for Consultation with Indigenous Peoples;
- (d) Amend the Legislative Assembly's rules of procedure to equip it with a consultation mechanism that complies with international standards for the enactment of future legislation;
- (e) Establish an internal consultation mechanism that complies with international standards for the judiciary.

Protection of indigenous human rights defenders

98. The Special Rapporteur recommends that the State:

- (a) Address the situation of systematized violence with a suitable policy on land requisition;
- (b) Agree on, with the indigenous peoples affected, appropriate individual and collective preventive and protective measures to be taken by law enforcement agencies, ensuring that these measures include an intercultural and gender perspective;
- (c) Provide State law enforcement agencies with the financial and human resources they need to properly apply the above-mentioned preventive and protective measures;
- (d) Take steps to ensure the presence of indigenous officials in State law enforcement agencies, including in leadership positions;
- (e) Ensure that there are appropriate mechanisms in place to punish discriminatory or racist behaviour against indigenous persons by law enforcement agencies;
- (f) Investigate, try and punish the perpetrators of attacks, including threats, against indigenous leaders; (g) Ensure the administrative and judicial investigation, prosecution and punishment of the perpetrators of the alleged excessive use of force by the police against indigenous persons involved in requisitioning land in China Kichá in March 2020;
- (h) Take appropriate individual and collective redress measures in respect of indigenous victims, in particular those belonging to the Bribri and Bröran indigenous peoples of Salitre and Terraba, respectively, for the murders of the indigenous leaders Sergio Rojas Ortiz and Jehry Rivera, including, but not limited to:

- (i) Guarantees of non-recurrence by means of preventive programmes and an early warning system, with the participation of the Office of the Ombudsman;
- (ii) Measures of satisfaction, such as a public apology.
- (i) (*sic*) Ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

Protected areas and environmental programmes

99. The Special Rapporteur recommends that the State:

- (a) Include free, prior and informed consultation of and consent from indigenous peoples as a prerequisite for the establishment of protected areas in indigenous territories and in territories of cultural significance to indigenous peoples;
- (b) Ensure indigenous peoples' participation in the management, administration and control of protected areas;
- (c) Guarantee access to and enjoyment by indigenous peoples of natural resources so that they may engage in cultural, ancestral and subsistence activities;
- (d) Allocate adequate environmental funds, managed by indigenous people's own authorities, and ensure accessibility for management of those funds.

Access to justice

100. The Special Rapporteur recommends that the State:

- (a) Continue to draft the policy on access to justice and conduct the necessary assessments with the active participation of indigenous peoples, in accordance with international standards, and with the technical assistance of OHCHR;
- (b) Investigate, prosecute and punish acts of violence, including sexual violence against indigenous women, and discrimination against indigenous persons;
- (c) Remove the barriers to access to justice faced by indigenous women, including women with disabilities;
- (d) Provide effective ongoing training on indigenous peoples' rights, their world view and reviewing treaty compliance for all local-level judicial staff, with a particular focus on the elimination of racial discrimination, and take appropriate measures to prevent and punish discriminatory and racist behaviour by prosecutors, judges and the investigators of the Judicial Investigation Agency, especially in the Canton of Buenos Aires;
- (e) Provide sufficient financial and human resources to ensure the availability of culturally appropriate support services during judicial proceedings involving indigenous persons, including the provision of interpreters free of charge, whenever necessary or upon request;
- (f) Include indigenous peoples' rights and their world view as compulsory subjects in the competitive recruitment examinations for the judiciary and for State law enforcement agencies;
- (g) Incorporate the study of indigenous law into the curricula of university law faculties and of the police training academy as a compulsory subject, with the relevant teaching materials being put together in partnership with experts in the field and with the participation of the indigenous peoples;
- (h) Ensure that it is the indigenous peoples themselves who define the procedural concepts of "cultural diversity" and "cultural expertise", based on their own cultures and world views;

- (i) Promote and bolster processes of establishing indigenous justice institutions and equip them with the material resources and tools they need to exercise their jurisdiction autonomously and, where appropriate, ensure sufficient cooperation and coordination between the ordinary and indigenous justice systems.

Indigenous women and participation

101. The Special Rapporteur recommends that the State:

- (a) Take effective measures to prevent and provide redress for the physical and psychological abuse suffered by indigenous women in the context of land conflicts;
- (b) Ensure that indigenous children's rights are respected by the legislature, executive and judiciary, in accordance with international standards, and that, in accordance with the Convention on the Rights of the Child, as interpreted by the Committee on the Rights of the Child, State institutions, such as the National Child Welfare Agency:
 - (i) Apply the principle of the best interests of the child in consultation with the indigenous peoples;
 - (ii) Offer the indigenous peoples the opportunity to participate in determining the best interests of indigenous children in general so that the applicable cultural context is taken into account;
 - (iii) Take measures that systematically apply the principle of the best interests of the indigenous child, assessing the impact of their decisions and actions on children's rights and interests;
 - (iv) Train their staff on indigenous children's rights;
 - (v) Reconsider cases in which indigenous children have been removed from their families as a result of women's participation in land requisition processes.
- (c) Promote indigenous women's participation in the enjoyment of fair access to land and resources in land restitution processes;
- (d) Recognize, by means of specific funds, indigenous women's role in environmental conservation;
- (e) Increase the resources allocated to fostering entrepreneurship among indigenous women and, in coordination with those women, offer them whatever capacity-building opportunities they think necessary to enhance their skills;
- (f) Take affirmative action to ensure indigenous women's participation in politics, including recognition of the National Forum of Indigenous Women as a public stakeholder in its own right;
- (g) Promote, in coordination with indigenous women's organizations, initiatives for raising awareness within indigenous communities of women's rights, discrimination, violence against women and other relevant issues.

102. The Special Rapporteur recommends that the indigenous peoples: (a) Undertake to guarantee indigenous women's access to land tenure within their jurisdictions; (b) Ensure that indigenous women have significant opportunities to participate in making decisions on, among other things, the use of indigenous lands. Economic, social and cultural rights

103. The Special Rapporteur recommends that the State:

- (a) Gather statistics disaggregated by gender, age and disability on the indigenous peoples, in order to safeguard their rights, including those to health care and education. To this end, State institutions should work together with representatives of the indigenous peoples, including women, to develop suitable indicators that will, among other things, prevent interrelated forms of discrimination;
- (b) Adopt a holistic and culturally appropriate approach to eradicating poverty in indigenous communities: To this end, the State should, among other things:
 - (i) Allocate sufficient financial resources to enable the indigenous peoples to design and implement their own development and well-being models relating to food sovereignty, protection of biodiversity, cultural heritage and other relevant issues;
 - (ii) Design the national development plan with the participation of indigenous peoples;
 - (iii) Guarantee equitable and quality access to public services, including water.
- (c) Remove barriers preventing communities from gaining access to equitable education, and improve Internet access in all territories;
- (d) Bolster existing human, technical and financial resources to ensure the full implementation of intercultural bilingual education in cooperation with the indigenous peoples;
- (e) Move forward with an intercultural education model by updating the curricula of all the country's educational institutions, incorporating the teaching of indigenous history, culture, sciences and world views and improving the teaching of indigenous languages;
- (f) Increase existing human, technical and financial resources and provide cultural training to ensure the delivery of education, health-care and social services in indigenous communities, and continue to support the social programmes implemented in those communities;
- (g) Remove the barriers preventing indigenous peoples, in particular women and persons with disabilities, from gaining access to social assistance schemes;
- (h) Train health-care personnel with a view to eliminating all racist or discriminatory practices from the health-care system, and provide appropriate, quality services;
- (i) Prioritize sexual and reproductive health programmes for indigenous girls and women;
- (j) Develop an intercultural health-care system that ensures respect for indigenous medicine and science and that provides services in indigenous languages;
- (k) Adopt appropriate policies and programmes for indigenous persons with disabilities, in particular at the community level, in cooperation with the indigenous peoples and with persons with disabilities;
- (l) Devise a holistic and culturally appropriate strategy for preventing suicide, alcoholism and drug abuse among indigenous persons, including young persons;
- (m) Take appropriate measures, in line with the Guiding Principles on Business and Human Rights, to prevent and provide redress for the environmental damage and human rights abuses associated with monocultures, including pollution of soil and water, paying particular attention to the buffer zones of protected areas.

104. The Special Rapporteur recommends that public and private companies: Refrain from breaching human rights and adopt human rights due diligence processes, with a view to identifying, preventing, mitigating and providing redress for, where applicable, actual or potential impacts on the human rights of indigenous peoples.
105. The Special Rapporteur recommends that the United Nations system:
- (a) Continue working on its action plan, in coordination with the indigenous peoples and the State, focusing on prevention and protection;
 - (b) Support the State in implementing the recommendations made in this report and by other United Nations mechanisms.

5. Indigenous peoples and coronavirus disease (COVID-19) recovery, A/HRC/48/54, 06 August 2021⁶⁴

I. Introduction

1. The present report supplements and follows up on the report of the Special Rapporteur on the rights of indigenous peoples to the General Assembly in 2020. The findings from that report regarding the initial impacts of the COVID-19 health crisis on indigenous peoples are still, a year on, very valid. In that report, concerns were raised in the following areas: disproportionate health impacts; an increase in discrimination and marginalization; the exacerbation of economic and social inequalities; the lack of access to COVID-19 information, personal protective equipment, testing and treatment; the impact of restrictions imposed on indigenous human rights defenders; and the continued operation of business activities encroaching on indigenous lands during the pandemic.

[...]

VI. Conclusions and recommendations

82. During the COVID-19 recovery phase, States must fulfil their obligations to indigenous peoples in accordance with the commitments made under the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international human rights standards. Recovery and post-pandemic decision-making must involve the representatives, leaders and traditional authorities of indigenous peoples in the design and implementation of culturally appropriate recovery efforts.
83. In order to effectively recuperate from the current pandemic and better prepare for future health crises, States should adopt the measures set out below.
84. In the short-term, States should:
 - (a) Involve indigenous organizations and leaders in the design and implementation of vaccine programmes to combat anti-vaccine misinformation, address historical mistrust, ensure cultural and language protocols are followed and provide comprehensive coverage;
 - (b) Consult indigenous peoples and obtain their free, prior and informed consent, through their representative organizations before planning and implementing rights-based COVID-19 responses and recovery measures;
 - (c) Provide emergency financial aid to cover lost revenues for indigenous communities unable to carry out their traditional economic activities, including pastoralism, animal husbandry, fishing, hunting and gathering;

⁶⁴ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F54&Language=E&DeviceType=Desktop&LangRequested=False>.

- (d) Adopt effective measures to ensure culturally appropriate access to health facilities and remove barriers to accessing health care and the delivery of necessary services to address the COVID-19 pandemic, such as testing and treatment;
- (e) Ensure that vaccination strategies and health guidelines targeted at indigenous peoples are culturally appropriate and communicated in indigenous languages;
- (f) Provide vaccines to all persons free of discrimination, including indigenous peoples, and support programmes such as COVAX, the global initiative for equitable access to COVID-19 vaccines;
- (g) Prioritize indigenous peoples for vaccine delivery because of their vulnerability, with due consideration of the specific situation of indigenous peoples living in urban areas, off reserve and outside their communities, indigenous peoples living in voluntary isolation and initial contact and those living nomadic or seminomadic lifestyles, and pay due respect for their right to self-identification;
- (h) Develop resources and expand social safety nets to respond to increased incidents of gender-based violence, child abuse, mental illness and addiction exacerbated by the pandemic;
- (i) Ensure urgent and effective measures to ensure the survival of indigenous peoples living in remote areas who are affected by the pandemic;
- (j) Adopt moratoriums on extractive projects impacting the lands of indigenous peoples during the COVID-19 recovery phase and ensure that private companies adopt COVID-19 protocols that respect the right of indigenous peoples to free, prior and informed consent;
- (k) Implement effective measures to end the criminalization of defenders of the rights of indigenous peoples and repeal counter-terrorism laws targeting indigenous peoples;
- (l) Refrain from promulgating legislation that undercuts the rights of indigenous peoples to lands, self-determination and free prior and informed consent;
- (m) Adopt effective national responses that include measures to secure land rights and implement conservation approaches that recognize the close relationship of indigenous peoples with nature and engage them as stewards of the environment and natural resources;
- (n) Ensure that pandemic emergency plans, responses and recovery measures recognize and support indigenous autonomy and inherent jurisdiction;
- (o) Prevent, investigate and punish acts of violence committed by State and non-State actors against indigenous peoples during the pandemic.

85. In structural terms, States should:

- (a) Adopt measures to eliminate systemic, institutional racial discrimination and implicit bias in public health-care systems and emergency response planning through awareness raising and anti-racism training;
- (b) Engage in a sustained dialogue with indigenous peoples on the long-term consequences of the pandemic for cultural heritage and livelihoods;
- (c) Ensure that COVID-19 recovery measures address the long-term needs and financial impact of the pandemic on indigenous peoples in terms of education, employment, housing, health and other social services;
- (d) Collect disaggregated data to inform future decision-making and implement strategies to collect disaggregated data on indigenous communities that
 - (i) are approved and carried out by the communities themselves,

- (ii) will assist in better understanding the disproportionate impact on indigenous peoples and
- (iii) are regularly and accurately updated and maintained in future;
- (e) Address food and nutritional insecurity with culturally appropriate health resources that reinforce and support the resilience of indigenous food systems, focusing on land-based solutions that recognize the collective territorial rights of indigenous peoples;
- (f) Implement measures to bridge the digital divide and technology gap by increasing the number of mobile phone towers, improving Internet access and funding indigenous community radio stations;
- (g) Adopt measures to address gender inequality in accessing health services, social benefits and employment;
- (h) Promote policies to strengthen the transmission of indigenous languages and knowledge to future generations and the role of women as knowledge keepers as a way to prevent and mitigate future pandemics;
- (i) Implement the United Nations Declaration on the Rights of Indigenous Peoples, in particular articles 21, 22, 23 and 24 recognizing the right to health and the right to be actively involved in developing health programmes;
- (j) Support mutual aid initiatives within and between indigenous peoples.

6. The situation of indigenous peoples in Asia, A/HRC/45/34/Add.3, 4 September 2020⁶⁵

I. Introduction

1. With the aim of engaging with indigenous peoples in the region, the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, conducted a regional consultation jointly with the Office of the United Nations High Commissioner for Human Rights in Bangkok and with support of the Asia Indigenous Peoples Pact and the Indigenous Peoples' International Centre for Policy Research and Education. The consultation was held in Bangkok from 13 to 15 November 2019 and attended by more than 100 representatives of indigenous peoples' organizations from Bangladesh, Cambodia, India, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, Nepal, Philippines, Timor-Leste, Thailand and Viet Nam, as well as Taiwan Province of China. Academics, lawyers and representatives of civil society organizations, independent national human rights institutions, the United Nations Environment Programme and the International Union for Conservation of Nature (IUCN) also participated.
2. The consultation focused on self-determination, indigenous governance and justice systems; lands, territories and resources; conservation; climate change; business and human rights; human rights defenders; and the Sustainable Development Goals. The impact of climate change on the enjoyment of economic, social and cultural rights was emphasized, as was the critical role played by indigenous peoples in protecting the environment, including through traditional knowledge. The consultation aimed, among other things, to exchange experiences and discuss the current challenges faced by indigenous peoples in Asia.

[...]

⁶⁵ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F34%2FAdd.3&Language=E&DeviceType=Desktop>.

II. Overview of human rights issues facing indigenous peoples in Asia

A. Self-determination, indigenous governance and justice systems

5. The exercise of the right to self-determination can be realized through autonomy or self-government and is indispensable for indigenous peoples to pursue their economic, social and cultural development and enjoy all the collective and individual human rights pertaining to them. The United Nations Declaration on the Rights of Indigenous Peoples sets out the right of indigenous peoples to maintain and develop their own indigenous decision-making institutions and political, economic and social systems. States should, in consultation and cooperation with indigenous peoples, support measures, including legislative measures, to achieve the ends of the Declaration, as well as ways and means for financing their autonomous functions.
6. The degree of legal recognition of indigenous peoples varies across Asia. Certain countries, including Bangladesh, Cambodia, India, Indonesia, Malaysia, Nepal, the Philippines and Timor-Leste, have adopted legal provisions that provide some autonomy through the recognition of customary justice practices or communal land rights. Constitutional recognition of indigenous peoples exists in certain parts of India (Nagaland and Mizoram, in the north-east), Malaysia (Sabah and Sarawak) and the Philippines (the Cordilleras and Mindanao). In Bangladesh, the Chittagong Hill Tracts Accord of 1997 creates a special tripartite administrative system that combines elective, civil servant and traditional indigenous authorities.⁸ In most Asian countries, however, there are significant gaps between legislation and practice, as well as legislative inconsistencies.
7. Recognition of indigenous customary justice practices is an important element of implementing self-governance. For indigenous peoples, State justice systems are often associated with a history of colonialism, dispossession and racial discrimination.
8. Participants in the regional consultation discussed the advantages of customary justice practices, including their accessibility (aspects such as geography and indigenous languages), their relative timeliness, their affordability and their non-adversarial nature. Challenges were also identified, notably the insufficient participation of women. It was noted that women face obstacles to attaining equal access to justice in patriarchal systems, be they State or customary justice systems.
9. Many participants emphasized that, while indigenous and other traditional and customary systems are able in many cases to provide effective forms of redress, overall access to justice remains a major issue. Several participants noted the highly disproportionate rate of incarceration of indigenous persons in State justice systems compared to nonindigenous persons. Intercultural dialogue and meaningful engagement between indigenous and State justice systems are needed in order for them to coordinate and harmonize their coexistence and strengthen the respect for human rights in both systems.
10. In the context of efforts to achieve Sustainable Development Goal, indigenous justice systems are receiving increasing attention globally for their potential role in promoting the rule of law and effective, accountable and inclusive institutions in a manner consistent with human rights.⁹ The Special Rapporteur is convinced

that indigenous and State justice systems should be seen as complementary and necessary to guarantee effective and equal access to justice for indigenous peoples. She calls for stronger measures to exchange information and harmonize the systems.

71. Strengthened legal recognition, autonomy and self-governance among indigenous peoples should be viewed as part of nation-building rather than as posing a risk of fragmentation; such recognition will result in societies based on inclusiveness and increase the legitimacy of the State. The Special Rapporteur emphasizes that the adequate implementation of the right to autonomy and self-governance implies changes in the governance of State authorities, which will have a constructive impact on human rights compliance, the remedying of discrimination, marginalization and inequality, the building of more democratic, participatory and inclusive societies and ultimately, the enhancement of sustainable development for all.

[...]

III. Conclusions and recommendations

69. Indigenous peoples in Asian countries continue to face discrimination and marginalization. Human rights violations stem from the lack of effective protection in domestic laws and policies regarding indigenous peoples' rights over their traditional territories, lands and natural resources, as well as the failure to respect their rights to participate and to be consulted, in good faith, in decisions affecting them and to obtain their free, prior and informed consent. Land-grabbing and activities linked to largescale development projects (including the construction of hydroelectric dams), extractive industries, monocrop plantations and logging are increasing in the region, which in turn results in the massive displacement of indigenous peoples, the destruction of their environment and rising poverty.
70. The promotion of the rights of indigenous peoples and their traditional practices, are key to sustainable conservation, biodiversity and climate change adaptation and mitigation measures. For States to put into action their development pledge of leaving no one behind, the obligations towards indigenous peoples must be at the forefront and must be reflected in effective policy measures and in the effective allocation of resources.

A. Self-determination, indigenous governance and justice systems

71. Strengthened autonomy and self-governance among indigenous peoples must be viewed as a part of nation-building. Implementation of these rights implies making changes in the governance of State authorities that will have a constructive impact on human rights compliance, the remedying of discrimination, marginalization and inequality and the building of more democratic, participatory and inclusive societies. Ultimately, it will enhance sustainable development for all. Indigenous governance systems that are still functioning should be recognized and strengthened. The use of indigenous languages in schools and in the courts should be supported.
72. The rights of indigenous peoples to be identified, to their lands, territories and resources and to self-determination must be respected and protected at all times. Consequently, States must ensure that indigenous people participate in decision making and must acquire the free, prior and informed consent of indigenous peoples on all matters affecting them.
73. Indigenous and State justice systems should be seen as complementary and necessary for guaranteeing effective access to justice for indigenous peoples and

stronger measures should be taken to harmonize the systems. Intercultural dialogue is needed between indigenous and State justice systems in order to coordinate and strengthen respect for human rights in both systems.

B. Lands, territories and resources

74. Laws that recognize the collective rights of indigenous peoples to their lands, territories and resources should be adopted and implemented. Contradictory sectorial legislation on land use, such as conflicting provisions on forestry and mining, should be reformed.
75. States should, in consultation with indigenous peoples, develop mechanisms for the registration, demarcation and titling of lands and territories traditionally owned, occupied and used. The right of indigenous peoples to have their free, prior and informed consent obtained should be respected whenever socioeconomic projects, infrastructure projects or projects for the extraction of natural resources are implemented in their lands and territories.
76. International donors that support land registration processes should be mindful of the implications of such processes for indigenous peoples and ensure that they respect the rights of indigenous peoples, including their right to participate in processes that affect them.

C. Conservation

77. There needs to be better understanding of indigenous traditional practices, such as rotational crop cultivation and forest management, and the contribution of indigenous peoples to the conservation, protection and sustainable use of biodiversity. Indigenous peoples should be consulted and participate in designing, implementing, managing and monitoring conservation initiatives and have effective access to complaints mechanisms to seek remedies for violations of their rights. National laws that make illegal the traditional livelihood practices of indigenous peoples, such as shifting cultivation, should be repealed.
78. Tourism cannot be prioritized over the rights of indigenous communities. Protected areas should not be declared, nor should UNESCO World Heritage status applications be submitted, without consultation and without obtaining the free, prior and informed consent of the indigenous peoples affected.

D. Climate change

79. Indigenous traditional knowledge is crucial for combating and adapting to climate change. Platforms for information exchange about traditional practices among indigenous peoples should be strengthened.
80. Climate finance has the potential to bolster the efforts made by indigenous peoples to adapt to climate change and contribute to climate change mitigation. Unless it is based on respect for the land rights and traditional livelihood practices of indigenous peoples, however, climate finance without adequate human rights safeguards has the potential to undermine the rights of indigenous peoples. Climate change-related projects must be designed with the meaningful participation of and in consultation with indigenous peoples. States, funders and donors all carry responsibilities in this regard.

E. Business and human rights

81. States and private companies should comply with the Guiding Principles on Business and Human Rights and independent monitoring of this should be strengthened.

82. States must strengthen the legal regulations of private companies and the procedures for environmental and human rights impact assessments prior to the commencement of a business activity. The outcomes of environmental and human rights impact assessments should be accessible, available in indigenous languages and reflect the projects' impacts on the economic, social and cultural rights of indigenous peoples.
83. National action plans to implement the Guiding Principles on Business and Human Rights should be developed. In the process, the participation and consultation of indigenous peoples should be ensured, and the full protection of their rights should be reflected in the national action plans. Where national action plans are adopted, indigenous peoples should be involved in their implementation.
84. Indigenous peoples' rights should be protected in the context of international investment agreements, including in relation to decisions on the content of such agreements and of related negotiation processes, investment dispute settlements and corporate obligations, as well as measures to mitigate the impact of international investment agreements. Investor-State dispute settlement mechanisms should be reformed in order to conform with international human rights standards.
- F. Suppression of the right to freedom of association and attacks against and criminalization of indigenous human rights defenders
85. States must take measures to prevent violence and attacks against and the intimidation, harassment and criminalization of indigenous peoples arising from the exercise of their rights and the defence of their lands and territories against business activities, including activities linked to the extractive industries, the construction of hydropower dams, agribusiness, logging and tourism projects. Perpetrators of such violations should be held accountable. Counter-terrorism laws that are used to criminalize indigenous peoples should be amended to ensure that the human rights of indigenous peoples are protected.

G. Sustainable Development Goals and economic, social and cultural rights

86. States should establish effective mechanisms for ensuring the sustained engagement, participation and inclusion of indigenous peoples in developing and implementing laws, policies and programmes, taking into account intersectional and multiple forms of discrimination relating to gender, disability, age and sexual orientation. Disaggregated data on indigenous peoples should be collected in order to inform effective policy measures. Effective participation of indigenous peoples in designing, implementing and evaluating education, health and welfare services should be ensured so that the knowledge and cultures of indigenous peoples can be integrated into such services.
87. United Nations country teams, United Nations entities in the region and international donors should promote the participation of indigenous peoples in assessing the national implementation of the Sustainable Development Goals.

7. The impact of COVID-19 on the rights of indigenous peoples, A/75/185, 20 July 2020⁶⁶

I. Introduction

1. This is the first report to the General Assembly by the new holder of the mandate of Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, pursuant to Human Rights Council resolution 42/20. It summarizes the activities of the mandate since the last report of the previous mandate holder (A/74/149) and analyses the specific impacts on indigenous peoples of the coronavirus disease (COVID-19) pandemic.

[...]

V. Conclusion and recommendations

90. The pandemic has exposed weaknesses and exacerbated disparities in public health and social security systems, leaving indigenous peoples behind in national responses and compounding the wider range of systemic violations they already faced. As the world prepares strategies to mitigate the socioeconomic consequences of confinement and reduced economic activity, human rights, including the rights of indigenous peoples, must be at the centre of recovery programmes. Given continuing or resurgent waves of transmission, national and local governments must also ensure that human rights-based pandemic emergency protocols are developed together with indigenous peoples. Ensuring that women have a leadership role is particularly important to ending the intersecting discrimination they face, and the situation of indigenous older persons, persons with disabilities, women, children, youth, lesbian, gay, bisexual, transgender, queer and intersex persons and human rights defenders must also receive specific attention.
91. The collective right of indigenous peoples to health entails the possibility of running their own health-care systems and applying a holistic approach to health care, incorporating their rights to culture, land, language and the natural environment.
92. Many indigenous peoples rely on fragile ecosystems for their sustenance and survival. As they are already threatened by climate change, reducing environmental protection in the name of promoting economic recovery would disproportionately have an impact on indigenous peoples. The pandemic must be an occasion for transformative change, including by ending the overexploitation of natural resources and emissions contributing to global warming, and reversing increasing socioeconomic inequality within and between nations.
93. The Special Rapporteur encourages all Member States and other international actors to act collectively and in solidarity to rapidly scale up emergency support for indigenous peoples in all their diversities, including for sufficient and culturally appropriate testing, personal protective equipment and treatment and for community services such as those relating to water and sanitation, health and social protection. Distribution of relief should never discriminate against anyone on such grounds as indigenous status, ethnicity, race, nationality (including statelessness), disability, age, sexual orientation or gender identity.
94. The Special Rapporteur endorses already issued guidance and recommendations on the rights of indigenous peoples in the context of the COVID-19 pandemic, including from OHCHR and the Inter-Agency Support Group on Indigenous Peoples' Issues.

⁶⁶ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F185&Language=E&DeviceType=Desktop>.

95. The Special Rapporteur further highlights the below recommendations to States, indigenous authorities and organizations, international donors, United Nations entities and business companies.

Planning and delivery of health care

96. Indigenous authorities, communities and associations should prepare or update contingency plans for pandemics, identifying the areas they can manage entirely independently and those where they may require support. The plans should include options for the isolation of sick members of the community, as well as a communication tree, clearly identifying the counterparts within the local and regional governments with which they will coordinate or collaborate. They should designate individuals within the community as focal points for implementation.
97. Indigenous peoples are encouraged to share information with State authorities and independent institutions such as national human rights institutions on the public health and human rights situation they face during the pandemic, provided that such authorities reciprocate and respect the continuing right of indigenous peoples to control their information. Indigenous peoples are also encouraged to share their good practices and traditional knowledge to inform solutions for the wider society.
98. States should update pandemic contingency plans and laws and ensure that such plans include specific measures and dedicated funding for indigenous peoples, and identify specific proactive communication channels, such as a directory with contact information for chiefs and other leaders, including in urban areas. States should also rely on indigenous knowledge to inform their overall responses.
99. To respect the rights to self-determination and self-governance, States and indigenous communities should prepare forward-looking tailored health-care and prevention protocols and virus containment measures, on the basis of transparent and accountable two-way consultation with representatives of indigenous authorities and organizations. Any emergency or unplanned State measures that could have an impact on the rights of indigenous peoples must first receive their free prior and informed consent, if necessary with the assistance of intercultural facilitators to explain the necessity and impact of the measures. The specific situation of indigenous peoples living in voluntary isolation must be taken into account, and planning may involve collaboration with other non-isolated indigenous communities in the area.
100. Data on indigenous women, children, elders, persons with disabilities and lesbian, gay, bisexual, transgender, queer and intersex and two-spirit persons in the health-care system should be systematically collected and analysed to identify and address any discrimination in the impact of measures or in access to health care, recognizing the potentially differing experiences of indigenous peoples living in urban settings, indigenous communities (including in voluntary isolation and in initial contact) and mixed settings.
101. Indigenous peoples in urban and rural settings should receive timely and accurate information on care and prevention during the pandemic, as well as, for instance, on support services for victims of gender-based violence during any periods of confinement, in accessible languages and formats (radio, social media, easy-read) that have been identified by the communities. States should also fund indigenous peoples' own initiatives in this regard.

102. Health-care protocols and preventive measures applicable to indigenous peoples should take into account their distinctive concepts of health, including their traditional medicine. They should be jointly developed and delivered by State health institutions and indigenous health systems that complement each other. Where distinct indigenous health structures do not exist, States should support their creation. States should also coordinate with indigenous peoples to ensure continuity of medical care for non-COVID indigenous patients.

Prevention and containment measures

103. States should support, and when requested assist in the enforcement of, any decision by indigenous communities to restrict access to their territories to prevent virus spread. Where health professionals from outside the community enter the community, for example, for mobile testing clinics, such persons may in principle be expected to have tested negative for the virus before arrival.

104. Nationwide lockdown and quarantine measures should be non-discriminatory in their application and enforcement, demonstrably necessary and proportionate, authorized for specific prescribed periods of time (potentially subject to renewal) and compliant with international human rights laws and standards. Such measures must accommodate indigenous peoples' traditional way of life, practices and institutions to mitigate any disproportionate impact on them.

105. If States close or restrict border crossings, special safeguards should protect the rights of indigenous peoples whose families, communities or peoples are divided by the borders.

106. Given the new pandemic-related risks, the resumption or continuation of business activity occurring on indigenous territory should take place only with the renewed consent of concerned indigenous peoples. States should consider a moratorium on all logging and extractive industries operating in proximity to indigenous communities. Neither State authorities nor businesses should be permitted to exploit the situation to intensify activities to which indigenous peoples have objected.

107. States should refrain from introducing legislation or approving extractive or similar projects in the territories of indigenous peoples in any circumstance where measures against COVID-19 prevent proper consultation and consent. States should equally refrain from proceeding to or threatening indigenous peoples with eviction of from their lands and seek to demilitarize indigenous lands.

108. Regular evidence-based evaluation of prevention and containment measures should take place with the participation of indigenous authorities and organizations.

Human rights defenders

109. States should provide additional protection to indigenous and other human rights defenders who may be at additional risk due to confinement or other measures. States should recognize the monitoring and reporting of human rights violations and abuses by defenders as an essential service that should be permitted to continue.

110. Emergency powers must not be abused to quash dissent or silence indigenous leaders and rights defenders. States should urgently remove or reduce the presence of State militaries in indigenous territories and communities. Attacks on indigenous, land, environmental and women human rights defenders must be stopped, perpetrators held accountable and access to justice and remedy and reparation guaranteed.

Economic and social recovery

111. In designing and implementing economic and social recovery plans, States must respect, protect and promote indigenous peoples' right to self-determination, including autonomy and self-governance, particularly their rights to control the use of and access to their lands and resources, and to operate their own health and educational systems. Relevant processes and plans must be driven by indigenous peoples themselves with the financial and material support of States, with a leadership role for indigenous women. Given pre-existing marginalization exacerbated by the pandemic, housing, access to food, health care and education for indigenous peoples, in both rural and urban contexts, should be a priority.
112. States should reinforce their commitments and actions aimed at curbing emissions and mitigating the impacts of climate change, taking into consideration the specific dependence of indigenous peoples on their lands and natural resources, including by supporting environmental conservation projects and initiatives led by indigenous peoples.

8. Visit to Congo, A/HRC/45/34/Add.1, 10 July 2020⁶⁷

I. Introduction

1. In the present report, the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, presents the findings of her visit to the Congo from 14 to 24 October 2019. She thanks the Government for the invitation and for its excellent cooperation during the visit.
2. The visit follows up on a visit by her predecessor, James Anaya, in 2010. The Special Rapporteur examines how the Government has addressed the recommendations contained in the previous visit report and identifies continuing and new issues.

[...]

II. Legal and institutional framework since 2010 A. Law No. 5-2011, on the promotion and protection of the rights of indigenous peoples, and its implementation decrees

8. The Special Rapporteur congratulates the Government for adopting a solid legal framework, while emphasizing that significant work remains to be done to ensure it is implemented in practice. Law No. 5-2011, on the promotion and protection of the rights of indigenous peoples, was adopted shortly after the visit of her predecessor and sets out a sound legal foundation for indigenous peoples to claim their rights, protect their culture and livelihood, gain access to basic social services and protect their civil and political rights. In 2015, the need to promote and protect indigenous peoples' rights was given constitutional recognition in article 16 of the new Constitution. In July 2019, six of the eight proposed draft decrees were adopted to implement Law No. 5-2011 by providing special measures to facilitate civil registration and access to basic social services and education. The decrees also provided guidance on holding consultations with a view to obtaining the free, prior and informed consent of indigenous peoples in the context of socioeconomic projects and development programmes and to protecting indigenous cultural, intellectual, spiritual and religious property and knowledge. They established an inter-ministerial committee to guide the Government's actions for indigenous

⁶⁷ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F34%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False>.

peoples, in particular its implementation of national action plans to improve the quality of life of indigenous peoples.

9. By Decree No. 2017-260 of 25 July 2017, the lead role for the promotion of the rights of indigenous peoples was transferred from the Ministry of Social Affairs and Humanitarian Action to the Ministry of Justice, Human Rights and the Promotion of Indigenous Peoples, which has, since then, had a dedicated directorate-general for the promotion of indigenous populations. The directors of that directorate-general's local offices, present in all 12 departments, had been in post a few months as at the time of the visit.
10. The above-mentioned directorate-general is composed of four divisions, each staffed by a director, two chiefs and an administrative staff. The directorate-general is tasked with the practical implementation of the Government's policies on the promotion of indigenous peoples' rights and will act as a permanent secretariat for the inter-ministerial committee when it is in place. The directorate-general's annual budget is approximately US\$ 250,000. The departmental directors, who each have an annual budget of US\$ 4,000, had been tasked at the time of the visit with following up on the civil registration process, preparing for the census of indigenous peoples and responding to individual cases.
11. Two of the proposed draft decrees – one for the administrative recognition of indigenous villages and the other regarding the modalities for sharing the benefits arising from the use and exploitation of indigenous traditional knowledge – are still pending adoption. The Special Rapporteur welcomes the fact that an additional decree, on recognition of traditional and customary lands for indigenous peoples, is being studied.
12. The indigenous peoples consulted during the visit lacked awareness of their rights under international law, the Constitution and national legislation. In at least three communities visited, no one knew about the existence of Law No. 5-2011. Apart from sporadic initiatives by civil society organizations, there was no evidence of any comprehensive, nationwide, government-led campaign to raise indigenous peoples' awareness about their rights, how to exercise them and how to seek remedies in case of interference or denial.
13. RENAPAC, which is based in Brazzaville, is well-placed to assist in the dissemination of information about Law No. 5-2011 throughout the country but suffers from paralysing internal leadership conflicts and chronic underfunding. Non-governmental organizations have individually translated and disseminated the Law into languages understood by indigenous peoples.

[...]

IV. Conclusions and recommendations

A. Conclusions

104. The Government of the Congo has established a solid legislative and institutional framework for the protection of indigenous peoples' rights since 2010, and its efforts to put indigenous peoples "on the map" should set an example in the region and the continent. Much work remains to be done, however, to end the exclusion and marginalization of indigenous peoples and to fully recognize and protect their distinct identities, cultural practices and ways of life.
105. The country still lacks adequate policies to enable the concrete realization of indigenous peoples' right to self-determination, an essential part of which lies both

in the demarcation of their traditional collective lands and in State recognition of their autonomous governance structures. Indigenous peoples, whether they live in a more urban setting or on the margin of the forest, continue to experience high levels of discrimination; they are not systematically consulted, nor is their consent systematically sought, in decisions affecting them; and only rarely do they benefit in practice from special measures taken by the Government, for example through the provision of social programmes, mainly in the form of fee waivers to promote participation in the education and health systems. The Government's strategy to improve indigenous peoples' standard of living, although a positive step, would benefit from the meaningful participation of indigenous peoples in its design and implementation, from greater recognition of the need to protect indigenous peoples' distinct identities and ways of life and from a sustained campaign to stop discrimination against indigenous peoples.

106. Indigenous peoples remain in a position of stark disempowerment that can only be reversed through financial and political commitments to fully implement Law No. 5- 2011 and its implementing decrees. Additional policies need to be adopted and implemented. The development of a national framework to define and accelerate the demarcation of collective traditional lands of indigenous peoples and protect them from further encroachment by logging, the extractive industries and conservation projects would be a good starting point to restore some sense of pride and leadership to disempowered indigenous communities.

B. Recommendations

107. The Special Rapporteur recalls and reiterates all the recommendations in her predecessor's report on his 2010 visit, including those related to the elaboration of a national campaign against discrimination, economic development that has due regard for indigenous culture, identity, rights over land and resources, and enhanced participation in decision-making and international cooperation. She urges the Government, international donors, the United Nations country team, civil society organizations and indigenous communities to work together towards their full, effective and urgent implementation.

108. The Special Rapporteur makes the following additional recommendations:

- (a) The Government must prioritize the effective access to and ownership of lands for indigenous peoples, as this is a foundation for the realization of the other rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples. The recognition of both collective and individual rights to land ownership for indigenous peoples is inscribed in Law No. 5-2011. All other existing laws should be accordingly harmonized;
- (b) The Government should continue its efforts to adopt special measures to help redress the human rights situation of indigenous peoples. Special measures, as described by the Committee for the Elimination of Racial Discrimination in its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, should not be understood to be a form of discrimination. For example, it is important for indigenous children to receive education in their mother tongue. Special measures and policies to redress inequalities can be informed by reliably collected disaggregated data;
- (c) RENAPAC should set aside its internal divisions and should be supported, financially and substantively, in its work and in its effort to increase the

- representativeness of its network and to reflect the range of interests of indigenous peoples, including by gender, age and whether they live in an urban setting or follow a traditional way of life. The Government should also seek to directly consult indigenous peoples, including, in particular, women, children and people with disabilities, for its action plans and strategies, including through consultations organized jointly with indigenous leaders or communities in the various departments;
- (d) The Government's engagement in favour of indigenous peoples, notably through the implementation of Law No. 5-2011, must result in a sustained strategy at all levels of society. National efforts for decentralization are crucial for successful government action for indigenous peoples at the grassroots level. Sporadic, national, high-level government events consisting of the distribution of materials and the delivery of public speeches may be useful for drawing attention to certain issues dear to both Bantu and indigenous communities but will not have a lasting effect unless they are embedded in a more sustained, concrete and coordinated strategy at the national and local levels;
 - (e) Greater efforts are needed to ensure national and international efforts to alleviate poverty include special measures to make these activities and services culturally appropriate for indigenous peoples, particularly with respect to education, health services (in particular reproductive and maternal health services) and income-generating activities. In addition, all government actions in favour of indigenous peoples should aim at promoting indigenous people's participation in decision-making and autonomy and a strong gender perspective;
 - (f) Conservationists and international donors concerned with the environment and the preservation of biodiversity should promote and fund indigenous-led conservation initiatives while focusing restrictive measures on threats to ecosystems coming from non-indigenous sources, including criminal poaching networks, corruption and unsustainable forest exploitation;
 - (g) In this respect, the Special Rapporteur invites the Government, its United Nations supporting partners and conservation organizations in the Congo to consider the recommendations included in her report on conservation. She recommends that conservation organizations adopt human rights policies and monitor the application of human rights-based conservation programmes, and that culturally appropriate and independent complaints mechanisms be made available for indigenous peoples to voice their concerns over conservation initiatives and support initiatives for indigenous peoples' right to remedy in cases when conservation activities have negatively affected their rights;
 - (h) The United Nations should, with guidance from the Office of the United Nations High Commissioner for Human Rights, assist the Government and indigenous peoples to carry out training and peer-to-peer exchanges to promote greater knowledge of international standards and good practices regarding indigenous peoples' rights. The Government should consider inviting other special procedures to visit the Congo and obtain additional concrete advice on how to improve the human rights situation of indigenous peoples and others in the country.

9. Rights of indigenous peoples, A/HRC/45/34, 18 June 2020⁶⁸

I. Introduction

1. This is the final report of the current Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, to the Human Rights Council. It provides brief information about the activities carried out since the Special Rapporteur last reported to the Council, and highlights some specific examples of positive impacts that the work carried out during the period of her mandate has had on the protection of the rights of indigenous peoples.

[...]

IV. Consultation and consent: experiences and recommendations

47. One of the most frequently recurring issues addressed by the Special Rapporteur throughout her mandate has been the implementation of international standards on consultation and free, prior and informed consent. The Special Rapporteur has made numerous observations on this topic as part of her evaluation of individual communications, country visits, technical assistance provided to Governments, public statements, seminars, forums and other public events. The majority of this work has involved the Latin American region, where there have been important debates on the issue as well as about regulatory initiatives and jurisprudence. These developments hold important lessons for indigenous peoples and for States in other regions as regards problems in the application and interpretation of consultation and consent standards in the context of legislative and administrative measures and natural resource development projects affecting indigenous peoples. The Special Rapporteur would like to highlight some of her main observations and conclusions on this issue, made throughout the course of her mandate.

(i) Foundation, nature and scope of indigenous consultations

48. One of the first challenges identified by the Special Rapporteur is how States and business actors conceptualize consultation in terms of its regulatory foundations and sources. There has been a clear tendency among States and business sectors to refer only to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) as the legal source of the duty to consult. By framing indigenous consultation exclusively in the parameters of ILO and its tripartite structure, some States have even addressed the topic from a logic of labour rights or relations. Indigenous consultation must be understood from the standpoint of international human rights law, taking into account the normative and jurisprudential advances in the area of indigenous peoples' human rights since the adoption of the Indigenous and Tribal Peoples Convention in 1989. Therefore, the conceptualization and application of indigenous prior consultation and consent should be based not only on the Indigenous and Tribal Peoples Convention and the guidelines developed by ILO in that regard, but also on a much broader, and subsequent, body of law consisting of various instruments, resolutions, declarations – in particular the United Nations Declaration on the Rights of Indigenous Peoples, jurisprudence and authoritative interpretations developed by international and regional human rights mechanisms.
49. Another problem observed is the lack of understanding by State and other actors of the nature and characteristics of indigenous consultation. Indigenous consultation

⁶⁸ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F34&Language=E&DeviceType=Desktop&LangRequested=False>.

and consent represent important safeguards for the substantive rights of indigenous peoples recognized in international human rights instruments. These substantive rights include the rights of participation and self-determination; rights to property, culture, religion and non-discrimination in relation to lands, territories and natural resources, including sacred places and objects; rights to health and physical well-being in relation to a clean and healthy environment; and the right of indigenous peoples to set and pursue their own priorities for development. Therefore, the starting point for analysing consultation and consent is evaluation of the substantive rights of indigenous peoples that would be at stake, for example in the context of development or investment plans or other measures.

50. Consultations with indigenous peoples need to entail a process based on a new model of relations, dialogue and cooperation between indigenous peoples and States. Indigenous consultations are not equivalent to standard procedures for notice and comment available to the general public, as the latter are not culturally adapted and nor do they adequately address indigenous peoples' specific concerns. Given the historical and political context of marginalization and exclusion that indigenous peoples have faced, differentiated consultations that are appropriate to their distinctive characteristics and rights are required.
51. Another problem identified by the Special Rapporteur is the tendency to conceive of consultations with indigenous peoples as mere formalities or procedures to provide information about measures or projects that have previously been designed and approved by State and business actors.
52. According to international standards, indigenous consultations should be prior, and should be conducted in good faith and through indigenous peoples' representative institutions. The element of "prior" means that consultations need to be carried out before the adoption of a measure, the granting of authorizations and permits, or the signing of contracts or other definite commitments by States related to activities or projects, can affect indigenous peoples.
53. In consultation processes, indigenous peoples' representative and decision-making structures, cultures and time frames need to be respected. The Special Rapporteur has emphasized that to ensure the climate of trust, mutual respect and good faith that is necessary in order to develop meaningful consultation processes, the consultation procedures themselves need to be the result of consensus. This also means that States need to try to overcome situations of disadvantage and power imbalance that are faced by indigenous peoples in terms of technical and financial capacity, access to information and political influence.
54. Indigenous consultations should not be understood as a one-time event but as a continuous process that "requires the State to both accept and disseminate information, and entails constant communication between the parties". Regarding extractive projects, consultation and consent may be necessary at different stages – from impact assessments to exploration to production to project closure.
55. Consultations should be culturally appropriate, and accessible, and should respect the forms of indigenous organization and representation, without coercion or attempts to divide them. Attention should be paid to representative structures that would be consulted in different scenarios, for example in relation to a measure with a nationwide scope, or to a measure or activity that would affect a particular indigenous community, or group of communities or people. In any case, the indigenous representative mechanisms must respond to their own internal processes and be effective in practice.

56. Adequate consultation processes must provide the time and space necessary for indigenous peoples to have full knowledge of the scope, nature and impacts of a proposed measure or activity before its approval, including possible environmental, health and other risks. Essentially, indigenous peoples should also be able to influence the making of decisions that affect their rights, as well as being able to make their own proposals.
57. There has also been a tendency to limit the scope of indigenous consultation to measures that are deemed to have a “direct impact”. Consultations should not be limited only to measures that explicitly refer to the rights and interests of indigenous peoples or to development projects whose areas of operation are in indigenous lands or territories without considering the impacts on surrounding indigenous peoples. The criterion of “impact” must be flexible and apply whenever a State decision may affect indigenous peoples in ways not felt by others in society. This includes cases of administrative or legislative measures of general application, if those measures could affect indigenous peoples differently in some way given their specific conditions and rights. The process of developing consultation laws or regulations requires consultation too, as this can also help in identifying consultation scenarios that respond to the realities of indigenous peoples in each country.

(ii) Impact assessments

58. In order to ensure reliable information in consultation processes, independent and impartial social, cultural and environmental impact studies that cover the full spectrum of rights that could be affected by a measure or project are required under international standards. The participation of indigenous peoples themselves in these assessments is essential, in order to identify the said impacts as well as possible alternatives and mitigation measures. Any proposed legislation on indigenous consultation must state the obligatory nature of these impact assessments, and adequate parameters for carrying them out.

(iii) Free, prior and informed consent

59. The main point of debate and disagreement regarding indigenous consultation revolves around the binding nature of its results. Indigenous peoples consider that their will must be respected regarding measures or activities that affect them. State and business sectors consider that this position amounts to a veto power, which they reject from the outset. Reducing the principles of consultation and consent to a debate about the existence of a veto power would amount to losing sight of the spirit and character of these principles which seek to end historical models of decision-making regarding indigenous peoples that have excluded them and threatened their survival as peoples.
60. Under the principles of progressive realization and non-regression of human rights, obtaining free, prior and informed consent should be understood as the objective of consultations and as an obligation in cases of significant impacts on the rights of indigenous peoples. This is evident in international legal developments subsequent to the Indigenous and Tribal Peoples Convention, of 1989 – including in the United Nations Declaration on the Rights of Indigenous Peoples, the jurisprudence of the inter-American human rights system, and the general comments and decisions of treaty-monitoring bodies.
61. It is necessary to move beyond the debate over the existence of a veto in the context of development projects, and instead focus on the international human rights obligations that States must observe at all times. Any restrictions on these

rights, such as a decision to proceed without the free, prior and informed consent of an indigenous people, imposes on the State a burden to prove the permissibility of the said restrictions under the international criteria of legality, necessity and proportionality in relation to a valid public purpose.

62. The Special Rapporteur, in common with previous mandate holders, has highlighted the need for review mechanisms through a judicial or other impartial and competent body in order to ensure that any decision by a State entity that does not have the consent of the indigenous peoples affected complies with these criteria and does not affect the physical and cultural survival of the indigenous peoples concerned. If these requirements are not met, it ought to be concluded that the measure or activity should not proceed without indigenous consent.
63. In cases where indigenous peoples have consented to a measure, or where a measure or project is considered to not bring significant impacts, States must still ensure at all times the protection of the substantive rights of indigenous peoples, in accordance with their international obligations. Consent must be given freely and any agreements arising from this consent must be subject to periodic oversight, evaluation and monitoring processes.

(iv) On the adoption of legislation

64. The Special Rapporteur has observed problems in the development of proposed legislation on consultation, and problems in the application of already existing legislation and the execution of consultation processes in general. Many of the problems are associated with the aforementioned issues related to understandings of the scope, purpose and timing as regards undertaking consultations. In many cases, the problem lies in the fact that consultation laws and procedures themselves were not developed with the participation of indigenous peoples.
65. In many countries, the dissatisfaction felt by indigenous peoples with the way that governments have sought to legislate for and/or implement consultation has led them to develop their own autonomous consultation protocols or their own community self-consultation processes. Indigenous peoples consider these initiatives to be expressions of their self-determination that should be respected by actors seeking to carry out activities that could affect them. The Special Rapporteur considers that indigenous consultation protocols and other consultation procedures need to be considered as alternatives to the general pattern of consultation laws so far promoted in the Latin American region.

(v) Stigmatization and criminalization

66. Another problematic aspect of the way in which indigenous consultation has been implemented is that in many States, indigenous peoples are perceived as mere interest groups whose goals are contrary to a purportedly superior national interest. The Special Rapporteur has repeatedly expressed her concern over situations of violence, stigmatization and criminalization that indigenous peoples have faced when expressing their opposition to development projects promoted by States or private businesses. States should carry out education and awareness-raising activities for officials and the general public in order to promote understanding of the rights that indigenous peoples seek to vindicate. There is an urgent need for indigenous peoples' interests in maintaining their lands, cultures, self-government and economic subsistence systems to be recognized as being part of the national interest within any democratic and multicultural society.

(vi) Cross-cutting issues related to indigenous consultation

67. There are other factors that would contribute to strengthening consultation as a safeguard for indigenous peoples' rights. Cross-cutting actions are needed to improve the promotion and protection of the substantive rights of indigenous peoples to their lands, territories and natural resources, to self-determination, including determining their own development priorities, and to access to justice. The principles of consultation and cooperation established under the United Nations Declaration on the Rights of Indigenous Peoples should guide coordinated actions between indigenous peoples and States to promote necessary legislative, policy and institutional reforms in specific sectors such as natural resource development, energy, infrastructure, tourism, agriculture and other relevant areas.
68. Another important element is the existence of effective judicial, administrative and other mechanisms to ensure that indigenous peoples can enforce their rights, especially in the context of development projects and similar activities. Additionally, legislative, judicial and other mechanisms are necessary to regulate, supervise and sanction private business and other third-party activities whose activities violate indigenous peoples' rights.
69. Consultation and cooperation should guide the means by which indigenous peoples can participate directly in decision-making related to development policies, laws, plans and programmes. Indigenous peoples' proposals, priorities and concerns regarding development should be duly incorporated in the State development planning before outlining priorities and granting concessions, licences and other authorizations for development activities that could later lead to social conflicts due to lack of consultation.
70. The Special Rapporteur encourages indigenous peoples and States to explore mechanisms for dialogue, consultation and cooperation to promote indigenous development priorities and other human rights. These processes of dialogue, consultation and cooperation must respect the mechanisms and protocols for relations, consultation and decision-making of indigenous peoples.
71. Consultation and free, prior and informed consent must also be understood as an extension of the right of indigenous peoples to self-determination. Therefore, they should be able to decide their own social, cultural, economic and political destinies and ultimately safeguard their rights recognized under the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights sources.

V. Final reflections at the end of the Special Rapporteur's term and forward-looking recommendations

72. The establishment of the mandate of the Special Rapporteur in 2001 was a response by the international community to the reiterated demands of indigenous peoples and to the situation of systematic violation of their individual and collective rights. The mandate has been acknowledged by United Nations Member States as an achievement in building an international framework for the advancement of the rights and aspirations of indigenous peoples.
73. Since 2007, following the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, Special Rapporteurs on the rights of indigenous peoples have been mandated to promote the Declaration, which has been the legal framework for all their activities, including thematic work, country visits, communications,

identification of best practices, cooperative dialogue with all relevant actors, and technical cooperation.

74. Throughout the years of her mandate, the Special Rapporteur has acknowledged progress in the recognition and legal protection of the human rights of indigenous peoples.⁸³ But she would like to stress that the “implementation gap”, and the increasing violence against and criminalization of indigenous peoples in many countries around the world, signals the need more than ever for a strong and effective mandate to ensure compliance with international human rights standards in this regard.
75. The mandate holder has tried to respond to this situation not only through communications, country visits and thematic reports, but also by trying to engage Governments and other actors in constructive dialogue, with the aim of making the United Nations Declaration on the Rights of Indigenous Peoples and other relevant human rights standards better understood, protected and realized. Working visits, technical cooperation, and active involvement in multilateral and multi-stakeholder processes have been key activities in this regard.
76. The Special Rapporteur would like to express her appreciation to the numerous Member States that have shown their support for the mandate, have engaged with its work and have implemented relevant recommendations. Nevertheless, she would like to underline that there are still many countries in which the existence of indigenous peoples is denied, or where they are recognized in such a way that the State does not deem the United Nations Declaration on the Rights of Indigenous Peoples applicable. This creates a void of protection. It is very difficult for the mandate to fulfil its work in these cases, as the States concerned are reluctant even to initiate a dialogue, and neither provide invitations for country visits nor answer communications.
77. The Special Rapporteur would like to reiterate the suggestion made by her predecessor that the Human Rights Council and the overall United Nations human rights system should consider better methods for reviewing countries that decline to cooperate with special procedures. The mandate holder has tried to develop creative ways to approach these situations. Increasing collaboration with regional and national human rights institutions has proved to be very useful. She has also participated in seminars, conferences and other activities, in all regions, trying to take those opportunities to open a dialogue with the States in question. A proactive approach requires more resources than are available. In this regard, the additional support provided by external funds and institutions has played a valuable role in enhancing the work of the mandate.
78. The Special Rapporteur considers awareness-raising to be crucial to addressing the situation of violation of the rights of indigenous peoples. The Special Rapporteur has tried to engage directly with the different United Nations agencies, bodies and conventions, such as the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, and with other multilateral institutions such as the World Bank and the European Commission, where issues affecting the human rights of indigenous peoples are discussed. This direct interaction has the potential for making the comments, conclusions and recommendations of the mandate holder available to many who are not necessarily familiar with the United Nations human rights system but whose activities have a direct impact on the lives and human rights of indigenous peoples. The Special Rapporteur firmly believes that the operationalization of “Delivering as one” is crucial in ensuring that

indigenous peoples' rights and issues are integrated by the various United Nations bodies and agencies in their programmes at all levels.

79. The dissemination of the work of the mandate through the Internet and social media is also strategically important. The mandate holder has used social media in order to make information about reports, statements and other work available. This interaction, within the limits established by the code of conduct for special procedure mandate holders of the Human Rights Council, is very valuable in terms of promoting the United Nations Declaration on the Rights of Indigenous Peoples, and best practices, and the dissemination of certain issues and situations of concern. Nevertheless, much could still be developed in this area so that the work of the Special Rapporteur can better reach indigenous peoples who need human rights protection.
80. A major challenge for the mandate is adequate follow-up on the implementation of the recommendations contained in thematic and country visit reports, and on the issues raised in communications. Although indigenous peoples themselves, civil society organizations and the United Nations system have an important role to play in this monitoring, better methods for follow-up would reinforce the impact of the mandate in terms of compliance. In this regard, the Special Rapporteur is grateful for the collaboration of the country and regional offices of OHCHR, which continue to follow up at the national level and have developed and disseminated publications and other actions to make the Special Rapporteur's recommendations available at the national level. Some OHCHR country offices have translated country reports and recommendations into languages understood by indigenous peoples. Member States should also make reports available and distribute them among the relevant authorities, and other parties. To this end, United Nations regional and country offices in general play an important role in disseminating information about the Special Rapporteur's comments and recommendations in country reports, press releases, country communications and other types of work regarding specific cases or country situations.
81. Taking into account the above-mentioned reflections, the Special Rapporteur would like to provide some brief conclusions and recommendations:
 - (a) The mandate of the Special Rapporteur on the rights of indigenous peoples continues to play an essential role in promoting the individual and collective rights of indigenous peoples enshrined in international human rights instruments, particularly the United Nations Declaration on the Rights of Indigenous Peoples. Collaboration and coordination with the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples should be sustained and enhanced.
 - (b) The Special Rapporteur has observed that in spite of progress in the legal recognition of indigenous peoples and in regard to their rights within the legal frameworks of Member States, the situation of the individual and collective human rights of indigenous peoples in all regions of the world remains a serious cause for concern. Therefore, the Special Rapporteur encourages all Member States to support the continuation and best functioning of the mandate.
 - (c) The Special Rapporteur calls on Member States to increase their support to the United Nations special procedures system, and specifically to this mandate, so that enough human and financial resources are available to adequately carry out its work.

- (d) The Special Rapporteur also calls on Member States to develop ways to encourage all countries to cooperate effectively with the mandate holder, and to devise ways and means to better monitor compliance with international human rights standards on the rights of indigenous peoples, particularly in countries where indigenous peoples and their rights and identities are not even recognized and which have not yet accepted country visit requests.
- (e) The Special Rapporteur would like to call upon the United Nations system and the regional human rights systems to increase their collaboration with the mandate at all levels in order to mutually reinforce the work relating to particular countries, regions or issues, in furtherance of the promotion and protection of indigenous peoples' rights.
- (f) The Special Rapporteur would like to express her gratitude to her predecessors, upon whose solid work she has built her contribution. She would also like to congratulate her successor and expresses her certainty that he will devote all his efforts to promoting the rights of indigenous peoples.
- (g) The Special Rapporteur would like to acknowledge the collaboration she has received throughout her term from civil society organizations, academia, the media and other relevant actors. She would like to encourage them to continue engaging with the mandate and helping to disseminate and implement its recommendations. The Special Rapporteur would like to particularly thank the funds and institutions which have provided financial support for the fulfilment of her work and hopes that they will continue to support future mandate holders.
- (h) The Special Rapporteur would like to express her gratitude to the dedicated staff supporting her mandate in the Office of the United Nations High Commissioner for Human Rights, and also to her external assistants, for the support they have provided as she has carried out her mandate over the past six years.
- (i) Finally, the Special Rapporteur would like to honour and recognize the collaboration of indigenous peoples and their institutions, organizations and communities in the work of the mandate. Any progress achieved on recognition and respect for their rights is mainly due to their unrelenting fight for justice.

B. SPECIAL RAPPOREUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

1. Towards a just transformation: climate crisis and the right to housing, A/HRC/52/28, 23 December 2022⁶⁹

[...]

III. Impact of the climate crisis on the right to adequate housing

[...]

B. Slow-onset events

[...]

18. Perhaps most notably, rising sea levels will result in partial or total inundation of some coastal areas with the corresponding loss of property, damage to infrastructure and disruption of basic services. Globally, it is projected that, in the midterm (2040–2060), 1 billion people will be at risk from coast-specific climate hazards in low-lying cities and settlements and on small islands. Small island developing States are especially vulnerable: in Pacific island countries, 57 per cent of built infrastructure is located in risk-prone coastal areas. In relation to Kiribati, the Human Rights Committee observed that “given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized”. The Committee has noted that Indigenous Peoples in the Torres Strait region face the prospect of having to abandon their homes, due to erosion and flooding on the islands, and lack of adequate adaptation measures, constituting a violation of their right to private, family and home life and their cultural rights.
19. Climate change will exacerbate several desertification processes, compounding other factors that are causing land degradation and desertification. Approximately 9 per cent of drylands, which cover about 46 per cent of the global land area and are home to 3 billion people, have been classified as desertification hotspots, affecting about 500 million people, particularly in South and East Asia, the Sahara region, including North Africa, and the Middle East. The combined pressures of desertification, climate variability and climate change are contributing to poverty, food insecurity and increased disease burden, rendering housing location inadequate and thereby forcing people to migrate.³⁶ Climate change is also expected to further exacerbate salinization, which is already one of the major global environmental and socioeconomic issues, with drylands in southern and western Australia, Mexico, South Africa, south-west United States and South America expected to be salinization hotspots, which will further drive climate-induced migration.

[...]

⁶⁹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F52%2F28&Language=E&DeviceType=Desktop&LangRequested=False>.

C. Adverse impacts of climate policies and responses on the right to housing

[...]

25. Climate mitigation measures must not result in “green grabbing”, described as the appropriation of land stimulated by global policies of climate change mitigation. Projects related to, for example, mega-dams, cultivation of biofuel feedstock, and lithium mining for electric batteries and solar panels have displaced local communities, leading to a loss of housing, too often without adequate prior consultation, remedies or compensation. The unsustainability of carbon removals and “offsets” as a climate mitigation approach is highlighted by the fact that the projected biological carbon removal pledges in nationally determined contributions would require almost 1.2 billion hectares of land, equivalent to current global cropland. Those measures are no substitute for preventing emissions from fossil fuels and may even reinforce or perpetuate the marginalization of and inequities faced by ethnic minorities and Indigenous Peoples. Projects implemented under climate mitigation programmes, such as Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+), have in many cases resulted in displacement of forest communities and severe restrictions on their livelihoods because of the lack of recognition of customary land tenure rights and the absence of communities’ participation in the design and implementation of such programmes. In Thailand, forest communities have been criminalized as “destroyers of the forest” and forced eviction orders have been issued against them, without consultation and without provision of alternative land and housing, under forest conservation policies and legislation in the context of the Government’s climate change mitigation action. In India, millions of people, mostly from forest-dwelling peoples, are at risk of forced evictions because of nature conservation claims in a context marked by the weak implementation of the Forest Rights Act.

[...]

D. Marginalized groups and persons

[...]

29. Persons in detention, including immigration detention, are extremely vulnerable to climate change and climate-related events. In one stark example, during an evacuation, persons in detention were left behind to fend for themselves, neck-deep in flood waters. Indigenous Peoples and peasants often live on lands and depend on ecosystems that are heavily exposed to climate impacts. They are also at greater risk of eviction and displacement owing to climate mitigation and environment conservation programmes, such as REDD+, hydroelectric or large wind-energy projects or biofuel plantations.
30. Marginalized groups and persons are often left out of climate adaptation actions, more likely to be negatively affected by climate mitigation and (mal)adaptation, more vulnerable to climate events and less likely to benefit from relief and reconstruction. To minimize their exposure to risks, it is crucial that policies are tailored to their specific needs, that safeguards are operationalized, and that marginalized groups are consulted and can participate in decision-making, implementation, monitoring and evaluation at all levels of climate action.
31. The climate crisis has the potential to further entrench socio-spatial segregation, housing discrimination and housing exclusion if States fail to take targeted measures to prevent the climate crisis from spilling over into the housing crisis and vice versa.

States need to tackle housing exclusion and discrimination to ensure that everyone can withstand the climate crisis and nobody is left behind. On the other hand, if the international community fails to address the climate crisis, that would trigger and entrench a housing and displacement crisis of global proportions that may potentially not be possible to control.

[...]

V. Towards just, human rights-based, climate-resilient and carbon-neutral housing for all

[...]

46. While there are substantial policy challenges in reaching net-zero embodied carbon for major building components such as cement and steel, there is a growing interest in sustainable materials such as hempcrete, wood, clay and straw or recycled materials, as well as in the reduction of energy use in the construction process (e.g. through prefabrication) and the use of smart technologies and traditional low-carbon technologies. Traditional designs and structures of the housing of Indigenous Peoples, and the use of more sustainable materials, can guide the development of more climate-resilient and carbon-neutral housing.

[...]

50. A rights-based transition would require transparency in decision-making; consultation with and participation of affected individuals and communities; non-discrimination; and accountability mechanisms. Specific mechanisms need to be developed to ensure the participation of tenants, including collectively through tenant unions or other associations, in decisions over housing and to engage persons living in informal housing. Persons at risk of marginalization can play an important role in promoting climate justice, and their perspectives, knowledge and lived experience need to inform climate and housing policymaking. Homelessness should be taken into consideration, and housing rights groups should be included, in the development of decarbonization strategies. Ensuring the respect of international labour standards and the rights of workers in the housing and construction sector needs to be an integral part of a transition to carbon-neutral, climate-resilient housing. Despite the marginalization they experience, Indigenous Peoples have been at the forefront of struggles for climate justice, and Indigenous traditional knowledge systems are a crucial resource for climate mitigation and adaptation, including for developing more climate-resilient and carbon-neutral housing.

[...]

VI. Conclusions and recommendations

[...]

64. Extreme weather events and slow-onset events have significant and lasting impacts on the enjoyment of the right to housing. The frequency and risk of extreme weather events, as well as the long-term impact of slow-onset events, are already evident. Such events damage and destroy housing and make existing housing inadequate due to changing conditions, drive climate migration and may in some instances require even the permanent relocation of communities. Reconstruction may present an opportunity to redress inequalities and achieve security of tenure, housing resilience and carbon-neutrality. Reconstruction efforts should not have a detrimental impact on the right to housing of climate disaster victims. States have an obligation: ...

- (e) To ensure that resettlement and relocation are pursued only when they cannot be avoided and are strictly necessitated by the unsustainability of maintaining human settlements in at-risk zones. Any resettlement and relocation should be planned and implemented with the full consultation and participation of affected and receiving communities and comply with the basic principles and guidelines on development-based evictions and displacement and other applicable human rights norms, for example the United Nations Declaration on the Rights of Indigenous Peoples.

2. Discrimination in the context of housing, A/76/408, 14 October 2021⁷⁰

I. Introduction

1. Discrimination in housing is one of the most pervasive and persistent barriers to the fulfilment of the right to adequate housing today. While global-level statistics do not exist on the scope of housing discrimination being experienced across regional contexts, at the national and regional levels extensive research, civil society testimony, studies and surveys show evidence of a problem of global magnitude. Of particular importance and in focus in the present report, is the finding that, across local contexts, discrimination in housing is disproportionately faced by particular vulnerable groups, including many minorities, underscoring the systemic and structural character of how housing discrimination persists.

[...]

6. In subsequent thematic reports, the mandate holder has examined the issue of the right to adequate housing for specific historically marginalized groups, such as women, indigenous peoples, migrants and persons with disabilities. ² These reports have brought focused attention to the particular barriers and forms of discrimination facing vulnerable groups in relation to the right to adequate housing. In addition to relevant articles of international human rights law and the interpretation and reaffirmation of these provisions by treaty bodies and other United Nations bodies in general comments, recommendations and resolutions, the thematic reports and country visits help to lay a conceptual framework for addressing discrimination in relation to the right to adequate housing.

V. Groups in focus

35. The effects of housing discrimination and socio-spatial segregation are disproportionately experienced by historically marginalized groups, in particular racial and ethnic minorities, migrants, refugees and internally displaced persons, women, indigenous people, LGBTQI+ persons, persons with disabilities, persons living in homelessness and people with a low income, pointing to the systemic nature of contemporary housing discrimination. The factors that shape the type of housing discrimination faced by vulnerable groups are multifaceted and intersectional, meaning that discrimination can be on multiple overlapping and reinforcing grounds, and vary in the context of different local social, economic and legal structures. The present section outlines the key normative human rights standards applicable for addressing the housing discrimination experienced by specific groups that have been subjected to historical or other forms of discrimination and social exclusion. The groups and standards covered are far from comprehensive. Many other groups face housing discrimination, such as children, young adults, older persons, single

⁷⁰ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F408&Language=E&DeviceType=Desktop&LangRequested=False>.

parent households, residents of informal settlements, foreigners, stateless persons, members of a particular religion or caste, sex workers and others. As noted above, the obligation of States under international human rights law to prevent, prohibit and eliminate discrimination in relation to housing extends to all possible groups.

36. To understand and effectively address systemic discrimination in the right to adequate housing, it is imperative to focus on the forms of discrimination that vulnerable groups face in specific contexts. Otherwise, it is difficult for national, regional and local governments to advance and enforce appropriate legal protections, policies, programmes and special measures, or allocate adequate resources to address such discrimination. The regular and consistent collection of adequate, disaggregated data is critical to understand the housing discrimination faced by marginalized groups. Moreover, in the design, implementation and monitoring of such policies, programmes and measures, States should actively consult with and involve individuals of those groups through their representative organizations.
37. Housing discrimination often goes unreported because it is difficult to document or because victims lack information about their rights or how to file complaints. It is also common for victims of discrimination to fear retaliation by their housing provider, landlord or even neighbours, or to feel that nothing can or will be done about the discrimination they experience.

[...]

C. Indigenous peoples

46. The right to adequate housing of indigenous peoples must be understood in accordance with the principles and rights set forth in the United Nations Declaration on the Rights of Indigenous Peoples, such as the principle of self-determination and the land rights of indigenous peoples.
47. Across the globe, indigenous peoples have faced dispossession, genocide, historic marginalization, exclusion and discrimination. Research and civil society testimony point to the continued discrimination that indigenous people face in their right to adequate housing, an issue underscored in a report of the previous mandate holder published in 2019. This can be apparent in the non-recognition of land rights, discrimination in the private housing market, increased vulnerability to homelessness, forced evictions and displacement, segregation, barriers to access to social or public housing and beyond. For example, in the Republic of Khakassia and Kemerovo Oblast in the Russian Federation, indigenous communities have filed dozens of complaints regarding the illegal seizure by coal companies of land and houses that have also had a detrimental impact on their right to a safe, clean, healthy and sustainable environment, including quality of drinking water, as demonstrated in a 2019 survey in Khakassia that found that nearly 25 per cent of water pipes in rural districts did not meet hygienic requirements. In India, many communities such as the Irula tribal community face historic dispossession, ongoing marginalization and discrimination, often manifested as segregation and barriers to gaining access to social housing, as tribal families are often excluded from State housing programmes because they lack documentation, secure tenure and access to financial institutions.

3. Report of the Special Rapporteur: Twenty years of promoting and protecting the right to adequate housing: taking stock and moving forward, A/HRC/47/43, 12 July 2021⁷¹

II. Contributions of the mandate

A. Development of guidelines and standard setting

8. One of the core contributions of the mandate of the Special Rapporteur has been the development of human rights guidelines anchored in existing human rights treaty provisions and their interpretation by United Nations treaty bodies. The guidelines reflect legal obligations of States and good practices to address human rights challenges. The previous Special Rapporteurs should be commended for developing these guidelines, which were the product of intensive consultations with States, human rights experts, representatives of United Nations agencies, national human rights institutions and civil society.
11. More efforts are needed in nearly all jurisdictions to ensure that national law governing eviction procedures is made fully compliant with international human rights standards, including the basic principles and guidelines on development-based evictions and displacement. Furthermore, guidance to ensure that people and communities who have been relocated enjoy at least similar levels of enjoyment of the rights to adequate housing, water and sanitation, food and work remains underdeveloped. Relocated communities and individuals are often not provided with effective legal remedies and fail to receive adequate compensation and redress.

[...]

III. Challenges for the realization of the right to adequate housing

G. Rethinking land governance, eminent domain and solidarity economy

75. Land use in much of the world used to be based on plural, mutual understandings between neighbouring groups and those who lived together, until the consolidation of colonial and post-colonial regimes eliminated plural land use arrangements, plural land tenures and co-living arrangements in favour of mutually exclusive tenure systems. In much of sub-Saharan Africa, for example, State centred regimes consolidated their control over land and eliminated plural tenure arrangements, starting in the mid-1970s.
- 43 The key legal and planning tool deployed by States for that purpose is eminent domain, also known as “taking”, compulsory acquisition or simply the exercise of regulatory authority to abridge or abolish private property. While the exercise of public power to regulate private property is critical to ensure its distribution and prevent its abuse, the erasure of plural tenurial arrangements by Statist regimes has also gone too far in the opposite direction. Similarly, land-grabbing by agribusiness and other businesses has undermined security of tenure of land and contributes to displacement and forced evictions.
76. Most large-scale evictions of communities, especially of rural and indigenous communities and of persons living in informal settlements, occur due to the exercise of eminent domain in one form or another. The pushback against evictions by social movements has led to the creation of new norms of international law at the global level which seek to vest indigenous communities and peasants with collective rights and recover collective control over the land resources that sustain them.

⁷¹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F47%2F43&Language=E&DeviceType=Desktop&LangRequested=False>.

77. The struggle against forced evictions, which are a major source of violations of the right to adequate housing, will not make real headway unless there is a will to rethink land governance. That involves a critical re-evaluation of eminent domain as legal doctrine and practice, expansion of the collective rights of communities in urban and rural areas who have been marginalized, and through such empowerment, laying the basis for a new solidarity economy which values people and planet over profits. The basis for such collective movements already exists in the form of urban cooperatives, community land trusts and cogovernance arrangements for managing land and resources. They involve social production of housing and communal forms of tenure. What is needed is a way to anchor those experiments more soundly in evolving norms of international law, especially the strong foundation offered by economic, social and cultural rights, including the right to adequate housing.

4. Visit to New Zealand, A/HRC/47/43/Add.1, 28 April 2021⁷²

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Leilani Farha, visited New Zealand from 10 to 19 February 2020 at the invitation of the Government. The visit took place shortly before the global coronavirus disease (COVID-19) outbreak. ... The present report therefore also covers developments that occurred after the conclusion of the Special Rapporteur's visit, up to February 2021.

II. Legal framework

A. International human rights law

4. New Zealand has ratified most international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, which sets out the right to adequate housing in article 11. ... The right to adequate housing should not be interpreted narrowly, for example as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. The following characteristics are necessary for housing to be adequate: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.
5. The right to adequate housing is part of the right to an adequate standard of living, which includes other rights, such as the rights to food, water and sanitation. Taken together, these rights essentially protect the right to life, which entails the right to live in dignity. If one cannot shelter from the elements in a decent and healthy home, life, health and security are at risk. The COVID-19 pandemic has underscored this.

B. Treaty of Waitangi and the right to housing

8. The right to adequate housing in New Zealand cannot be fully understood without considering the Treaty of Waitangi (Te Tiriti o Waitangi). This relates in particular to the relationship between Maori and the Crown, but the Treaty also needs to be recognized as a founding constitutional document of the State of New Zealand, establishing rights, obligations, expectations and responsibilities for all New Zealanders. Any attempt to understand whether the right to housing is enjoyed in New Zealand and whether national, provincial and local governments are meeting their human rights obligations requires a recognition of the Treaty as a source of rights and expectations for all New Zealanders.

⁷² <https://undocs.org/en/A/HRC/47/43/Add.1>.

9. Using the Treaty in a meaningful way necessitates an exploration of the State's history of colonization, land dispossession, forced assimilation and racism, and the contemporary consequences of these on and for Maori. It requires an understanding of how these developments have informed and continue to shape a wide range of contemporary dynamics across New Zealand society, which are tied up in issues of cross-cultural and bicultural exchange and the division of labour in the economic system and of authority in public governance.
10. Throughout her visit, the Special Rapporteur heard beautiful articulations by Maori of their deep physical and spiritual connection to their lands as home, despite the almost universal experiences of physical separation of Maori from their ancestral homes at the hands of various regulatory regimes between 1840 and today. This has given rise to and perpetuates an ongoing state of homelessness that is integrally linked to the existential and actual disruption of this connection as a result of colonization and, more specifically, colonial governance.
11. This is a dark shadow that hangs over the country – a shadow that must be understood as shared between Maori and non-Maori and that cannot be lifted without a significant shift in relations between the Crown and Maori, and by acknowledging that Maori have borne the greatest harm. Such a shift may already be under way, but it must be led by Maori in accordance with the principles of full and meaningful participation and free, prior, informed consent contained in the United Nations Declaration on the Rights of Indigenous Peoples. It must be rooted in kaupapa Māori (“a Maori way”) and Maori understandings and interpretations of Te Tiriti o Waitangi. The Special Rapporteur believes that the Government is taking steps in this direction. Maori language and principles are finding their way into housing policies and programmes, which suggests the Government may understand that Te Tiriti should form the basis of housing-related policy and programming.
12. Many of these policies and the commitment of resources to support them are in their initial stages. How they are implemented will be determinative of whether the Crown is ready to cede power, resources and leadership to Maori, allowing for their true self-determination.
13. As the Special Rapporteur has set out in more detail in a recent thematic report, the right to housing is interdependent with and indivisible from the rights and legal principles set out in the United Nations Declaration on the Rights of Indigenous Peoples, including the rights to self-determination, to freely determine political status, to pursue economic, social and cultural development, and to free, prior and informed consent.
14. The right to adequate housing is extremely important in ensuring improved housing outcomes for Maori. While the Treaty of Waitangi offers a promise of shared prosperity for inhabitants, and a promise of equal outcomes for Maori as citizens, the human right to adequate housing enshrined in the Universal Declaration of Human Rights and subsequent international human rights treaties can provide guidance as to what that prosperity and equality should look in terms of housing.
15. In addition to the above, the Treaty promises the retention of all assets and treasures in Maori hands. These parts of the Treaty have been breached in significant ways, especially historically. Causal links to the contemporary housing experiences of Maori are discussed in more detail below.

[...]

IV. Groups at risk of discrimination and social exclusion

60. Discrimination in the housing market is a significant problem. The Special Rapporteur heard from many Maori, members of Pacific peoples and other persons belonging to racial minorities that tight rental markets allowed discrimination to flourish. Property owners would repeatedly choose people of European descent over people from other racial groups, making access to private rental accommodation very difficult. Between January 2016 and December 2019, the New Zealand Human Rights Commission received 256 complaints regarding discrimination in the area of land, housing and accommodation. Of those complaints, 108 were classified as relating to grounds of race, colour, and/or ethnic or national origin. A total of 63 complaints related to discrimination on the grounds of disability.
61. People living in situations of homelessness also experience significant discrimination. The Special Rapporteur heard repeated references to their “anti-social behaviour”, from public officials and within the general population. Maori living in situations of homelessness indicated that they were often treated with disrespect and suspicion when trying to access services.

A. Maori

62. Maori suffer some of the worst housing outcomes in the country. Representing 16.5 per cent of the national population, Maori are disproportionately represented among homeless populations, experience a higher rate of disability than non-Maori (32 per cent of the total population, when adjusted for age), have a lower median weekly income, represent 60 per cent of those who receive Emergency Housing Special Needs Grants for short-term emergency accommodation, and make up 36 per cent of social housing tenants. Maori are four times more likely to live in overcrowded housing conditions than people of European heritage. Homeownership rates for Maori in 2018 were 47 per cent, as compared to 64 per cent for the general population. These figures above forcefully lead to the conclusion that significant targeted action is required urgently to meet the current housing needs of Maori as a means to both promote human rights and restore Te Tiriti rights.
63. New Zealand has a separate housing strategy for Maori that covers the period 2014–2025. In the strategy, the Government notes that access to shelter is a fundamental human right, and envisages an increase in the number of Maori community housing providers, more Maori employment in the construction sector and an increase in housing construction on Maori land. It does not, however, encompass the broader spectrum of elements required in a human rights-based housing strategy for indigenous peoples. For example, the strategy does not refer to the concepts of self-determination and free, prior and informed consent, or state that Maori housing programmes should be administered as far as possible through their own institutions.³⁶ The Kāinga Strategic Action Plan in Auckland is also noted as referencing the human right to housing, but it is focused on elevating the rights outlined in the Treaty of Waitangi rather than all components of the right to adequate housing. The Special Rapporteur also notes, however, the Māori and Iwi Housing Innovation Framework for Action, developed by Maori housing experts and providers and launched in 2020, which is aimed at, among other things, increasing the capacity of Maori housing providers and addressing systematic housing issues through the Waitangi Tribunal inquiry.

[...]

VI. Recommendations

85. The Special Rapporteur makes the following recommendations to local governments and the national Government in New Zealand:

[...]

- (b) Develop and implement a comprehensive human rights-based housing strategy based on the right to adequate housing as reflected in international human rights law, the Treaty of Waitangi, the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples and its principles of free, prior and informed consent and self-determination. The strategy should also take into due consideration the guidelines on the right to a decent home being developed by the New Zealand Human Rights Commission. It should also set out how New Zealand will implement the relevant Sustainable Development Goals; [...]
- (g) Establish forthwith the post of a commissioner for indigenous peoples' rights in the New Zealand Human Rights Commission, as well as of a commissioner responsible for monitoring the implementation of the right to housing; [...]
- (p) Increase efforts to provide alternative housing schemes for low-income and vulnerable groups. This must also include targeted funding, financing and capacitybuilding for iwi and Maori housing providers;
- (q) Support, facilitate and provide financial resourcing to iwi, runanga and Maori housing providers and increase the self-determination of housing solutions by indigenous peoples....

5. Guidelines for the Implementation of the Right to Adequate Housing, A/HRC/43/43, 26 December 2019⁷³

I. Introduction

[...]

- 7. There remains, however, a lack of clarity among many in government and in civil society about what it actually means to implement the right to housing in a comprehensive and effective manner so as to meet these unprecedented challenges.
- 8. Fortunately, there is a well-established framework in international human rights law from which States and rights holders can draw. The content of the right to adequate housing has been the subject of extensive commentary and jurisprudence within the international human rights system and has been a central focus of human rights advocacy globally.
- 9. The Guidelines set out below build on the normative standards that have emerged from this jurisprudence, as well as from the recommendations and experiences of the Special Rapporteur. They have been developed in consultation with States and other stakeholders throughout the length of the mandate.⁵ They do not attempt to cover all State obligations related to the right to housing. Rather, they describe the key elements needed for the effective implementation of the right to housing as it has been elaborated under international human rights law.

⁷³ Published in 2020, Human Rights Council, 43rd session, <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F43&Language=E&DeviceType=Desktop&LangRequested=False>. "The sixteen Guidelines for the Implementation on the Right to Adequate Housing contain under each guideline specific implementation measures for States, public authorities, and regional and local governments."

II. Guidelines for the Implementation of the Right to Adequate Housing

Preamble

10. The present Guidelines focus on the obligations of States as the primary duty bearers under international human rights law. The term “State” refers to all public authorities and all levels and branches of government, from the local to the national, including legislative, judicial and quasi-judicial bodies. “States’ obligations” are understood to include all aspects of the relationship of States with businesses, financial institutions, investors and other private actors that play important roles in the realization of the right to housing. In the present Guidelines, the “right to housing” refers to “the right to adequate housing” as guaranteed under international human rights law.
11. The present Guidelines shall not be interpreted as limiting, altering or otherwise prejudicing any rights recognized under international human rights or humanitarian law and should, where applicable, be read together with other human rights standards and guidelines related to displacement, evictions, security of tenure, public participation, business and human rights and with the jurisprudence and comments of United Nations human rights treaty-monitoring bodies and special procedures. The Guidelines themselves should be read as interrelated and interdependent.

[...]

Guideline No. 3. Ensure meaningful participation in the design, implementation and monitoring of housing policies and decisions

[...]

24. Implementation measures: ...

- (d) Indigenous peoples have the right to be actively involved in developing and determining housing programmes that affect them. States must consult with indigenous peoples to obtain their free, prior and informed consent before adopting or implementing administrative and legislative measures that may affect them. [Declaration on the Rights of Indigenous Peoples, in particular arts. 10, 19 and 23]

[...]

Guideline No. 6. Prohibit forced evictions and prevent evictions whenever possible

[...]

38. Implementation measures: ...

- (d) States should implement programmes to prevent evictions through measures such as rent stabilization and controls, rental assistance, land reform and other initiatives to promote land and tenure security in urban and rural settings. Preventive measures should also be adopted to eliminate the underlying causes of eviction and displacement, such as speculation in land, real estate and housing. No relocation of indigenous peoples is permitted without their free, prior and informed consent. [United Nations Declaration on the Rights of Indigenous Peoples, art. 10].

[...]

Guideline No. 8. Address discrimination and ensure equality

43. Discrimination, exclusion and inequality are at the heart of almost all violations of the right to housing. Housing systems have intensified social, economic, political and spatial inequalities.

44. ... [I]ndigenous peoples, ... are disproportionately represented among those living in homelessness, in informal accommodation and inadequate housing, and are often relegated to the most marginal and unsafe areas. These groups often experience intersectional discrimination as a result of their housing status.

[...]

48. Implementation measures: ...

(d) States should incorporate into their laws, policies and administrative practices distinctive standards and approaches to equality that have been developed by and for particular groups. For example: ...

(ii) States must ensure the right to housing of indigenous peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples. This means guaranteeing the right of indigenous peoples to be actively involved in developing and determining housing and other social and economic programmes and, as far as possible, to administer such programmes through their own institutions. [United Nations Declaration on the Rights of Indigenous Peoples, art. 23. See also A/74/183] States must also fully comply with relevant domestic treaties and agreements concluded with indigenous peoples... [United Nations Declaration on the Rights of Indigenous Peoples, art. 37]

Guideline No. 11. Ensure the capacity and accountability of local and regional governments for the realization of the right to adequate housing

[...]

63. Implementation measures: ...

(d) Indigenous governments have the right to develop and determine housing programmes that are consistent with international human rights law through their institutions of self-governance and in conformity with the United Nations Declaration on the Rights of Indigenous Peoples. States must ensure they have adequate resources to implement the right to housing. [United Nations Declaration on the Rights of Indigenous Peoples, art. 4. See also A/73/176, para. 5.]

Guideline No. 13. Ensure that the right to housing informs and is responsive to climate change and address the effects of the climate crisis on the right to housing

[...]

72. Implementation measures: ...

(d) States must work with affected communities to develop and promote environmentally sound housing construction and maintenance to address the effects of climate change while ensuring the right to housing. The particular vulnerability of indigenous peoples to climate change must be recognized and all necessary support should be provided to enable indigenous peoples to develop their own responses. Forests and conservation areas must be protected in a manner that fully respects the rights of indigenous peoples to their lands and resources and to their traditional and environmentally sustainable practices in housing.

C. SPECIAL RAPPOREUR IN THE FIELD OF CULTURAL RIGHTS

1. Development and cultural rights: the principles, A/77/290, 15 August 2022⁷⁴

I. Introduction

1. Cultural rights are indispensable to sustainable development. Development will only be sustainable if it is shaped by the values of the people that it involves and the meaning that they ascribe to it, protects their resources and uses their heritage in all its dimensions – tangible, living and natural. A human rights approach with a strong consideration for cultural rights is both a framework for and a guarantee of success for any development agenda.
2. However, cultural rights have been sidelined in sustainable development strategies. Cultural development is not recognized as a pillar of sustainable development, alongside the social, economic and environmental pillars. The impact of development on cultural rights is rarely measured. Development projects are rarely community led. Plans on poverty eradication and social development rarely incorporate cultural rights elements and often neglect cultural diversity. The cultural sector is often considered restrictively as a source for further income. Research has shown that United Nations monitoring bodies rarely comment on the effects of development on cultural rights except in specific cases, mainly concerning indigenous peoples. This is a very restrictive understanding of the link between development and cultural rights.

[...]

II. Legal and policy framework

8. The 2030 Agenda is firmly anchored in human rights. States have made commitments to respecting, protecting and fulfilling cultural rights in a plethora of human rights instruments. The strongest references are to be found in article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights, which recognize the right of everyone to participate freely in cultural life, to enjoy the arts and to share in scientific advancement and its benefits. The need for substantive equality in sustainable development is based on article 27 of the International Covenant on Civil and Political Rights and on the International Convention on the Elimination of All Forms of Racial Discrimination.
9. As reiterated many times by this mandate, cultural rights protect the right of each person individually, in community with others and collectively, to develop and express their humanity, their world views and the meanings they give to their existence and their development, including through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. Cultural rights also protect the cultural heritage of the individual and groups and the resources that enable such identification and development processes.
10. Cultural rights are therefore essential for the development of each person and community, their empowerment, and the construction of their respective identities in a sustainable cultural ecosystem. They are at the core of the definition of development itself. It is an illusion to believe that the goal to leave no one behind could be sought without full respect for cultural rights for all, on an equal basis.

⁷⁴ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F290&Language=E&DeviceType=Desktop&LangRequested=False>.

[...]

13. The United Nations Declaration on the Rights of Indigenous Peoples also contains important references to development, based on their right to self-determination, recognized in article 3. The Declaration recognizes that indigenous peoples must have the right to determine and develop priorities and strategies for exercising their right to development (art. 23) and that States must obtain their free and informed consent prior to any project that affects them or their lands or territories and other resources (art. 32.2). The Declaration recognizes that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment.

[...]

III. Sustainable development: the concept

[...]

C. *Alternative visions*

31. Counterbalancing the prevailing economic model with examples of alternative models promotes cultural diversity and must be encouraged. The incorporation of different knowledge systems into sustainable development is an epistemic challenge that, if addressed, will lead to positive results.
32. The transnational indigenous movement has been active and helpful in highlighting viable alternative models of sustainable development. Indigenous knowledge systems look to create a balanced relationship between the planet and communities, with cultural and spiritual practices supporting the well-being of both humans and nature. It is important that indigenous approaches be respected and that indigenous communities be allowed to continue as joint custodians of the natural world to ensure their survival. It is equally important that their knowledge be shared through intercultural dialogue and that it can contribute to global sustainable development solutions. The Special Rapporteur has been surprised that this knowledge-sharing was not done with regard to the coronavirus disease (COVID-19) pandemic. The world could have learned a lot from indigenous knowledge about the best ways to quarantine and lock down to prevent the further spread of the virus, as several indigenous communities have mastered the practice of shielding, an indigenous technique, for centuries. Unfortunately, indigenous peoples were not consulted; rather, they were only seen as possible victims of the spread of the virus.
33. In communities throughout the world, peasants also bear cultural identities and practices that are conducive to sustainable development – development that is self-determined, self-defined, shared and at one with the natural world. The dynamic nature of culture has meant that indigenous models have at times been superbly intertwined with peasant and/or local cultural identities. A notable example of the successful transposition of community cultural norms onto national policies of sustainable development is the South American model of *buen vivir* (good living) that has been incorporated into the constitutions of Ecuador and the Plurinational State of Bolivia.
34. Sometimes inspired by indigenous and local outlooks, several alternative visions focus on putting the planet at the centre of development. Some decouple growth and well-being from resource use. A notable example is ecological swaraj (radical ecological democracy), emerging from the Indian subcontinent, which translates as self-rule or self-reliance in balance with nature. Regenerative models in general

emphasize development as a continuous process based on a co-evolutionary partnership between ecological and sociocultural systems. Regenerative models are less about minimizing negative impacts on nature and more about creating holistic approaches that maximize positive impact for better planetary health. Central to such models is the concept of reliability, which expresses the ability of products and processes in the built environment to be adaptive, resilient and regenerative.

[...]

VI. Challenges and violations of cultural rights in the name of development

A. Land-grabbing, displacement and cultural heritage appropriation and destruction

63. The Special Rapporteur is unfortunately used to receiving worrying reports on development used for or resulting in the eradication of the cultural identity of local populations, in particular through land-grabbing, forced displacement and resettlement, and the destruction of cultural heritage. She and her predecessor in the mandate have sent many communications in the past to States to address this issue.
64. Submissions received have also included allegations of such practices in Tibet, for example, through the compulsory resettlement of nomad farmers and herders, making them dependent on governmental support; the discrediting of the community's lifestyle, aspirations and beliefs and their knowledge of protecting wildlife and nature; and the creation of parks and reserves that exclude human activities and residence.
65. Many complaints relate to displacement and the grabbing of indigenous and other peoples' land. The Batwa, in Uganda, were reportedly evicted from their ancestral forests owing to the creation of a national park – the Bwindi Impenetrable National Park – in 1991, and they fell into poverty. Following the pursuit of target 8.9 of the Sustainable Development Goals, to promote sustainable tourism that creates jobs and promotes local culture and products, the Batwa saw their culture reduced to a tourist attraction. They now only experience their culture through its performance for a foreign, tourist gaze, all in the name of profit. In addition, the Batwa are not even benefiting from the programme funds.
66. Other examples of negative effects include land-clearing and the failure to obtain the free, prior and informed consent of concerned communities. In South Africa, it is alleged that a key “sustainable development” project focusing on energy, metallurgy, manufacturing, agro-processing and logistics violates local rights. In the United States of America, fossil fuel exploration and the construction of pipelines have repetitively undermined the rights of local populations. In Kenya, development projects have reportedly led to the massive displacement of people without adequate compensation or consultation. Projects have been insensitive to people's grave sites and have moved people without resettling them in a manner that would enable them to continue to enjoy their cultural rights and religious ceremonies and also to continue to have access to ancestral shrines or even medicinal flora.

[...]

B. Tensions between cultural rights and nature conservation

70. One area where sustainable development commonly threatens cultural rights is nature conservation, in particular the creation and management of protected areas. Protected areas are seen as essential tools in achieving many of the targets of the Sustainable Development Goals concerning conservation, biodiversity loss and forest management. They are largely viewed as public goods and sustainable solutions to the biodiversity crisis, as well as key climate change mitigators. However, according to a report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, they have often been created in the territories of indigenous peoples or other land-dependent communities without any consultation, compensation or consent (A/71/229). This has had deleterious effects on the cultural rights of these groups, who are removed from their lands and often violently prevented from returning.
71. This mode of nature conservation – commonly called “fortress conservation” – necessarily entails significant religious and cultural loss for land-dependent communities, whose cultural and spiritual identities are often inextricably intertwined with their lands, territories and resources. 90 Indigenous resistance to the establishment of protected areas is often rooted in the desire to safeguard both their lands and their cultural identity, two aspects that are essential to their survival as peoples.
72. Protected areas are key sources of tourism revenue, one of the target areas associated with Sustainable Development Goal 8 on promoting sustainable economic growth, employment and decent work for all. For many countries, protected areas are a vital part of the economy. As an example, 237 million people visited national parks in the United States in 2020, with a resulting contribution of \$28.6 billion to the domestic economy.
73. Examples of violations of cultural rights and the right to development through conservation efforts are numerous. Conservation efforts by the Government of Kenya in the Mau Forest required the eviction of members of the Ogiek community, who successfully challenged the State before the African Court on Human and Peoples’ Rights. Among other findings, the Court affirmed that the eviction violated the Ogiek community’s right to economic, social and cultural development. In the Republic of Tanzania, tens of thousands of indigenous Maasai are reportedly at risk of eviction in the Ngorongoro Conservation Area, a UNESCO World Heritage site.
74. In the case of protected areas, donors routinely emphasize the important economic and social development projects instituted in nearby villages and the purported benefits that flow to displaced communities. These benefits may take the form of improved infrastructure, the building of schools, microcredit programmes and small-scale agricultural initiatives, among others. There is a lack of recognition that these same communities are entitled to their right to cultural development, which can only be realized through their access to their lands, territories and resources.
75. Renewable energy initiatives also pose significant risks for cultural rights. Wind, solar and hydropower projects often violate the land, resource and cultural rights of indigenous peoples and other local communities, who experience the negative effects of these projects but often receive few benefits. This experience explains the resistance to energy projects, in particular among indigenous peoples.
76. Domestic courts have shown a willingness to challenge development-related threats to cultural rights stemming from clean or renewable energy projects. In 2021, the Supreme Court of Norway found that a wind farm on the Fosen peninsula

encroached on the grazing lands of the Sami people, and thus violated their right to enjoy their own culture under article 27 of the International Covenant on Civil and Political Rights.

77. As governments and businesses are increasingly pressured to transition to renewable energy, it is critical that these projects be community led or, at a minimum, designed in consultation with the communities that stand to be affected. A just transition requires that green energy projects prioritize the well-being of local communities and avoid initiatives that would have a negative impact on their cultural rights.

C. The requirements of consultation and participation

[...]

79. As stated by the Committee on Economic, Social and Cultural Rights, the right of everyone, individually or in association with others or within a community or group, to take part in cultural life, includes the obligation to take part freely in an active and informed way, and without discrimination, in any important decision - making process that may have an impact on one's way of life and cultural rights. At a minimum, development that is respectful of rights requires meaningful consultation with and full and effective participation of those likely to be affected in their way of life and in their rights, including indigenous peoples, minorities, peasants, and women and young people. Respecting consultation and participation rights helps to guarantee that the cultural rights of all are respected in development processes but also creates space for culturally informed development approaches.
80. Consultation and participation rights for minorities are further protected through international human rights standards, such as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (arts. 2 and 4) and the Council of Europe Framework Convention for the Protection of National Minorities (art. 15). Core obligations under the right to take part in cultural life include allowing and encouraging the participation of persons belonging to minority groups, indigenous peoples or members of other communities in the design and implementation of laws and policies that affect them.
81. In the context of indigenous peoples, States must work in good faith to obtain their free, prior and informed consent before adopting or implementing any development measure that may affect them. As noted in a study of the Expert Mechanism on the Rights of Indigenous Peoples, free, prior and informed consent is grounded in the right to self-determination guaranteed by article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and the right to be free from racial discrimination guaranteed in the International Convention on the Elimination of All Forms of Racial Discrimination (A/HRC/39/62). Free, prior and informed consent is now viewed as the "gold standard" for indigenous peoples in the context of development, with international financial institutions and national Governments obligating themselves to comply.
82. The rights to consultation, participation and free, prior and informed consent are keys to protecting the collective rights of indigenous peoples and other groups and are integral to the ability of all to safeguard their cultural rights and to engage in self-determined development. Development agendas that are dictated by national Governments and international bodies, which are not the best placed to identify cultural rights risks and to mitigate the impact of development projects on those rights, violate cultural rights.

83. However, ensuring real participation is currently a challenge. Stakeholders criticize the top-down approach in implementing the 2030 Agenda, which often becomes yet another technocratic narrative. Performance is variable from country to country. For example, the International Federation of Library Associations and Institutions observed that sometimes, Governments are open and committed to engagement, while in other cases, the implementation of the Sustainable Development Goals is left to formalistic bodies which have little real impact. In Argentina, it is reported that a law on the environment recognizes the right of each person to be consulted and to give opinions in administrative procedures related to the preservation and protection of the environment, but not in sustainable development processes more broadly. Indigenous peoples are often unaware of the institutional avenues to participate in the policies that impact them in a manner that is active, dynamic and culturally appropriate. In the Canary Islands in Spain, an attempt to consult the local population about a large gas energy development was reportedly interrupted by the Government, leaving locals feeling unappreciated. In Slovakia, it is reported that efforts to ensure participation are being made, but too little time is given to ensure that all voices are heard.
84. Importantly, States and development agencies should be moving towards ensuring that, in addition to respecting the rights to consultation, participation and free, prior and informed consent, development projects are community led. This requires not merely participation but leadership by local communities at all stages of development projects (conception, design, decision-making, implementation and management), ensuring their agency in and ownership of the entire process. It embodies a “bottom-up” approach, in which multiple stakeholders, including the most marginalized in society, are given decision-making authority in the conception and implementation of development and in which States and international development actors should incentivize and provide financial and technical support to those seeking to engage with development processes.

[...]

VII. Conclusions and recommendations

94. Cultural rights are at the core of sustainable development processes and should be recognized in that capacity. They are about the “how”, the manner in which we live our lives, how we see our world and how we transmit our values. Accordingly, cultural diversity is crucial for the human ecosystem and for the sustainability and resilience of the wider ecosystems, together with biodiversity, to which it is interlinked. Cultural diversity opens avenues towards implementation that recognizes the value of both traditional and modern knowledge and encourages their synergies.
95. Recalling that the Sustainable Development Goals are a voluntary process enshrined in human rights that remain obligations under international law, the Special Rapporteur underlines that no violation of human rights, including cultural rights, may be justified in the name of development or sustainable development.
96. There is a need to adopt a human-rights-based approach that includes cultural rights throughout the implementation and monitoring of Goals. The indivisibility, universality and interdependence of all human rights ensure coherence and provide clear red lines to guarantee sustainability and prevent harm; the realization of one human right cannot be isolated from its impacts on other rights, either in planning, implementation or impact assessment and evaluation.

97. In many cases, “development” policies and strategies reflecting dominant cultural viewpoints or those of the most powerful sectors of society, with historic ties to colonialism and domination, are designed and implemented to the detriment of the most vulnerable in a manner that impedes the future sustainable development and survival of these persons and communities and probably, in the longer term, of humanity. The need to accept and consider frameworks that sit outside mainstream approaches has become urgent. Cultural diversity is as key to our future as biodiversity is; they are interrelated. 98. People and peoples must be the primary beneficiaries of sustainable development processes. The Special Rapporteur recommends, in particular, that States, international organizations and other stakeholders ensure that sustainable development processes: (a) Are culturally sensitive and appropriate, contextualised to specific cultural environments and seek to fully align themselves with the aspirations, customs, traditions, systems and world views of the individuals and groups most likely to be affected; (b) Fully respect and integrate the participation rights and the right of affected people and communities to free, prior and informed consent; (c) Are self-determined and community led; (d) Are preceded by human rights impact assessments to avoid any negative impacts on human rights, including impact assessments on cultural rights; any impact assessment failing to address living heritage or the cultural significance of affected natural resources, or conducted without the free, prior and informed consent, consultation and active participation of the persons and communities affected directly or indirectly, should be rejected as insufficient and incomplete; (e) Recognize that indigenous peoples must give their free, prior and informed consent before any project that affects them is implemented.
99. The Special Rapporteur also recommends that States, international organizations and other stakeholders: (a) Establish better protections for the vulnerable workers in the informal creative industries or artisan economy, which supports sustainable livelihood models; (b) Ensure that local communities are consulted and lead programmes on sustainable development that is consistent with their values and priorities; (c) Support the cultural sector’s contributions to sustainable development, not restricting them to only certain types of outputs – those that can be marketed and measured – but rather recognizing their potential impact on all goals and policies.
100. The Special Rapporteur lends her full support to the Culture 2030 Goal campaign envisioning the recognition of culture as the fourth pillar of sustainable development, including a stronger place for culture throughout the implementation of the 2030 Agenda; the adoption of a stand-alone goal on culture in the post-2030 development agenda and the adoption of a global agenda for culture.
101. She further calls for the establishment and use of appropriate indicators and the consideration of an inter-agency platform measuring the contribution of culture to the achievement of every target of the Sustainable Development Goals, based on the UNESCO Culture 2030 Indicators framework and the OHCHR human rights indicators, as well as the availability, accessibility, acceptability, adaptability and appropriateness conditions for the implementation of economic, social and cultural rights.

2. Cultural rights: an empowering agenda, A/HRC/49/54, 22 March 2022⁷⁵

[...]

II. Legal framework

[...]

6. An important focus of the Special Rapporteur will be the realization of substantive equality in the exercise of cultural rights. In this, she is guided by article 27 of the International Covenant on Civil and Political Rights (currently ratified by 173 States), in which States parties are required to ensure that persons belonging to minorities are not denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the United Nations Declaration on the Rights of Indigenous Peoples act as interpretative tools for article 27 of the Covenant and clarify the need for positive steps to be taken for the realization of the rights recognized in that article.

[...]

III. Positive force of culture and cultural diversity

A. Protecting cultural rights relating to monuments, objects and sites

[...]

16. The Special Rapporteur believes in the need to engage in further reflection on ways to redress the loss or damage of cultural heritage of communities and groups, particularly – but not only – threatened minorities, indigenous peoples and victims of assimilationist policies. In addition to restitution, the Special Rapporteur is eager to explore alternative ways of redress, including redress in the form of special benefits for the community to compensate for their separation from their cultural heritage.

[...]

19. The Special Rapporteur is looking forward to contributing to these continuing debates in the coming years. She is particularly interested in the rights of marginalized groups to their cultural heritage; the rights of refugees, migrants, minorities and indigenous peoples to their cultural heritage and ways these rights can be operationalized require further discussion. The active participation of and consultation with members of these groups in all discussions relating to their cultural heritage are unfortunately not always in place. Discussions between experts, curators and professionals with the owners of the cultural heritage can be improved. Difficult discussions about cultural heritage, such as monuments and street names that are vestiges of colonialism or slavery, also need to be further explored. The Special Rapporteur would like to invite all stakeholders to share relevant good practice and to raise issues of concern.

[...]

B. Protecting cultural rights relating to intangible culture

24. The Special Rapporteur is also committed to exploring further the benefits of protecting rights to intangible culture. The rights to one's identity and to maintain, celebrate and develop one's world views, values, approaches, customs, traditions and their manifestations need to be protected for the well-being, health and

⁷⁵ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F54&Language=E&DeviceType=Desktop&LangRequested=False>

development of the individual, the social cohesion of the society and the evolution of civilization. Disrespect for substantial elements and violations of the above-referenced rights have had a lasting impact on several segments of the population; many indigenous communities carry the scars of such disrespect. At times, such violations have been happening under the pretext of protecting human rights or “educating” the persons whose rights were being violated. These narratives were recently used in the migration debate, where some host States claimed that migrants allegedly needed to be “educated” about the rule of law. Such policies and attitudes could be an expression of covert and insidious cultural superiority, through which the values of every other culture are ignored and despised. Historical injustices have to be addressed and disrespect for specific cultures, explicit or implicit, must end, and difficult discussions about redress for the gross violations committed have to be initiated. The collective nature and elements of cultural rights, as recognized by current standards in international law, are also part of the remit of the mandate.

C. Protecting cultural rights relating to the natural environment

29. The Special Rapporteur is fully committed to further unpacking the relationship between natural diversity, the environment and cultural rights. Identities and cultural realities are also built through the way individuals and communities interact with nature and their environment.

[...]

32. The recent recognition of the right to the enjoyment of a safe, clean, healthy and sustainable environment refocuses the attention of the mandate holder on the importance of cultural practices and traditional knowledge as tools for the realization of the right to the enjoyment of a safe, clean, healthy and sustainable environment. Often, cultural rights relating to nature are neglected or sidelined for other needs and interests. At times, projects funded by international organizations and executed by transnational corporations do not prioritize the spiritual and cultural rights of the persons and communities concerned. Certain cultural practices are also often unfairly attacked and deemed environmentally unfriendly (such as shifting cultivation and cultural burning). Also, development and sustainability are being interpreted as serving a specific way of life, and the expertise of the people who inhabit the lands to be “developed” is not sought, despite the guarantee of free, prior and informed consent. As the Special Rapporteur on the rights of indigenous peoples has noted, environmental impact assessments should give special consideration to the cultural rights of indigenous peoples and any such project should include meaningful consultations to obtain their free, prior and informed consent. The Special Rapporteur invites all stakeholders to send ideas on how the implementation of cultural rights can be strengthened in addressing environmental issues and to share good practice and concerns on these matters with the mandate holder.

V. Balancing of rights

33. Similar to most other human rights, cultural rights are not absolute rights. In her attempts to balance cultural rights with other rights or interests, the Special Rapporteur is again guided by international law. First, cultural rights cannot prevail over absolute rights, including the prohibition of torture and other forms of ill-treatment, slavery and genocide. Harmful traditional practices that constitute torture and other forms of ill-treatment or slavery must be eradicated. Any violence, including rape and harmful traditional practices, is a violation of human rights,

no matter what their origin. As highlighted by United Nations bodies, coercive practices of bonded labour of migrant domestic workers or indigenous individuals must not be tolerated by any State under any circumstances. States are under the clear obligation to take measures to eradicate such practices and to effectively investigate such cases.

34. Second, any balancing between cultural rights and rights other than absolute rights or other interests must follow the principles of legality, legitimacy and proportionality. In its evaluation of the communications submitted by Lovelace, Kitok and Länsman, the Human Rights Committee asked for the existence of a reasonable and objective justification for the prevalence of one right over the other, consistency with human rights instruments, the necessity of the restriction and proportionality. It is argued that the complete neglect of one right – be it a cultural right or another right – for the full realization of the competing right would in most cases violate the principle of necessity. The core of each human right must be protected.

[...]

36. In balancing cultural rights with other rights or interests, the rights of vulnerable or marginalized sections of the population must take priority so that effective and real equality can be achieved. This is of particular importance when balancing the right to development with the cultural rights of a community. Although at times violations are perpetuated by transnational corporations – and the Special Rapporteur follows with interest developments in human rights responsibility of transnational corporations – ultimately the duty to respect, protect and fulfil cultural rights is borne by the State, and the State must act towards the full implementation of such rights for all, without discrimination.

3. International legal frameworks related to climate change, culture and cultural rights, A/75/298, 10 October 2020⁷⁶

I. International legal frameworks related to climate change, culture and cultural rights

A. Cultural rights standards

[...]

4. Specific standards apply to the cultural rights of particular groups. For example, the UN Declaration on the Rights of Indigenous Peoples establishes, in article 31, that “indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, [and] knowledge of the properties of fauna and flora.” In the outcome document adopted at the World Conference on Indigenous Peoples, held in 2014, States explicitly confirmed that indigenous peoples’ knowledge and strategies to sustain their environment should be respected and taken into account in developing national and international approaches to climate change mitigation and adaptation.

[...]

⁷⁶ <https://www.ohchr.org/en/documents/thematic-reports/a75298-report-climate-change-culture-and-cultural-rights>.

B. Relevant standards on the environment and climate change

1. The environment and climate change

[...]

11. According to the Paris Agreement's preamble, "Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity..."
12. This important agreement's sole specific reference to culture is to note that some cultures recognize the ecosystem as Mother Earth. Its article 7 (5) acknowledges that "adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate."

[...]

3. Standards related to specific groups and peoples

[...]

c. Indigenous peoples

27. Article 29 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms that "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination." Article 32 confirms that indigenous peoples have the right to determine how their lands and resources are used, and that their free, prior and informed consent is required before projects affecting their lands and resources are undertaken. Effective mechanisms for redress and mitigation must be available when there are negative environmental or cultural impacts. According to the Rio Declaration on the Environment and Development, "Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development." (Principle 22).

[...]

D. Sovereignty, climate change and cultural rights

[...]

34. Threats to the sovereignty of indigenous peoples over their land, as well as to their land and tenure rights, have a direct impact on their ability to counter the negative effects of climate change, and undermine their ability to play a positive role in determining which cultural practices and aspects of traditional knowledge are brought to bear on it in ways that affect climate change.

[...]

II. Examples

36. This section contains a small selection of diverse examples from different regions illustrating many issues raised in the report. Some are drawn from submissions. These examples should be understood in conjunction with the relevant section in the main report.

A. The negative impacts of climate change on culture, cultural heritage and cultural rights

[...]

5. Impact on cultural rights of indigenous peoples

45. In the U.S. state of Louisiana indigenous people are facing forced displacement due to sea level rise, and ancestral lands and sacred sites are endangered. In Guyana, indigenous people are moving from the savannah to forests in times of drought and changing planting patterns.

46. Linguistic diversity and indigenous languages may also be eroded. For example, there is a risk that the Sami language and cultural practices will be lost in Finland due to climate change and resulting migration. Adaptation to arctic sea ice, marine mammals, and tundra are defining features of Inuit language, knowledge and ways of life, which are consequently now all under threat. These developments also have a gendered impact. For example, in Nicaragua, the drying up of lagunas has deprived indigenous women of a social space to gather and exchange.

[...]

B. The positive potential of culture, cultural heritage and cultural rights to enhance responses to climate change

47. The Inupiat in Point Hope, Alaska, are using contemporary storytelling as a critical form of cultural adaptation to climate-induced changes to homeland, sense of place, and environmental kinship, that threaten their culture and cultural identity. "Storytelling reveals and fosters adaptation, allowing residents to maintain their connections to dramatically shifting places and cope with an uncertain future."

[...]

50. The Initiative of the Amazon Sacred Headwaters is an indigenous initiative in which different indigenous peoples that have bordering ancestral lands have come together to promote regional governance guided by indigenous traditions/principles, harmony, and cooperation, highlighting the importance of fomenting a relationship between humans and Earth. The Amazonian indigenous confederations in each country cooperate to protect 30 million hectares of rain forest. The Initiative "seeks to create a mosaic of indigenous-titled territories based on their traditional knowledge of geographic ecological boundaries." It aims to "create a united front against the pressures on these indigenous territories and address climate change by keeping forests standing and fossil fuels in the ground."

D. SPECIAL RAPPOREUR ON THE RIGHT TO FOOD

1. Seeds, right to life and farmers' rights, A/HRC/49/43, 30 December 2021⁷⁷

I. Introduction and framing the issue

[...]

C. Farmers' rights are human rights

20. Human rights can be a bulwark against these threats to the environment and people's lives. The International Treaty on Plant Genetic Resources for Food and Agriculture is a significant advancement in fulfilling people's human rights. First, it recognizes the importance of farmers' seed systems and the enormous contribution that the local and indigenous communities and farmers throughout the world, particularly those in centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world. Second, the Treaty recognizes farmers' rights as a sovereign responsibility and directs contracting parties to protect and promote farmers' rights. Third, the Treaty enumerates farmers' rights and considers this enumeration as fundamental to the realization of those rights at the national and international levels.

[...]

24. Indigenous peoples make up less than 6 per cent of the world's population, yet are stewards of 80 per cent of the world's biodiversity on land. With indigenous peoples living on land that is among the most vulnerable to climate change and environmental degradation, indigenous rights are more important than ever. Indigenous peoples' right to seeds has been confirmed in the United Nations Declaration on the Rights of Indigenous Peoples, which affirms indigenous peoples' right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as their human and genetic resources, seeds, medicines and knowledge of the properties of fauna and flora. In this regard, States are to take effective measures to recognize and protect the exercise of these rights in conjunction with indigenous peoples.

25. When reading the International Treaty on Plant Genetic Resources for Food and Agriculture in its entire context, together with the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas and the United Nations Declaration on the Rights of Indigenous Peoples, farmers' rights are best understood as the rights that smallholder farmers/peasants and indigenous peoples have in relation to seeds based on their long-standing and ongoing practices and contribution to enhancing global biodiversity; this comes with the corollary Member State obligations to respect, protect and fulfil those rights

⁷⁷ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F49%2F43&Language=E&DeviceType=Desktop&LangRequested=False>.

II. Farmers' rights

A. Legal framework

[...]

38. Meanwhile, multilateral support around farmers' rights sparked by the International Treaty on Plant Genetic Resources for Food and Agriculture has significantly advanced – first through the United Nations Declaration on the Rights of Indigenous Peoples and under the present mandate, and most recently through the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, the Committee on the Elimination of Discrimination against Women's general comment No. 34 (2016) and the Human Rights Committee's general comment No. 36 (2018). This is further buttressed by the Committee on World Food Security's 2021 policy recommendations, recognizing farmers' contributions to biodiversity and calling for the strengthening of policy instruments and coherence for the conservation of biodiversity for food and agriculture and the fair and equitable sharing of seeds in the context of the Treaty and the Convention on Biological Diversity. If existing intellectual property rights treaties are marked by definitional ambiguity and international strife, farmers' rights have contributed to normative innovation and international cooperation.
39. From a WTO perspective, patent protection is the norm and everything else is unique and exceptional. From the International Convention for the Protection of New Varieties of Plants perspective, breeder's rights are the norm that fits easily within the exceptional space of WTO. Both perspectives are a version of an intellectual property rights regime and have proven to not reflect a commitment to international cooperation or the reality of most small-scale farmers' and indigenous peoples' practices in the past or present, or their desires for the future.

B. Promotion of farmers' rights

[...]

46. With this in mind, the Special Rapporteur provides a framework on how to extrapolate general principles from the inventory, with the ultimate aim of better understanding, defining and designing farmers' rights under the following non-exhaustive themes based on article 9 of the International Treaty on Plant Genetic Resources for Food and Agriculture and human rights law:
- (a) Recognition of farmers' and indigenous peoples' right to seeds;
 - (b) Protection of farmers' and indigenous peoples' traditional knowledge;
 - (c) Right to save, use, exchange and sell farm-saved seeds;
 - (d) Right to participate equitably in benefit-sharing;
 - (e) Right to participate in decision-making.

[...]

(a) Recognition of farmers' and indigenous peoples' right to seed

50. The contribution of small-scale farmers/peasants and indigenous peoples to the conservation and development of plant genetic resources for food and agriculture production must be recognized as the foundation of all seed systems. As such, all Member States should recognize farmers' rights in national legislation and prioritize the national and international support of farmers' seed systems. Such recognition must reflect the fact that biodiverse farmers' seed systems are the preconditions

for any fair economic system and any type of market to function. Therefore, farmers' rights must be supported and implemented in a way that ensures that property and contract laws do not encroach on this fundamental element of seed systems.

(b) Protection of farmers' and indigenous peoples' traditional knowledge

51. Traditional knowledge in the context of plant genetic resources encompasses the multidimensional living body of knowledge that farmers, indigenous people and their communities employ in selecting, saving and adapting plant materials, which are passed from generation to generation. For many communities, traditional knowledge intertwines with sacred knowledge, creating collective identity and defining a community's relationship to nature. As such, traditional knowledge is inherently tied to peoples' and communities' right to self-determination.
52. Traditional knowledge is sometimes protected through an intellectual property regime – this increases the risk of exploitation. To ensure that peoples' traditional knowledge in all its forms is protected, Member States should first implement measures that guarantee that a community's knowledge cannot be shared or used in any way without the community's free, prior and informed consent. This includes a community's right to refuse collaboration.
53. Without commenting on their efficacy, it helps to understand how existing mechanisms that protect traditional knowledge are enacted through defensive or proactive approaches. Defensive approaches involve having a traditional knowledge documentation system or a database to ensure that intellectual property rights are granted only for plant varieties that meet the conditions for protection, such as novelty and inventiveness. In such approaches, countries incorporate provisions borrowed from the Convention on Biological Diversity and the Nagoya Protocol, such as disclosure of origin, prior informed consent, mutually agreed terms and fair and equitable benefit-sharing. Examples include the community biodiversity registries and biocultural community protocols in Benin and the community seed registries established by the Campagao Farmers' Production and Research Association and the Southeast Asia Regional Initiatives for Community Empowerment in the Philippines. A proactive approach to protecting traditional knowledge involves granting farmers and farming communities sui generis rights to protect and control the use of their traditional knowledge. For example, France recognizes traditional knowledge holders under the Intellectual Property Code and the Law on Literary and Artistic Property.

[...]

(d) Right to participate equitably in benefit-sharing

56. The right to food includes everyone's right to share in the full use and dissemination of agrarian and nutritional knowledge. Further refined in the context of farmers' rights, farmers have the right to participate in the fair and equitable sharing of benefits. ...

[...]

61. Any system of benefit-sharing should recognize that ultimately farmers and indigenous people contribute to agricultural biodiversity, and should therefore ensure that all benefits are distributed to farmers and indigenous people under terms jointly designed by farmers' and indigenous peoples' organizations.

(e) Right to participate in decision-making

[...]

64. This right should be extended to the participation of smallholder farmers/peasants and indigenous peoples in international organizations. Many international organizations allow for civil society organizations to be involved as observers, or in some cases, as stakeholders. For example, the Civil Society and Indigenous Peoples' Mechanism for Relations with the UN Committee on World Food Security is an innovative mechanism that allows civil society organizations to organize and participate autonomously in the Committee's operations.

C. Farmers' rights enhance innovation and agrobiodiversity

69. As countries continue negotiations, they should keep in mind that the more a system protects methods of freely sharing seeds and knowledge, ensures farmer participation in all aspects of breeding, and strengthens cultural ties to the land, the more biodiversity is conserved and rights to life and food are fully realized. Therefore, the International Treaty on Plant Genetic Resources for Food and Agriculture, with its articulation of farmers' rights, further refined by the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, provides the foundation for a human rights-based system of digital sequence information governance.

[...]

IV. Conclusion and recommendations

93. Flourishing and resilient seed systems are key to the full realization of the rights to life and to food. The concentration of corporate power in food systems has made communities vulnerable to harm caused by ecological degradation and pesticides. Global South communities are disproportionately harmed, especially smallholder farmers/peasants, indigenous peoples, women, children and agricultural workers.

94. The challenge for Member States is that the current international and national legal landscape creates potentially divergent obligations and risks human rights violations. Establishing a robust farmers' seed system is made urgent if a State intends to include or has already included intellectual property rights as part of their national seed system.

95. For Member States to meet target 2.2 of the Sustainable Development Goals, the Special Rapporteur has provided a framework to cohere and advance farmers', indigenous peoples' and workers' rights and ensure that the world's seed systems are diverse and safe and fulfil the rights to life and food.

96. The Human Rights Council should:

- (a) Reaffirm that farmers', indigenous peoples' and workers' rights are human rights;
- (b) Recognize smallholder farmers/peasants and indigenous peoples as stewards of seed systems for all of humankind in line with the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas;

- (c) Take note that intellectual property rights and commodity seed systems are often implemented in a way that threatens human rights.
97. Member States should:
- (a) Recognize, support and reward smallholder farmers/peasants and indigenous peoples as stewards of seed systems for all of humankind;
 - (b) Invest in research and development to maintain and build sustainable farmers' seed systems;
 - (c) Avoid any funding, training and technical or capacity-building exclusively focused on commodity seed systems;
 - (d) Develop and interpret their seed and plant variety protection laws and policies based on the fact that fully realized farmers' rights are a precondition for any type of fair economic system.
98. As such, Member States should ensure that their national laws:
- (a) Recognize farmers' rights as human rights;
 - (b) Establish farmers' rights as the fundamental aspect of their national seed system;
 - (c) In cases of national systems comprised of farmers' and commodity seed systems, conduct regular human rights impact assessments;
 - (d) Prioritize the full realization of farmer's rights.
99. Member States should base their national seed systems on the International Treaty on Plant Genetic Resources for Food and Agriculture and human rights law as articulated in instruments such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. To this end, they should, as a minimum:
- (a) Protect farmers' and indigenous peoples' traditional knowledge against exploitation resulting from the application of intellectual property rights. This includes implementing measures that guarantee that any community's knowledge cannot be shared or used in any way without the community's free, prior and informed consent;
 - (b) Fulfil farmers' and indigenous peoples' right to freely save, use, exchange and sell farm-saved seeds as an indivisible and fundamental right;
 - (c) Fulfil farmers' and indigenous peoples' right to participate equitably in all systems of benefit-sharing. All benefit-sharing mechanisms should be based on principles of protecting traditional knowledge and redistributing benefits back into the hands of farmers and indigenous peoples. In this regard, States should support local community seed libraries as the principal means to develop and fulfil farmers' rights. States are also encouraged to better support the multilateral system under the International Treaty on Plant Genetic Resources for Food and Agriculture;
 - (d) Respect and support farmers' and indigenous peoples' right to participate in decision-making regarding all laws, policies and practices that address matters such as seed release, seed registration, seed commercialization laws, access and benefit-sharing laws, plant variety protection laws and trade laws at the

national level. This includes providing farmers with an opportunity to jointly design mechanisms intended to respect, protect and fulfil farmers' rights.

100. In order to ensure a stable multilateral system based on human rights, cooperation and solidarity, Member States should consider:
- (a) Not pressuring other Member States to join the International Convention for the Protection of New Varieties of Plants in any way. Being a party to that Convention should no longer be required as part of bilateral or regional agreements. Member States are strongly encouraged to remove such requirements from current agreements;
 - (b) Ensuring that human rights are at the core of all negotiations around global governance for digital sequence information and that farmers' rights are the basis for the design of any access and benefit-sharing mechanisms;
 - (c) Ratifying and implementing all relevant International Labour Organization conventions on occupational health and safety and implementing recommendations and codes of practice related to the protection of workers from exposure to hazardous substances in the workplace;
 - (d) Cooperating to transition to agroecology and gradually phase out pesticides, starting with the phasing out and banning of highly hazardous pesticides.
101. The FAO Council is strongly encouraged to review the agreement with CropLife International with an eye to human rights concerns and to consider directing the Director-General of FAO to rescind the agreement.
102. The Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture is:
- (a) Invited to consider the present report as a guide when interpreting the inventory of national measures, best practices and lessons learned from the realization of farmers' rights and when finalizing the options;
 - (b) Encouraged to ensure that the secretariat meets its duties to mobilize resources and provide technical assistance to contracting parties and relevant stakeholders for capacity-building to enhance the realization of farmers' rights.

2. Interim report of the Special Rapporteur on the right to Food, A/76/237, 27 July 2021⁷⁸

IV. Food Systems Summit chronology and assessment

[...]

C. Marginalizing human rights

53. At the outset of Summit preparations, human rights were not part of the process. In October 2020, through the Civil Society and Indigenous Peoples' Mechanism for Relations with the United Nations Committee on World Food Security, civil society organizations organized a call to action "to challenge" the Food Systems Summit process. Some of their major concerns were that human rights and limiting corporate power were still not on the Summit agenda.

[...]

⁷⁸ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F237&Language=E&DeviceType=Desktop&LangRequested=False>.

56. The marginalization of human rights as an overall approach led to the marginalization of a range of issues and groups including Indigenous peoples. In the middle of wave 1, in mid-February 2021, participants at the fifth global meeting of the Indigenous Peoples' Forum at IFAD provided a synthesis of their deliberations on "The value of indigenous food systems, resilience in the context of the COVID-19 pandemic". This included seven recommendations to the Food Systems Summit on how the Summit could best serve Indigenous peoples. Despite these calls, to date, no Indigenous/traditional knowledge holders are part of the Scientific Group, and it appears that such knowledge is still in the margins.

57. On 31 March 2021, members of the United Nations Permanent Forum on Indigenous Issues, the Scientific Group, the Global Hub of FAO and "members of the scientific community of indigenous peoples" met. This was an exchange between the Scientific Group and the knowledge communities of the Indigenous peoples. The United Nations Permanent Forum and FAO are scheduled to present the White/Whipala Paper on Indigenous Peoples' food systems at a pre-Summit affiliated session (although not in the main programme). Other Indigenous peoples, through the Civil Society and Indigenous Peoples' Mechanism, have decided to denounce the Summit because of its productivity paradigm, marginalization of human rights and limited scope.

[...]

59. In sum, the Food Systems Summit has been driven by an understanding of science and policy that reflects a particular hierarchy of values. The process began with corporate-friendly policymakers, natural scientists and economists. Later, Member States were brought into the process to work within a set of parameters determined by that original corporate-friendly group. Human rights were introduced very late in the process. To date, according to the most recent Summit secretariat presentation to the Advisory Committee, Indigenous people's concerns remain an "emerging topic". Governance was introduced, and in general terms, only after the short list of proposals was finalized in preparation for the pre-Summit.

[...]

V. Trade and territorial markets

[...]

C. Agroecology and territorial markets

[...]

79. It may be useful to understand how food systems and territories are made through movement, especially if one element of territorial markets is to circulate wealth. All food systems generate movement, and the movement of human animals has always been "natural, common and largely harmless". People often build their cultures and food systems around the seasons, tidal shifts and movements of a particular species through space and time. Pastoralists, fishers and some Indigenous people's sense of their home territory is bounded by the movement of the animals that they depend on. With climate change, people, non-human animals and entire biomes are migrating at unprecedented rates. This means that territories are quickly changing in scale, nature and size. This also means that migrant workers are some of the most vulnerable to sickness and death in the pandemic. It is helpful to map territorial markets as they are. It would be more productive also to have a better understanding of how new territories are being remade in real time.

VI. Conclusions and recommendations

[...]

90. The Committee on World Food Security includes the autonomous Civil Society and Indigenous Peoples' Mechanism, a space for human rights that enables solidarity among the food systems' constituents. The Mechanism must be included in any Food Systems Summit outcomes conversation and assessment.

[...]

93. More specifically, States should: ... (g) Enact the ... Declaration on the Rights of Indigenous Peoples through national policy and legal frameworks....

94. Businesses should: ... (b) Not operate in a territory without the free, prior and informed consent of Indigenous peoples....

3. The right to food in the context of international trade law and policy, A/75/219, 22 July 2020⁷⁹

I. Introduction

[...]

3. The world was falling behind on fully realizing the right to food even before the pandemic. If statistics are any guide, the number of hungry and undernourished people in the world has been rising since 2015. Meanwhile, biodiversity in agriculture is decreasing as the global diet becomes increasingly homogenized around a small number of crops, including a marked shift towards heavily processed foods. Furthermore, COVID-19 is only the most recent virus, and not the last, to strike humanity as a result of our continued disruption of animal habitats, which increases the risk of zoonotic transfer of disease. Lastly, the world has only recently recovered from the food price volatility which struck during the period 2007–2010.
4. The right to food cuts through oversimplified debates over whether food insecurity is a problem of scarcity (not enough available food) or a problem of distribution (lack of access to food). Instead, it requires us to first understand how power is produced and distributed before answering the question of how food should be produced and distributed.
5. Until now, trade policy has primarily focused on economic frameworks and has either ignored or marginalized people's human rights concerns. At the same time, human rights policy has provided a powerful socio-political critique of trade but has not offered an institutional alternative to the existing regime. Neither approach has adequately responded to climate change.
6. The present report of the Special Rapporteur on the right to food, Michael Fakhri, is a first step past this impasse, by framing the right to food within the context of international trade law and policy. International trade is of particular importance and a core element that must be addressed to ensure the full realization of the right to food. The report blends trade and human rights policy, and provides principles and an institutional map that can guide States and people to understand the right

⁷⁹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F219&Language=E&DeviceType=Desktop&LangRequested=False>. See also 'Public statement by the United Nations Special Rapporteur on the right to food, Mr. Michael Fakhri: Response to joint statement by the leaders of the World Bank Group (WBG), the World Trade Organisation (WTO), the International Monetary Fund (IMF) and the World Food Programme (WFP)', 20 May 2022, <https://www.ohchr.org/sites/default/files/2022-05/joint-statement-wto-imf-wfp.pdf>.

to food anew in political, economic and ecological terms. During his mandate, the Special Rapporteur will work with States and stakeholders to expand on these basic elements in order to generate an effective international food policy geared towards building a new trade regime.

[...]

III. World Trade Organization Agreement on Agriculture

[...]

C. Inherent limitations

27. The past 25 years have shown that these exceptional, ameliorating Agreement on Agriculture provisions do not ensure fair international markets nor do they make domestic markets stable. Moreover, WTO negotiations have not advanced trade policy on agriculture since 1995. Over the decades, the details of who grows what food, where and for whom have changed significantly. Nevertheless, existing WTO disciplines lock in a profoundly unequal set of outcomes. They continue centuries of patterns of trade in which formerly colonized States, indigenous peoples, agricultural workers and peasants are denigrated by the trade system.
28. In addition, rather than advance trade policy to promote development and human rights, the Agreement on Agriculture has privileged those States and corporations that already have access to resources, infrastructure, credit and foreign markets. More specifically, trade liberalization and domestic policies in the wealthiest countries increased the market power of transnational commodity traders and processors. The Agreement contributed to the consolidation of corporate power by ignoring the dominant role that a handful of large companies play at all levels of the food system.

[...]

IV. Human rights principles for international trade

[...]

B. Self-sufficiency

53. As it relates to the right to food, self-sufficiency is a value that can provide qualitative and principled guidance to governments, people and institutions with regard to their decision-making and strategic planning across the different policy contexts that have an impact on the right to food, including trade policy.
54. In a human rights context, self-sufficiency is a relational principle in which the notion of self is collective and not individualistic, nationalistic or aiming for autarky. With nations, and within nations, self-sufficiency is about food and community and their symbiotic place in relation to world food and ecological systems. Between nations and political systems, it is a principle of horizontal coexistence. In all those different relations, self-sufficiency emphasizes autonomy, harmony, coexistence and respect.
55. Self-sufficiency is centred on communities, requiring policy and planning to be as localized as practicable. Scale matters with regard to how we understand what is working. In theory, the world as a whole has enough food to feed everyone and is “self-sufficient”, but 800 million people are chronically undernourished (and many more if we consider the number of malnourished). Centred on and scaled to local communities, self-sufficiency places the locus of decision regarding

the major dimensions of food production, distribution and consumption, and the recycling or disposal of food waste, in local communities first, national communities second and international communities third.

[...]

61. Self-sufficiency involves seeking regulatory harmony, rather than harmonization, between indigenous, local, national, regional and international laws. Respecting the right to food means respecting the rights of peoples to follow plural food laws, customs and practices. Policies that prioritize efficiency treat the diversity of food laws as secondary (or even antagonistic) to the overweening goal of lower prices. Harmonization is justified by the promise of cheaper food – but respecting the right to food is more than ensuring that food is as cheap as possible. It means creating the conditions for people to be able to access, cultivate, rear and prepare culturally appropriate food at a reasonable social and environmental cost. Against the backdrop of prioritizing autonomy, a respect for plurality means that trade policies should seek first to protect existing food ecologies and should not, a priori, promote the standardization of food practices and rituals, through laws and customs which support them.

[...]

C. Solidarity

[...]

73. The Intergovernmental Panel on Climate Change has listed more than 100 mitigation scenarios, most of which assume continuing economic growth. However, combining economic growth with the Paris climate commitments is only possible using extremely optimistic projections and heavy reliance on carbon capture and storage technologies. These technologies have not been designed for widespread use, and their efficacy and broader consequences are largely understudied. Other “green growth” plans rely heavily on the intensive mining, processing and usage of rare earth minerals. Often located on the lands of racialized and indigenous peoples, these materials contain radioactive elements that make their extraction and processing an energy-intensive and extremely dangerous process for both humans and the environment.
74. Similarly, so-called “green grabs” are particularly worrying when it comes to the realization of the right to food. The phenomenon involves the appropriation of resources, notably in developing States, for environmental purposes, and carbon emissions in developed States are supposedly offset through the financing of carbon - saving projects in developing States. In addition to the ineffectiveness of these market-based mechanisms in actually delivering fewer emissions, green grabs also undermine the right to food by disrupting local food-making practices and shifting the usage of land away from agriculture, hunting or gathering. Often, land is appropriated without meeting the following human rights requirements: obtaining free, prior, and informed consent from indigenous peoples; cooperating and collaborating in good faith with peasants and other people working in rural areas; and holding corporations accountable to their human rights obligations.
75. All in all, optimistic reliance on potential technological “fixes” to deliver green growth only postpones the necessary transformations of economies, including our food systems. These systems must transform from growth-centric goals in order to limit the effects of climate change, to build truly sustainable relationships with

our ecosystems and to empower those with fewer resources to assume control over their lives. Any delays will acutely limit everyone's ability to fully realize their right to food. Persons with disabilities, women, youth, children, indigenous peoples, racialized people and people living in poverty are – and will continue to be – disproportionately affected by these climate-induced disruptions.

[...]

V. International food agreements

[...]

B. Form and function of international food agreements

91. The new type of human rights-oriented food agreements would be cooperative spaces of regional self-sufficiency and solidarity, held together by shared understandings of dignity.
92. Part of the task would then involve developing an interface for the different regional food hubs; this would require creating mechanisms that allowed for different types of food systems to coexist. The political question would be over which single intergovernmental institution would host the interface process among the different international food agreements, much like the United Nations Conference on Trade and Development provided a base for several autonomous international commodity agreements.
93. To ensure a people-centred approach, this base institution would have to ensure that all relevant parties have a seat at the table, building on inclusive institutions such as the Committee on World Food Security, ILO and the Arctic Council. These institutions have established different forms of participation for not only States but also peasants, employers, organized labour and indigenous peoples. The Committee on World Food Security is best suited to the task – albeit with some improvements. It is a unique international space where Governments, international agencies, the private sector and civil society coordinate their efforts to tackle hunger and malnutrition. Through the Civil Society and Indigenous Peoples' Mechanism, rights holders have an effective seat at the Committee's table. The Mechanism is an autonomous space that allows different social movements, indigenous peoples, labour unions and advocacy organizations to work together and shape Committee policies. Regardless of which institution acts as the base, it would have to ensure this degree of participation as a minimum.
94. A human rights approach must also inform the substantive focus of an international food agreement. As such, international food agreements should focus on three elements: land, labour and migration.

Land: being in good relation with the land

95. A general principle of law among indigenous peoples and peasants is that communities are entitled to have the authority and resources necessary to be in good relation with the land and, thus, with each other. A lot can be learned here from the work of Kim Tallbear and her experience of the “everyday Dakota understanding of existence that focuses on ‘being in good relation’”. Generally, to “be in good relation”, like the idea of “good food”, is a matter for each community to determine for itself, through its unique conception of dignity. Importantly, though, being in good relation requires food practices that work in harmony with the land, not through controlling or extractive relationships.

96. Through policy tools and agroecological practices, the right to food is well suited to universalize the caretaking principle of being in good relation. In terms of trade, this would mean that international food agreements need to ensure that people's local tenure is never disrupted, and that they always have the ability to be in good relation with the land and each other.

E. SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

1. Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice, A/76/222, 23 July 2021⁸⁰

II. The existential threat of climate change

4. At the end of 2020, the Secretary-General emphasized the grim trajectory that humanity is on, as follows: "Humanity is waging a war on nature. This is suicidal. Nature always strikes back – and it is already doing so with growing force and fury. Biodiversity is collapsing ... Today, we are at 1.2 degrees of warming and already witnessing unprecedented climate extremes and volatility in every region and on every continent. We are headed for a thundering temperature rise of 3 to 5 degrees Celsius this century."

[...]

7. Despite multilateral commitments laid down in United Nations instruments and conventions from the 1980s on, including the United Nations Framework Convention on Climate Change, the Kyoto Protocol to the Convention and the Paris Agreement adopted under the Convention, progress has been insufficient and unequitable. While the Paris Agreement has sought to keep the rise in global temperature below 2 degrees Celsius above pre-industrial levels and, ideally, to keep the rise in temperature below 1.5 degrees Celsius above pre-industrial levels, national commitments to cut emissions have fallen far short of the measures necessary to achieve this target. Emissions are in many cases not merely permitted but actively encouraged by Governments, as several States provide the fossil fuel industry with extensive subsidies. The world's failure to reduce emissions has been compounded by the environmental and social consequences of climate change which have been largely ignored over the last years, as many initiatives aimed at shifting to renewable energy have not been designed and managed so as to build resilience within affected communities, including workers and indigenous peoples, and to reduce inequality.

[...]

III. The rise of the climate justice movement

9. Civil society, indigenous peoples, environmental human rights defenders, trade unions and social movements across the world have worked for decades to address climate change. To the extent that pressure has built towards meaningful action on climate change, that pressure has been driven by the tireless commitment of these actors to raising popular awareness of environmental challenges, advocating for the realization of the right to a healthy environment for all, including future

⁸⁰ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F222&Language=E&DeviceType=Desktop&LangRequested=False>.

generations, and proposing solutions. As observed by the Intergovernmental Panel on Climate Change (IPCC), “civil society is to a great extent the only reliable motor for driving institutions to change at the pace required”.

10. Civil society endeavours include efforts to protect the world’s lands, forests and oceans; to produce and analyse scientific data pertaining to climate change and associated harms; to build communities that are resilient, including by drawing on traditional knowledge; to prepare meaningful, fact-based proposals to limit climate change and mitigate its impacts; to document, call attention to and hold State and non-State actors accountable for environmental degradation while promoting the protection and welfare of workers, indigenous peoples and communities experiencing the impact of such degradation; and to push for policy change, including through national and international advocacy and litigation.

[...]

13. Among those at the forefront of the movement for climate justice are indigenous peoples. As recognized by the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, owing to their close relationship with the environment, indigenous peoples are uniquely positioned to contribute to addressing climate change. In Thailand, indigenous communities of peoples such as the Karen have developed expertise in sustainable agriculture and forest management practices and have been on the front lines of peaceful resistance against fossil fuel projects. In Australia, activism by Aboriginal and Torres Strait Islander peoples helped secure ambitious climate commitments from the private sector. The Coordinating Body of Indigenous Organizations in the Amazon Basin (COICA) has successfully advocated for indigenous peoples’ interests before international climate action forums.

IV. Challenges and threats

[...]

A. Physical attacks, killings and intimidation

20. The most pressing challenge facing climate and environmental justice advocates is the threat of violence. Over 70 per cent of human rights defenders killed every year are involved in the protection of the environment or closely related work asserting indigenous peoples’ rights and the rights of other communities that are marginalized and discriminated against. According to the United Nations Special Rapporteur on the situation of human rights defenders “one in two victims of killings recorded in 2019 by OHCHR had been working with communities around issues of land, environment, impacts of business activities, poverty and rights of indigenous peoples, Afrodescendants and other minorities”.

[...]

D. Criminalization, judicial harassment and surveillance

[...]

33. Companies have also targeted climate defenders with what have come to be known as “strategic lawsuits against public participation”, (SLAPPs). The term refers to lawsuits, including for defamation, anti-racketeering, interfering with business and conspiracy, brought by corporations and wealthy individuals with the aim of intimidating, harassing and draining the resources of those targeted. Criminal defamation charges have reportedly been used in Latin America and Southeast Asia to prosecute indigenous people, activists and human rights defenders.

[...]

F. Restrictions on participation in national and international climate negotiations

[...]

41. Achieving meaningful participation at United Nations climate forums has also proved difficult. Civil society has faced barriers to access to the climate forums imposed by the forums themselves, including bureaucratic hurdles, such as visa delays and denials, the limited opportunities afforded to United Nations-accredited associations to register representatives and limited opportunities to participate effectively and meaningfully in negotiations. Front-line defenders, including rural community leaders and indigenous peoples, often struggle to access United Nations climate change negotiations and may be subject to stricter travel, funding and security restrictions. This is an egregious example of inequity, insofar as corporate actors responsible for many of the harms in question have faced far fewer barriers to obtaining access.

[...]

G. Challenges and risks faced by specific groups

43. In addition to the various ways in which the rights to freedom of peaceful assembly and of association of civil society members have been violated, as discussed above, the ability of individuals and groups to engage in work oriented towards protecting environmental rights and advancing climate justice has been limited by the severity of the attacks directed against and the restrictions imposed on particular groups.
44. Indigenous peoples have faced particularly severe threats and challenges. The Special Rapporteur of the Human Rights Council on the rights of indigenous peoples has highlighted the drastic increase in acts of violence, criminalization and threats to which indigenous peoples have been subjected in the course of their resistance to major business ventures. For instance, more than 200 indigenous rights defenders were killed in Latin America between 2015 and 2019. Challenges to indigenous peoples also stem from climate change mitigation projects that do not uphold respect for indigenous peoples' rights, including their rights to assembly, association and free, prior and informed consent.

[...]

V. Meeting human rights obligations

48. The rights to freedom of peaceful assembly and of association are recognized and protected, inter alia, under article 20 of the Universal Declaration of Human Rights and articles 21 and 22 of the International Covenant on Civil and Political Rights. They are also encompassed in article 8 of the International Covenant on Economic, Social and Cultural Rights and guaranteed by other international conventions protecting the rights of groups that are marginalized and discriminated against, including, for example, the Convention on the Rights of the Child (art. 15), the Convention on the Elimination of All Forms of Discrimination against Women (art. 7), the United Nations Declaration on the Rights of Indigenous Peoples (arts. 17 and 18).... These rights are exercised and enjoyed individually and collectively.

[...]

51. These obligations are pertinent to addressing the climate crisis. The Paris Agreement calls for States to “respect, promote and consider their respective obligations on human rights”, including the rights of indigenous peoples, as well as to take into account “the

imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities”.

A. An enabling environment for civil society as essential for addressing the climate crisis and ensuring a just transition

[...]

58. The Special Rapporteur has observed that international development cooperation on climate action has increased in recent years. He welcomes efforts to ensure that international aid is accessible by civil society organizations and communities, including indigenous peoples, as well as by women-led and children’s organizations. He values the adoption of an Indigenous Peoples Policy by the board of the Green Climate Fund and calls for its full implementation. The Special Rapporteur encourages the Fund, as well as other international financial institutions, to continue adopting measures to ensure effective engagement in the Fund’s activities and financing for all sectors of civil society, including local organizations and rural communities.

[...]

B. Recognition and facilitation of climate-related protests, including civil disobedience

[...]

66. The Special Rapporteur recalls that gatherings in private spaces fall within the scope of the right of peaceful assembly. The extent to which restrictions may be imposed on such a gathering depends on considerations including “the nature and extent of the potential interference caused by the gathering with the interests of others with rights in the property ... whether the ownership of the space is contested through the gathering and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle”.

67. Ensuring that these principles are respected is of particular importance relative to indigenous peoples, as in many instances companies have been granted licences allowing them to enter and assume control over areas within indigenous peoples’ ancestral lands, without their free, prior and informed consent. Prohibiting indigenous peoples from protesting such ventures on their ancestral lands serves to compound the violations of rights perpetrated through use of such measures.

68. States must ensure that criminal laws penalizing activities such as usurpation, defamation, conspiracy, coercion, incitement of crime, terrorism, sedition and cooperation with foreign entities, which are often broad and ill defined, are not used to target environmental defenders and to create a chilling effect, including through prompt dismissal of such charges when they are being used to suppress climate justice advocacy. States must ensure that force is never used to disperse an assembly unless its use is strictly unavoidable in accordance with the requirements imposed by international human rights law, including international norms and standards on the use of force.

[...]

C. Inclusive participation in development and implementation of climate and just-transition policies

[...]

72. States must ensure that everyone can fully exercise the rights to freedom of peaceful assembly and of association. This includes indigenous peoples....

[...]

75. In addition to removing restrictions, States must take measures to ensure that people are able to effectively participate in shaping climate policies on the local, national and international levels. The mandate holder and others have previously emphasized that “public participation is crucial to surmount any crisis, and civil society must be regarded as an essential partner of governments in this endeavour”. Registration status should not limit associations’ ability to monitor, report on, conduct advocacy concerning and challenge the environmental impacts of business ventures and decision-making processes exerting an impact on environmental issues. It is important, moreover, as States update their plans under the Paris Agreement and advance their energy transitions, that workers, indigenous peoples and communities are meaningfully included in the process.
76. Ability to participate in decision-making is equally important for individual projects for climate action. This should apply not only to projects emerging from international climate finance institutions such as the Green Climate Fund and the Adaptation Fund, which should ensure the effective participation of people in the design, implementation and monitoring of projects, but also to approaches adopted under article 6 of the Paris Agreement. Article 6 allows for the trading of emissions reduction credits and establishes a sustainable development mechanism as well as non-market approaches. The Special Rapporteur urges States parties to the Paris Agreement to ensure that respect for rights is incorporated in the rules being negotiated for the implementation of article 6, including through the adoption of rights-based social and environmental safeguards, rules to ensure the participation and consultation of indigenous peoples and local communities, and an independent grievance redress mechanism.
77. The rights to freedom of peaceful assembly and of association must be fully upheld in the context of the sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change and other multilateral forums focusing on climate change. Processes and mechanisms must be strengthened to facilitate the meaningful participation of civil society and indigenous peoples in these forums.
...
78. The principles of access to information and public participation in climate - related decision-making underpin the Doha Work Programme on Action for Climate Empowerment established under the United Nations Framework Convention on Climate Change. The Special Rapporteur believes that a significant step was also taken through the establishment of the Local Communities and Indigenous Peoples Platform under the Convention, which aims towards enhancing the engagement of local communities and indigenous peoples in climate change efforts associated with the United Nations. The adoption of a new Doha Work Programme and a new workplan for the Local Communities and Indigenous Peoples Platform Facilitative Working Group at the twenty-sixth session of the Conference of the Parties to the Convention can help further support the effective participation of civil society and indigenous peoples in the development and implementation of climate policies, if these work streams are adequately informed by relevant human rights obligations.

D. Prevention of, protection from and accountability for attacks

[...]

81. Businesses, in addition to States, must respect the rights to freedom of peaceful assembly and of association of individuals, communities, indigenous peoples and

workers and ensure that they face no attacks in reprisal for their activism, including when they directly oppose a company's activities or engage in collective bargaining on workplace issues related to environmental and occupational safety concerns. In this context, the Special Rapporteur echoes the call issued by the Working Group on Business and Human Rights for businesses to commit to a zero-tolerance policy with respect to attacks against human rights defenders, including environmental human rights defenders. 84 Businesses must also refrain from retaliatory firings and other forms of retaliation.

[...]

VI. Conclusions and recommendations

A. Conclusions

87. The current climate crisis presents a challenge of unparalleled proportions. It is already responsible for generating and exacerbating widespread human rights violations around the world; if forceful action is not immediately taken, this will lead to even more catastrophic harm and human suffering in future.
88. The strongest voices pushing back against the status quo, and in favour of more meaningful climate action, have come from civil society, including indigenous peoples, young people, children and other communities that have experienced the impact of the crisis. Unfortunately, instead of receiving support, climate justice advocates have been attacked both by States and by business interests. Urgent attention is needed at the local, national, regional and international levels to ensure that those fighting for climate justice receive the support they deserve, as a means of respecting their rights and ensuring that their struggles for climate action and a just transition are recognized and supported.

[...]

Recommendations

90. States should:
- (a) Recognize publicly at the highest levels the work of civil society and the importance of the rights to freedom of peaceful assembly and of association as essential to the advancement of climate action and just transition;
 - (b) Adopt all necessary measures to ensure that individuals, organizations, communities and indigenous people exercising their rights to freedom of peaceful assembly and of association in support of climate justice are not subjected to attacks, harassment, threats and intimidation, including conducting thorough, prompt, effective and impartial investigations into killings and violence against civil society actors, ensuring that perpetrators are brought to justice and refraining from issuing official and unofficial statements stigmatizing civil society groups engaged in climate justice;
 - (c) Ensure that the rights to freedom of peaceful assembly and of association in support of climate justice are fully and equitably enjoyed by all groups and communities, including indigenous peoples, youth, children, women, members of other minority and discriminated-against groups, workers and associations, including unregistered groups, including by eliminating existing barriers and adopting positive measures to ensure that marginalized communities are provided with specific, meaningful opportunities to exercise the full extent of these rights in the context of climate justice;

- (d) Ensure that law and practice illegitimately restricting the place where and manner in which protests may take place, including laws criminalizing protests at or near business worksites as well as blanket bans on particular forms of protest, are reformed, in order to ensure full access to and enjoyment of the right to freedom of peaceful assembly. Among other things, States should amend laws criminalizing road blocking as a form of peaceful protest. States should recognize and provide space for civil disobedience and non-violent direct-action campaigns and ensure that any restriction complies with legality, necessity and proportionality requirements;

[...]

- (i) Ensure that civil society and communities can meaningfully participate in all climate and just-transition policy development and implementation at all levels of decision-making. This means:
- (i) Putting in place transparent and inclusive processes to ensure that everyone, including women, indigenous peoples, youth, children, persons with disabilities and other groups facing marginalization or discrimination, is provided with equal opportunities to effectively participate in climate decision-making. This includes ensuring meaningful consultation prior to the adoption of climate- and energy-related laws and projects....

F. SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

1. Racism and the right to health, A/77/197. 20 July 2022⁸¹

I. Introduction

1. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health agrees with the High Commissioner for Human Rights that systemic racial discrimination extends beyond any expression of individual hatred. She recognizes that it results from bias in multiple systems and public policy institutions, and is also crystalized in laws. Both separately and together, these factors perpetuate and reinforce barriers to equality.
2. The focus of the present report is on the impact of racism on human dignity, life, non-discrimination, equality, the right to control one's health and body, including the right to freedom from non-consensual medical treatment and experimentation, and the entitlement to a system of health protection. On the basis of anti-coloniality and anti-racism frameworks, the report exposes the global health impact on racialized people of the living legacy of past and ongoing forms of racism, apartheid, slavery, coloniality and oppressive structures, including the global economic architecture, funding mechanisms and national health systems.
3. The Special Rapporteur underlines the fact that racism is a key social determinant of health and a driver of health inequities. She considers from a historical perspective the impact of past and contemporary forms of racism on the right to health and on the ability of individuals and communities to realize their rights to underlying

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<https://www.undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F197&Language=E&DeviceType=Desktop&LangRequested=False>.

determinants of health, such as access to health care, services and goods, including with respect to sexual and reproductive health. She also sheds light on the impact of racism and discrimination, in particular on Black people, persons of African descent, migrants and indigenous peoples and minorities, and the intersection of factors at play, such as poverty, and discrimination based on age, sex, gender identity, expression, sexual orientation, disability, migration status, health status (e.g. HIV/AIDS) and location in rural or urban communities.

[...]

IV. Legal framework

[...]

14. The International Convention on the Elimination of All Forms of Racial Discrimination includes concrete examples of racial discrimination and a clarification that racial discrimination should be understood as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. Article 5, paragraph (e) (iv), of the Convention refers to the need to prohibit and eliminate racial discrimination in order to guarantee the right to public health and medical care. The Committee places particular emphasis on and provides recommendations, including in relation to the right to health, regarding certain population groups that experience racism or racial discrimination such as ... indigenous peoples....

V. Ongoing manifestations of racism and related forms of discrimination in underlying determinants of health

22. The concept of epistemic injustice, or injustice related to knowledge, whereby someone’s knowledge or experience is not taken seriously or considered credible on the basis of an analysis of power and associated stereotypes, has increasingly been applied in the context of health care. A distinction is made between two types of epistemic injustice: testimonial injustice, in which someone’s pain, experience or trauma is discounted by people in a position of power, and hermeneutical injustice, in which the naming and articulation of suffering is prevented by a gap in (dominant) knowledge and ideas, arising from stereotypes and the dismissal of the authority of marginalized groups’ experiences. These injustices “can be systematic, especially if, as in the case of racism and sexism, the stereotypes and prejudices are deeply entrenched in the social world”.
23. The Special Rapporteur has reviewed the existing literature on the barriers faced by indigenous peoples to enjoyment of the right to health. It can be confirmed that language is a major component of discrimination in various countries, including Argentina (A/HRC/21/47/Add.2, para. 110), Australia (A/HRC/36/46/Add.2, para. 56), the Congo (A/HRC/18/35/Add.5, para. 23), Namibia (A/HRC/24/41/Add.1, para. 95), Panama (A/HRC/27/52/Add.1, paras. 74–75) and Sri Lanka (A/HRC/34/53/Add.3, para. 59). Ongoing research has also shown that inadequate cultural adaptation in the delivery of health services can create a barrier to the enjoyment of the right to health for indigenous peoples in various countries, including Botswana (A/HRC/15/37/Add.2, para. 81), Chile (E/CN.4/2004/80/Add.3, para. 78), Colombia (E/CN.4/2005/88/Add.2, para. 110), the Congo (A/HRC/18/35/Add.5, para. 74), Ecuador (A/HRC/42/37/Add.1, para. 103), and Honduras (A/HRC/33/42/Add.2, para. 102). Moreover,

information relating to the sexual and reproductive rights of indigenous peoples is often not made available in accessible formats and in indigenous languages. This language barrier exacerbates both testimonial and hermeneutical injustice. The Special Rapporteur regrets that there have been a limited number of submissions investigating the situation in European countries.

[...]

VII. Impact of colonialism on the availability of indigenous and traditional health knowledge systems, medicine and practices

57. Rooted in imperial conceptions and hierarchies distinguishing between “legitimate” and “non-legitimate” knowledge, the targeting of medicine in the colonies was a deliberate strategy put forward by European colonial powers for domination. Colonial States used both civil and criminal laws to suppress or marginalize most African therapeutics, targeting in particular those who challenged individualistic and materialist conceptions of health.
58. This suppression, undermining and marginalization of traditional and indigenous knowledge systems and medicine has wide-ranging health impacts. Intellectual property also enables the colonial theft of indigenous peoples’ traditional knowledge and genetic resources by allowing patenting and profiteering from the intellection property and value extracted from global South people and communities, along with the ancestral knowledge associated with them. This threatens food sovereignty and indigenous cultural heritage in the process.
59. Healing materials, knowledge and practices of indigenous communities were for a long time labelled as unmodern and ineffective, and their use was often regulated or even criminalized by colonial and post-colonial States. With the expansion of intellectual property rights towards the end of the twentieth century, as well as Western scientific bias, whereby knowledge is considered to exist only if it is formalized or privately owned, pharmaceutical companies have sought to patent traditional herbs and materials used for their medicinal properties.
60. These efforts of co-optation are intimately linked to monocultural ideologies, genetic modification technologies, and, more broadly, to monopolies. The sociocultural manifestations of the Western consumerist appropriation of indigenous knowledges are to be found in the takeover and monetization of yoga, meditation and other culturally rooted practices by middle class white people in the global North.

XI. Conclusions and recommendations

89. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health agrees with the agenda towards transformative change for racial justice and equality, a four-point agenda for ending systemic racism and human rights violations by law enforcement against Africans and people of African descent. She encourages this model to be considered when dealing with the right to abuses and violations of the right to health, namely: step up, to stop denying and start dismantling racism; pursue justice, to end impunity and build trust; listen up, so that people of African descent are heard; and redress past legacies, take special measures and deliver reparatory justice.

[...]

91. Similarly, the Special Rapporteur on the rights of indigenous peoples has emphasized that measures should be developed to train indigenous health-care workers to

incorporate traditional medicine into the delivery of health services, and to increase the participation of indigenous communities in designing health services that are responsive to their needs, including in cases related to reproductive health and rights.

[...]

96. Acceptable health requires an urgent focus on ensuring an end to the demonization and belittling of indigenous and traditional health, and instead promotes an inclusive approach that is respectful and seeks to understand and support integration into primary health care.

[...]

99. It is important to focus on neglected diseases and therapeutic options for conditions that predominantly affect those living in the so-called global South, while ensuring that we do not blame individual Black people, people of African descent, indigenous people and other racialized persons for the ways in which racism is manifested on their bodies.

G. INDEPENDENT EXPERT ON THE ENJOYMENT OF ALL HUMAN RIGHTS BY OLDER PERSONS

1. Visit to New Zealand, A/HRC/45/14/Add.2, 13 July 2020⁸²

I. Introduction

1. Pursuant to Human Rights Council resolution 42/12, the Independent Expert on the enjoyment of all human rights by older persons conducted an official country visit to New Zealand from 2 to 12 March 2020, at the invitation of the Government.

[...]

III. Administrative, legal, institutional and policy framework

[...]

14. The Constitution of New Zealand includes several legal and extralegal sources, including legislative documents, the common law, the principles of the Treaty of Waitangi, the law and custom of Parliament and customary international law. The Treaty of Waitangi has profound significance for human rights and for harmonious relations between Māori and non-Māori in New Zealand.

[...]

17. These policies have been based on the Positive Ageing Strategy, which was designed to achieve 10 guiding principles, namely to: empower older persons to make choices enabling them to live a satisfying life and lead a healthy lifestyle; provide them with opportunities to participate in and contribute to family, whānau

⁸² <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F14%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>. See also Visit to Finland, A/HRC/51/27/Add.1, 24 August 2022, para. 77 (“Discrimination on the basis of language and ethnic and indigenous origin is aggravated for older persons”), and para. 80 (“Attention must be paid, in health-care and social services, to the community-based practices characteristic of the Sami indigenous people. In line with the recommendations on mental health care contained in the concluding observations of the Committee on Economic, Social and Cultural Rights on the seventh periodic report of Finland, practices, in particular community care, that support the whole Sami community must be developed. Community centres with health-care and social welfare professionals familiar with the Sami culture are increasingly important for older Sami people who wish to continue their traditional reindeer-herding lifestyles, in particular given the increasing migration of younger Sami people to urban centres”), https://www.ohchr.org/sites/default/files/2022-09/A_HRC_51_27_Add.1_AdvanceEditedVersion.pdf.

and community; reflect positive attitudes to older persons; recognize the diversity of older persons and ageing as a normal part of the life cycle; affirm the values and strengthen the capabilities of older Māori and their whānau; recognize the diversity and strengthen the capabilities of older Pacific persons; appreciate the diversity of cultural identity of older persons; recognize the different issues facing men and women; ensure older persons, in both rural and urban areas, live with confidence in a secure environment and receive the services they need to do so; and enable older persons to take responsibility for their personal growth and development through changing circumstances.

18. The Government recently adopted a new comprehensive strategy entitled “Better Later Life – He Oranga Kaumātua 2019 to 2034”, which is guided by the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). Based on the outcomes of a national participatory consultation, the strategy links to existing dedicated policies on older persons such as the Healthy Ageing Strategy of 2016, the New Zealand Disability Strategy 2016, the New Zealand Carers’ Strategy 2008 and the Mahi Aroha – Carers’ Strategy Action Plan 2019–2023. The strategy resonates with human rights principles and is conducive to human rights-based implementation.

[...]

IV. Independent Expert’s main findings

A. Age discrimination

22. Age discrimination is explicitly prohibited under the 1993 Human Rights Act, which was significantly changed by the Human Rights Amendment Act 2001, including with regard to government activity within the normative scope. Ageist rhetoric, portraying older persons as a burden, nevertheless remains pervasive and contributes to negative attitudes towards ageing and older persons. This demonstrates that normative action, which is an important signal to society that age discrimination is not tolerated, is not sufficient to overcome stereotypes based on age.

23. Whereas discrimination in employment is listed in the Act among the unlawful practices, including prior to employment and in advertising, age discrimination is common in the workplace. Legislation prohibiting age discrimination is not sufficient to change employers’ behaviour, but may lead to more subtle and covert ways of discriminating. Older persons, in particular, experience discrimination when seeking employment and in accessing training opportunities, and they lack equal employment opportunities, which affects their length of time in work and their ability to save for retirement. There are also reports of older persons being denied access to mortgage loans on the basis of age, and of discriminatory practices related to insurance for older persons. Moreover, certain communities and ethnic groups, such as Māori and Pasifika peoples and refugees and migrants, continue to face structural inequalities and discrimination, which are exacerbated in old age.

[...]

B. Violence, neglect, maltreatment and abuse

25. New Zealand recognizes that it has unacceptable rates of domestic and sexual violence. Among developed countries, New Zealand has one of the highest reported rates of domestic violence with around 12 per cent of New Zealanders – over half a million people – directly affected by domestic and family violence each year.

26. One in three women is subjected to physical or psychological violence, especially domestic and sexual violence, including rape, by an intimate partner during the course of her lifetime. Violence disproportionately affects certain parts of society in New Zealand, particularly Māori and women.

[...]

29. Older Māori experience greater levels of abuse than older non-Māori. Information from Māori service providers indicates that economic and emotional abuse are more common than physical or sexual abuse. In a high proportion of cases seen by Māori older persons' service providers, the victim has some form of dementia. A sense of shame and stigma can be associated with elder abuse.

[...]

32. While the Family Violence Act 2018, in force since July 2019, laid the foundations for the transformation of the response system to domestic violence, there are concerns at the very low levels of reporting and the high rate of recidivism, particularly within the Māori community, with only 29 per cent of domestic and family violence and only 6 per cent of sexual violence reported to the police.

[...]

D. Adequate standard of living

35. Old-age poverty is below the Organization for Economic Cooperation and Development (OECD) average. Nevertheless, as the basic pension remains very close to the poverty threshold and house prices rise, there are still concerns about poverty among older persons. A large group of older persons, around 60 per cent of singles and 40 per cent of couples, have little or no additional income apart from the New Zealand Superannuation, which makes them very vulnerable to any changes in policy or economic circumstances. Moreover, the Superannuation is based on the assumption of mortgage-free homeownership for older persons. As private rental housing is becoming unaffordable under this regime and in view of the ongoing changes of tenure patterns, the number of older persons facing material hardship will increase and many of them will be in rental accommodation. The homeownership rate for older Māori in 2018 was 48 per cent, compared to 58 per cent of older persons of European descent.

36. There is also considerable variation by age group, with a much higher poverty rate for persons aged 75 or more. There are also important disparities for older persons living in rural areas, including higher levels of poverty.

37. The population of New Zealand in smaller towns and rural regions is ageing at a faster rate than in larger urban centres, and the disparities have the potential to increase in the future. In the most disadvantaged rural areas, there is a high concentration of Māori. Many older persons living in remote and rural areas have problems accessing health services, and those who require specialist care are likely to have to travel long distances for appointments and procedures. Older persons encounter difficulties in accessing regular transport, including public transportation and paid services such as taxis and buses. This leaves them isolated from services and social interactions.

[...]

41. The provision of adequate housing remains a challenge, especially in terms of affordability and habitability. Vulnerable groups such as Māori and Pasifika are overrepresented in rental and crowded housing. This overrepresentation correlates closely with low income, poor health and lower education levels. Kāinga Ora – Homes

and Communities is responsible for providing public housing for people in need. During the 2020/21 financial year, Kāinga Ora is forecast to invest NZ\$ 2.9 billion in rental property additions and upgrades and management of its infrastructure assets, and a further NZ\$ 422 million in repairs and maintenance of the existing housing portfolio.

[...]

E. Social protection and the rights to social security and work

[...]

58. This concerns particularly those groups that are more likely to be affected by a lack of economic activity and employment, including women, Māori and Pasifika. Older women, for instance, are less likely to have retirement savings, as over a lifetime they will have earned considerably less than men. Any change to superannuation and retirement provision is likely to have a gendered impact. Owing to the existing spousal deduction policy, some older women receive a reduced rate of New Zealand Superannuation. The Independent Expert was pleased to learn that it is anticipated that this policy will be amended from 9 November 2020.

[...]

V. Conclusions and recommendations

A. Overall strategy and findings

84. New Zealand is undergoing an essential age-structural change, which requires urgent adequate action now to meet the ensuing challenges. The Independent Expert commends the commitment of New Zealand to ensuring the enjoyment of all human rights by older persons. She welcomes the adoption of the new comprehensive strategy entitled “Better Later Life – He Oranga Kaumātua 2019 to 2034”, which is guided by the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), the founding document of New Zealand. It includes links to existing dedicated policies on older persons such as the Healthy Ageing Strategy of 2016, the New Zealand Disability Strategy 2016, the New Zealand Carers’ Strategy 2008 and the Mahi Aroha – Carers’ Strategy Action Plan 2019–2023.

[...]

B. Recommendations to the Government

Data and statistics

91. Notwithstanding various efforts, particularly in the context of digitalization, the Independent Expert encourages the Government to ensure the nationwide, systematic and regular collection of disaggregated data on the impediments to the enjoyment of all human rights by older persons, such as all forms of discrimination on the basis of age, individually and cumulatively, as well as exclusion, poverty and all forms of violence, abuse, neglect and maltreatment.

92. Data used in assessments should not only be disaggregated by age, but also ensure that age cohorts reflect the heterogeneous nature of the older population – in particular the Māori, Pasifika and other communities, as well as migrants and refugees – to enable differentiation between older and very old persons, who have different needs and capacities. Age cohorts should also be granular enough to take into account the relativity of the notions of age, considering the respective life-course context.

[...]

Violence, maltreatment, neglect and abuse

[...]

97. The Independent Expert encourages the Government to adopt criteria and guidelines for the provision of victim-oriented and culturally appropriate legal, biopsychosocial cultural and economic assistance that recognize the special needs of older women belonging to Māori and Pasifika and other communities, while ensuring that culturally sensitive efforts uphold the universality of rights.

[...]

Adequate standard of living

[...]

104. She encourages the Government to ensure an increased focus on the needs of older persons living in rural and remote areas, as well as small villages, including older Māori and Pasifika. It is essential to plan and implement viable transport and infrastructure options for the ageing population in order to ensure their access to essential services.

[...]

Care

107. As ageing gathers pace, there will be an ever-growing proportion of older persons in need of long-term care. In light of the projected doubling of overall longterm care costs by 2050, the Independent Expert notes the significant lack of longterm care professionals that will arise, unless the Government adopts substantial measures. She stresses that this becomes more pressing as, for instance, the number of older Māori needing care could increase by more than 200 per cent by 2026.

108. The Independent Expert is concerned to learn that especially Māori, but also Pasifika, have shorter life expectancy and higher disability rates in general, which is simply not acceptable. She urges the Government to intensify its efforts to address what seem to be structural biases in and beyond the health-care system and to ensure that the needs of Māori and Pasifika, as well as other groups, including migrants and refugees, are adequately integrated in health and care policies.

H. SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS

1. Reflections of the Special Rapporteur on her tenure and development-induced displacement, A/77/182, 18 July 2022⁸³

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez - Damary, pursuant to General Assembly resolution 76/167 and Human Rights Council resolution 50/6. In the first part of the present report, the Special Rapporteur provides reflections on her six-year tenure at the end of her

⁸³ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F182&Language=E&DeviceType=Desktop&LangRequested=False>.

term. In the second part, she examines the phenomenon of displacement by development projects and its impact on the human rights of those displaced.

II. Reflections of the Special Rapporteur on her tenure

[...]

12. In her road map, the Special Rapporteur also stated the importance of raising awareness on some neglected drivers of internal displacement. In one of her reports to the General Assembly, the Special Rapporteur discussed internal displacement in the context of the slow-onset adverse effects of climate change (A/75/207), which was a much-needed discussion on a lesser-known cause of climate-induced internal displacement, as more attention is usually directed to displacement caused by the more dramatic sudden-onset drivers of climate-induced displacement. There is now extensive evidence of the widespread impacts of climate change on the enjoyment of human rights, such as the rights to life, health, housing, food, water and education, and on cultural rights and collective rights, including the rights of indigenous peoples and the right to self-determination. In that report, the Special Rapporteur contended that movement or mobility owing to slow-onset adverse effects of climate change might not be entirely voluntary or forced, but rather that it fell somewhere on a continuum between the two, with varying degrees of voluntariness and constraint. However, in cases where voluntariness is absent, such mobility would fall squarely within the notion of forced displacement, in accordance with the definition of internally displaced persons set out in the Guiding Principles on Internal Displacement. In view of what is now commonly accepted to be a “climate emergency”, the Special Rapporteur enjoins the international community to build on the practices in disaster risk mitigation and reduction to create a more comprehensive response to the rights of those displaced by climate change by, for example, further examining the potential for loss and damages affecting displaced peoples.

[...]

IV. Development-induced displacement: definition and terminology

27. Defining development-induced displacement – also called development-based displacement – can be controversial. Development finance institutions use the term “involuntary resettlement”. However, this language optimistically emphasizes the solution – resettlement – rather than the human rights challenges of displacement. Displacement by development projects may occur without sustainable resettlement materializing in practice or even in principle. Recognizing the particular challenges faced by those displaced by development projects without human rights protection or durable solutions, in the present report the Special Rapporteur will refer to “development-induced displacement”.

[...]

29. Certain development projects are especially likely to induce displacement. The most well-known types are large-scale energy and transport infrastructure projects (dams, roads, highways, canals, power plants, railways, airports and spaceports), extractive projects (mines, oil and gas fields, and energy pipelines), and large-scale agribusiness. These projects can displace people through their extensive requirements for land and through their environmental impact on communities’ health, food security and livelihoods.

30. Even development projects with ostensibly benign aims can provoke significant displacement. Conservation projects have the important aim of safeguarding wildlife and the environment yet often result in the displacement of indigenous peoples from their lands, which they have managed sustainably for generations. Tourism projects, such as the development of resort zones or the construction of stadiums for global sporting events, may lead to the forced eviction and arbitrary displacement of local communities. Urban renewal or “city beautification” projects can benefit local communities, yet they often result in those communities being forcibly evicted or displaced by economic pressures as renewed neighbourhoods become more desirable to wealthier groups.

V. International legal standards A. Human rights instruments

31. The Guiding Principles on Internal Displacement establish that the prohibition of arbitrary displacement includes cases of large-scale development projects unless justified by compelling and overriding public interests (principle 6). Arbitrariness, as clarified by the Human Rights Committee, should not be equated with illegality – as displacement can be legal under national law yet arbitrary under international law – but should be interpreted more broadly to include elements of appropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.
32. Principle 7 obliges authorities to explore all possible alternatives to displacement. If no alternative emerges, authorities must base displacement on a legal decision, provide full information on the reasons and procedure for displacement and on compensation and relocation, seek affected communities’ free and informed consent, and involve them in relocation planning. Displacement proceedings should not violate the fundamental rights of the displaced (principle 8). Authorities should prevent in particular the displacement of indigenous peoples and other groups with a special dependency on and attachment to their lands (principle 9) and should comply with the right to effective remedy for rights violations (principle 7 (f)). These principles apply to development-induced displacement.

[...]

VI. Potential consequences of development-induced displacement on the enjoyment of human rights

[...]

47. The rights of indigenous peoples to self-determination, livelihoods, development, control over their lands and resources, and protection from displacement are detailed in articles 3, 4, 8, 10, 18, 20, 23 and 26–28 of the United Nations Declaration on the Rights of Indigenous Peoples. Nonetheless, they continue to be disproportionately affected by development-induced displacement. The relatively unexploited nature of their lands makes them a prime target for the extractive, hydropower, agribusiness and conservation sectors, and a significant gap remains between the recognition and the implementation of indigenous rights.

VIII. Conclusions and recommendations

63. Unlike displacement caused by conflict or disasters, development-induced displacement can be prevented through appropriate policy choices and by States fully implementing their existing human rights commitments. This requires a change in mindset, one that is centred on individuals and communities and

empowers them to realize their right to development rather than paternalistically treating them as passive subjects whose agency is subordinate to State interests. The recommendations below are provided in that spirit.

A. Ensure meaningful disclosure, participation and consent

[...]

65. States and development actors should:

- (a) Ensure that information provided to affected populations is timely, is provided in a space and format that is physically, culturally and linguistically appropriate and accessible for all literacy levels, and is updated in advance of each phase of project planning and implementation;
- (b) Improve the quality of disclosure and consultation processes by providing disclosure and consultation venues that are accessible to all groups, including women, persons with disabilities, older persons, indigenous peoples and minorities, and by ensuring meaningful participation and continuous and good-faith consultation throughout all phases of the project cycle; (c) Seek the informed consent of, rather than merely engaging, affected populations by providing them with the opportunity to shape development and resettlement plans, propose alternatives or refuse projects entirely, in line with the right to development;
- (d) Facilitate access to legal and technical assistance to enable affected communities' informed participation.

2. Housing, land and property issues in the context of internal displacement, A/HRC/47/37, 21 April 2021⁸⁴

I. Introduction

1. The present report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, is submitted in accordance with Human Rights Council resolution 41/15. In it, the Special Rapporteur provides an overview of the activities she has undertaken since her previous report (A/HRC/44/41) and examines housing, land and property issues in the context of internal displacement.

[...]

III. Housing, land and property issues in the context of internal displacement

A. Introduction

6. The loss of land and housing is a key feature of internal displacement regardless of its cause. Globally, both internal displacement and tensions over land are on the rise. Tensions and conflict related to land and housing are likely to increase in the future owing to climate change, natural hazards, large-scale land investments, extractive industries, food insecurity, population growth and rapid urbanization. Housing, land and property issues arise at all stages of displacement. They drive conflict and displacement, are a consequence of displacement and pose obstacles durable solutions. Addressing housing, land and property issues in situations of displacement is therefore essential to preventing displacement, mitigating its impact and achieving durable solutions.

⁸⁴ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F47%2F37&Language=E&DeviceType=Desktop&LangRequested=False>.

7. The loss of housing, land and property threatens a range of human rights that States have an obligation to respect, protect and fulfil. States should therefore refrain from interfering with such rights, protect internally displaced persons and people at risk of displacement from abuses and take positive action to ensure the enjoyment of housing, land and property rights.

[...]

B. Legal and policy framework

What are housing, land and property rights?

[...]

14. The right to land is linked to the enjoyment of a range of human rights. International law recognizes the land rights of indigenous peoples (who have a distinctive spiritual relationship with their traditionally owned lands, territories and resources) and equal access, use and control of land to women (who are often discriminated against in relation to access to property and inheritance). In response to increased competition over land and natural resources, new guidance on protecting customary land rights and access to land in support of food security and the sustainable use of resources has been developed during the past decade.

[...]

Housing, land and property and displacement

17. The Guiding Principles on Internal Displacement contain provisions restating the obligations of States and others relating to housing, land and property and displacement. They set out, for example, the obligation of the authorities to explore feasible alternatives to displacement, obtain the free and informed consent of those affected prior to relocation or displacement and provide proper accommodation and remedies (principle 7). States are also under a particular obligation to protect against the displacement of indigenous peoples and other groups with a special dependency on and attachment to their lands (principle 9). During displacement, internally displaced persons should be provided with basic shelter and housing, food and potable water (principle 18) and their property and possessions should be protected (principle 21). States should take measures to support the reintegration of displaced persons who have returned, notably by assisting them in recovering their property or by providing compensation (principles 28–29).

[...]

C. Understanding the relationship between housing, land and property, internal displacement and human rights

Housing, land and property issues as causes of displacement

22. Land is a valuable resource for livelihoods, trade and economic development. Land also has social and spiritual dimensions, notably for indigenous peoples and other groups with a special attachment to their lands. These multiple dimensions create conflicting interests that can escalate into tensions, conflict and forced evictions or displacement, as evidenced by the World Bank's estimate that 65 per cent of today's conflicts have a significant land dimension. Unaddressed discriminatory policies and previous waves of displacement and land dispossession create historical grievances, thereby endangering social cohesion and trust. Poverty and socioeconomic marginalization due to landlessness, unequal access to land and a high concentration of land owned by a small number of people or organizations are other powerful drivers of conflict.

23. The impact on land and housing of development and business activities such as largescale investments in land, infrastructure, mining and urban renewal have led to displacement and expropriation under conditions amounting to forced eviction. Conservation measures have also resulted in forced evictions and displacement in numerous countries and particularly affected the land rights of indigenous people. In other cases, competition over access to valuable resources has resulted in violent attacks on civilians, the destruction or occupation of housing and property and sustained conflict involving military forces, non-State armed groups and criminal organizations.

[...]

Specific groups

38. Although most internally displaced persons can be considered vulnerable in terms of their housing, land and property rights, women, indigenous peoples and pastoralists face specific challenges in relation to tenure. Displaced children, older persons and persons with disabilities too have specific needs that need to be integrated into response programmes. Weak security of tenure is often a reflection of the discrimination and socioeconomic marginalization affecting certain groups and individuals. During displacement, insecurity of tenure exacerbates pre-existing vulnerabilities and limits opportunities to improve living conditions. Indigenous peoples, women, minorities and members of certain caste systems, among others, tend to have weak security of tenure and to have customary or subsidiary land rights limited to such activities as food production, gathering, hunting and fishing. Because these rights are often not recognized and because vulnerable people often lack awareness, means or trust in institutions, they face difficulties defending their land against confiscation or occupation. Courts are often inaccessible to them and customary dispute resolution mechanisms may discriminate against them.

[...]

40. Indigenous peoples' strong cultural, spiritual and economic attachment to their lands is recognized under human rights law, which details the measures to be taken to protect them from displacement, including by requiring their free, prior and informed consent in respect of any measures and projects affecting the use of their land and natural resources and of attempts to relocate them away from their land. Indigenous peoples' tenure is mostly customary, with limited legal recognition or protection from the State. Their housing, land and property rights have typically been threatened by displacement caused by conflict, environmental conservation laws and investment projects authorized by the State. Even when national law recognizes indigenous peoples' land rights, limited access to judicial procedures leaves indigenous peoples vulnerable to encroachment. In 1997, the Philippines adopted progressive legislation protecting the land rights of indigenous peoples according to international standards. Since limited resources have been allocated for the law's implementation, however, and because of competing interests between the country's mining policy and the law, in 2016 the lands of the Lumad indigenous peoples were still being encroached upon by public and private development projects, extractive companies, largescale plantations and small-scale illegal mining and logging activities carried out by local paramilitary groups.

41. Pastoralists have a unique relationship to land as their livelihoods are based on mobility and access to extensive territories for their livestock. Droughts, desertification and land degradation, exacerbated by the slow-onset impact of climate change, require

increased mobility and access to common lands to compensate for the shrinking availability of good pastures. In parallel, the use of pasture areas for development purposes and the individual titling of common lands limit their mobility and increase land degradation and overgrazing by concentrating livestock in reduced areas.

42. Land and environmental human rights defenders, especially women and indigenous peoples defenders, are increasingly the targets of violent acts, including killings, intimidation, criminalization, forced eviction and displacement. Their role is essential in raising awareness among the public and the authorities of land rights and of the impact of development projects and business operations on human rights, natural resources, health and the environment.

[...]

Improving security of tenure

46. Improving security of tenure helps to prevent housing, land and property disputes, reduce displacement and achieve durable solutions. Forced evictions often cause initial or renewed displacement, impoverishment and a deterioration of living conditions in the new location. States have the primary responsibility for preventing forced evictions and providing remedies. Evictions may be necessary in the case of justified public interest in certain development projects and to protect property rights after widespread secondary occupation following conflict or to save lives through evacuation or relocation from hazard-prone areas if preventive measures are insufficient to reduce risk. Even in these circumstances, evictions should be in line with national law and international human rights law and standards, including due process.
47. Regardless of the type of tenure held by potential evictees, affected groups should take part in decisions on alternatives to evictions, evacuations and planned relocations. Alternatives could include the regularization and upgrading of informal settlements and improvements in terms of access to services, housing conditions and resilience to disasters. Using eviction impact assessment tools helps to understand the human and financial costs of evictions and inform the response.⁴⁹ Assessments should take into account the differential impact on specific groups, including displaced persons, indigenous peoples, women, children, persons with disabilities, minorities and older persons.
48. If eviction is unavoidable, affected groups should participate in decisions regarding alternative housing, location and compensation and be afforded the right to due process, including by receiving appropriate notices, making appeals and seeking remedies. Importantly, evictions should not result in homelessness. Planned relocations should involve a full resettlement process to ensure access to adequate housing, notably security of tenure, accessibility for people with special needs, access to livelihood opportunities, services and social and economic infrastructure. Access to alternative lands of equal value should be provided.
49. As part of States' obligation to protect persons within their territory from human rights abuses by third parties, authorities should develop laws and policies limiting the risk of eviction and displacement posed by development projects, business-related activities and speculation on land and real estate. Such laws should ensure the free, prior and informed consent of indigenous peoples. The Guiding Principles on Business and Human Rights highlight the responsibility of States to provide a regulatory environment conducive to businesses' respect for human rights in relation to corporate laws or laws regulating land or mining concessions, and the

responsibility of businesses to exercise due diligence to ensure that their activities do not violate human rights.

3. Internal displacement in the context of the slow-onset adverse effects of climate change, A/75/207, 21 July 2020⁸⁵

I. Introduction

1. Internal displacement linked to the adverse effects of climate change is expected to increase significantly over the coming years and decades. Projections indicate that, without concrete climate and development action, over 143 million people in sub-Saharan Africa, South Asia and Latin America alone could be forced to move within their own countries by 2050 owing to the slow-onset impacts of climate change. While this figure covers different types of human mobility, it gives an indication of the expected scale of movement in these three regions, which suggests that the global scale will be even higher. Climate change will affect every region, although some countries and communities are more vulnerable, including small island developing States and the least developed countries. Most population movements relating to the slow-onset adverse effects of climate change are expected to remain within national borders.
2. In the present report, the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, draws attention to the particular challenges posed by internal displacement in the context of the slow-onset adverse effects of climate change, and its impacts on the enjoyment of the human rights of those affected, with the aim of advancing a human rights-based approach to prevention, response and solutions. The adverse effects of climate change can involve slow and sudden-onset events. Slow-onset events are defined as “events that evolve gradually from incremental changes occurring over many years or from an increased frequency or intensity of recurring events” (FCCC/TP/2012/7, para. 20). Slow-onset events include sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification (FCCC/CP/2010/7/Add.1, decision 1/CP.16, footnote 3). Slow-onset and sudden-onset events, such as floods or storms, can also be intertwined, requiring holistic approaches that take their interrelations into account.

[...]

II. Applicable legal and policy frameworks

5. The issue of internal displacement in the context of the slow-onset adverse effects of climate change lies at the intersection of various legal and policy fields, including international human rights law, international environmental law, international disaster relief law, disaster risk reduction and sustainable development, and requires concerted action.
6. There is extensive evidence of the widespread impacts of climate change on the enjoyment of human rights, such as the rights to life, health, housing, food, water and education, cultural rights and collective rights, such as the rights of indigenous peoples and the right to self-determination. At least 155 States have now recognized in law the human right to a safe, clean, healthy and sustainable environment

⁸⁵ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F207&Language=E&DeviceType=Desktop&LangRequested=False>.

(A/74/161, para. 43). Those impacts contribute to displacement, and displacement further impacts the enjoyment of human rights. Under the 1998 Guiding Principles on Internal Displacement, which reflect international human rights law and international humanitarian law, arbitrary displacement is prohibited, including in cases of disasters, unless the safety and health of those affected requires their evacuation (Principle 6).

III. Understanding internal displacement in the context of the slow-onset adverse effects of climate change

A. Movement patterns

[...]

15. The level of vulnerability of individuals and households therefore plays an important role in their mobility. Those who are less vulnerable may be able to adapt to slow-onset processes and mitigate their impacts, thus being able to remain in their homes, or they might move elsewhere before the situation evolves into a disaster leading to displacement. In this case, movement can be an effective adaptation strategy to prevent displacement and might include seasonal and temporary migration. At earlier stages of a crisis, movement might be shorter, temporary, involve only some members of a household, and involve a higher degree of choice. Most vulnerable populations might not have the resources necessary to adapt this way and might stay in the area until they have no choice other than to leave and become displaced. Other communities might not move because they have a particular attachment to their lands and culture, such as indigenous peoples. It is usually the poorest and most vulnerable people who stay in situ as a slow-onset process gets worse without being able to adapt. They usually move as a measure of last resort to ensure their survival and have limited options on where to go. Displacement in the context of the slow-onset adverse effects of climate change is expected to be mostly long-term and internal, notwithstanding the possibility that some people might eventually cross borders.

[...]

Specific groups

29. Indigenous peoples and other persons whose livelihoods depend heavily on ecosystems are among those who have contributed the least to climate change while suffering some of its worst impacts. Indigenous peoples are highly dependent on their lands, territories and natural resources for their livelihoods and cultural practices and are particularly vulnerable to climate change-related displacement. The adverse effects of climate change threaten their ancestral lands, livelihoods, culture, customs, religious practices, identity and language. In different parts of the world, indigenous ancestral lands and sacred sites are already being submerged and disappearing as a result of sea level rise, thawing permafrost and land erosion. The impacts of slow-onset processes on arable lands, marine ecosystems and wildlife affect indigenous peoples' subsistence livelihoods. If development projects for climate change adaptation and mitigation are designed and implemented without the participation and free, prior and informed consent of indigenous peoples, such projects not only deny them of their right to participate in decisions affecting them, but can further undermine their livelihoods and traditions and increase their risk of displacement.

30. Other persons whose livelihoods are directly dependent on natural resources, such as farmers, herders, pastoralists and fisherfolk, are directly impacted by the slow-onset adverse effects of climate change, which might affect agriculture, fish stocks and pasture lands, destroying livelihoods and cultural practices. For example, pastoral production is recognized as part of cultural heritage in Africa, where 66 per cent of land is dedicated to this practice. Pastoralists travel across vast terrains with their livestock in search of water and grazing grounds. Environmental changes such as desertification and droughts reduce grazing lands and kill livestock, forcing them to change their traditional routes and eventually leave their communities, traditional ways of life and cultural practices behind.

[...]

Vulnerable groups as agents of positive change

34. Even though specific groups are particularly vulnerable to the slow-onset adverse effects of climate change and related displacement, they also have great agency. In many contexts they display remarkable strength, resourcefulness and resilience in the face of disasters and displacement, despite the challenges, barriers and discrimination that they face. They also have traditional knowledge and valuable perspectives that can contribute to the design of programmatic responses, disaster risk reduction strategies and durable solutions.

35. Indigenous peoples have traditional knowledge of the environment and the effects of climate change at the local level. They have developed coping strategies that can inform approaches to climate change adaptation and disaster risk reduction and play a central role in environmental protection and climate action (see A/HRC/36/46). Indeed, in the Paris Agreement, the importance of indigenous peoples' knowledge systems to guide adaptation action is acknowledged (art. 7). The Intergovernmental Panel on Climate Change, the international body responsible for assessing the science related to climate change, has also recognized that "indigenous, local, and traditional knowledge systems and practices, including indigenous peoples' holistic view of community and environment, are a major resource for adapting to climate change". Indigenous peoples also actively claim their rights and seek to hold Governments and companies accountable for climate change.

[...]

IV. Addressing internal displacement in the context of the slow-onset adverse effects of climate change A. Human rights obligations of States

[...]

Durable solutions

51. Internal displacement associated with slow-onset processes poses particular challenges for the achievement of durable solutions. The slow-onset adverse effects of climate change tend to be long-term and, in some instances, irreversible, making return unlikely or impossible in many contexts. Local integration or settlement elsewhere can also pose challenges, for example because of a decrease in available habitable lands owing to the adverse effects of climate change, or because of cultural barriers, discrimination and tensions with host communities, which might be exacerbated by resource scarcity driven by slow-onset processes. Housing, land and property rights can be a key barrier to durable solutions in these contexts, as lack of ownership might contribute to unsustainable relocations, evictions and multiple

displacements. Achieving durable solutions can also be particularly challenging for groups such as indigenous peoples, which have a special relationship with their territories and lands. The risk of protracted displacement is therefore particularly high in the context of the slow-onset adverse effects of climate change.

[...]

54. Internally displaced persons, communities at risk of displacement and host communities must be involved in decision-making processes relating to the planning and implementation of prevention and response strategies as well as durable solutions, at all stages of development, implementation and monitoring of laws, policies, programmes and strategies. The participation of specific groups, including women, children, older persons, persons with disabilities and indigenous peoples, must also be ensured. The participation of affected persons and communities constitutes a great asset to the development of laws, policies and programmes as diverse groups can share their enriching knowledge, perspectives and experiences (see A/72/202 and A/HRC/36/46). To be able to enjoy meaningful participation in decision-making, people must have access to relevant information, in a language and format that they can understand and that is adapted to their needs relating, for instance, to literacy, disability or their location. This includes information on the conditions in the place of origin, local integration or settlement elsewhere. Even before a disaster takes place, they must be informed and prepared about the possible dangers and risks, and warned of imminent threats. Moreover, the free, prior and informed consent of populations must be obtained before any measures that affect them are taken to address disaster displacement, for example in the case of planned relocations. Similarly, the free, prior and informed consent of indigenous peoples must be obtained before the adoption and implementation of legislative or administrative measures or the approval of projects that might affect them, including climate change mitigation and adaptation projects in their territories.

I. SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF

1. Indigenous peoples and the right to freedom of religion or belief: Interim Report, A/77/514, 10 October 2022⁸⁶

I. Introduction

1. Indigenous peoples are diverse and complex, with 476 million living in 90 countries, speaking over 4,000 languages, and owning, occupying, or managing over one-quarter of the world's land. Consistent with their right to self-determination, indigenous peoples are free to define and determine their spiritual identity for themselves. Many conceptualize spirituality as a "way of life": shaping distinctive emotions, habits, practices, or virtues, fashioning distinct beliefs and ways of thinking, and a particular way of living together and communicating. Thus, spirituality concerns the transcendent and is intrinsic to indigenous peoples' daily experiences and practices. Albeit diverse, indigenous spirituality and culture are often grounded in community, identity, and relationships with traditional lands.
2. Contemporary crises in human rights for indigenous peoples frequently stem and are inseparable from unremedied past policies and practices. Beyond State restrictions

⁸⁶ https://www.ohchr.org/sites/default/files/2022-11/A_77_514_AUV.docx.

on spiritual ceremonies, symbols, and leaders in the name of “assimilation,” challenges for their right to freedom of religion or belief could encompass forced displacement, exploitation of indigenous territories without their Free, Prior, and Informed Consent (“FPIC”), environmental damage and destruction, as well as the impacts of climate change. Severe, systematic, and systemic discrimination and marginalization affect their ability to survive, let alone thrive—by exercising their innermost religious or belief convictions.

3. Recalling the UN Secretary-General’s position, ensuring “equal and meaningful participation, full inclusion and empowerment” towards realizing human rights and opportunities for all indigenous peoples is imperative. While Article 18 of the International Covenant on Civil and Political Rights (“ICCPR”) safeguards followers of every faith or none, a frequently recurring question from rights-holders and key stakeholders is whether its application has been adequate or appropriate for indigenous peoples. Recognizing the mandate’s relatively limited engagement with indigenous peoples to date, the Special Rapporteur aims to develop a framework for productive, sustained exchange with this report — highlighting existing and emerging challenges to indigenous peoples’ enjoyment of freedom of religion or belief.

[...]

III. Methodology

7. The Special Rapporteur convened 16 bilateral meetings and 25 consultations across all five geographical regions (18 virtual, four hybrid, and seven in-person) to inform the present report. Participants included survivors of rights violations, indigenous leaders and influencers; human rights defenders; policymakers; academics; UN offices, and other intergovernmental organization officials. Despite limited Internet connectivity and language barriers, the Special Rapporteur sought to engage indigenous peoples in geographically remote locations wherever possible. In response to his Call for Submissions, he received and reviewed 39 submissions from civil society, 36 from individuals, four from States, and one from a multilateral organization. The Special Rapporteur extends his deepest gratitude to all who provided their time and insight.
8. A methodological challenge in preparing this report was the lack of comprehensive or disaggregated data mapping indigenous peoples’ experiences with the freedom of religion or belief framework. Researchers may overlook concerns or hold certain biases towards indigenous spirituality. Security was another key concern where indigenous peoples live in conflict-afflicted or insecure situations, potentially fearing violent retribution.
9. Acknowledging the diversity of indigenous peoples’ beliefs and lived experiences, the report does not analyse all concerning situations but provides an evidence-based analysis of trends and illustrative examples. The Special Rapporteur adopts an intersectional lens, noting reports of multiple, intersecting forms of discrimination, violence, and hostility based on various characteristics (e.g., religion or belief, race, ethnicity, language, sexual orientation, gender identity, political opinion), including a gender lens—consistent with his mandate—for analysing violations and issuing recommendations.

IV. Conceptual and legal framework

10. International law has no universally accepted definition of “indigenous peoples.” Nevertheless, community self-identification is widely regarded as a “fundamental criterion,” with many considering themselves distinct by possessing “historical continuity” with pre-colonial societies on their land. Objective criteria could also be considered (e.g., distinct language), yet States often instrumentalize said criteria to deny recognition of indigenous peoples’ existence and rights, including self-determination. For the same reasons, the Special Rapporteur notes that indigenous peoples resist description as “minorities.” Where indigenous peoples may technically constitute a minority, based on objective proportional criteria, this status should not preclude their additional recognition and rights as indigenous peoples.
11. “Spirituality” is the preferred term of many indigenous peoples in characterizing their religion or belief identity. Reasons include (1) lack of equivalent translation for “religion;” (2) delineation between their “religion” (e.g., Christianity, Islam) and indigenous beliefs; or (3) tainted legacy of “religions” being instrumentalized to inflict gross rights violations against them. Some interlocutors seek to “decolonize” language framing their spirituality, including “ritual,” “witchcraft,” or “superstition,” as such rhetoric has been deployed to depict them as “lesser” and justify harmful practices.
12. Indigenous people employ broader terms interchangeably with “spirituality,” including “worldview,” “way of life,” or “culture.” Often they recognize the holistic nature of their beliefs, encompassing “spiritual ceremonies, but also [wide-ranging] activities such as hunting, fishing, herding and gathering plants, medicines and foods [with] a spiritual dimension[...].” Their way of life is intrinsically intertwined and “cannot be divided into frameworks and categories.”
13. For this report, “indigenous spirituality” consists of diverse spiritual beliefs and practices that indigenous peoples identify as integral to their indigeneity: such as their “distinctive spiritual relationship” with “traditionally owned or otherwise occupied and used lands, territories, waters, coastal seas, and other resources” (“indigenous lands”). Such practices are often localized and should not be homogenized into a globalizing discourse on “indigenous spirituality.” Many indigenous peoples subscribe to theistic and other belief systems that they do not necessarily consider “indigenous.” They may practice their beliefs in combination with indigenous spirituality “rooted in [their] lived reality and practices” as rights-holders.
14. Protecting persons of all faiths and none, the right to freedom of religion or belief is enshrined in Articles 18 of the Universal Declaration on Human Rights (“UDHR”) and ICCPR and elaborated upon in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“1981 Declaration”). Their protections extend beyond followers of “institutionalized” belief systems to encompass adherents to “theistic, non-theistic and atheistic beliefs,” including those of indigenous peoples.
15. In mapping obstacles and opportunities for indigenous peoples’ exercise of freedom of religion or belief, the Special Rapporteur was guided by the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) — a universally accepted soft-law instrument developed in consultation with indigenous peoples to articulate their rights, including spiritual practices. Article 12 UNDRIP protects access to and maintenance of religious and cultural sites, ceremonial objects, and repatriation, while Article 25 recognizes their spiritual relationship to traditional lands. Aspects of indigenous spirituality reportedly appear elsewhere in UNDRIP,

resulting in mutually reinforcing protection. Many actors worldwide—including States, regional and domestic courts, scholars, and rights-holders—employ UNDRIP to interpret ICCPR vis-à-vis, indigenous peoples.

16. Several experts observe that Article 18 of the UDHR was shaped mainly by debates between Islamic and Protestant Christian groups. At the same time, the diplomatic push for expanding protections for both “religion or belief” foregrounded the rights of atheists in Soviet states. Indigenous spirituality, they argue, was generally overlooked and poorly understood within this framework, and “primacy and relative longevity of the ‘freedom of religion or belief’ umbrella has all but sidelined competing rights conceptions regarding religion.”
17. Articles 18 and 27 of the ICCPR protect the right to manifest religion or belief “individually or in community with others,” as well as minorities’ right to practice their faith. Yet some experts wonder whether international human rights law fully protects indigenous peoples’ collective rights or spirituality when narrowly interpreted. As the Inter-American Court of Human Rights (“IACtHR”) observes, indigenous peoples’ relationship with traditional land is not merely about “possession and production but [has] a material and spiritual element” that they must enjoy to preserve culture. Indigenous spirituality encompasses diverse beliefs and traditions. Many describe their relationship with nature as “balanced” or “cyclical,” embracing places, phenomena, flora, and fauna as sacred and emphasizing respect for nature and other humans. Others practice animism or ancestor worship; maintain ceremonial or burial sites; and consider hunting and using other resources sustainably as part of their spiritual customs.
18. While “sacred sites” in the 1981 Declaration (i.e., freedom “to establish and maintain places of worship”) seemingly apply to manufactured structures, experts argue that protections must also extend to traditional lands that are integral to indigenous spirituality. Yet several States allegedly fail to protect believers of indigenous spirituality equally, often dismissing legal claims invoking the right to freedom of religion or belief as justification for protecting indigenous peoples’ access and use of traditional lands. The Canadian Supreme Court, for example, authorized the building of a ski resort in the mountains considered sacred since the “state’s duty ... is not to protect the object of beliefs.” Some US courts have ruled that commercial use of traditional lands would not “coerce” indigenous peoples to act contrary to their religious beliefs, and the State could use federal lands anyway “even if [it] makes [their] worship [...] ‘impossible.’”
19. While all human rights are interconnected and mutually reinforcing, the intersection between culture and freedom of religion or belief for indigenous peoples draws considerable attention. The UN Committee on Economic, Social, and Cultural Rights observes that maintaining and strengthening their “spiritual relationship” with ancestral lands is “indispensable to their cultural life.” Incidentally, indigenous peoples primarily cite cultural rights in complaints to the Human Rights Committee regarding spiritual practices. This is not to say that freedom of religion or belief is less practical/applicable, but it is less commonly cited and understood vis-à-vis indigenous peoples. Regional and domestic courts also invoke culture, property, or intellectual property law to protect indigenous spiritual practices.
20. Several experts warn that analogizing “indigenous spirituality” for the non-indigenous world—often to gain public support—may decontextualize them. For instance, describing elders as their “priests” or indigenous lands as their (admittedly irreplaceable) “Church.” The notion that religious groups may be rights-holders

without some formal institution, organization, or other legal personality is unfamiliar to most modern, liberal legal systems. Yet as one interlocutor opined, “[i]ndigenous religions should not have to be likened to Judeo-Christian practices and beliefs to make them acceptable [or deemed worthy of protection].” Nor does international human rights law demand it: freedom of religion or belief is protected regardless of whether the State recognizes its existence.

V. Key findings

A. *Forcibly assimilated and denied recognition*

21. Harrowing historical experiences of colonization, forced assimilation, and dispossession have shaped and are inseparable from indigenous peoples’ contemporary concerns for spiritual, cultural, and physical survival. Several States invoked variations of the Doctrine of Discovery (“Doctrine”) to justify forcibly removing indigenous peoples from their lands. The Doctrine—developed in support of religious institutions’ ambitions to “invade, capture, vanquish, and subdue [...] all Saracens and pagans, and other enemies of Christ” —furnished a “discovering” sovereign with “exclusive right” to “extinguish” indigenous peoples’ pre-existing title and interests in their lands. Experts further describe forced sedentarization—placing migratory, mobile, or nomadic indigenous peoples into settlements—as causing loss of their spirituality by separating them from their lands.
22. Several reports of State efforts to further assimilation initiatives detail attempts to control indigenous women’s sexuality and reproductive capacities, including sterilization of Native American women in the USA; “biological absorption” (via forced impregnation) in Australia’s Stolen Generations; and Denmark’s insertion of IUD devices into approximately 4,500 Greenlandic women and girls often without their consent.
23. Other reports document the forced removal of indigenous children from their families and communities for distant, often religious institution-led schools, where they were “exclusively taught the dominant religion and culture” and prohibited from using their own languages, culture, and spiritual practices under threat of punishment. In 2022, the US Government observed that this assimilative policy closely accompanied the intergenerational loss of indigenous spirituality. Canadian interlocutors highlight enduring trauma from this imposed rupture with loss of ancestral identity and spirituality.
24. The loss of traditional language significantly affects indigenous spirituality, where oral expression is the “bedrock” of ceremony and transmitting knowledge. One interlocutor stated, “when you lose language, you lose everything.” Yet many indigenous languages steadily disappear amidst inadequate State support and prohibitions, such as the Vietnamese Government allegedly intimidating and arresting Khmer Krom Buddhist monks seeking to teach and speak Khmer.
25. Article 18 of the ICCPR explicitly prohibits coercion in matters of religion or belief. Yet, according to interlocutors, many indigenous peoples today are still being forcibly converted to non-indigenous religions “to survive” amidst State and religious institutions’ threats of violence, hostility, and discrimination. Actors in Mexico have reportedly coerced indigenous women to participate in majoritarian Catholic activities, while others in Malaysia have pressured indigenous peoples’ conversion to Islam by offering better housing. In Brazil, civil society has raised concerns over the head of the federal Indigenous Affairs Department unit charged with protecting uncontacted indigenous tribes, fearing improper pressure for their conversion.

26. Although State recognition is not theoretically required to exercise one's freedom of religion or belief, denial of recognition poses practical challenges. At least 18 States deny recognition of indigenous peoples and/or their spirituality, typically through arbitrary administrative requirements. For instance, without the US Bureau of Indian Affairs' recognition, the Winnemem Wintu tribe describes lacking uninterrupted access to their lands to perform coming-of-age ceremonies; or participation in decisions about spiritually significant fisheries. Without a listed option for indigenous spirituality, followers of Kepercayaan spirituality in Indonesia allegedly identify themselves as "Hindus" to receive national identification cards.

B. Relationship to indigenous land

27. The Special Rapporteur is deeply concerned at widespread reports of States failing to protect or deliberately undermining indigenous peoples' occupation, access, or use of indigenous lands without FPIC, with significant implications for their enjoyment of spirituality. For the African Commission on Human and Peoples' Rights, "any impediment to, or interference with accessing the natural environment [has] considerable repercussions on [Ogieks'] enjoyment of freedom of worship." Likewise, the relocation of burial sites has prohibited indigenous peoples from practising traditional burial ceremonies. Growing urbanization in South America has replaced indigenous worship sites with city infrastructure. A mining company destroyed ancient rock structures in Juukan Gorge, Australia, with profound spiritual significance to traditional owners. Obstacles to indigenous people's access and use of their lands may prevent them from enjoying spiritual practices and transmitting knowledge to future generations while engendering spiritual and psychological distress by creating a sense of alienation.

28. Yet States and non-State actors have forcibly evicted or denied indigenous peoples access to their land and inflicted environmental degradation and destruction in their territories (including for construction, extractive industries, agro-industrial farming, logging, cash crop plantations, hazardous waste dumping, and tourism). Interlocutors submit that Russian State-sponsored logging companies have proposed a 1,000-kilometer paved road through the Udege peoples' sacred forest. Extractive companies in the Philippines, India, and Cambodia have forcibly evicted indigenous peoples from their lands, in some cases supported by national police/military. UN experts recently scrutinized Tanzania's escalating violence in forcibly evicting Maasai peoples for development and conservation reserves, deploying live ammunition, and tear gas. Operators of the Kathmandu Valley Road Expansion Project reportedly forcibly evicted Newars en masse and risked the destruction of countless cultural heritage sites considered "integral [to their] life and identity."

29. The Special Rapporteur received reports from every region that States have instrumentalized their legal and policy frameworks to frustrate indigenous peoples' access or use of indigenous land, often treating their rights as secondary considerations to political and economic objectives. In 2019, Pakistan's Supreme Court approved the transfer of Bahria Town Karachi to a private developer, with experts estimating that approximately 10% of indigenous communities were forcibly removed after "illegally occupying" 40,000 acres of traditional land. State ambivalence or complicity is also a concern. The Brazilian Government's lack of regulation on agricultural fertilizers has allegedly caused water pollution on indigenous territory, threatening spiritually significant waters. Without adequate legal protection in Canada, recent years have reportedly witnessed increasing vandalism and desecration of sacred First Nations sites containing indigenous pictographs and petroforms.

30. Many indigenous peoples seek land tenure as the “only way” to protect their territories against these serious challenges, even if the anthropocentric Lockean concept of land ownership is contrary to their worldview. For Mapuche people in Chile, “I belong to the earth; the earth doesn’t belong to me.” Yet despite indigenous peoples holding and using over a one-quarter of the world’s land, they enjoy secure tenure for only 10%. The Special Rapporteur recalls that secure tenure rights are a critical indicator for Sustainable Development Goal (“SDGs”) No. 1 of ending all forms of poverty everywhere.
31. Arbitrary designation of State borders encompassing indigenous lands may also undermine their freedom of religion or belief where they cannot cross over, including to access a sacred site or engage tribal members in traditional ceremonies. Although the USA’s “Enhanced Tribal Identification” cards may facilitate access across the Mexico border, rights-holders express concerns that its verification process may further racial discrimination and stereotyping if potentially based on “Indian” appearance or blood quantum.
32. Rather than being forcibly evicted for specific projects, some indigenous peoples are displaced from traditional lands by living in regions prone to natural disasters or embroiled in conflict, typically resource-rich areas. With the scant immediate prospect of return, indigenous internally displaced persons and refugees may hold fears for their “cultural loss,” compounding or exacerbating psychological distress.
33. Nature’s vitality is at the heart of many indigenous cultures and spirituality, as well as their daily survival, with over 60 million indigenous peoples materially reliant upon forest resources. Consequently, indigenous peoples frequently “bear an unfair share” of costs arising from activities damaging nature. This extends to their disproportionate suffering from climate change, despite being amongst those who contributed the least to this historically, which furthers their socio-economic marginalization, food insecurity, and displacement from increasingly uninhabitable lands. In a landmark decision adopted on 22 July 2022, the Human Rights Committee has found that Australia’s failure to adequately protect indigenous Torres Islanders against adverse impacts of climate change violated their rights including to enjoy their culture, while observing a “strong cultural and spiritual link between indigenous peoples and their traditional lands.”
34. Experts have asserted that the “best way” to protect nature typically is to protect the rights of those living there. Compelling evidence indicates that indigenous peoples are often “custodians of biological diversity within ancestral territories,” especially where they enjoy secure land rights, given their rich reservoir of knowledge of nature and behavioural adaptation to maintain ecological balance. Disregarding indigenous peoples and the loss of their languages—as a source and conduit of knowledge—misses valuable opportunities for biodiversity conservation, climate mitigation, and sustainability, especially considering that indigenous peoples are only 6% of the global population yet protect 80% of its biodiversity.
35. The Special Rapporteur is concerned at reports of some conservation and climate mitigation measures violating indigenous peoples’ rights. Several States and nature protection groups have embraced “fortress conservation,” blocking their access to indigenous lands—including sacred sites—in the name of “environmental protection,” without FPIC and even where they live sustainably in keeping with their spirituality. Having denied their formal permit requests, some interlocutors claim that Kenyan park rangers have extracted bribes from indigenous persons seeking to conduct spiritual ceremonies on their lands in conservation zones. According

to Sami peoples in Scandinavia and Baka in Congo and Cameroon, specific conservation measures unduly restrict their sustainable hunting and fishing activities. Interlocutors particularly emphasize that the IUCN's goal to protect 30% of the planet by 2030 must not disproportionately affect indigenous peoples or their human rights.

36. As the Special Rapporteur on human rights defenders (“HRDs”) observes, protection of environmental HRDs—including indigenous peoples—is “inherently linked” to the “protection of their communities and peoples,” including their freedom of religion or belief. Yet State and non-State actors intimidate, torture, and even murder them for advocating for their rights and protection of sacred lands, such as Brazilian miners reportedly “open[ing] fire with automatic weapons from speed boats” on Yanomami peoples. In 2021, Front Line Defenders verified murders of 358 HRDs across 35 countries, 26% of whom were indigenous. Insecurity and impunity foster such violence, with indigenous HRDs in Colombia being increasingly caught up in the crosshairs of paramilitary and criminal violence and targeted in their homes during COVID-19 lockdowns.
37. Indigenous women HRDs have described experiencing gendered forms of violence, harassment, and intimidation from State and non-State actors seeking to quell their advocacy as “a triple punishment:” for being indigenous women and HRDs against powerful interests. They also report threats of sexual and gender-based violence (“SGBV”) and smear campaigns (e.g., accusations of “unfaithfulness”) on online platforms. Civil society highlight that Indian security forces have systematically used SGBV to intimidate, humiliate and terrorize Adivasi activists, undermining community cohesion and resistance to land displacement and exploitation.

C. Restrictions on manifestations of indigenous spirituality

38. Countless indigenous communities have reported living with historical and ongoing violations of their freedom of religion or belief through State restrictions on ceremonial practices and spiritual leaders, often aimed at forced assimilation and conversion. Until the early 20th century, Japan banned several Ainu practices, including their bear-spirit-sending ceremony (iyomante), ostensibly only reversing the decision to capitalize on its tourism value as a “savage spectacle.” Canada and the USA previously banned Sun Dances, potlatches, and other traditional practices considered “anti-Christian” that are essential for worship and intergenerational transmission of knowledge. Given their spiritual centrality, some still practised them clandestinely. Religious organizations have similarly stigmatized and banned indigenous spiritual practices as “morally damaging” or “corrupt.” Greenlandic experts observe that the State-sponsored Lutheran Church imposed such restrictions, impairing their drum dance and shamans.
39. According to the Expert Mechanism on Rights of Indigenous Peoples (“EMRIP”), improper acquisition, retention, and use of ceremonial objects may violate indigenous peoples’ right to freedom of religion or belief. Many indigenous peoples regard these objects, and human remains as physical representations or homes of spirit, respectively, treating them as sentient beings. Removing these items from indigenous communities, land, and spiritual leaders may break their relationship with attached spirits or risk “spiritually-caused illnesses” that persist through future generations. Plundered by colonizers, displayed as curiosities, and even utilized to justify pseudo-scientific racist theories about indigenous peoples, it is reported that over one million indigenous ancestral remains and cultural items still reside

in repositories worldwide. Interlocutors emphasize that public display of such objects may inflict spiritual and physical harm, damaging its spiritual essence and relationship with indigenous peoples, particularly where there are inappropriate preservation methods, untrained staff, and breaches of cultural secrecy.

40. Yet States, museums, other cultural institutions, and private collectors often express reluctance to repatriate ceremonial objects and remains, prioritizing proprietary “ownership” or scientific/historical value over indigenous rights. Interlocutors further report facing temporal, financial, and legal hurdles for successful repatriation, such as many national laws “limit[ing] deaccessioning” and enabling State justifications to set aside repatriation claims. Article 11 UNDRIP emphasizes that indigenous peoples must enjoy effective redress and restitution for spiritual property taken without FPIC.
41. Recalling that educational institutions were historically sites for forced assimilation and loss of cultural identity of indigenous peoples, restrictions on indigenous spiritual practices within this context remain contentious. In the Middle East, North Africa, Tajikistan, Vietnam, Mongolia, and Bolivia, interlocutors observe barriers to teaching their children about indigenous spirituality. Barriers include mandatory religious education that promotes “dominant,” non-indigenous spiritual teachings without accessible opt-out options and a lack of indigenous language options in schools. Some highlight primary and secondary schools restrict indigenous students from donning traditional clothing and sacred symbols, including eagle feathers.
42. EMRIP submits that appropriating indigenous peoples’ cultural heritage causes “spiritual, cultural, religious and economic harm.” In several regions, states and non-State actors have reportedly commercialized indigenous spirituality — fuelling derogatory stereotypes and violating cultural secrecy or commercializing their sacred sites, practices, and objects—including plants and their genetic material—without FPIC or sharing benefits with traditional custodians. Food, pharmaceutical, tourism, and fashion industries are amongst those implicated. “Folklorization,” the re-stylizing of traditional expressions to reduce aesthetic and semantic complexity for outside consumption, often homogenizes and ignores the complex identities of indigenous peoples, including their spirituality. For instance, interlocutors observe that Kenya tourism material often treats “Maasai” as shorthand for all indigenous peoples.
43. Corporatized “cultural exchange” (especially given the speed and reach of the Internet in driving globalization and following the colonial-induced loss of traditional knowledge) might either homogenize indigenous voices or may magnify some while silencing others. Appropriation does not occur on equal playing fields, often perpetuating unremedied histories of oppression and exploitation. Between 60% and 80% of “Aboriginal and Torres Strait Islander,” arts and crafts sold are created without their involvement or benefit received. One interlocutor has described appropriation as “another form of colonization,” taking from those who already had everything taken from them.
44. Controversy arises when States and companies turn indigenous sacred sites and ceremonies into tourist “spectacles,” affecting their spiritual value and access to followers. In Russia and the USA, interlocutors report being required to pay entrance fees to access their sacred sites, designated as tourist attractions, including within national parks. One interlocutor observed that the event calendars of national parks’ for tourists often insensitively clash with indigenous traditions. “It’s like going into a Church and announcing a party.”

45. Many indigenous peoples embrace diverse forms of syncretism; reflecting the fluidity of intercultural exchange and rejecting assimilation, homogenization, and binary conceptualizations. In Kyrgyzstan, interlocutors observe a trend of Imams adopting indigenous spiritual traditions over recent decades. In Indonesia, some Kayan peoples combine Catholic and indigenous spiritual practices, singing hymns in a traditional way. Others incorporate indigenous iconography into Christian churches. Though not necessarily amounting to undue restrictions on manifestations, syncretistic practices may attract resistance, typically from religious institutions, that may result in individuals downplaying their indigenous spirituality. Generating public controversy, the Church recently suspended a Lutheran priest in Greenland after he incorporated the Inuit drum dance into a service.
46. By restricting access to spiritually significant plants, including those with psychoactive properties, indigenous interlocutors claim that States and international organizations have limited their spiritual practices. The 1961 Single Convention on Narcotic Drugs bans the coca leaf, which is spiritually significant in Bolivia and Peru, while State drug policies have restricted access to peyote, white sage, and ayahuasca. Such limitations are not necessarily unlawful since States may prohibit manifestations of spirituality for specific reasons, such as for public health, in limited circumstances—including that measures are legislated, necessary, and proportionate. Experts submit that non-indigenous peoples sometimes exploit indigenous peoples' traditional knowledge to pursue social harms (e.g., cocaine production), but legal safeguards preventing this exploitation may disproportionately affect indigenous communities.

D. Women, equality, and freedom of religion or belief

47. Several experts have asserted that, traditionally, many indigenous belief systems were matriarchal or egalitarian, with women holding powerful and influential positions in spiritual, socio-economic, and political spheres. Across several regions, the Special Rapporteur has heard that indigenous women were key—even primary—carriers and custodians of indigenous spirituality, presiding over rituals and celebrations, healing, advising, controlling lands, and transmitting knowledge to future generations. In the Philippines, indigenous women (babaylans) are “a reflection of strength in their tribes.” Women were considered “central to the identity, existence, and longevity of their communities,” even though other interlocutors described their societies as patriarchal.
48. Having imposed patriarchal structures and principles, some States and non-State actors have invalidated or undermined gender dynamics within indigenous communities, stripping women of their elevated status, agency, and social mobility. Forced sedentarization has brought formerly migratory indigenous groups under State administrative procedures that recognized men as “heads of household.” The growing influence of religious institutions, which ban women from being spiritual leaders, was described as effectively sidelining indigenous women and shrinking their space to fulfil sacred roles and responsibilities. Interlocutors report that restrictions flowing from Canada's 1867 Indian Act effectively prevented indigenous women from voting, serving as elected representatives, or benefiting from matriarchal inheritance, entrenching inequality. Land appropriation often has gendered ramifications, particularly “underminin[g] indigenous women's status and roles” in matriarchal and matrilineal societies. In one recent comparative survey, 22 of 30 States gave greater legal recognition to men's rights over women's in inheriting traditional land.

49. Historically, colonial and patriarchal systems steeped in prejudice towards indigenous culture and spirituality have depicted women as “untamed savage[s],” “witches,” and “uncivilized” —a subject to “normalize” through forced assimilation—to “exotic” and “sexually deviant” because of norms for sexual and reproductive practices (e.g., birth outside of marriage and widow re-marriage). The Special Rapporteur is concerned with reports that media, cultural influencers, and individuals hypersexualize, fetishize and objectify indigenous women. Patriarchal concepts of sex- and gender-based roles, sex-based superiority or inferiority, increasing social inequalities, and the prevalence of male-dominated power structures are among multidimensional causes of harmful practices against indigenous women which threaten their ability to live freely, equally, and in keeping with their right to freedom of religion or belief.
50. Amongst those harmful practices, many indigenous women worldwide are disproportionately vulnerable to SGBV, trafficking, and acts related to witchcraft accusations and ritual attacks. The National Human Rights Commission (“NHRI”) of Nepal recently found that 49% of women trafficking survivors are indigenous. Indigenous Australian women are 35 times more likely to experience domestic and family violence. In Cameroon, 55% of Mbororo women testify to surviving domestic violence before they were 15 years old. “Man camps” (temporary housing facilities for the majority non-indigenous workforce) in Malaysia, India, and Canada have reportedly heightened SGBV against indigenous women. One study of Fort Berthold Indian Reservation found a correlation between workers’ arrival and an approximately 75% increase in sexual assaults. Interlocutors also highlight that indigenous survivors of SGBV often face stigmatization from within their communities and the police. Said treatment and attitudes often deter reporting, increase the risk of revictimization, and effectively function to “protect perpetrators and silence women.”
51. Several scholars characterize indigenous women as occupying a space that oscillates between invisibility in private—primarily as survivors of SGBV—and hypervisibility in public as “deviant bodies.” They are often targeted with discrimination, hostility, and violence from State and non-State actors because of their visible, empowered choices regarding religious dress, whether in wearing traditional attire (such as *mujeres de pollera* in Bolivia) or refusing to wear gendered clothing based on interpretations of another religion. In Algeria, indigenous women have felt pressure to remove traditional tattoos (symbolizing fertility) with acid to avoid negative attention, as the majority Muslim community considers them “haram” (forbidden). In a verdict later overturned, Sudan convicted Christian Nuba women with “indecent dressing” under the 1991 Criminal Act for wearing skirts and trousers.
52. Several States legitimately restrict harmful practices perpetuated in the name of indigenous culture and spirituality that violate the rights of members of indigenous communities. Restrictions have applied to such practices promoting banishment, trafficking, beatings, child marriage, SGBV, mutilation and amputation, torture, and murder, including persons with albinism. Some persons also invoke their interpretations of indigenous beliefs to justify discrimination, violence, and hostility against indigenous of lesbian, gay, bisexual, transgender/transsexual plus (“LGBT+”) persons. In several regions, indigenous women call for alternative “rites of passages” to female genital mutilation. Interlocutors further report that indigenous girls are forcibly married and raped in Thailand. In a practice known as “beading,” indigenous girls in Kenya—sometimes as young as nine—are coerced into sexual relations with men of “warrior” age in exchange for beads and other goods. It is essential to

delink hostility, violence, and discrimination emanating from external sources and attitudes within indigenous belief systems. As interlocutors repeatedly emphasized, indigenous peoples are not inherently violent, and the causes of violence are multifaceted: poverty, displacement, conflict, and structural disenfranchisement.

53. Some indigenous women feel compelled to make a supposedly binary choice between “culture or rights,” namely advancing communities’ culture or enforcing their human rights. This false dichotomy can “further entrench[...] vulnerability of indigenous women to abuse and violence.” The Special Rapporteur recalls that the universal right to equality is unqualified. States must protect the freedom of religion or belief of indigenous peoples while ensuring that religion or belief systems are not invoked to justify violence and discrimination, including barriers to indigenous women’s sexual and reproductive healthcare and services. Where permissible under international law, indigenous women must decide whether a specific cultural practice violates their rights.

E. Sexual orientation and gender identity

54. In several indigenous communities worldwide, individuals that self-identify as “third gender” have held visible, recognizable, and valued positions within indigenous communities. Said positions include healers, priests, and keepers of spiritual knowledge (e.g., *māhū* in Native Hawaiian and Tahitian communities, “two-spirit persons” in certain Canadian indigenous tribes, and *muxes* amongst Zapotec in Mexico).
55. Colonial, non-indigenous actors, regarded these gender-diverse views and practices as “immoral,” “perverse,” and “unnatural” and imposed draconian rules that criminalized and pathologized said practices. The British Raj-introduced Criminal Tribes Act 1871, which criminalized homosexuality and cross-dressing, has been linked to the severe contemporary marginalization of *Khawaja Siras* (gender variant considered to have a feminine soul) in Pakistan. Many consider *māhū* a derogatory term today, with negative connotations that ostensibly coincide with colonization. Such practices and policies have profoundly impacted the spiritual roles and status of indigenous LGBT+ persons, impairing their exercise of freedom of religion or belief and exacerbating their vulnerability to violence and discrimination in wider society. Studies indicate that indigenous LGBT+ persons often face a high risk of intimate violence, especially compared to non-indigenous LGBT+ persons or indigenous heterosexual persons. Some in MaeSamLaep, Thailand—misguided about the mutability of sexual orientation and gender identity—reportedly perpetrate the crime of so-called “corrective rape” (via forced marriage) against them.

F. Socio-economic challenges

56. Contrary to the UN SDG’s objective that “no one is left behind,” many indigenous peoples struggle to survive in a culture of widespread discrimination, let alone enjoy their rights, including freedom of religion or belief. Scapegoating, stigmatizing, and negatively stereotyping indigenous peoples and their spirituality only furthers marginalization. No faith or belief system is protected from critique in international human rights law. However, States, religious institutions, and broader society have deployed terms such as “witchcraft,” “folklore,” “pagan,” “devil-worship,” and “anti-development” to characterize indigenous spirituality, to deny their equal participation in society—including access to essential goods and services—and even to justify rights violations including of their freedom of religion or belief and non-discrimination.

57. Within several States, State educational curriculums and teachers reportedly have stereotyped, underrepresented, or misrepresented indigenous peoples, including their spirituality, often excluding positive representations of them, peddling discriminatory tropes, or whitewashing colonial history. Indigenous healers claim that the lack of differentiation between “witchdoctors” and “traditional doctors” in Uganda’s 1957 Witchcraft Act could stigmatize and penalize them. Allegedly, ethnic majority Tajiks brand Pamiri as “backward” people and discriminate against those seeking decision-making roles as civil servants and politicians in Tajikistan.
58. Indigenous peoples have also faced discrimination, violence, and hostility for their perceived “failure” to assimilate, especially where they advocate for their rights and express their cultural and spiritual identity. In a 2020 study, 97% of indigenous Australian respondents encountered harmful social media content weekly, including threats and demands from white nationalists for forced assimilation. Respondents were also concerned that social media companies are less likely to understand—and thereby moderate—hatred based on their “way of life” and spiritual identity compared to other religions. In a Norwegian survey, approximately 33% of respondents had observed hateful speech or conduct against Sami peoples, typically questioning their indigeneity and reindeer herding—a spiritually significant practice. Harmful practices against indigenous peoples, including hateful rhetoric, disinformation, and derogatory tropes, may travel from offline to online worlds and vice versa. The Special Rapporteur recalls that HRC Resolution 16/18 prohibits incitement to discrimination, hostility and violence based on one’s religious or belief identity, as guided through the Rabat Plan of Action’s six-step test.
59. Interlocutors noted that systematic and widespread discrimination can pressure indigenous peoples, especially younger generations, to assimilate to survive or “to succeed” in broader society, thereby self-censoring, reducing, or ceasing spiritual practices—feeding fears of “traditional knowledge going extinct.” In Tunisia, Amazigh perceives social pressure to conform, concealing their language and clothing to secure employment and social acceptance. Indigenous peoples from Sangha, Congo, “saw no other viable option [besides integration] for ensuring survival” once driven from their forests and forbidden from hunting. Others seek Western education to “learn the white man’s way,” effectively using State legal systems to challenge adverse policies and practices, including those undermining their freedom of religion or belief.
60. Underlying many indigenous peoples’ current interactions with State apparatuses is an enduring distrust engendered by centuries of institutionalized discrimination, dispossession, and forced assimilation. Today, certain State actors are still perceived as hostile or exclusionary, deterring participation and perpetuating disadvantage. In Bolivia, Peru, and the Philippines, healthcare authorities’ stigmatization and restrictions on indigenous midwives have reportedly driven many indigenous women to choose homebirths in accordance with spiritual beliefs, limiting access to emergency medical services should complications arise.
61. While human rights are interdependent and indivisible, this is particularly relevant to indigenous peoples whose “spiritual worldview” governs every aspect of their lives. For example, indigenous peoples often conceptualize health holistically, encompassing one’s physical well-being and the spiritual, intellectual, and emotional health of the whole community, which depends on indigenous lands as a critical source of life and healing. Many justice systems are community-orientated, using rehabilitation and reintegration in “seek[ing] to heal the offender, victim, and community.” And

their socio-economic philosophies frequently emphasize “social responsibility and reciprocity,” guiding production and distribution of goods, sustainable practices, and engagement in traditional occupations (e.g., hunting, fishing).

62. By failing to develop culturally relevant, holistic solutions that consider indigenous peoples’ rights and needs, several interlocutors submit that States’ practices and policies are relatively ineffective—and may even be detrimental. Invoking neoliberal principles, some States have paternalistically sought to justify or legitimize rights violations as being in indigenous peoples’ “best interests.” Such claims include rationalizations that forced relocation facilitates indigenous peoples’ access to modern goods and services, despite profoundly rupturing community cohesion and identity. States often consider traditional livelihood activities as “irrelevant” and sometimes discourage them “even in the absence of viable alternatives.”
63. For interlocutors, the lack of culturally appropriate options and the State’s failure to fulfil positive obligations in protecting their collective identity and their rights to exercise culture, language, and religion have compounded disadvantages. Many indigenous peoples globally have comparatively low educational achievement rates (low attendance and literacy and high dropout). Cited factors include lack of indigenous language options, culturally appropriate curricula, physically accessible schools, or institutional accommodation of traditional practices (e.g., hunting, nomadic lifestyle, and sacred ceremonies).

G. Civic and political exclusion

64. When the rights of one community suffer, the whole of society suffers. Empowering indigenous peoples by respecting their rights to equal participation within political and public spheres is paramount for ensuring democracy, peace, and security, especially by empowering them to mitigate disadvantages and better advocate for rights, including freedom of religion or belief. However, many indigenous peoples regularly suffer exclusion from civic and political spaces because of their indigeneity and/or religion or belief identity.
65. Some States prohibit those not belonging to their official religion or belief system from holding public office, contrary to their right to non-discrimination. Other indigenous peoples are divested or denied citizenship, affecting their socio-economic participation. Myanmar’s 1982 Citizenship Law reportedly fails to recognize the ethnoreligious Rohingya community as citizens, rendering them stateless and denying them myriad civil and political rights, including participation in elections. Sedentarization, forced dispossession and relocation, and denial of citizenship rights have significantly impaired the tribal traditions of the Bedouins and their relationship to the land in several Middle Eastern countries.
66. States have legitimate interests in upholding public safety and national security. Yet several States have allegedly instrumentalized their ‘security’ and counterterrorism frameworks — contrary to a human-rights-based approach — to discriminatorily impede or criminalize indigenous peoples’ enjoyment of their rights, including their freedom of assembly, association or expression, and spiritual practice, and to justify rights violations. For example, Bangladesh has reportedly invoked “security” justifications to reject indigenous land claims in the Chittagong Hill Tracts, thereby restricting their opportunities for worship.
67. States also have weaponized counterterrorism legislation to surveil indigenous peoples during their spiritual ceremonies, lower due process standards and increase penalties against indigenous activists expressing political dissent. The

Committee on the Elimination of Racial Discrimination has expressed concern that Ecuador has brought criminal proceedings against indigenous activists on charges including terrorism, sabotage, and resistance, resulting in convictions and fines disproportionate to the acts' seriousness. Drawing on and cultivating misrepresentation of indigenous peoples, the Philippines' Anti-Terrorism Law 2020 supports the "red-tagging" of indigenous HRDs. They have been allegedly labelled as "communists" based on their political opinions, subject to arbitrary arrest and extra-judicial killings, and had indigenous schools shut for being "breeding grounds for terrorists" or having "anti-government" curriculums. Civil society also highlights that indigenous peoples' social media use for advocacy and community organization may increase their vulnerability, observing Facebook/Meta's role in facilitating "red-tagging."

68. Both violating indigenous peoples' rights and limiting their advocacy against such violations, several States allegedly have intimidated, surveilled, threatened, arbitrarily arrested, or violently attacked peaceful indigenous protestors with excessive force. In Algeria, 41 Amazigh were reportedly arrested and imprisoned in 2019 for drawing attention to their indigenous identities during peaceful protests. States blocking Internet access is never justifiable, including to reinforce public order or protect national security. Indonesia has imposed Internet blackouts in majority-indigenous West Papua to reportedly quash community organizations and quell advocacy for their rights domestically and abroad. Steadily, more States are moving towards regulating online communications through hate speech legislation. Such measures may deliberately or inadvertently discriminate against indigenous peoples, such as concerns that Canada's online hate speech bill could characterize their political organization as "anti-government."

H. Access to justice

69. Worldwide, interlocutors from every region have observed a reoccurring disconnect between State rhetoric—in extolling respect for indigenous peoples' rights—and reality, with States failing to recognize indigenous peoples and uphold their rights, including freedom of religion or belief. Such shortcomings are often borne from complicity or denial of responsibility. States have fully implemented merely 28% of IACtHR's reparation orders in land rights cases, with low compliance rates attributed to various factors, including lack of State ability or political willpower—often where the alleged perpetrators still hold power. Impunity for rights violations reigns in such permissive climates. Despite progressive legislation protecting indigenous rights in the Philippines, attacks against indigenous HRDs reportedly escalated over 2020-2021. And in Mexico, up to 95% of murders of environmental HRDs, including indigenous persons safeguarding their sacred lands, allegedly do not result in prosecution.
70. The Special Rapporteur recalls that the role of the police, which function as frontline defenders in the criminal justice system, is imperative for ensuring effective remedies for rights violations of indigenous peoples. Interlocutors reported incidents of police brutality, unconscious bias, and failure to investigate violent crimes, including where rooted in prejudice towards indigenous peoples and their spiritual identity. Furthermore, as the Special Rapporteur on violence against women observes, domestic legislation and policies to prevent violence against women often overlook "specific vulnerabilities and realities of indigenous women."
71. States must ensure effective remedies to victims of rights violations, with UNDRIP specifying that grounds of redress include taking indigenous "religious and spiritual

property” without FPIC. Treatments may differ depending on victims’ wishes and contexts, and interlocutors often describe currently available options as inadequate or inappropriate for remedying past wrongs, particularly forced assimilation and displacement. Despite the court in *United States v Sioux Nation* ordering monetary compensation—worth approximately \$1.2 billion today—for land dispossession, Sioux peoples have not accepted it, instead seeking restitution as the only appropriate remedy. Given traditional lands’ spiritual value, they “cannot be exchanged for other lands once[...]lost.”

72. Some seek reparations to partly remedy the violations of their rights, while others believe “no amount of money” can heal “years of misery, despair, and death” under government policy. Public apologies and recognition may help some survivors, while other interlocutors decry such symbolic measures as insufficient without reform to provide substantive equality. When Denmark recently apologized for its forced “re-education” of 22 Greenlandic children in the 1950s, it attracted criticism for not offering other remedies—or redressing other alleged violations.
73. Interlocutors report that indigenous peoples’ overrepresentation in criminal justice processes globally frequently affects their ability to exercise spirituality. Banning indigenous spiritual practices in prisons—including sweat-lodge, pipe and drum ceremonies, growing of long hair, and “smudging”—may hinder traditional healing, intergenerational transfer of knowledge, rehabilitation, and “cultural survival” upon release. Mapuche peoples in Chile have decried judicial rejection of its traditional healer’s (machi) request to partly serve his sentence in his community in fulfilling his essential healing obligations, especially amidst the COVID-19 pandemic.
74. Indigenous peoples may face specific obstacles in effectively advocating or proving violations of their freedom of religion or belief, including absent historical records amidst colonization, “cultural secrecy,” and the voluntary isolation of “uncontacted tribes,” precluding their self-representation. Cultural secrecy can place indigenous peoples in a “double bind”—forced to choose between revealing their spiritual practices to satisfy legal standards in physically protecting an item or retaining this secrecy but losing access or tolerating others damaging the item’s spirituality. To claim land rights, indigenous people must sometimes prove their unbroken connection to indigenous lands to the same State that forcibly broke those connections. The Special Rapporteur has learned that indigenous peoples may face other structural barriers in accessing the justice system, such as translating spirituality into legally-actionable language, expensive and complex legal processes to register traditional lands, and insufficient translators.

[...]

J. Conclusion

82. A better understanding of indigenous peoples’ right to freedom of religion or belief will not only benefit indigenous peoples but allow a broader appreciation of what a fuller realization of freedom of religion or belief for all entails. The right equally protects everyone, without a hierarchy of belief identity, whether enjoyed by millions or hundreds or exercised in buildings or sacred groves on indigenous territories.
83. Reflecting the richness and diversity of human experiences, the Special Rapporteur recalls that indigenous peoples belong to all faiths and none—and many enjoy them syncretistically. Protecting indigenous peoples’ freedom of religion or belief must consider their distinctive spiritual needs, practices, and beliefs through a consultative approach. Such conditions include access to and use of territories,

which are essential components of their physical, spiritual, and cultural survival and effective realization of their human rights more broadly, especially noting the holistic nature of their “worldview.” Reports of forced displacement and sedentarization—frequently during development, extractive, tourism, or conservation projects—desecration and destruction of their sacred sites and, in several States, violence against indigenous HRDs raise serious concerns for their right to freedom of religion or belief. The Special Rapporteur emphasizes that it is impossible to analyse existing challenges to their exercise of freedom of religion or belief without acknowledging past exclusion and inequality. Systematic discrimination further makes it difficult for indigenous peoples to live, let alone live consistently with their spirituality.

84. As a Special Rapporteur on indigenous peoples has observed, a “lack of awareness” of indigenous rights repeatedly creates serious situations damaging their enjoyment of spirituality, culture, and traditional knowledge. This report initiates a valuable conversation within the UN system by analysing obstacles and opportunities for indigenous peoples in exercising their fundamental right to freedom of religion or belief rather than marking an endpoint.

K. Recommendations

85. The Special Rapporteur acknowledges the historic exclusion of many indigenous peoples from the development of international law instruments that affect them, including the right to freedom, religion, or belief. Emphasizing that holistic and human-rights-based solutions typically encompass indigenous spiritual considerations and address systematic disadvantage, and must ensure their FPIC, noting concerns that there should be “nothing about us, without us,” the Special Rapporteur recommends:

1. States

- (i) Establish legal and policy frameworks that recognize the right of indigenous peoples to their beliefs and comprehensively promote and protect their rights—drawing on UNDRIP specifically—including freedom of religion or belief. To this end, regularly review and revise such frameworks to tackle discrimination, undue restrictions on spiritual manifestations, and impediments to access and use of their lands.
- (ii) Establish collaborative, consultative mechanisms for indigenous peoples to effectively influence decision-making on issues that affect them, including developing holistic rights-based policies and matters affecting spiritual practices. Consider and seek to overcome intersectional barriers based on religion or belief identity, disability, sexual orientation and gender identity, and ethnicity.
- (iii) Deliver effective and appropriate remedies for indigenous survivors of rights violations, developed in consultation with them, consistent with international principles and guidelines, such as reparations, restitution, and supporting recommendations of truth and reconciliation commissions. Where applicable, acknowledge historical and ongoing harms of colonization, the Doctrine of Discovery and forced assimilation/dispossession more broadly for their spirituality and culture.
- (iv) Condemn harmful practices that result in human rights violations against indigenous peoples, including those invoking religion or belief or related to accusations of witchcraft and ritual attacks.

- (v) Take effective measures to ensure accountability, protection, and empowerment of all indigenous persons, including those targeted for their sexual orientation and gender identity or disability. Eliminate all discrimination and violence against indigenous women.
- (vi) Launch investigations against non-State actors, including private enterprises, forcibly displacing indigenous persons from their lands and violating freedom of religion or belief and other rights.
- (vii) Where feasible and sufficient data protection safeguards are instituted, collect disaggregated data to improve monitoring and reporting mechanisms on discrimination, violence, and hostility targeting indigenous peoples, including HRDs and where these are based on religion or belief identity.
- (viii) Collaborate with indigenous spiritual leaders and influencers to support conservation efforts and sustainable development of traditional lands through a human rights-based approach. States should also comply with Akwé: Kon guidelines.
- (ix) Develop human rights-based educational resources recognizing the connection between colonization and dispossession/marginalization of indigenous peoples; and tackling unconscious bias, stigmatization, and stereotyping towards indigenous peoples and their spirituality, including among teachers, police, judges, and other public servants.

2. UN and international/regional organizations

- (a) Reemphasize the importance of UNDRIP in elucidating the rights of indigenous persons and encourage States to fully respect and protect those rights, including provisions relating to indigenous spirituality.
- (b) Develop and support linkages between UN, international and regional human rights mechanisms to embed indigenous peoples' rights within their daily operations where affected, ensuring no one is left behind. Explore avenues for effectively engaging self-governing indigenous territories and entities, which may lack Statehood, on matters affecting them—notably climate change.
- (c) Continue to support global interfaith dialogue, including indigenous spiritual leaders, on climate change and other environmental challenges.
- (d) Facilitate exchange between UNESCO, International Council of Museums, and indigenous peoples on indigenous spirituality to develop international guidance on appropriate storage and display of indigenous objects, including repatriation. Support the development of international protections for the intellectual property rights of indigenous peoples.

3. Civil society (including religious or belief actors)

- (a) Recognize the responsibility or complicity of religious and other civil society institutions in violating the rights of indigenous people and provide appropriate remedies to the victims.
- (b) Promote interfaith dialogue that engages adherents of indigenous spirituality, including youth, opposes stereotypical narratives based on religion or belief identity, and includes space for syncretism.
- (c) Continue undertaking and supporting advocacy, monitoring, and reporting, effectively holding States and non-State actors to account for violations of the freedom of religion or belief of indigenous peoples.

- (d) Continue to engage with the UN human rights system, including Special Procedures, EMRIP, and the UN Permanent Forum on Indigenous Issues.

4. Media

- (a) Provide training to staff to address misinformation/stereotypes towards indigenous peoples and their spirituality, and combat speech inciting violence, discrimination, and hostility in accordance with human rights standards and guidance, including the Rabat Plan of Action, Fez Plan of Action, and UN Strategy and Plan of Action on Hate Speech.

5. Private enterprise

- (a) Promote and respect the rights of indigenous peoples in line with the UN Guiding Principles on Business and Human Rights, even when domestic law fails to recognize or protect those rights. When seeking FPIC, processes should respect their rights and customary decision-making processes. Those seeking to use or commercialize traditional indigenous iconography, art, or other cultural practices, especially related to indigenous spirituality, should also recognize their contributions appropriately and carefully consider who benefits from that cultural borrowing/appropriation.
- (b) Seek to provide suitable opportunities for indigenous peoples who face disadvantage and discrimination in wider society.

6. Museums and Cultural Centres

- (a) Collaborate with traditional custodians and government officials to facilitate prompt and culturally-sensitive repatriation of indigenous peoples' ceremonial objects, and human remains, according to relevant international guidance, with attention to those with spiritual significance.

7. Political parties

- (a) Initiate opportunities for indigenous participation through meaningful representation within political parties and raise indigenous rights through party platforms so they may gain wider recognition.

2. Elimination of all forms of religious intolerance, A/75/385, 12 October 2020⁸⁷

I. Introduction

1. The 2030 Agenda for Sustainable Development and its interdependent Sustainable Development Goals include an explicit commitment to leaving no one behind. The 2030 Agenda clearly provides that human rights, development, peace and security are mutually reinforcing and contains a commitment “to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status”.
2. The people most likely to be left behind by development are often those who endure discrimination and exclusion on the grounds of identity – often multiple identities – including religious or belief identity. Such discrimination can be particularly acute in situations where persons identify with a religion or belief group

⁸⁷ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F385&Language=E&DeviceType=Desktop&LangRequested=False>.

that is numerically inferior to the rest of the population and/or in a non-dominant position in a given society. In many parts of the world, such populations experience significant discrimination and social exclusion – often entrenched over generations – on the basis of, and in the name of, religion or belief. Such discrimination inhibits the fundamental freedoms of members of these religious or belief communities, perpetuates significant inequalities in numerous sectors and limits their ability to participate effectively in cultural, religious, social and public life.

3. In the present report, the Special Rapporteur focuses on persons who, on account of their religion or belief, are at risk of “being left behind”, but have received less attention from policymakers in the field of sustainable development.⁴ Equally, the mandate holder hopes that his analysis will encourage all stakeholders – States, civil society (including faith-based actors) and United Nations entities – to include action on sustainable development in their efforts to promote freedom of religion or belief, in particular in the context of religious or belief minorities who may experience unequal access to essential services such as health care, quality education and housing, inter alia.

[...]

V. Key findings

[...]

Health, hunger and clean water and sanitation (Sustainable Development Goals 3, 2 and 6)

[...]

... While health and well-being are closely linked with levels of income and education, information received by the Special Rapporteur indicates that the religious or belief identity of persons acts as an additional aggravating factor for health inequities in some countries. The 2030 Agenda Sustainable Development Goal to ensure healthy lives and promote wellbeing at all ages (Goal 3) and its related goals of zero hunger (Goal 2) and clean water and sanitation (Goal 6) requires the elimination of such inequalities.

43. ... Hmong Christians in Viet Nam who fled their homes under pressure from authorities to renounce their religion or belief, disproportionately lack quality health care, clean water and basic necessities. In Ecuador, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health found that indigenous (and Afro-Ecuadorian) peoples show worse health indicators than the rest of the population, including higher rates of malnutrition and anaemia.

[...]

Security of tenure (Sustainable Development Goal 1)

48. Indicator 1.4.2 of the goal of ending poverty in all its forms everywhere is the “proportion of total adult population with secure tenure rights to land”. Security of tenure – the certainty that a person’s rights to land will be recognized by others and protected in cases of challenges – is a serious issue for religious or belief minorities. Indigenous peoples – up to 2.5 billion women and men – hold and use more than 50 per cent of the world’s land but have secure tenure to just 10 per cent. The situation of indigenous women can be especially dire as both national and customary laws

frequently fail to protect their property rights, and they often bear disproportionate burdens related to poverty, food insecurity, climate change and conflict.

49. A disturbing trend exists whereby Governments open up the lands of indigenous, religious or belief minorities to investment without the communities' consent or in contravention of their customary and collective land ownership. Communications to and by special procedures reveal numerous troubling examples of communities being dispossessed of their traditional lands, including the Kaiowá and Guarani people in Brazil, the Standing Rock Sioux Tribe in the United States of America, Wangan and Jagalingou in Australia and Te Wai o Hua (Maori). The Special Rapporteur is also concerned about States encroaching on peaceful opposition against these developments and the high murder rate of indigenous leaders in the context of land disputes.
50. In many cases, contemporary violations of land rights reflect vestiges of discrimination that States inherited. Prior to the independence of Bangladesh (1971), Pakistan promulgated the Enemy Property Act to enable the State to confiscate "enemy" lands, which in practice meant land owned by Hindus. It is reported that authorities seized approximately 53 per cent of the total land owned by the Hindu community. In the 50 years since independence, the Government of Bangladesh has not rescinded the property seizures. Bangladesh has legislatively enabled affected individuals to file claims for the return of confiscated property since 2001; religious minorities, however, allege that corruption and antipathy among local government officials have precluded access to restitution for those affected.

J. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF SLAVERY, INCLUDING ITS CAUSES AND CONSEQUENCES

1. Contemporary forms of slavery, including its causes and consequences, A/77/163, 14 July 2022⁸⁸

I. Introduction

1. In the present report, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, analyses the prevalence of contemporary forms of slavery in the informal economy. After referring to relevant international standards and definitions, the main drivers of informality and the profiles of workers are explored, followed by an overview of informal employment sectors that are at risk of contemporary forms of slavery. After discussing some of the main challenges in preventing contemporary forms of slavery in the informal economy, some positive developments in responding to them are presented before the conclusions and recommendations.

[...]

V. Drivers of informality

27. There are various interlinked drivers of informality. To begin with, poor households are more likely to work in the informal economy. Poverty prevents children from gaining access to education and increases the risk of child labour. A lack of access to education and vocational training leads to low literacy, numeracy and skills among

⁸⁸ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F163&Language=E&DeviceType=Desktop&LangRequested=False>.

them, severely restricting their access to decent work. It has been pointed out in this regard that 93.8 per cent of workers with a low level or without education are in the informal economy. Low wages and skills and a lack of sufficient social safety nets push informal workers further into poverty and increase the risk of contemporary forms of slavery among them.

28. Discrimination is another interlinked driver. Access to education and decent work is extremely limited or even non-existent for marginalized populations, including ethnic, linguistic or religious minorities, communities discriminated against on the basis of their type of work or their descent, indigenous peoples, migrant workers, older workers and workers with disabilities, due to intersecting forms of discrimination. In addition, women among these groups face discrimination based on gender. The resulting exclusion and inequalities force these marginalized populations to accept jobs in the informal economy that may be exploitative or abusive. While States around the globe have enacted anti-discrimination laws, the fact that these vulnerable populations are disproportionately represented in the informal economy shows that they are not effectively enforced in practice.

[...]

VI. Profiles of workers in the informal economy

[...]

38. It should also be highlighted that 86.3 per cent of the global indigenous population reportedly work in the informal sector compared to 63 per cent for non-indigenous populations.⁶⁴ Many live in rural areas and engage in agriculture, manufacturing, mining and construction. Informality among indigenous peoples is more prevalent in emerging and developing economies like Latin America and the Caribbean, as well as in other regions. In New Zealand, for instance, the unemployment rate for Māori indigenous peoples is reported to be higher than others, pushing them into the informal economy. It is also the case that more indigenous women are working in the informal economy than indigenous men.

[...]

VIII. Challenges in preventing contemporary forms of slavery in the informal economy

47. The informal economy can serve as a cause of contemporary forms of slavery, and there are key challenges to overcome in this regard. To begin with, the informal economy continues to be under- or unregulated at a global scale, creating protection gaps, particularly among women, children, young people, minorities, people discriminated against on the basis of their type of work or their descent, indigenous peoples, older workers, workers with disabilities and migrant workers. This underscores the need for more proactive legislative or regulatory intervention in order to register informal work, guarantee the rights of informal workers and prevent their victimization in contemporary forms of slavery.

[...]

X. Conclusions and recommendations

A. Conclusions

68. The informal economy can serve as a cause of contemporary forms of slavery as decent work deficits and indicators of exploitation are recognized in a number of sectors in all regions of the world. Various conditions and characteristics inherent in the sector, such as casualization, a lack of formal registration, contracts and

social/economic protection, as well as precarious working conditions, increase the risk of victimization in these practices. There are number of drivers that promote informality, such as poverty, discrimination and high costs and financial exclusion. Groups including women, young people, minorities, indigenous peoples, older workers, workers with disabilities and migrant workers are particularly affected by informality.

[...]

71. There is no one-size-fits-all approach, as the rate of transition from the informal to the formal economy is inevitably influenced by economic, social, political and cultural factors in each State. Therefore, tailored solutions that respond to these factors must be carefully considered and implemented. It is also essential that the needs of women, young people, older workers, migrant workers, minorities, indigenous peoples and workers with disabilities are adequately addressed. Finally, all relevant stakeholders, including national, regional or international financial institutions, national human rights institutions, civil society organizations, trade unions, as well as informal workers should participate actively in decision-making in order to promote a more effective and joined-up approach. This will facilitate the transition from the informal to the formal economy more smoothly and prevent contemporary forms of slavery in all sectors.

B. Recommendations

72. The Special Rapporteur recommends that States: ... (c) Consult and actively involve all relevant national, regional and international stakeholders and partners, including informal workers and businesses, in developing appropriate measures to facilitate the transition. Intersectional dimensions, such as gender, age, disability, minority, indigenous, inherited and migration status, must be carefully considered and reflected; ... (m) Where appropriate, adopt temporary special measures to enhance qualifications and employability for groups such as women, children and young people, minorities, indigenous peoples, communities discriminated against on the basis of their type of work or their descent, older workers, workers with disabilities and migrant workers....

K. WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

1. The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders, A/HRC/47/39/Add.2, 22 June 2021⁸⁹

I. Introduction

1. Threats to human rights defenders and to civic freedoms are increasing concerns globally – a trend that has intensified under the guise of the COVID-19 crisis. A large number of human rights defenders are under threat and attack because they raise concerns about adverse human rights impacts of business operations, often in the context of large development projects that affect access

⁸⁹ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F47%2F39%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>.

to land and livelihoods. At the same time, the space for civil society actors to raise concerns about human rights impacts is shrinking, and human rights defenders face reprisals including criminalisation of their engagement in public protest or civil dissent.

2. The increasing risks to human rights defenders cannot be seen in a vacuum or divorced from the underlying root causes of attacks. Defenders are often attacked because they shine a light on the underlying patterns of harmful business conduct and investment. As businesses, often in collaboration with the State, seek access to natural resources and land, for example, they may engage in economic activity that adversely impacts the rights of communities, including water, environmental and land rights. Historical issues relating to racism and marginalisation of vulnerable groups, and indigenous peoples, also means that certain groups may be disproportionately affected by business-related human rights abuses. The role of human rights defenders is intrinsically linked to underlying patterns of human rights abuses arising from business conduct. Thus, it is important to address and prevent such underlying abuses as part of a holistic approach to securing sustainable and rights-respecting business models.

[...]

II. Human rights defenders and the Guiding Principles on Business and Human Rights

[...]

A. The increase in risks to human rights defenders connected to business activity

13. The murder of Berta Cáceres, the Lenca leader, and an environmental and indigenous rights defender, who was shot dead in her home on 2 March 2016 having led protests about, and spoken out against, the construction of the Agua Zarca dam, has been widely reported. The dam project threatened the traditional lands and water resources of the local Lenca indigenous communities in Honduras. Her murder remains an emblematic case that shines a light on the grim realities faced by human rights defenders in the context of business activities. In 2018, a Honduran court ruled that executives of the dam company DESA ordered the killing of Cáceres. Although seven men were found guilty of the murder and sentenced to 30 to 50 years, impunity for others implicated in the murder remains an issue.
14. Sadly, this is just one of too many such cases over the past decade, as an overwhelming body of evidence recognises.

[...]

19. Many other Special Procedures mandate holders have also addressed the issue, highlighting the urgent case for action in the face of repeated business-related human rights abuses against human rights defenders. For example, in 2018, the Special Rapporteur on the rights of indigenous peoples focused on attacks against and the criminalisation of indigenous human rights defenders, particularly those arising in the context of large-scale projects

involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging (noting that these are occurring in the context of intensified competition for and exploitation of natural resources), and reflected on available prevention and protection measures. The Special Rapporteur on human rights and the environment worked with the Universal Rights Group to develop a website for environmental human rights defenders, and emphasised the risks to, and impacts of, business activity on environmental human rights defenders in the 2017 Universal Rights Group policy brief “Environmental Human Rights Defenders: A Global Crisis”.

20. The issues covered by Special Procedures mandate holders highlighted that the Working Group, as the most relevant Special Procedures mandate charged with addressing business practice, needed to clarify expectations in this field, particularly for business, and thereby focus minds on the prospective and actual harm caused to life and limb by business activity. The Working Group’s guidance should be read in conjunction with the relevant work of other Special Procedures mandates and it supplements the work of those mandates on a variety of connected issues, such as on the rights of indigenous peoples.

[...]

B. Why risks related to business activity are faced by human rights defenders

22. Human rights defenders often step in when they, their co-workers, their communities and their lands are under threat. The matters at stake are often a question of life or death, and/or ecological destruction. The types of risks faced by human rights defenders when highlighting irresponsible practices involving business enterprises or their business partners (including actors with links to governments) include threats, or the reality, of: smears, slurs, harassment, intimidation, surveillance, strategic lawsuits against public participation (SLAPPs), criminalisation of their lawful activities, physical attacks and death.
23. Many human rights defenders are under threat and attack because they raise concerns in the context of large development projects that affect access to land and livelihoods, and the rights of indigenous peoples and/or local communities. However, risks to individuals speaking up against potential or actual impacts on human rights exist across a number of sectors. The situation is made worse by the current trends of shrinking civic space, the criminalisation of defenders engaging in lawful public protest or civil dissent, and the increasing pursuit of strategic litigation against public participation designed to stifle the activities of human rights defenders. For example, civil defamation lawsuits are often used to silence the voices of defenders. This is taking place within a context of increased authoritarianism and undermining of the rules-based international order, which presents an additional layer of challenge to the work of human rights defenders.

[...]

IV. Respect for the rights of human rights defenders as critical to sustainable development and responsible recovery

[...]

38. The Working Group looks forward to continued partnership with human rights defenders, trade unions, indigenous peoples' organisations, and civil society, as well as with States, business, national human rights institutions, and researchers to bring this guidance to life, and to highlight good practices and positive stories of how transformation is occurring in terms of business respect for the rights of human rights defenders.

[...]

V. The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders

39. As part of their duty to protect human rights, States need to provide support to business enterprises that deal with risks to human rights defenders to improve responses on the ground. States must emphasise that human rights defenders should be seen, by States, business, and all stakeholders, as partners for achieving change. Such support can be grounded in State policies about how business should relate to human rights defenders, and States' related expectations of business conduct in this context. The leadership role for States in this regard cannot be overstated. The following analysis of Pillar I provides examples of how States can fulfil their duty to protect human rights defenders from human rights abuses arising from business activity, and connects such practices to the Guiding Principles.

A. Pillar I: The State duty to protect human rights

40. Guiding Principles 1-10 set out the State duty to protect human rights. This includes protecting the rights of human rights defenders to do the work they do in relation to identifying, speaking up about, and seeking to prevent, mitigate or seek remedy for adverse impacts of business activity in a safe and enabling environment.

[...]

2. States should set forth clear expectations for business enterprises regarding the importance of respecting the rights of human rights defenders

43. In accordance with Guiding Principle 2, States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction should respect human rights defenders throughout their operations, including within their supply chains.

[...]

Guidance

45. In accordance with Guiding Principles 2 and 3, States should provide guidance on how all business enterprises domiciled in their territory and/or jurisdiction should respect human rights defenders throughout their operations, including within their supply chains.

46. Illustrative actions that States should take:

[...]

- The risks human rights defenders face in the context of business activities (e.g. criminalisation, harassment, strategic lawsuits against public participation (SLAPPs), threats and intimidation, smear campaigns, physical attacks and killings), including risks facing specific groups of human rights defenders (e.g. women human rights defenders, indigenous human rights defenders, LGBTI human rights defenders, human rights defenders living with disabilities, and trade unionists).

[...]

What information should the guidance include for business enterprises?

[...]

- Information on the “do no harm” principle and the requirement to apply the concept of Free Prior and Informed Consent, set out in the United Nations Declaration on the Rights of Indigenous Peoples, paying particular attention to and following FPIC protocols created by communities where they exist.

[...]

C. Pillar III: Access to Remedy

79. Pillar III, Guiding Principles 25-31 deal with access to remedy. Both States and business enterprises need to provide access to remedy, including to human rights defenders. This has been explored by OHCHR in its Accountability and Remedy Project.

[...]

1. States should ensure that human rights defenders have access to judicial, administrative, legislative or other means to access remedy

81. In accordance with Guiding Principle 25, States must ensure that all necessary judicial, administrative, legislative or other means that they take to provide affected persons with access to effective remedies for business-related human rights abuses are suitable for the needs of human rights defenders.

82. Illustrative actions that States should take:

[...]

- ensure that the specific needs of women human rights defenders and indigenous defenders are addressed.

[...]

D. Issues in focus

1. Development Finance Institutions including International Financial Institutions

102. Development Finance Institutions (DFIs), including International Financial Institutions (IFIs) are State-run institutions, some are public-private initiatives, and some have more of a private sector quality. IFIs often fall within the “State-business nexus” under Pillar I.¹⁴⁵ In this section, the focus is on development finance institutions (multilateral, regional and national) that conduct investment of public and private funds.

103. Development projects, and the ways in which the entities running those projects engage with human rights defenders, often pose particular challenges for

human rights defenders, particularly because they often entail contest over land, displacement, environmental rights, and rights of indigenous peoples. Development projects may exacerbate already tense situations, for example around land tenure, by bringing rapid development and investment to an area, often without robust consultation and engagement with communities and impacted rights holders in advance of the decision to initiate a project. Risks to defenders connected to development projects may arise and in areas with weak governance, where the rule of law is lacking or absent, the injection of significant sums can render corruption inevitable. In such situations, defenders who raise human rights implications of development projects, may be characterised as hostile to development and anti-investment, rather than as critical voices who are well-placed to identify underlying harms that may give rise to conflict.

2. Visit to Honduras, A/HRC/44/43/Add.2, 15 May 2020⁹⁰

I. Introduction

1. Pursuant to Human Rights Council resolution 35/7, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by two of its members, Anita Ramasastry and Dante Pesce, visited Honduras from 19 to 28 August 2019. During the visit, they aimed to assess the efforts made by the Government of Honduras and business enterprises to prevent, mitigate and address the adverse impact of business-related activities on human rights, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

[...]

II. General context

[...]

10. Corruption and weak public institutions are among the factors exacerbating social conflict affecting all stakeholders – from civil society and indigenous communities to business and the Government – and fuelling lack of trust in the Government.

[...]

III. Human rights risks and impact in specific sectors

A. *Right of affected rights-holders to participate*

[...]

20. Both local communities (including indigenous communities) and businesses have signalled an urgent need for a clear institutional and regulatory framework on participation as a key element to address the root causes of social conflict. The current gaps have also negative consequences for business and investors, such as the costs of stalled operations, damage to a company’s reputation and investors withdrawing financing, like in the Agua Zarca dam case.
21. The Working Group reminds all businesses that the meaningful participation of communities is a central aspect of human rights due diligence, as set forth in the Guiding Principles: it allows business to identify early on, and to better understand, the potential impact on human rights and risks of a project for the environment and

⁹⁰ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F43%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>.

people, particularly of those at greater risk of abuse, such as women, indigenous and afro-Honduran peoples, and persons with disabilities, and the associated concerns and grievances.

22. Engagement should take place at the earliest stage of a project and provide an explanation of the negative and positive impact on social, economic, cultural activities and the environment. This means, for example, presenting findings from environmental studies in a manner that is understandable to those lacking technical expertise. For businesses it means engaging in comprehensive (human rights) impact assessments, together with an analysis of potential environmental harm. In all cases, plans for mitigating impact should be developed and shared with all stakeholders.
23. The issue of legal standards for consultations with indigenous peoples was a matter of concern for many stakeholders. The Working Group observed the lack of a proper regulatory and institutional framework to ensure the rights of indigenous peoples to free, prior and informed consultation and consent in line with international standards, such as the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples. The inadequacy of the “socialization” process in projects affecting indigenous communities was particularly evident in cases of the Reitoca and Tornillito hydroelectric projects.
24. A legislative initiative was developed on free, prior and informed consultation with indigenous and Afro-Honduran peoples and presented to Congress in May 2018. The initiative was prompted also by efforts to ensure legal certainty for investors in development projects, given the potential for conflict surrounding them, including in the hydroelectric, energy and mining sectors. In this context, concern was expressed about the draft law and the lack of alignment of provisions on free, prior and informed consultation and consent with international standards. In 2015, 2016 and 2017 the Special Rapporteur on the rights of indigenous peoples called, among others, for more inclusive processes with broader and diverse indigenous representation in the consultation, drafting and approving stages of the law (see A/HRC/33/42/Add.2). Similar concerns were also raised by the Committee on the Elimination of Racial Discrimination in 2018 (see CERD/C/HND/6-8). In October 2019, following additional information received indicating the continued opposition from significant sectors of indigenous peoples to the draft law, the Special Rapporteur reiterated her view that the current draft still had not addressed the problems of process and substance previously identified.
25. The Working Group reiterates its concern at the prospect of the passage of the draft law as currently presented and stresses the need, as a precondition for any law, to ensure a broader and inclusive consultation process.
26. The Government informed the Working Group that Congress was analysing a technical proposal and schedule of activities submitted by OHCHR Honduras in November 2019, and that the commission in charge of drafting the law announced that it would allow further comments by indigenous communities. On 23 January 2020, representatives from indigenous and Afro-Honduran communities protested in front of Congress, opposing the process and the content of the draft law.
27. The Working Group noted with interest the information received from the Government regarding some initiatives, including by the Secretariat of Energy, to prepare a protocol for engaging indigenous communities at the earliest stage of

projects in the energy sector, looking at similar experiences of other countries in the region. It also noted that some companies, after experiencing social conflict and consequent project delays or blockages, had reviewed their processes to ensure better consultation as part of a human rights due diligence process.

28. The Working Group welcomes the above initiatives, but is still concerned that the approval of the draft law in its current form could aggravate the existing social conflict and unrest surrounding development projects. It urges the Government and Congress to properly take into account the observations and recommendations made by relevant human rights bodies and mechanisms, and to implement them in full. The adoption of a regulatory and institutional framework on the right to free, prior and informed consultation and consent for indigenous peoples in line with international standards would constitute a significant step towards rebuilding trust between State authorities and indigenous communities.
29. The Working Group reiterates the observations made by the Special Rapporteur on the rights of indigenous peoples that any initiative with regard to participation and consultation rights should be accompanied by strengthened protections for other substantive areas, including indigenous lands, the environment and human rights defenders.

[...]

C. Land rights

42. Agriculture continues to be a driving force behind economic growth. Many small farmers engage in small-scale and subsistence farming. Indigenous communities often hold collective ancestral titles on land. Approximately 80 per cent of privately held land is, however, either untitled or improperly titled.
43. Access to, use of and control over land are issues at the root of many social conflicts, where business enterprises are – either directly or indirectly – involved.
44. The Government informed the Working Group about several measures taken to register and adjudicate land, including for the benefit of small-scale farmers and indigenous and Afro-Honduran peoples. This includes the titling of some 1,114,976 hectares benefiting around 25,000 families from 12 Miskito territorial councils, and the plan for the Alliance for the Development of the Moskitia, in which priority is given to land titling and regulation in the region.
45. Challenges nonetheless remain to ensure appropriate processes of territorial regularization, legal recognition and legal protection of land, in accordance with international standards. Local communities and farmers explained the negative effects that they continue to endure in relation to access and the use of land and natural resources, especially in the context of development projects. The Working Group identified some recurring patterns.
46. Firstly, the Working Group was informed about cases of small-scale farmers, including indigenous communities, who claim farmland as their own. Companies dispute those claims and routinely file lawsuits against them with the aim of taking possession of the land in question. In Bajo Aguan, for example, this pattern of behaviour fuelled violence, with dozens of people reportedly killed and hundreds more injured and arrested.
47. Secondly, the Working Group learned that the Government had granted licences for businesses to operate in non-core protected areas, affecting communities and the cultural heritage and livelihoods of indigenous peoples, such as the Tolupan

indigenous peoples in San Francisco Locomapa (A/HRC/33/42/Add.2, para. 22).

48. Thirdly, the Working Group was informed that the numerous cases of eviction of small farmers to allow business enterprises to occupy land had been conducted with excessive use of force by police and military, and in some cases with the involvement of private security companies, resulting in injury and loss of life. It recalls that businesses should exercise due diligence before initiating operations on land that is inhabited or used by communities for their livelihoods, and proactively engage with those communities. The Government should take effective measures against forced evictions in accordance with international human rights standards, and ensure that victims have access to effective recourse that allows restitution of their possessions, return to their homes or land, and appropriate compensation.

[...]

IV. Gender aspects of business and human rights

61. The Working Group noted that, despite the existence of a solid institutional and normative framework to address different forms of discrimination against women, women from ethnic minorities and indigenous women, lesbian, bisexual, trans and intersex women, rural women, women living in poverty and indigenous women are particularly disadvantaged, and therefore disproportionately affected by business-related human rights abuses.

[...]

V. Human rights defenders and criminalization

66. The Working Group met with numerous human rights defenders engaging in work to defend the rights of communities and individuals – including land rights, rights to environment and natural resources, and indigenous and women rights – affected by various types of development and investment projects. A significant number of defenders are women, who face additional risks because of their gender. The Working Group was impressed by the active and engaged civil society actors operating throughout the country in the face of systematic violations and abuses, most often committed with total impunity, which in turn fuels more attacks against them.

67. The Working Group did not see these people as criminals or anti-development agitators but as peaceful and humble farmers, indigenous peoples and community members who are genuinely worried about their natural resources and livelihood, and are demanding a path towards development that benefits all. In this context, the Working Group reiterates the call of the Special Rapporteur on the situation of human rights defenders for strong and urgent action to ensure protection for those who defend the rights of others, including in the context of business activities (see A/HRC/40/60/Add.2).

[...]

VI. Access to remedy and accountability

76. While the justice system seems to be frequently used to prosecute human rights defenders, the same does not appear to be the case for investigations into crimes committed against defenders. According to the Special Rapporteur on the situation of human rights defenders, between 2015 and October 2018 at least 43 human rights defenders were killed, 76 journalists were murdered between 2001 and

2017 and more than 120 land rights defenders were killed between 2010 and 2017 (A/HRC/40/60/Add.2, para. 23). Impunity and lack of investigation into attacks in the context of development projects remain the rule rather than the exception.

[...]

78. The law on the protection of human rights defenders, journalists, media workers and justice system actors, adopted in 2015, led, with the support of human rights defenders and civil society, to the establishment of the national protection mechanism. In the period from 2015 to 2019, the mechanism had its budget increased by 142 per cent and processed 521 requests for protection measures, of which 384 were admitted and 137 dismissed for not meeting the requirements set out in the law. As at 30 December 2019, 204 people benefited from protection measures. The establishment of the mechanism represents a landmark development for the protection of human rights defenders, union leaders, journalists and lawyers. The Working Group commends the Government for this initiative and welcomes the development of a manual for risk assessments that take into account gender and indigenous peoples at heightened exposure to abuses, and hopes that it will be approved promptly by the mechanism.

79. While the offices of special prosecutors and specialized units have been established to investigate environmental crimes or certain crimes affecting indigenous peoples, serious crimes, such as murder, are prosecuted by regular prosecutors. In this context, civil society organizations and lawyers working with communities and human rights defenders noted that many cases were often not investigated or had stalled at the investigation stage, or delayed when transferred to the court. On the other hand, they pointed out that the large volume of criminal complaints against them were processed and brought to court promptly. The Working Group notes that there are no procedural safeguards to ensure that the criminal justice system is not misused to intimidate defenders and foreclose their access to an effective remedy.

[...]

IX. Development of a national action plan on business and human rights

100. At its review during the second cycle of the universal periodic review, in July 2015, Honduras accepted a recommendation on developing a national action plan on business and human rights (A/HRC/30/11). The Working Group welcomes this commitment and commends the leadership of the Ministry of Human Rights in this context.

101. The Working Group also positively notes that the Government of Honduras shares its views regarding the need to proceed cautiously and slowly in the process of developing a national action plan. Before developing it, the Government has to begin by ensuring an enabling environment for multi-stakeholder engagement. This includes the recognition that building trust among all stakeholders represents a precondition for such engagement, and will take time. The political will for ensuring meaningful step-by-step engagement in the process should be demonstrated by concrete actions. The approval of a consultation law in accordance with international standards for building trust with indigenous communities and other civil society actors is a case in point.

[...]

X. Conclusions and recommendations

A. Conclusions

[...]

105. The Working Group saw the extent to which impunity and widespread corruption have eroded confidence in public authorities and their ability to protect individuals and communities against business-related human rights abuses, particularly those in most vulnerable situations, such as indigenous peoples. The current amendments to the Criminal Code, which criminalize the legitimate work of those defending their rights, lands and the environment, and the parallel step-back in the fight against corruption, have deepened distrust in State institutions.

[...]

B. Recommendations

109. The Working Group recommends that the Government of Honduras:

- (a) Adopt a regulatory and institutional framework to ensure the equal and meaningful participation in decisions regarding business projects from an early stage; this includes access to information and transparency at all phases of projects that have an impact on the rights of people and the environment;
- (b) Ensure that government entities and the private sector respect the rights to free, prior and informed consultation and consent of communities of indigenous peoples, in accordance with such international standards as the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples; any consultation protocols/process or legal framework must ensure the full participation of indigenous peoples in its development and implementation;
- (c) Adopt a comprehensive and transparent regulatory framework on social and environmental impact assessments that take into account sector-specific risks, and differentiated impact on groups at heightened risk of business-related human rights abuses; and ensure effective oversight by means of institution strengthening and capacity-building for relevant State actors...

[...]

- (f) Ensure protection of the right of people living in rural areas, including indigenous peoples, to possess, use, develop and control their lands, and resources with full security of their land rights; this includes the establishment of an appropriate and effective permanent mechanism to enable indigenous peoples to submit claims and obtain compensation for abuses of rights over their lands and natural resources; the mechanism should coordinate with the judiciary, agricultural authorities and the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, and be provided with the technical and budgetary capacity necessary;
- (g) Take immediate measures to protect the life and integrity of people at risk because of their work defending the rights of communities, their land or the environment in the context of development projects, and ensure prompt and impartial investigation into cases involving threats and violence against them; this requires strengthening existing mechanisms (for example, the national protection mechanism for human rights defenders) and developing new initiatives with the systematic integration of a gender perspective, such as:

- (i) The establishment, within the Office of the Attorney General, of integrated teams with attorneys from relevant units of special offices to strengthen its capacity to investigate all dimensions of crimes against defenders and indigenous peoples, including when perpetrated by private entities;
- (ii) Preventing further misuse of the judicial system to criminalize human rights defenders, including by developing safeguards and procedures to assess whether criminal complaints are used as a pretext to prevent them from exercising their rights to seek effective legal remedies for the communities and individuals they represent;
- (iii) Immediately repealing the provisions in the new Criminal Code and legislative decree No.102-2017 criminalizing dissent and silencing individuals who stand up for victims of business-related human rights abuse;

[...]

- (j) Reform the labour rights regime, including occupation health and safety regulations, to bring it into line with international labour standards, including by:
 - (i) Establishing an independent and adequately staffed, trained and resourced Labour Inspectorate with a broad mandate to inspect, enforce and impose penalties in cases of non-compliance with all human rights pertaining to workplace in all sectors, including in the fishing industry affecting Miskito indigenous peoples, with an emphasis on prevention....

L. SPECIAL RAPPOREUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES

1. Violence against indigenous women and girls, A/HRC/50/26, 21 April 2022⁹¹

I. Introduction

1. The present report of the Special Rapporteur on violence against women, its causes and consequences, Reem Alsalem, is submitted to the Human Rights Council pursuant to its resolution 41/17. In the report, the Special Rapporteur addresses the theme of gender-based violence against indigenous women and girls. With the report, she intends to shed light on the specific manifestations of violence against indigenous women and girls, which have in most cases extended across

⁹¹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F50%2F26&Language=E&DeviceType=Desktop&LangRequested=False>. See also *Violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response*, A/77/136, 11 July 2022, para. 29 (“The extractive industry, energy and production-related ventures, commercial logging and extractive energy sourcing have had negative, gendered and often violent impacts. ... The situation creates scope for opportunistic sexual violence, for which there is no or limited accountability. The protection gap for indigenous women is wider, due to territorial and jurisdictional conflicts that beget legal loopholes and interjurisdictional neglect”), para. 50-1 (“Of all fatal attacks against environmental human rights defenders, a third targeted indigenous people. Indigenous women and girls, particularly those defending their territories and communities, are at high risk of violence. In some countries, such as Guatemala and the Philippines, indigenous women and women human rights defenders faced threats, violence and criminalization in relation to their activism against land encroachment by hydroelectric plants, mining companies, illegal logging ventures and farmers. Despite the circumstances, only a few nationally determined contributions in Asia paid attention to indigenous women. The violence is often connected to corporate and State entities in extractive, energy and production-related ventures whose projects target fertile lands home to indigenous and forest communities, as these areas tend to hold scarce and valuable natural resources. Rights over such lands are generally State-owned or customarily held or exist in a legal “grey zone” without redress mechanisms, creating scope for violent land expropriation, exploitation, theft and grabbing”), <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F136&Language=E&DeviceType=Desktop&LangRequested=False>.

generations; to explore their connections to other human rights violations that affect indigenous peoples, and indigenous women and girls in particular, and to provide guidance for States and other stakeholders on the measures needed to further prevent and combat violence against indigenous women and girls in the context of their international human rights obligations.

[...]

III. Introduction: gender-based violence against indigenous women and girls

7. Indigenous women and girls face complex and intersectional forms of violence, linked to patriarchal structures, racial and ethnic discrimination and socioeconomic status. Evidence from various countries shows that indigenous women have been particularly exposed to serious forms of gender-based violence, such as forced sterilization; trafficking and sexual violence in the context of displacement or migration; harmful traditional practices; and gender-based violence in the context of conflict. These different manifestations of violence are perpetrated by State agents; non-State actors, such as private companies and armed groups; members of their own community; and others.
8. Unfortunately, gender-based violence against indigenous women and girls is drastically underreported and perpetrators regularly enjoy impunity. Despite the increased risk of violence, indigenous women and girls face significant obstacles in accessing justice, either within their community or through State institutions, due to discrimination, bias, fear of stigmatization, language barriers and re-victimization risks. As a result, indigenous women and girls receive no remedies for the violence they experienced. They also suffer the consequences of intergenerational trauma that, left unaddressed, is transmitted to the following generations.
9. Indigenous women and girls experience violence both at the individual level and at the collective level. They also bear the gendered consequences of the violence against themselves and their communities disproportionately. However, there is still insufficient understanding of the specific ways in which indigenous women and girls experience human rights violations at the intersection of their individual and collective identities, in particular how indigenous women and girls experience the systemic discrimination in indigenous and non-indigenous justice systems and barriers they confront in accessing effective justice. Similarly, there is insufficient understanding of how their experiences differ from nonindigenous women.
10. In the present report, the Special Rapporteur presents an overview of the main causes, manifestations and consequences of gender-based violence against indigenous women and girls, as well as good practices and challenges with regard to their access to justice, to truth and redress and to support services, and their participation in initiatives and processes related to prevention of and protection from gender-based violence. She also provides recommendations for States and other stakeholders to guide their efforts towards implementing policy and legal reforms to protect the right of indigenous women and girls to a life free from violence, in accordance with their international human rights obligations.

IV. Legal and policy frameworks

A. International and regional frameworks and their interpretation

11. At the international level, two instruments specifically address the rights of indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on 13 September 2007. The Declaration

affirms the basic rights of indigenous peoples in a number of areas under the broad overarching right to self-determination. Article 22 (1) states that particular attention is to be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of the Declaration. In article 22 (2), States are reminded of their obligation to take measures to ensure indigenous women and children the enjoyment of full protection and guarantees against all forms of violence and discrimination. As requested by the General Assembly in 2014 at the World Conference on Indigenous Peoples, the systemwide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples was developed in 2015.

12. The second instrument is the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO). The Convention is, to date, the most advanced international treaty specifically targeted at the advancement of the rights of indigenous peoples. However, the only specific reference to women is in article 20 (3) (d), which refers to equal opportunities, equal treatment and protection from sexual harassment. No other reference regarding prevention of or protection from violence exists in the Convention. Nevertheless, subsequent studies carried out by ILO have, to a certain extent, examined the issue of violence against indigenous women and girls within the context of the implementation of the Convention, stating that the full spectrum of the rights recognized in the Convention is central to addressing gender-based violence against indigenous women.
13. Indigenous peoples' rights, including those of indigenous women and girls, are also indirectly protected under the core human rights treaties and cited in several other United Nations conventions and instruments. Although the human rights treaties do not contain specific provisions on indigenous women and girls, the treaty bodies monitoring their implementation have addressed their rights specifically in the exercise of their monitoring functions, for example in concluding observations and general recommendations and general comments. The Committee on the Elimination of Discrimination against Women is currently drafting a general recommendation on the rights of indigenous women and girls, including on the prevention of and response to gender-based violence.
14. Other relevant international instruments, mechanisms, reports and resolutions include Human Rights Council resolution 32/19, which was focused on eliminating violence against women and girls, including indigenous women and girls. Furthermore, by its resolution 33/25, the Council established the Expert Mechanism on the Rights of Indigenous Peoples, which has included some consideration of violence against indigenous women and girls in certain thematic reports and studies. In response to a recommendation of the United Nations Permanent Forum on Indigenous Issues, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) developed a strategy for the inclusion and visibility of indigenous women in 2016.
15. The rights of indigenous women and girls have also been considered in regional human rights systems. The American Declaration on the Rights of Indigenous Peoples, adopted in 2016, refers to their rights explicitly, and under article VII, States have an obligation to adopt the necessary measures to prevent and eradicate all forms of violence and discrimination, particularly against indigenous women and children. Indigenous women and girls' rights are also indirectly protected through the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú

Agreement), under which States parties are required to meet their international obligations related to the rights of indigenous peoples. While no specific reference is made to indigenous women and girls in the American Convention on Human Rights or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, monitoring bodies have addressed their rights specifically through their activities. Both the Inter-American Commission on Human Rights and the Inter American Court of Human Rights have focused on these rights in their decisions and reports. In a report published in 2017, the Inter-American Commission on Human Rights included an overview of relevant jurisprudence related to eliminating violence against indigenous women and girls.

16. While the African Charter on Human and Peoples' Rights and the Protocol thereto on the Rights of Women in Africa do not refer specifically to the right of indigenous women to be free from violence, the African Commission on Human and Peoples' Rights adopted an advisory opinion stating that the United Nations Declaration on the Rights of Indigenous Peoples is consistent with the Charter and the jurisprudence of the Commission. Moreover, in 2011, the Commission adopted its resolution 183, on the protection of the rights of indigenous women in Africa, in which it noted the persistence of violence and various forms of discrimination and marginalization faced by indigenous women, and urged States to collect disaggregated data on the general situation of indigenous women and adopt laws, policies, and specific programmes to promote and protect all human rights of women. In a landmark judgement in 2017, the African Court on Human and Peoples' Rights elaborated on the concept of "peoples' rights" and recognized indigenous peoples' rights to land.
17. At the European Union level, the European Parliament adopted its resolution of 3 July 2018 on violations of the rights of indigenous peoples in the world, including land grabbing, in which it referred specifically to violence against women and the rights of indigenous women and girls. With regard to the Council of Europe, the European Social Charter and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) do not contain specific references to indigenous peoples and, thus far, no specific cases have arisen through their monitoring bodies. The Group of Experts on Action against Violence against Women and Domestic Violence, the monitoring mechanism for the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), identifies various State obligations to address violence against indigenous women in its baseline evaluation reports for a number of countries under article 4 of the Convention.

[...]

V. Manifestations of violence against indigenous women and girls

A. Root causes of violence and connected issues

24. As reported by the Special Rapporteur on the rights of indigenous peoples in 2015, indigenous women and girls experience a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses. A close connection exists between gender-based violence perpetuated against them and the multiple forms of discrimination they face, based on the intersection of gender, race, ethnicity and socioeconomic circumstances. Historic and systemic patriarchal power structures, racism, exclusion and marginalization, maintained by the legacy of colonialization, have led to high levels of poverty, dire financial and social stress, and significant gaps in opportunities and well-being between indigenous and nonindigenous women.

These structures and systems are both cause and consequence of the structural and institutional stereotyping, discrimination and violence that indigenous women and girls still face from all sectors of society today.

25. Moreover, many forms of violence and abuse against indigenous women and girls contain a strong intergenerational component. Violations of the right to self-determination of indigenous peoples are historically and currently endemic and have been especially detrimental to the rights of indigenous women and girls. Violations, through both colonization and post-colonial power structures and State practices, have included assaults on the cultural integrity of indigenous communities, non-recognition of customary laws and governance systems, failure to develop frameworks for self-governance, and practices that strip indigenous peoples of autonomy over land and natural resources. Furthermore, the lack of recognition of indigenous land rights can lead to poverty, food and water insecurity and barriers to access natural resources needed for survival, and can create unsafe conditions that facilitate the perpetration of gender-based violence acts against indigenous women and girls.
26. The rise of indigenous women to claim their rights has – in several contexts – been met by resistance from inside indigenous communities, as women’s rights have often been considered divisive and external to the indigenous struggle. This false dichotomy between collective and women’s rights further entrenched the vulnerability of indigenous women and girls to abuse and violence, leaving them stripped of their rights to self-determination and agency by both violations of their collective rights and violations of their individual rights, creating and perpetuating systemic and generational vulnerability. However, it is also important to recognize that indigenous customary practices can be favourable to indigenous women and can strengthen their position in the communities, with prominent examples being the matrilineal systems of the Khasi in India and Bangladesh, and the Kreung in Cambodia.
27. Expectedly, situations of armed conflict, which often are related to lands, territories and natural resources, have a heavy impact on the rights of indigenous peoples and indigenous women and girls. In nearly every region of the world, indigenous peoples are being displaced and severely affected by violence on their lands and territories. For example, the islands of Okinawa in Japan, once the Kingdom of Ryukyu, historically became the battlefields for various conflicts over territory. Today, reportedly, this still has a profound gender-based impact on Ryukyuan/Okinawan women and girls, who face high rates of sexual violence and domestic violence. Likewise, the armed conflict in and militarization of the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation, since 2014, and the increase in armed clashes since late 2018 between Indonesian security forces and pro-Papua armed independence groups are examples of conflict that has an impact on indigenous women.
28. Indigenous women and girls are additionally specifically affected by the climate crisis, environmental degradation, industrial-scale agriculture and extractive industries and projects, and face an elevated risk of health problems, including reproductive health problems and high infant mortality rates associated with environmental contamination and degradation, leading to the loss of their traditional and spiritual ways of life, affecting their cultural identity and livelihood, and pulling them into a cycle of impoverishment and exposure to gender-based violence.

B. Manifestations of violence, intersectionality and special groups

29. The different manifestations of gender-based violence perpetrated against indigenous women and girls include, but are not limited to, the following: domestic violence, sexual harassment, sexual violence, trafficking, female genital mutilation, child, early or forced marriage, obstetric violence, violations of sexual and reproductive health and rights, gender-related or “honour” killings, forced displacement, kidnapping and forced labour. This violence is largely driven by the desire to occupy and control indigenous territories and resources and by the militarization that accompanies those efforts. These actions are committed by a multitude of actors, such as State actors, private companies, criminal groups and members of women’s own indigenous communities, including family members. At a minimum, this series of structural violence results in indigenous women being victimized by the realities of their daily life, and has a negative impact on the enjoyment of their fundamental human rights.
30. As the Inter-American Commission on Human Rights has rightly observed, these “acts of violence and discrimination against indigenous women not only harm those women individually, but also negatively impact the collective identity of the communities to which they belong”. The violation of their collective rights is particularly pronounced through the denial of dignified and culturally sensitive enjoyment of their sexual and reproductive health and rights, as indigenous women and girls have been subjected to eugenically imposed birth control, forced sterilization and attempts to force them to have children with non-indigenous men as part of assimilation policies. Furthermore, instances of health workers verbally assaulting indigenous women or violently forcing them to give birth in a horizontal position against ancestral customs have been reported, indicating a lack of understanding of, or a rejection of, traditional culture and practices. Moreover, some States have prohibited and criminalized indigenous midwifery or denied indigenous women the opportunity to give birth on the land of their ancestors, while respect for indigenous and ancestral practices, such as allowing indigenous midwives, can help disrupt the cycle of intergenerational violence and trauma, and protect against structural violence and racism within the medical system.
31. Indigenous women and girls with multiple and intersecting identities or characteristics are likely facing even higher rates of gender-based violence. For example, indigenous women and girls who live far from their home communities or in areas far from main cities are particularly vulnerable to these acts of violence. Furthermore, a study conducted in Nepal in 2021 with 210 indigenous women with and without disabilities indicated that indigenous women with disabilities were at an even higher risk of violence. Discrimination at the intersection of gender, disability and indigenous status, such as in education, may also result in barriers for indigenous women and girls with disabilities in recognizing, defining and describing the violence they face. Furthermore, indigenous women and girls with diverse sexual orientations and gender identities can experience intracommunity obstacles and violence, and can also face violence from State or non-State actors outside of the community. However, depending on the indigenous community and region, their diverse sexual orientation and gender identity may be accepted and even praised by their communities. Statistics from Canada reveal that indigenous women with diverse sexual orientations and gender identities are more likely to experience intimate partner violence in their lifetime compared with other indigenous women.

32. Indigenous women who are defenders of human, environmental or land rights are particularly targeted, in order to force them to stop their advocacy and activism. Notable examples include the killing in 2016 of Berta Cáceres and other members of Consejo Cívico de Organizaciones Populares e Indígenas de Honduras in response to their opposition to the construction of the Agua Zara hydroelectric dam. Mujeres Indígenas por la Conservación, Investigación y Aprovechamiento de los Recursos Naturales, a small indigenous women-led organization in rural Oaxaca, Mexico, funded under the Spotlight Initiative partnership with the United Nations trust fund in support of actions to eliminate violence against women, reported threats from aggressive ranchers for the work they do on indigenous women's rights and environmental justice. Similarly, MADRE, an international women's organization working in collaboration with a community development organization for indigenous women on the Atlantic coast in the north of Nicaragua, had faced pushback from local communities and State law enforcement.
33. Violence against indigenous women and girls in politics is also prevalent; exemplified by the harassment of and threats made against the first indigenous Democratic woman, elected in 2018, to serve in the North Dakota legislature in the United States. Despite these challenges, indigenous women continue to try to surmount the obstacles faced in their political participation and to advocate for their rights.
34. As noted by the Expert Mechanism on the Rights of Indigenous Peoples, gender discrimination puts indigenous women in vulnerable situations, particularly during migration. Indigenous women and girls who have been displaced, because of armed conflict, mostly related to their lands, territories or natural resources, suffer heightened vulnerability to gender-based violence. This violence manifests itself in multiple ways, such as through ethnic cleansing or forceful deportation; sexual violence; or trafficking, extortion, criminality, or labour exploitation in situations of vulnerability as a result of poverty.

VI. Indigenous women and girls' effective access to and participation in the prevention of and protection from violence

A. Access to prevention and protection services

35. Several good practices in ensuring indigenous women and girls' effective access to mechanisms relating to prevention and protection from violence have been identified. For example, regarding access to emergency support and hotlines on gender-based violence, in Guatemala, the ombudsperson for indigenous women, in collaboration with prosecution and law enforcement authorities, established a free hotline during the coronavirus disease (COVID-19) pandemic, available in four languages – K'iche', Mam, Q'eqchi' and Kaqchikel – to provide care and advice for indigenous women who were victims of violence. Moreover, a Guatemala-based civil society organization, the Women's Justice Initiative, produced radio programmes in local languages to broadcast information on the pandemic, and also used the opportunity to generate awareness about the hotline for psychological services.
36. Practices regarding reporting gender-based violence or seeking protection or related support services have also been reported. For example, in Brazil, reporting channels of the National Human Rights Ombudsman, whose staff receive training in supporting indigenous women and girls, can be used to search for information and to file complaints. In Mali, given that the majority of indigenous Tuareg communities reside in hard-to-reach areas, mobile gender-based violence clinics have been established.

37. Indigenous-led victim support services are often preferred by indigenous survivors of sexual assault. For example, the StrongHearts Native Helpline in the United States found that of the 3,074 calls received in 2020, not one of the callers chose to transfer to a non-Native hotline for support during non-staffed hours. The Government of Canada, together with Pauktuutit Inuit Women of Canada, has announced its commitment to fund the construction and operation of new shelters for Inuit women and children, including those with diverse sexual orientations and gender identities, across Inuit Nunangat. In Australia, the Sexual Assault Referral Centre Service, operating in the Top End of the Northern Territory, is staffed by Aboriginals and non-Aboriginals, providing counselling, training, clinical support services and legal assistance.
38. In terms of collecting research and evidence, the Swedish authorities allocated research grants to fund research into how Sami women are served by and benefit from the current national response to violence against women. A study was commissioned and financed to map Sami society from a gender-equality perspective, to form the basis for any proposed measures that the Sami Parliament deems necessary. The resulting study, presented in April 2021, contained proposals for measures for Sami gender equality, violence prevention work and further research.
39. When it comes to prevention, the Office of the Children's Commissioner in the Northern Territory supports the work of the Tangentyere Council in Central Australia, an Aboriginal community-controlled organization dedicated to self-determination, service provision and community leadership. One of the Council's projects, "Girls can, boys can", works to debunk gender and social norms for Aboriginal children and communities. In Argentina, accessible materials were produced in several indigenous languages to help children learn about their rights, taking into account respect for their languages, identities and world views. The Ministry for Women in Paraguay, through regional women's centres, held awareness-raising and prevention workshops for women in indigenous communities, to provide information about the different types of violence and legal provisions, prevention and reporting mechanisms, and supporting mechanisms.
40. Despite these advances, it is clear that support services are often not aimed at, appropriate for or inclusive of the specific needs of indigenous women and girls. Many survivors of violence or those at risk of violence are also often not aware that services are delivered, or how to access them.
41. Moreover, having experienced violence, indigenous women and girls may suffer stigmatization when they try to access support services, both from their communities and from the staff that provides the services. Due to lack of training and awareness-raising, health professionals are often insensitive to the realities, culture and worldview of indigenous women, and rarely offer services respecting their dignity, privacy, informed consent and reproductive autonomy. The double stigmatization exacerbates the reluctance of indigenous women and girls to seek assistance, owing to fear of the consequences of the stigmatization and to mistrust of the service providers.

B. Participation in initiatives and processes

42. Several good practices were reported regarding indigenous women and girls' participation in initiatives and processes on issues that affect their lives. For example, in terms of indigenous women and girls' leadership and advocacy, in Peru, the National Network for the Promotion of Women recruited older indigenous

women in rural communities as senior women leaders to advocate for gender- and age-sensitive policies with local authorities. The Network, from the start, took a participatory and inclusive approach so as to not reproduce patterns of social exclusion of indigenous women but instead generate new forms of relationships with project participants. Also in Peru, indigenous women established the National Organization of Andean and Amazonian Indigenous Women, which implements actions aimed at strengthening grass-roots organizations, raising awareness of their demands and influencing the public agenda in order to gain representative spaces at the local, regional, national and international levels.

43. Participation in national plans, policies and agreements relating to violence against women is key to ensuring effective, comprehensive and culturally appropriate approaches in the prevention of and protection from gender-based violence. In Australia, the process for a new 10-year strategy to reduce gender-based violence is currently ongoing. Through the advocacy of indigenous women leaders, the previous strategy's failure in acknowledging their specific circumstances and needs was recognized. This led to work on developing, in collaboration with the communities, a national plan dedicated to reducing gender-based violence against Aboriginal and Torres Strait Islander women.
44. Regarding prevention and holistic care, a network of for indigenous women in Mexico promotes culturally appropriate models in preventing and addressing gender-based violence, through an approach based on human rights and gender equality. It started with five homes, in the States of Chiapas, Guerrero, Puebla and Oaxaca. Now there are 34 homes, although budget cuts during the COVID-19 pandemic significantly affected their activities.
45. Advocacy by indigenous women has led to concrete advances in creating more accessible justice systems for them. For example, in 2014, and following consistent reporting by the Enlace Continental de Mujeres Indígenas de las Américas on cases of racism and discrimination, the judicial branch of the Province of Chaco, Argentina, established services of translation and expert opinions in indigenous languages.
46. Furthermore, some countries have maximized efforts to strengthen opportunities for the participation of indigenous women and girls in policymaking. For example, in El Salvador, UN-Women implemented a project with funds from the Canada Fund for Local Initiatives, with the objective of creating an observatory on the rights of indigenous women, as a citizen instrument of control and social oversight from a gender, legal and intersectional perspective. It is also envisioning the training of 25 indigenous women leaders on women's rights, and mechanisms for the handling and reporting of violence against women.
47. Nevertheless, the political participation of indigenous women and girls in processes that are important to their lives is still limited, for example, in governance processes, or legislative or advisory bodies or mechanisms, due to the existence of many barriers, such as violence against indigenous women and girls in politics. Similarly, there is still insufficient participation of indigenous-led organizations in designing and implementing strategies to prevent and respond to violence directed against indigenous women and girls that are adapted to their contexts, settings and needs. Moreover, indigenous women have not been sufficiently recognized as the guardians of valuable traditional knowledge in their communities, including regarding nature and sustainable practices, which can also inform climate mitigation and adaptation strategies. Lastly, domestic legislation and frameworks to prevent violence against women often do not take into account the specific vulnerabilities and realities of indigenous women and girls.

VII. Fair and effective judicial procedures for indigenous women and girls, and access to justice

48. Several countries have adopted or strengthened normative frameworks with specific references to indigenous peoples. Furthermore, more States are recognizing that policies intended to prevent and respond to gender-based violence are unlikely to be effective in addressing violence among indigenous women and girls unless the policies are specifically tailored to their needs. For example, the National Institute of Indigenous Affairs in Argentina has recently created an area on women and indigenous diversity and an area on indigenous children and adolescents.
49. Because many members of indigenous communities live in rural and remote areas, ensuring physical access to justice systems is key for indigenous women and girls' effective access to justice. Paraguay provided information on its itinerant programme, the mobile house of justice, which includes alternative conflict resolution methods, with 90 per cent of its beneficiaries being women.
50. Representation within the justice system and in broader politics and governance is key to effective access. For example, in Guatemala, an association of indigenous women lawyers was created with the objective of supporting the professional development of indigenous women lawyers. The association offers legal and technical advice to indigenous women and communities in defending their individual and collective rights, taking into account intercultural and gender perspectives. Similarly, indigenous women and men from the Garífuna communities of Punta Piedra and Triunfo de la Cruz in Honduras received support from a local organization to legally defend their territories before the Inter-American Court of Human Rights. The Court ordered Honduras to comply with its State obligation to delimit and demarcate the traditional territories of both communities, and to grant protection measures to their members, owing to serious incidents of violence.
51. The implementation of the extraterritorial human rights obligations of States is an important concept in the fight against gender-based violence against indigenous women and girls, allowing for accountability by non-State actors for violations of human rights they have committed. For example, following the rape and sexual violence inflicted on women from Lote Ocho by private security guards working for a Canadian mining company, while they were being forcefully evicted in Izabal, Guatemala, a Canadian provincial court determined that the Canadian parent mining company could be tried in Canada for its legal responsibility for acts of human rights violations caused by its subsidiary abroad, including the rape of 11 Q'eqchi women'. This legal decision set an important precedent.
52. Furthermore, providing awareness-raising and training to indigenous authorities can lead to their increased engagement in addressing gender-based violence within the indigenous community. This is especially important where domestic laws allow for indigenous communities to use their own judicial systems and customs. For example, in the Plurinational State of Bolivia, the government of the municipality of Viacha developed training sessions, in the Aymara language, for the native indigenous rural authorities. The training was led by indigenous leaders and organizations, in collaboration with the Municipal Legal Service and UNFPA, and reached approximately 400 indigenous authorities from 60 different communities. Similarly, the creation of leadership schools for indigenous women and women of African descent provided participants with conceptual and methodological knowledge that was key to eradicating femicide.

53. States are also investing in awareness-raising and training on the specific needs of indigenous women and how to engage them. In 2021, the National Human Rights Commission of Mexico developed a toolbox on how to incorporate gender, intersectional and multicultural perspectives in the handling of complaints of alleged violations of the human rights of indigenous women. Another example is the Indigenous Court work Programme in Canada, which assists indigenous people seeking justice in understanding their rights, and raises the cultural awareness of those involved in the administration of the criminal justice system. In Argentina, the Spotlight Initiative and other partnerships facilitated access to legal aid and financial education for indigenous women and guaranteed the participation of women in the process of monitoring laws against violence against women and girls.
54. Some good practices reassert the applicability of human rights to all and protect rights to be free from violence that may not be identified as such by the indigenous community. For example, in its findings in Amparo review proceeding 5008/2016, the Supreme Court of Mexico decided that indigenous men could not continue with the practice of marrying girls under the age of 14.
55. Gaps and challenges persist, however. As highlighted by the Working Group on the issue of discrimination against women in law and in practice in its 2019 report, indigenous women are disproportionately more likely to be criminalized, involved with the criminal justice system and overrepresented in many domestic prisons, due to a myriad of reasons, including harmful racial and gender stereotyping and intergenerational poverty. The disproportionately high incarceration rate of indigenous women compared to their non-indigenous counterparts, such as in Australia, Canada and Costa Rica, is a reflection of structural discrimination and of the barriers to accessing fair and effective judicial processes that are posed by State criminal justice systems and within indigenous systems. In some countries, indigenous women who are human rights and environmental defenders and women seeking abortions are particularly targeted in order to unfairly punish them and to set an example for others.
56. Some States do not recognize specific particularities that characterize the violence that indigenous women and girls face, which can result in barriers to access to justice. Other barriers include, but are not limited to, lack of expertise in indigenous languages and culture; lack, or poor allocation, of legal support and assistance; bias, stigmatization and stereotyping of indigenous women and girls by justice and law enforcement authorities; and high levels of impunity for crimes committed against indigenous women and girls. These constitute serious barriers within the justice system at large, resulting in discrimination and revictimization, reinforcing the already existing and deep-seated fear and distrust of the justice system. Where indigenous communities live in rural and remote areas, isolation and weak institutional presence in indigenous territories form a physical barrier to justice. Lack of documentation and recognized legal status can also exacerbate violence against indigenous women and girls and further prevent them from seeking justice.
57. Challenges still exist with respect to the issue of jurisdiction, intercultural justice and the application of indigenous law in cases of violence against women, or even the lack of recognition of indigenous women and girls' particular circumstances and the structural violence they face. In numerous instances, indigenous women and girls are obliged to first access traditional justice mechanisms that rule on the basis of traditional customary laws, which can, like national justice systems, be patriarchal and biased. For example, in Palestine, cases of gender-based violence

tend to be first referred to traditional community leaders (mukhtars). In some cases, violence against indigenous women and girls is understood and accepted by the community, which renders seeking justice for or protection from abuse a challenge.

VIII. Indigenous women and girls' access to truth, redress and guarantees of non-repetition

58. Under numerous international, regional and domestic laws, States carry an obligation to guarantee indigenous women and girls' rights to justice and comprehensive rehabilitation, restitution and reparation measures for gross violations of international human rights law and international humanitarian law, including sexual and other gender-based violence. Justice in such cases is also a critical component of the women, peace and security agenda.
59. An important form of reparation and satisfaction is the search for and acknowledgment of truth, responsibility and fault. Several truth commissions, such as those in Chile, Guatemala, Kenya and Peru, have described human rights violations that were committed against indigenous women. More recently, the conclusion of a three-year inquiry by Canada in 2019 is an important example of such moral and non-monetary reparation, as it was found that Canada had committed genocide against its indigenous population. The findings also characterized the violence against indigenous women, girls and persons of diverse sexual orientation and gender identity as a national tragedy of epic proportion.
60. Courts can play an important role in emphasizing the importance of truth seeking. In the case of *Fernández Ortega et al. v. Mexico*, the Inter-American Court on Human Rights established that from the moment the State became aware of the existence of a sexual violation committed against someone who belonged to a group in a situation of special vulnerability due to her status as indigenous and as a girl, it had the obligation to carry out a serious and effective investigation to verify the facts and identify the perpetrators.
61. There is evidence to show that investing in indigenous women's leadership and participation in legal and political processes concerning the violence they experience can result in justice and reparations for victims. UN-Women, civil society organizations, women's human rights defenders and public prosecutors came together to support indigenous Q'eqchi' women in winning the first ruling by a national court on sexual violence as a war crime. The Sepur Zarco case was the first time a national court considered charges of sex slavery during armed conflict and recognized the acts as a war crime, leading to important reparations for the affected community.
62. *Mujeres Transformando el Mundo*, a multidisciplinary initiative of non-governmental organizations in collaboration with the United Nations trust fund in support of actions to eliminate violence against women, is taking comprehensive legal, psychological and social approaches to support survivors of violence, with a view to improving access to justice and reparations for indigenous and mestiza women living with disabilities who have experienced gender-based violence.
63. Despite these advances, indigenous women and girls are still generally excluded from reparation programmes. For example, in Peru, a programme was initiated in 2007 for individual and collective reparations for victims of the country's conflict (1980–2000). However, there have been insufficient efforts to address sexual violence and other forms of gender-based violence in the conflict, with some 6,000 victims who have not yet been provided with reparations

64. Effective implementation of recommendations by truth commissions or commissions of inquiry, and concrete follow-up on judicial decisions, remain a challenge. For example, while the conclusion of the three-year inquiry by Canada was an important step, its practical implications will be limited if not followed by robust policies. There continues to be a lack of movement to satisfy indigenous women's demands for accountability, demonstrable action and policy changes. This will require greater visibility and involvement of indigenous women as agents of change in the decision-making processes. In general, as women and girls remain predominantly depicted as victims of violence, more efforts, including in the area of redress and non-repetition, are needed to highlight their resilience and their roles in resisting, addressing and eliminating violence and as agents of change.
65. Moreover, insufficient effort is being exerted to protect indigenous women wishing to participate politically, to design laws that protect them from violence and to safeguard that space for them. Furthermore, issues relating to indigenous women and girls are often not included in the spaces to which indigenous women politicians are invited, which contributes to making them feel more invisible.

IX. Disaggregated data on violence against indigenous women and girls

66. Disaggregated data on violence against indigenous women and girls are scarce and not systematically collected. The data and evidence that are available indicate that indigenous women have poorer access to health-care services, and experience worse sexual and reproductive health outcomes and higher rates of violence than non-indigenous women.

[...]

X. Conclusions and recommendations

70. Indigenous women and girls are subjected to a complex web of structural forms of violence that are perpetrated against them by State and non-State actors in a systemic way. While this discrimination is often based on their identity as indigenous and as women, it is further exacerbated when these identities intersect with other characteristics, such as race, age, disability, migration status and sexual orientation and gender identity.
71. Indigenous women and girls experience violence at both the individual level and the collective level. These individual and collective rights interact together; they are mutually interdependent and not exclusive. The collective dimension to the violence that indigenous women and girls face is often overlooked and forms an important part of their experience of violence. Discrimination and gender-based violence against indigenous women and girls threaten to disrupt their spiritual and cultural lives, and have an impact on the very essence of the social fabric of their communities and nations. Furthermore, the lack of recognition of indigenous peoples' overarching rights to self-determination and land rights can facilitate the perpetration of gender-based acts of violence against indigenous women and girls.
72. While the collective rights of indigenous peoples are paramount for their existence, identity, well-being and prosperity, these should not come at the expense of the individual rights of indigenous women and girls. Their individual rights should never be overlooked or violated in the pursuit of collective or group interests, as respecting both dimensions of their human rights is essential. At the same time, preventing and responding to such violence will allow indigenous women and girls to participate more fully and equally in advancing collective self-determination rights.

73. The effects of the violence suffered by indigenous women and girls permeate all aspects of their lives and severely affect their human rights to life, dignity, personal integrity and security, health, privacy and personal liberty, and their rights to a healthy environment and to be free from ill-treatment. Indigenous women and girls are particularly at risk of violence, harassment and punishment while pursuing their political rights and environmental protection work and during their resistance of attempts to control their territories and resources. Indigenous women and girls do not only experience gendered forms of violence, they also experience gendered consequences of violence, as they often bear the consequences of such violence disproportionately.
74. These intersecting forms of structural discrimination result in limited access to justice for indigenous women and girls, and widespread impunity for perpetrators of gender-based violence against them. While the present report has shed light on some of the barriers that survivors face, and on the uniqueness of their experiences, further investigations need to be carried out, including by collecting disaggregated data, to 107 Submission from the Council of Europe secretariat of the monitoring mechanism under the Istanbul Convention. guide processes of evidence-informed, victim-centred and human rights-based policymaking at the domestic level.
75. States must ensure that their domestic legislation on gender-based violence against women is fully applicable to indigenous women and girls and sensitive to their experiences, including by ensuring specific provisions to account for all forms of violence against them, such as environmental, spiritual, political and cultural violence. Additionally, States must ensure that indigenous women are appropriately consulted and that their participation is sought in any legislative processes related to violence against them.
76. States have a due diligence obligation to prevent, investigate and punish perpetrators, and to provide reparations for indigenous women and girls who are victims of gender-based violence. States must therefore design and implement public policies to prevent gender-based violence against indigenous women and girls. Addressing the endemic impunity that prevails for crimes committed against them can also contribute to preventing further violence.
77. States must ensure all laws and policies across jurisdictions work in a way to prevent and respond to violence against indigenous women. States must further amend any laws or policies that erode the ability of indigenous communities to prevent and respond to violence against indigenous women. To ensure that these laws are relevant and culturally appropriate, indigenous representatives, specialists in indigenous law and cultural interpreters should be involved to increase the understanding of processes and rights.
78. Governments, financial institutions, the private sector and other non-State actors must ensure that any large infrastructure, development and natural resource extraction projects are carried out in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, respecting the right to self-determination and the principle of full, free, prior and informed consent of the indigenous peoples affected by the project, on whose land and territories the project would rest or affect, or who have claims to cultural sites potentially affected by such projects.
79. States must establish multisectoral and holistic approaches to combat the various forms of violence against women and girls by implementing ongoing training and capacity-building on diligent investigation in cases of sexual and other

gender-based violence against indigenous women, and ensure that such training includes a gender and ethnicity perspective.

80. States should adopt and implement measures to eradicate discriminatory gender stereotypes and negative social attitudes that are the root cause of gender-based violence against indigenous women and girls, including in the school environment and curricula.
81. States must also ensure that indigenous women and girls have effective access to health-care systems and services, including sexual and reproductive health and rights services, that are provided in a culturally sensitive manner and include access to indigenous health workers. They should also allocate budgets to implement quality health-care services to reduce maternal and infant mortality and to ensure adequate access by women and girls to reproductive health services.
82. All stakeholders must make every effort to work with and through indigenous organizations, particularly women-led organizations, when addressing gender-based violence. Furthermore, addressing barriers faced in the context of sexual and reproductive health and rights and gender-based violence requires working with and through indigenous organizations, which must be provided with core yet flexible funding to strengthen organizational resilience in a sustainable manner.
83. All stakeholders must, rather than continuously perceiving and portraying indigenous women and girls as primarily victims or vulnerable groups, recognize them for being resilient, survivors, change makers and important leaders in the movement and struggle for the rights of indigenous peoples.
84. States and other stakeholders must step up efforts to collect disaggregated data on the situation of indigenous women and girls and on the forms of violence and discrimination they are subjected to, as well as on the impact of militarization of the habitat and territories of indigenous peoples. The data should – to the extent possible – be disaggregated according to age, ethnicity, sex, and the relationship between perpetrator and victim. Data should be used to inform policies that are aimed at preventing and responding to acts of violence against indigenous women and girls.
85. States must ensure that indigenous women and girls have effective access to justice systems that are free from ethnic and/or gender-based discrimination, bias and stereotypes. This includes access to legal aid and representation, and to information in their own indigenous languages.
86. States should ensure that indigenous women and girls who are survivors of violence have adequate access to protection and support services, including culturally appropriate medical treatment, psychosocial counselling and professional training.
87. States should take proactive and effective steps to recognize, support and protect the life, integrity and work of indigenous women human rights defenders and ensure that they conduct their activities in conditions of safety and in an enabling and inclusive environment, while providing robust protections for those at risk of violence and investigating violence committed against them.
88. States should implement public policies that promote the healthy development of girls and their right to a life free from violence, as well as retain them in the education system. This requires early detection of barriers to education and reasons for school dropout, including because of child, early and forced marriage and a lack of bilingual education opportunities.

89. States must act to protect indigenous women human rights defenders and land protectors who are at risk of discrimination and violence. This includes ensuring robust protections for the right to protest and ensuring that violence against indigenous women human rights defenders and land protectors is fully investigated.
90. States must adopt policies in favour of rural and indigenous women that include a focus on strengthening the involvement of women in the governance of land. All actors should strengthen support for the implementation of programmes relating to climate mitigation and adaptation in a gender-responsive manner.
91. States should ensure that indigenous women of all ages and stages of the life cycle, including older women, are included in prevention and response policies related to gender-based violence. Indigenous women exercise a role as knowledge keepers, counsellors, healers, community leaders and decision makers, which should be appropriately acknowledged and supported by States, through, for example, the provision of funding and their effective inclusion in and consultation on all processes that affect them.
92. The Commission on the Status of Women should include the issue of indigenous women and girls in its official programme of discussion in the coming years.

2. Visit to Ecuador, A/HRC/44/52/Add.2, 22 May 2020⁹²

I. Introduction

1. The Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, conducted an official visit to Ecuador from 29 November to 9 December 2019, at the invitation of the Government. The main focus of the visit was to assess the overall situation of violence against women in the country and to evaluate the efforts being made to eliminate violence against women, including through relevant laws, policies and services, and the obstacles faced in this regard.

[...]

III. State response and measures to address violence against women

[...]

E. Provision of shelters and access to essential services

48. During her visit, the Special Rapporteur was concerned by the fact that almost all interlocutors with whom she met pointed to the dire shortage of adequate shelters throughout the country offering a safe house for women and girls who had been victims of violence, particularly in indigenous communities and in rural and remote areas. The limited support provided to the shelters that are in place and the lack of coordinated, gender-friendly and comprehensive essential services for survivors of violence are also of considerable concern.

[...]

G. Situation of women who face multiple and intersecting forms of discrimination and violence

83. During her visit, the Special Rapporteur paid special attention to the situation of women and girls who face multiple and intersecting forms of discrimination and violence and experience higher rates of all forms of violence against women.

⁹² <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F52%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>.

84. Violence against women disproportionately affects women and girls who face intersecting and multiple forms of discrimination, such as indigenous women, Afro-Ecuadorian women, Montubio women, lesbian, bisexual, transgender and intersex women, women with disabilities, migrant and refugee women, women living in rural and remote areas, and women environmental rights defenders.

1. Indigenous women, Afro-Ecuadorian women and Montubio women

85. The 2008 Constitution establishes that Ecuador is an intercultural and plurinational State, enshrines the direct and immediate enforceability of international human rights instruments, and recognizes 21 collective rights of the indigenous communes, communities, peoples and nationalities, and guarantees that the authorities must obtain their free, prior and informed consent for projects on their lands or that could affect them environmentally or culturally (art. 57). It also recognizes collective rights for Afro-Ecuadorians (art. 58).

86. Despite the progressive provisions of the Constitution, Afro-Ecuadorian and Montubio women continue to face multiple forms of exclusion and discrimination. As a result, they endure extreme forms of poverty, humiliation and the denial of their social and economic rights. Their vulnerable economic status, combined with the prevailing patriarchal values, expose them to various forms of gender-based and sexual violence. They are also more vulnerable to mistreatment by public and private companies, as they are often not requested to provide their free, prior and informed consent in decision-making processes relating to large-scale projects for the exploitation of natural resources. Moreover, when such projects are carried out, these women are rarely provided with alternative housing and livelihoods or adequate compensation.

87. Similarly, indigenous women face intersecting and multiple forms of discrimination on the grounds of gender and ethnicity, often owing to their low socioeconomic status. They also face social exclusion, particularly those living in remote areas where language barriers also hinder integration. Those forms of discrimination and exclusion create extremely difficult social conditions and manifest themselves in an alarmingly high prevalence of violence against indigenous women. Indeed, indigenous women continue to experience higher rates of domestic and family violence and more severe forms of such violence than other women, particularly those who are defending their territories from multinational mining and other extractive companies. For women who have experienced violence at the hands of foreign workers or within their own homes and communities, no culturally sensitive shelters exist that provide for their protection.

88. The Special Rapporteur is also concerned at reports suggesting that indigenous women who are environmental human rights defenders have been targeted, criticized, threatened, intimidated, subjected to surveillance and harassed, including online, because of their gender and their work. Documented incidents show that women human rights defenders, as well as their family members and intimate partners, face reprisals, death threats, verbal abuse and harassment by State and non-State actors in an attempt to undermine their work.

[...]

V. Conclusions and recommendations

93. On the basis of the above findings and in a spirit of cooperation and dialogue, the Special Rapporteur on violence against women, its causes and consequences, offers the Government of Ecuador the following recommendations.

[...]

101. Concerning indigenous, Afro-Ecuadorian and Montubio women, the Government should:

- (a) Adopt a specific national action plan on violence against indigenous women that would include appropriate temporary special measures to accelerate their full participation at decision-making levels, in line with the commitments made under the United Nations Declaration on the Rights of Indigenous Peoples;
- (b) Systematically consult indigenous, Afro-Ecuadorian and Montubio women and seek their free, prior and informed consent in decision-making processes relating to large-scale projects for the exploitation of natural resources that have an impact on their rights and legitimate interests;
- (c) Investigate cases of alleged sexual violence perpetrated by workers associated with large-scale projects against indigenous, Afro-Ecuadorian and Montubio women.

M. SPECIAL RAPPOREUR ON EXTREME POVERTY AND HUMAN RIGHTS

1. Visit to Nepal, A/HRC/50/38/Add.2, 13 May 2022⁹³

I. Introduction

1. The Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, visited Nepal from 29 November to 9 December 2021. The purpose of the visit was to assess the extent to which the Government's policies and programmes related to poverty are consistent with its human rights obligations and to offer recommendations, with a view to eradicating multidimensional poverty and reducing inequalities, in line with Sustainable Development Goals 1 and 10. The Special Rapporteur is grateful to the Government for inviting him, facilitating his visit and engaging in constructive dialogue. The present report is submitted in accordance with Council resolution 44/13.

[...]

III. Situation of poverty and inequality in Nepal

[...]

C. Legal and institutional framework related to poverty *Guaranteeing constitutional rights in practice*

19. Nepal has one of the most progressive constitutions in the world. In addition to listing many economic and social rights and the rights of specific groups, it includes the right to social justice, stating that several marginalized groups have the right to "participate

⁹³ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F50%2F38%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>.

in the State bodies on the basis of inclusive principle". These groups are identified as "the socially backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender and sexual minorities, youths, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Arya".

[...]

Effectively ending discrimination through an intersectional reservations policy

[...]

27. The proper answer to that judgment, in the view of the Special Rapporteur, is not to abandon the reservations policy and replace it by a system that focuses on socioeconomic status only, but to improve it in three ways: ... (c) Thirdly, however much the reservations policy can improve the representation of certain disadvantaged groups in the civil service and ensure that the composition of the administration reflects the diversity within the population, such a policy should not be seen as a substitute for investing in improving the ability of members of such groups to compete on an open basis with others. Dalit but also women, indigenous nationalities and Madhesi should benefit from improved opportunities in education and private employment and they should be effectively protected from discrimination. Inspiration could be found in the Dalit Empowerment Act adopted in Province 2, which goes beyond the 2011 Caste-based Discrimination and Untouchability (Offence and Punishment) Act precisely with that objective in mind.

D. Access to land

28. Land is considered a key asset in the agrarian society of Nepal. A productive asset and source of power, identity and dignity, land ownership offers opportunities for food production and revenue generation. It also provides the necessary collateral for contracting loans and facilitates the acquisition of citizenship certificates, paving the way for access to many public services.

29. Conversely, landlessness is both a consequence and a cause of poverty in Nepal. Landless households find it more difficult to obtain loans from banks, since they cannot use land as collateral for credit. Without access to formal financial institutions, poor families are forced to seek access to credit from landowners to pay for dowries, weddings, medical expenses or costs related to migration. Those costs lead them to deepen their indebtedness, increasing their dependency on their landowners and perpetuating exploitative arrangements akin to bonded labour.

30. Historical injustices related to land ownership and its unequal distribution make this a highly political topic, which the Special Rapporteur examined when visiting landless communities across three provinces. Several challenges were identified.

[...]

Protected areas

38. The lack of practical protections for land users, despite the guarantees of the 1964 Lands Act, particularly affects indigenous people (Janajati Adivasi). National parks and other "protected areas" in Nepal cover almost one quarter of the country. Most of these areas have been established on the ancestral land of indigenous populations, many of whom were evicted and have since remained landless. By some estimates, as of 2015, about 65 per cent of ancestral lands formerly owned by indigenous peoples had been replaced with national parks and reserves,⁴⁹ forcing

many Janajati to relocate elsewhere.

2. Visit to Malaysia, A/HRC/44/40/Add.1, 6 April 2020⁹⁴

I. Introduction

1. The Special Rapporteur on extreme poverty and human rights, Philip Alston, visited Malaysia from 13 to 23 August 2019. The purpose of the visit was to report to the Human Rights Council on the extent to which the Government's policies and programmes relating to extreme poverty are consistent with its human rights obligations and to offer constructive recommendations to the Government and other stakeholders. The Special Rapporteur is grateful to the Government for inviting him and facilitating his visit, and for its continuing engagement. The present report is submitted in accordance with Human Rights Council resolution 35/19.

[...]

11. A better understanding of poverty in Malaysia reveals the inaccuracy of the mainstream narrative that poverty is largely confined to small numbers in rural areas and indigenous peoples. While those groups face dire and unique challenges, urban poverty is significant. For example, the official 2016 poverty rate for Kuala Lumpur was 0 per cent, yet 27 per cent of households earned less than the Central Bank (Bank Negara) estimate of the living wage for the city in 2018.¹⁵ A survey of people living in low-income apartments, carried out in 2018, found 7 per cent of people living below the national poverty line, 85 per cent in relative poverty and 99.7 per cent of children in relative poverty.¹⁶ One soup kitchen director said she served up to 700 people a night, and that more than 40 soup kitchens operated in Kuala Lumpur. None of this points to a city that has eliminated poverty.

[...]

13. A new approach towards long-neglected populations, who face disparate rates of poverty, is urgently needed. Even under the official line, indigenous peoples have much higher rates of poverty than the general population and, despite promises by politicians, continue to experience widespread violations of their rights. The Government should also address the plight of the millions of non-citizens disproportionately affected by poverty, including migrants, refugees, stateless people and unregistered Malaysians, who are systematically excluded from official poverty figures, neglected by policymakers and often effectively barred from access to basic services.
14. Poverty eradication programmes must also reflect the fact that poverty affects all races and ethnicities. The colonial period generated sharp inequalities along racial lines and race still pervades how many people think and talk about poverty. Relative income inequality between Bumiputeras (ethnic Malays and non-Malay indigenous people) and other groups has narrowed since the adoption of the New Economic Policy in 1970, but as of 2016, Bumiputeras still had a higher poverty rate than the Chinese or Indian populations. Nevertheless, nearly six per cent of Chinese households nationwide had to scrape by on less than RM 2,000 (US\$ 492) per month in 2016 and important research shows that Indians, who also suffered great exploitation during the colonial period, have not benefited from much development planning and many poverty eradication programmes.

⁹⁴ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F40%2FADD.1&Language=E&DeviceType=Desktop&LangRequested=False>

15. The Government should also improve access to data and other information on poverty. Its persistent refusal to provide effective access to such information, and in some cases the complete failure to even collect important data, significantly hampers research, policymaking and poverty alleviation.

[...]

III. Data collection and transparency

25. Malaysia stands out among its peers for its lack of transparency around publicly held data and other information. Unlike the great majority of similarly situated countries, Malaysia does not provide full access to key household survey microdata, stifling both governmental and independent research and analysis on poverty and inequality. When asked for data, State government officials often indicated they would need to make a request to the central Government. Researchers can apply to the Department of Statistics for select sets of data, but several said their requests were often not granted. International organizations and even State officials said they too had to make specific requests for information and that their access was essentially at the mercy of the Department of Statistics.

[...]

28. The statistics that are available are carefully managed and presented in a way that often obscures crucial details. Existing data on poverty and inequality is not presented in a way that disaggregates by gender or that distinguishes between Malay and non-Malay Bumiputeras, obscuring the situation of indigenous peoples.

[...]

V. Social protection

[...]

43. Despite high enrolment rates, certain populations face other sizeable barriers to education. Twelve per cent of households in Sarawak and 7.5 per cent in Sabah live more than 9 km from a government primary school. For secondary school, the numbers rise to 37.4 per cent in Sabah and 50.9 per cent in Sarawak. Children in rural areas often leave villages at a young age and stay in hostels far from their families in order to attend school, but this is far from an ideal situation. Those without identification, including stateless persons, migrants and some indigenous peoples, are not able to attend public schools and must make do with an informal education.
44. Far too many schools suffer from a lack of basic infrastructure and facilities or deteriorating conditions. There are many dilapidated schools in rural areas, especially in Sabah and Sarawak. According to the Ministry of Education, 584 of the 1,296 schools in Sabah have been classified as dilapidated by the Public Works Department. Eighty-four of them were rated unsafe, but just 22 were scheduled for repair in 2019.

[...]

VII. Populations of concern

Indigenous peoples

52. Some 13 per cent of the population is indigenous, including an estimated 70.5 per cent of the 2.7 million population of Sarawak, 58.6 per cent of the roughly 3.8 million population of Sabah and about 0.7 per cent in Peninsular Malaysia. Official statistics

obscure poverty among indigenous peoples by combining outcomes for indigenous peoples and Malays within the umbrella Bumiputera category. Outdated figures from a decade ago, the most recent available, reveal indigenous poverty rates that vastly exceed national averages: 31.16 per cent for the Orang Asli in 2010, 22.8 per cent in Sabah and 6.4 per cent in Sarawak in 2009.

53. Despite laudable political and legal commitments to promote the rights of indigenous peoples, their rights, ways of life and goals were frequently misunderstood or dismissed by government officials with whom the Special Rapporteur met. In responding to the Special Rapporteur's draft report, the Government illustrated this complete failure by stating that "most of [the] indigenous community still resist to change their mind set and way of life due to having strong belief on maintaining their ancient traditions". That would suggest that the Government's longstanding rhetorical commitments are meaningless in practice.
54. Land rights are especially important for indigenous peoples and many described their indispensable relationship with the land, and how their cultivation methods, diet, shelter and traditional health-care practices derived from and depended on access to land. These communities have for years raised concerns about the negative impacts that loss of land to commercial plantations and logging have on their health, well-being, housing and food security. However, States continue to find devious ways to deprive indigenous communities of the land they have traditionally relied upon, for example by disingenuously declaring their land a "forest reserve", while allowing corporate actors to exploit the area. One person said, "We never said we were facing extreme poverty. The Government is saying that and using it to justify projects that do not benefit us." A civil servant in Sarawak tellingly claimed that indigenous people do not actually "use" the land, they merely "roam around". Like her, many policymakers seem to assume a hierarchy of potential land uses that ranks corporate extraction of profit above sustainable cultivation by indigenous peoples. In the face of powerful evidence to the contrary, the Government asserted that "commercial plantations and logging are not threatening or diminishing, either directly or indirectly, the resources or tenure right of the communities".
55. Indigenous people also reported that they were often excluded from social services including school and health care. Some said they had dropped out of school because the instruction was not relevant or accessible to them, because of what they saw as attempted religious conversion or because they experienced corporal punishment and discrimination. By contrast, no government official could produce an assessment of educational outcomes for indigenous peoples. One Kelantan State official explained that Orang Asli could never be expected to achieve the same educational outcomes as people in cities.
56. Some indigenous women described an appallingly authoritarian approach by health authorities to indigenous peoples. They said they were required to accept unwanted contraceptive injections or implants to which they had not freely consented. One woman described begging doctors to remove an unwanted and painful implant that prevented her from carrying out daily tasks and said the removal had cost her the equivalent of a month's worth of household expenses.
57. The Government should follow through on its promises to indigenous peoples. It should evaluate existing law, practices and institutions to ensure that policies are developed in line with the principles contained in the United Nations Declaration on the Rights of Indigenous Peoples. Given that many issues relating to land have been devolved to the state level, the federal Government must find ways to work with

State authorities to ensure recognition of the customary land rights of indigenous peoples, including through public and participatory mapping of indigenous land claims, and build on existing efforts to hold State officials to account when they have failed to protect those rights. It should ensure that laws and policies are consistent with the Declaration, ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and incorporate and implement the principle of free, prior and informed consent in matters concerning the lands and livelihoods of indigenous peoples. It should also confirm without delay a visit by the Special Rapporteur on the rights of indigenous peoples. Finally, and critically, it should routinely publish disaggregated poverty and income data on indigenous peoples, so that their situation is not obscured and policymakers can develop solutions responsive to their needs.

[...]

IX. Key recommendations

[...]

91. Indigenous peoples have the highest overall poverty rates in Malaysia and are in desperate need of better protection of their customary land rights and more effective access to quality health care and education. Implementation of a comprehensive new set of policies is needed.

N. SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT

1. The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals, A/77/284, 10 August 2022⁹⁵

I. Introduction

[...]

7. According to the Danish Institute for Human Rights, there are human rights obligations underlying all of the Goals and 93 per cent of the targets (157 out of 169). For example, Goal 7 on affordable and clean energy is connected to the ... the United Nations Declaration on the Rights of Indigenous Peoples (arts. 25 and 32)....

[...]

IV. A human rights-based approach to the Sustainable Development Goals

[...]

41. The framework principles on human rights and the environment clarify three categories of State obligations relevant to the Sustainable Development Goals: procedural obligations, substantive obligations and special obligations towards those in vulnerable situations (see A/HRC/37/59, annex). In striving to fulfil their duties related to the Goals, States have procedural obligations to: ...

(h) Respect the rights of indigenous peoples, peasants and local communities in all actions to conserve, protect, restore, sustainably use and equitably share the benefits of healthy ecosystems and biodiversity, including respect for traditional

⁹⁵ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F284&Language=E&DeviceType=Desktop&LangRequested=False>.

knowledge, customary practices and the right of indigenous peoples to free, prior and informed consent....

[...]

43. Many different groups are particularly vulnerable to climate and environmental harms, including children, women, persons living in poverty, persons with disabilities, lesbian, gay, bisexual, transgender and queer persons, older persons, indigenous peoples, peasants, refugees, internally displaced persons and migrants. In order to leave no one behind, States must prioritize actions to respect, protect and fulfil the right to a clean, healthy and sustainable environment for those groups.

[...]

VIII. Conclusion and Recommendations

78. To achieve the Sustainable Development Goals and fulfil the right to a clean, healthy and sustainable environment, States should apply a human rightsbased approach to all aspects of improving air quality, ensuring safe and sufficient water, accelerating ambitious climate action to limit global warming to 1.5°C, detoxifying the economy, shifting to a sustainable food system, and conserving, protecting and restoring healthy ecosystems and biodiversity. For example, a rights-based approach to conservation is essential to ensure that the designation and management of protected terrestrial, freshwater and marine areas do not violate the rights of indigenous peoples, peasants, Afrodescendants or nature-dependent local communities. A human rights-based approach to preventing exposure to pollution and toxic chemicals could save millions of lives every year, while avoiding billions of episodes of illness and generating trillions of dollars in benefits.

2. Visit to Norway, A/HRC/43/53/Add.2, 3 January 2020⁹⁶

I. Introduction

1. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, visited Norway from 12 to 23 September 2019, at the invitation of the Government. The purpose of the visit was to examine how well Norway has been implementing its human rights obligations related to environmental protection, to identify good practices and to investigate the environmental challenges the country faces. The Special Rapporteur expresses his appreciation for the warmth, generosity and strong dedication towards human rights and environmental protection of the people whom he encountered.

[...]

II. Legal and policy framework

A. International law and policy

6. Norway has ratified all of the major international human rights treaties.... Norway is also a party to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169). Environmental protection is essential to fulfil many of the rights recognized in these agreements, including the rights to life, health, food, water, culture and development. Of critical importance is protecting

⁹⁶ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F53%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>.

the rights of those who may be most vulnerable to environmental harms and climate change, including women, children, indigenous peoples, persons with disabilities and people living in poverty, as well as persons for whom some of these factors intersect.

[...]

III. Fulfilling the right to a clean and healthy environment

21. In many respects, Norway has a strong environmental record. In 2018, it ranked fourteenth out of 180 nations on the Environmental Performance Index published by Yale and Columbia universities. Procedural environmental rights (information, participation and access to justice) are well respected. Air, water and food quality are generally good, most environments are non-toxic and Oslo is a shining example of urban sustainability. However, Norway faces human rights challenges related to climate change, biodiversity, indigenous people and businesses.

[...]

B. A safe climate: the Norwegian paradox

28. One of the world's most urgent challenges is climate change, which is violating human rights across the planet today and threatening to do so on a vast scale in the future (A/74/161, paras. 1–4 and 73–74). The United Nations High Commissioner for Human Rights has warned that “the world has never seen a human rights threat of this scope”. Norway, as one of the world's wealthiest nations and a major producer of oil and gas, must accept substantial responsibility for leading efforts in mitigation and adaptation, and addressing loss and damage.

[...]

International climate and forest initiative

45. The Norwegian International Climate and Forest Initiative has an annual budget of up to 3 billion Norwegian krone (approximately \$350 million) to reduce deforestation and forest degradation in developing countries, while improving the livelihoods of people living in or near these forests. The initiative is led by the Ministry of Climate and Environment and the Norwegian Agency for Development Cooperation. Deforestation and forest degradation not only contribute to climate change, but also cause the loss of biodiversity and jeopardize the human rights of people who depend on healthy forests.

46. The Norwegian International Climate and Forest Initiative has an explicit commitment to advancing the rights of indigenous peoples and forest-dependent communities, which is a crucial element in empowering them to become effective forest stewards. Since 2016, gender equality is also explicitly addressed in projects under the Initiative. After 10 years of experience, Norway commissioned several evaluations of the Initiative and is implementing recommendations from those evaluations, such as focusing future efforts on tropical forests and in countries where progress is being made. In the context of efforts to protect forests, several civil society organizations raised concerns about the human rights and environmental consequences of high levels of Norwegian imports of Brazilian soy to provide feed for aquaculture, cattle and dairy.

[...]

IV. Indigenous peoples, human rights and the environment

78. One of the highlights of the Special Rapporteur's visit to Norway was three days spent in Karasjok, Kautokeino and other sites in Finnmark County, where he was hosted by the Sámi Parliament. The Sámi people have lived in Finland, Norway, the Russian Federation and Sweden for many thousands of years. In recent decades, the Government of Norway has begun to respect the indigenous rights of the Sámi people. Important steps forward have included the Sámi Act (1987), the inclusion of Sámi rights in the Constitution (1988), the establishment of the Sámi Parliament (1989), the Finnmark Act (2005) and an agreement on procedures for consultation between the Sámi Parliament and State authorities (2005).
79. Despite these positive developments, there remain serious concerns related to human rights and the environment. Reindeer husbandry is at the heart of Sámi culture, providing livelihoods for more than three thousand people. Healthy and productive environments are essential for both the herders and the reindeer. Both Sámi reindeer herders and Sámi organizations expressed deep concerns about threats to the sustainability of reindeer husbandry caused by the encroachment, fragmentation and cumulative impact of existing and proposed developments including mines, wind farms, hydroelectric power plants, power lines, railways, cabins and tourism activities, and the infrastructure associated with these developments, especially roads. In 2011, the Special Rapporteur on the rights of indigenous peoples observed that these activities had resulted in the loss and fragmentation of pasture lands, with detrimental effects on reindeer, and that natural resource extraction and development projects threatened to diminish areas available for grazing (A/HRC/18/35/Add.2, para. 55).
80. According to the Sámi, traditional ecological knowledge, which must be considered in assessments of these developments, is not being given sufficient weight. Projects of particular concern include the Nussir copper mine, the proposed Dawvi wind farm and reopening of the gold mine at Bidjovagge.
81. The Nussir mining project was also criticized by environmental organizations, which noted that Norway was one of only a handful of nations that continued to allow submarine disposal of mine tailings (along with Chile, Indonesia, Papua New Guinea and Turkey). The Norwegian Institute of Marine Research concluded that submarine tailings disposal in fjords would contaminate the water, reduce populations of fish and crustaceans and cause significant ecosystem disruption. The Special Rapporteur was surprised to learn that submarine tailings disposal would be approved in a National Salmon Fjord, as is the case with the Nussir project. The Government has since amended its position and will not allow future projects to use submarine tailings disposal, but the Nussir project is not covered by this change in policy. The Government states that the Nussir project meets the requirements of the Pollution Control Act and is subject to conditions intended to limit environmental impacts.
82. Climate change exacerbates the multiple challenges facing Sámi reindeer herders, as changing weather and shifting precipitation patterns affect the availability of the reindeer's food supply. For example, while reindeer can scrape away snow to reach vegetation on the ground, they cannot scrape away the ice that forms after freezing rain or when temperature swings result in melting snow that freezes into ice.
83. Reindeer herders also strongly oppose the orders forcing them to reduce the size

of their herds, an action the Government says was necessary to protect the health of reindeer and the ecological health of regions that were being overgrazed. The mandatory reduction caused extensive anguish in Sámi communities, and is the focus of a complaint before the United Nations Human Rights Committee.

84. The Special Rapporteur on human rights and the environment endorses the recommendations made by the Special Rapporteur on the rights of indigenous peoples in 2011 and 2016 (A/HRC/18/35/Add.2, paras. 72–89, and A/HRC/33/42/Add.3, paras. 73–89), noting with concern that progress in implementing these recommendations has been slow. For example, there is widespread agreement that the Minerals Act needs to be updated to clarify and protect Sámi rights. A new agreement that would extend the consultation process for Sámi people and rights to include county and municipal governments has been delayed, but would be an important step forward.
85. The Sámi also depend highly on fisheries, yet they face challenges in securing adequate access. For example, the Sámi have requested an increase in their quota for cod, to a seemingly modest 1.2 per cent share of the total allowable catch. In 2016, the Norwegian Institute of Human Rights recommended that the Sea Sámi's right to fish be established by law, since it is part of the practice of their culture and based on their historical fishing customs. The Sámi are also deeply concerned about the impact of fish farms on wild Atlantic salmon.
86. Like most indigenous peoples worldwide, the Sámi are environmental human rights defenders. In view of its longstanding and ongoing leadership at the international level in protecting environmental human rights defenders, Norway could provide a model for the world in protecting the rights of indigenous peoples, protecting the environment and highlighting the connections between human rights, healthy ecosystems and healthy people.

V. Business and human rights

87. The Government expects businesses to respect the environment and human rights. To this end, Norway has extensive legislation, described earlier in the present report, as well as a national action plan on business and human rights. An evaluation conducted by the Norwegian Agency for Development Cooperation concluded that, while the 2015 action plan was sound, there were implementation gaps. Specifically, the evaluation found an emphasis on awareness-raising about the Guiding Principles on Business and Human Rights, but “much less attention on how to ensure that the principles are implemented”.
88. There is an interesting Norwegian case involving the OECD Guidelines for Multinational Enterprises. Under the Guidelines, national contact points are responsible for raising awareness in both the business community and civil society and dealing with complaints that the Guidelines have been breached by multinational enterprises operating in or from their territories. Friends of the Earth Norway and the Norwegian Forum for Environment and Development filed a complaint with the Norwegian National Contact Point in 2009 alleging that Cermaq, a large Norwegian aquaculture company, had inadequate environmental policies and practices and was violating the rights of indigenous peoples. The National Contact Point conducted a mediation process resulting in a joint statement by the parties that successfully resolved the complaint.
89. The Special Rapporteur met with representatives of Norwegian businesses (e.g., Telenor and Norsk Hydro) that have faced criticism for their role in alleged human

rights violations in developing countries, including Malaysia and Brazil. He also heard extensive criticisms from civil society organizations that Norwegian aquaculture corporations continue to cause serious environmental harm and potential human rights violations in Chile and Canada. The Norwegian National Contact Point for the OECD Guidelines could serve as an appropriate mechanism for further investigation into these allegations.

VI. Conclusion and recommendations

[...]

95. The Special Rapporteur encourages the Government to implement the following recommendations in order to enhance the country's reputation as a world leader in fulfilling its environmental and human rights commitments, and to accelerate progress towards achieving the Sustainable Development Goals:

[...]

- (p) Redouble its efforts to secure the free, prior and informed consent of the Sámi before making any decisions that affect their rights, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples;
- (q) Amend the Reindeer Husbandry Act to establish a co-management regime to give Sámi reindeer herders an equal role in planning and decision-making;
- (r) With the Sámi Parliament, take the necessary steps to complete the consultation agreement related to county and municipal governments, and expedite completion and ratification of the Nordic Sámi Convention;
- (s) With the Sámi Parliament, consider jointly creating an ecosystem-based plan for the reindeer herding regions. Such a plan would identify areas that are essential to reindeer migration, Sámi sacred sites, and areas that may be suitable for future industrial development....

O. SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION

1. Right to education: the cultural dimensions of the right to education, or the right to education as a cultural right, A/HRC/47/32, 16 April 2021⁹⁷

I. Introduction

1. In the present report, submitted pursuant to Human Rights Council resolutions 8/4 and 44/3, the Special Rapporteur on the right to education considers the right to education from a perspective in which this right is viewed as a cultural right.
2. Despite the efforts that have been made in many countries, schools are not making the most of cultural diversity, which is viewed as an obstacle to overcome rather than as an asset to nurture. Nonetheless, the limited cultural relevance of education systems seriously impedes the realization of the right to education. The major challenge is to determine how these systems can be used to provide inclusive and quality education that promotes cultural diversity and cultural rights – which are human rights – and that reflects and draws on that diversity. This most basic failure to seize an opportunity and the serious injustices it leads to – the failure to make the most of the knowledge of which objects, institutions and people are repositories and the loss of that knowledge – must be addressed.

⁹⁷ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F47%2F32&Language=E&DeviceType=Desktop&LangRequested=False>.

[...]

4. The aim of the Special Rapporteur is not to take a group-by-group approach (by listing the rights of minorities, migrants, indigenous peoples, persons with disabilities, women or children, although she nonetheless draws on their experiences) but to set out the main principles and plans of action making it possible for everyone, regardless of the communities he or she belongs to or identifies with, to respond more clearly to the challenge. The use of the term “cultural dimensions” in the plural denotes a diversity of forms of diversity: diversity of the people and of all participants in educational life, on the one hand; diversity of knowledge and disciplines, on the other. Making the most of the knowledge to hand and making the most of the diversity of people are mutually reinforcing activities.
5. There are three capacities on which the effective realization of the right to inclusive and quality education depends:
 - (a) The capacity of the actors of education systems to adapt to the diversity of learners’ cultural resources and the cultural resources available locally, which also necessitates the capacity to take ownership of these resources;
 - (b) The capacity of everyone to be enriched by the value of these particular cultural resources, while respecting human rights as a whole;
 - (c) The capacity to include people and resources in educational life (and as a result of educational life).

II. Recognizing the right to education as a cultural right, and shifting perspectives

7. Understanding the right to education as a right with strong cultural dimensions, or even as a cultural right, prompts various shifts in perspective.

[...]

16. This is not to deny the existence of vulnerability. The right to education, understood as a vehicle for the transmission and enhancement of the cultural values of communities – minority or indigenous communities, for example – in a spirit of universality and respect for human rights, forms the backbone of the right to development of those communities.

[...]

III. Cultural dimensions of the right to education in international instruments and the practice of international bodies

[...]

25. In addition, there are many instruments aimed at the protection of minorities, indigenous peoples, migrants and persons with disabilities that prohibit forced assimilation and advocate the inclusion and participation of all in a society respectful of diversity, an approach that inevitably has an impact on education. These instruments emphasize that the transmission of knowledge and values specific to a group – particular languages, for example, and the transmission of knowledge and values in those languages – contributes to the development of learners in their social and cultural context. They also note the importance of ensuring access to the knowledge and values of other communities. Providing an education that contributes to the free and full development of a person’s cultural identity while ensuring respect for the rights of others and cultural diversity does not mean

segregation or confinement to a community; it requires offering people access to a wide variety of cultural resources, including from outside the communities to which they belong or with which they identify.

[...]

30. As stated in article 4 of the Universal Declaration on Cultural Diversity, “the defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.”

P. SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF CLIMATE CHANGE

1. Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation, A/77/226, 26 July 2022⁹⁸

I. Introduction

1. We are faced with a global crisis in the name of climate change. Throughout the world, human rights are being negatively affected and violated as a consequence of climate change. For many millions, climate change constitutes a serious threat to the ability of present and future generations to enjoy the right to life. Human-induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced. In its article 28, the Universal Declaration of Human Rights guarantees that all human beings are entitled to a social and international order in which their rights and freedoms can be fully realized. Climate change already undermines this order and the rights and freedoms of all people. We are being confronted with an enormous climate change crisis of catastrophic proportions. It is happening now.

[...]

2. There is an enormous injustice being manifested by developed economies against the poorest and least able to cope. Unwillingness by developed economies and major corporations to take responsibility for drastically reducing their greenhouse gas emissions has led to demands for “climate reparations” for losses incurred. Some have suggested the term “atmospheric colonization” to explain the global imbalance between the impacts of climate change and the emitters of greenhouse gases. When ranked by income, the economically most privileged 50 per cent of countries are responsible for 86 per cent of the cumulative global carbon dioxide emissions, while the economically vulnerable half are responsible for only 14 per cent.
3. The Special Rapporteur on the promotion and protection of human rights in the context of climate change highlights the reference to human rights included in the preamble to the Paris Agreement, in which parties should, inter alia, “consider their respective obligations on human rights”.

⁹⁸ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F226&Language=E&DeviceType=Desktop&LangRequested=False>.

[...]

4. The present report explores the functional arrangements of the United Nations Framework Convention on Climate Change and the Paris Agreement. The report will focus primarily on three key themes: mitigation (emissions reduction), loss and damage (the impacts of climate change) and participation in decision-making processes in the climate change regime. Underpinning all of these themes is the need for adequate and predictable finance and support. The implications for human rights will be considered in each of these three themes. The present report complements and updates the report by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

[...]

II. Human rights implications of mitigation actions

6. Mitigation efforts to reduce greenhouse gas emissions have two implications on the enjoyment of human rights. First, an inadequate response to reducing greenhouse gas emissions has a significant negative impact on the enjoyment of human rights. Second, some mitigation actions have a significant impact on the exercise of human rights.

[...]

B. Human rights implications of certain mitigation actions

16. A number of mitigation actions being employed by States and business enterprises have significant human rights implications. Some of these include forest-based mitigation and hydroelectric dams. Others include the location of wind turbines. New mitigation technologies associated with atmospheric changes and geoengineering also have the potential for significant human rights impacts. The impact of new technologies will be the theme of the Special Rapporteur's report to the Human Rights Council at its fifty-ninth session, in 2024.

1. Forest-based mitigation actions

17. The Intergovernmental Panel on Climate Change states that the agriculture, forestry and other land use sector offers significant near-term mitigation potential at relatively low cost. Nevertheless, these predictions do not match global trends in deforestation. Deforestation in the Amazon has risen again over the past four years. Other parts of the world also face steady, or rapidly increasing, deforestation. It is estimated that while 15 billion trees are cut down every year, only 5 billion are replanted – resulting in an annual net loss of 10 billion trees. Emissions by the agriculture, forestry and other land use sector account for around 11 per cent of the global total, with the bulk of the emissions occurring in relatively few countries. The group of indigenous peoples that the Special Rapporteur met with in Bonn in June 2022 have indicated that forest fires in the Amazon as a result of droughts have had enormous impacts on the livelihoods of indigenous peoples.
18. Other studies suggest that the value of using forestry as a means of reducing global temperature limits may be overstated and that, while restoring ecosystems is crucial for planetary health, it is no substitute for preventing emissions from fossil fuels. The Special Rapporteur concurs with this conclusion. It is preferable to address emissions at the source.

19. Forest-based mitigation actions have negative consequences on the exercise of human rights, particularly those that are related to land and land tenure. According to Oxfam, instead of reducing emissions at the scale and speed required to stay within a relatively safe level of warming, too many Governments and corporations are hiding behind planting trees and unproven technologies in order to claim that their 2050 climate change plans will achieve net zero emissions. Studies suggest that these land - hungry plans would require at least 1.6 billion hectares of new forests. The explosion of net zero commitments, many of which lack clarity and transparency, could lead to a surge in demand for land, particularly in low- and middle-income countries, which, if not subject to robust safeguards, could pose increasing risks to the enjoyment of human rights to food, water, sanitation and housing, especially for people and communities whose livelihoods depend on land.
20. Another related response with human rights implications is the mechanism for reducing emissions from deforestation and forest degradation (REDD+) developed by the United Nations Framework Convention on Climate Change in response to high deforestation rates, particularly in tropical forests. There are mixed views regarding the efficacy of the mechanism's programmes and whether they deliver real emissions reductions. The mechanism itself and associated voluntary carbon market programmes have been the source of human rights infringements, particularly of indigenous peoples in rainforest areas. The allocation of rights to the protection of carbon in forests has been referred to as "neo-colonialism" as the land occupied by indigenous peoples is set aside for the protection of carbon stores. This can deny indigenous peoples their traditional rights and practices.
21. Another mitigation action, associated with biomass burning, has implications for land appropriation and the exercise of human rights. Biomass burning and bioenergy, carbon capture and storage is a process where wood or other plant-based carbon (biomass) is burned as an alternative to fossil fuels. Providing the feedstock for energy production from biomass burning as a fuel source requires using existing forests or new land to grow the biomass.
22. Concerns have been expressed that sourcing trees from plantations for biomass electrical power generators in Latin American is adversely affecting the rights of indigenous peoples. The Special Rapporteur heard concerns expressed by the Sámi indigenous peoples that their land will be appropriated for biomass fuel production.

2. Hydroelectric dams

23. The development of hydroelectric dams is creating significant human rights implications for people displaced by dams and for downstream users of water. Climatological studies suggest that downstream countries along the Mekong River have suffered low water supplies despite ample upstream rainfall, because of water being withheld by upstream dams. This has significant implications for access to safe drinking water and food security for downstream countries.
24. Indigenous peoples of the Amazon region are also experiencing the effects of hydroelectric dams. Dam construction and related infrastructure have displaced indigenous peoples from their land. The Special Rapporteur heard from indigenous peoples that changes to river flows have had significant implications for the ecological maintenance of riverine systems, which in turn affect the ability for indigenous peoples to seek sources of sustenance.

3. Other technologies

25. The Sámi indigenous peoples have expressed concern to the Special Rapporteur that they were not properly consulted and had not given free, prior informed consent to the erection of wind turbines on their land. Furthermore, serious concerns have been brought to the attention of the Special Rapporteur about the potential environmental and human rights impacts from deep seabed exploration and mining for minerals that could be used in battery production for electric vehicles and other forms of electrical storage.

III. Loss and damage: a litany of human rights impacts

26. In its article 8, the Paris Agreement states that “Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change”. From a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation.

27. In its sixth assessment report, the Intergovernmental Panel on Climate Change describes how observed and predicted changes in climate are adversely affecting billions of people and the ecosystems, natural resources and physical infrastructure upon which they depend. This number is rising dramatically. Many of these effects are highlighted in the present report.

28. Climate change has already harmed human physical and mental health. In all regions, health impacts often undermine efforts for inclusive development. A. Loss and damage by climate change disasters (in physical form)

29. About 3.3 billion people are living in countries with high human vulnerability to climate change. Analysis by the International Federation of Red Cross and Red Crescent Societies found that 97.6 million people were affected by climate- and weather-related disasters in 2019. The intersection of gender with race, class, ethnicity, sexuality, indigenous identity, age, disability, income, migrant status and geographical location often compound vulnerability to climate change impacts, exacerbate inequity and create further injustice. Climate change manifests itself in many physical forms, which in turn, creates a multitude of human rights impacts. The hard realities of the enormity of the losses and damages suffered by people, particularly by those in the global South, are explored below.

[...]

C. Protecting climate rights defenders

[...]

86. Indigenous peoples defending their rights have been the target of serious attacks and human rights abuses. In 2020, there was a total of 227 lethal attacks against land and environmental defenders. A disproportionate five out of seven mass killings of defenders recorded in 2020 were of indigenous peoples. Indigenous women acting as environmental defenders face additional obstacles to their well-being, such as sexual violence, sexual discrimination, harassment of their children and families and increased vulnerability to mistreatment from State forces and armed groups.

V. Conclusion and recommendations

[...]

91. Also with respect to mitigation, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

- (a) Include human rights considerations in their nationally determined contributions and other planning processes and ensure that market-based mechanisms have effective means for protecting human rights and effective compliance and redress mechanisms to this effect;
- (b) Ensure that food security and the protection of the rights of indigenous peoples take precedent over land-based mitigation actions.

[...]

Recommendations for enhancing the participation and protection of climate rights defenders

94. The Special Rapporteur recommends that the International Law Commission be mandated to develop, within a two-year time frame, an international legal procedure to give full and effective protection to environmental and indigenous human rights defenders, including by establishing an international tribunal for the prosecution of perpetrators of violence against and the killing of environmental and indigenous human rights defenders.

95. The Special Rapporteur recommends that the International Law Commission be mandated to include in the definition of ecocide those actions against environmental and indigenous human rights defenders.

[...]

98. The Special Rapporteur further recommends that the General Assembly encourage all States to give standing to children and young people, including indigenous children and young people international, national and subnational court systems.

99. With respect to the participation and protection of human right defenders, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

- (a) Pass an omnibus decision that allows for the full and effective participation of indigenous peoples and civil society organizations in decision-making processes at all levels of the Conference of the Parties process....

Q. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

1. Ecological crisis, climate justice and racial justice, A/77/549, 25 October 2022⁹⁹

I. Introduction

1. The global ecological crisis is simultaneously a racial justice crisis. As countless studies and submissions received show, the devastating effects of ecological crisis are disproportionately borne by racially, ethnically and nationally marginalized groups – those who face discrimination, exclusion and conditions of systemic inequality because of their race, ethnicity or national origin. Across nations, these groups overwhelmingly comprise the residents of the areas hardest hit by pollution, biodiversity loss and climate change. These groups are disproportionately concentrated in global “sacrifice zones” – regions rendered dangerous and even uninhabitable owing to environmental degradation. Whereas sacrifice zones are concentrated in the formerly colonized territories of the global South, the global North is largely to blame for these conditions. As noted by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: “high-income States continue to irresponsibly export hazardous materials ... along with the associated health and environmental risks, to low- and middle-income countries”. Notably, the distinction between “high-income” and “low-income” countries is directly related to the racist economic extraction and exploitation that occurred during the colonial era, for which colonial powers have not been held accountable.
2. “Sacrifice zones,” as illustrated in this report, are more accurately described as “racial sacrifice zones”. Racial sacrifice zones include the ancestral lands of Indigenous Peoples, territories of the small island developing States, racially segregated neighbourhoods in the global North and occupied territories facing drought and environmental devastation. The primary beneficiaries of these racial sacrifice zones are transnational corporations that funnel wealth towards the global North and privileged national and local elites globally.
3. In addition to documenting racial sacrifice zones, the Special Rapporteur highlights coerced displacement and immobility in the context of ecological crisis and how racially, ethnically and nationally marginalized groups are disparately subjected to this coercion and immobility. Submissions received show how climate induced migration cannot be divorced from the racially unjust hierarchies and regimes of colonial and imperial extraction and exploitation that have significantly determined who is forced to move and who has the privilege of keeping their homes and nations.

[...]

10. The General Assembly and Human Rights Council have recognized the human right to a clean, healthy and sustainable environment, and the Council has noted the human rights impacts of climate change in a number of resolutions. The

⁹⁹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F549&Language=E&DeviceType=Desktop&LangRequested=False>. See also *2030 Agenda for Sustainable Development, the Sustainable Development Goals and the fight against racial discrimination*, A/HRC/50/60, 17 June 2022, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F50%2F60&Language=E&DeviceType=Desktop&LangRequested=False>.

Office of the United Nations High Commissioner for Human Rights (OHCHR) and various special procedures of the Council have produced vital human rights knowledge, upon which this report builds. They have highlighted equality and non-discrimination concerns, especially in relation to gender, age, disability, sexual orientation and gender identity, Indigenous people and people of African descent.

[...]

II. Why ongoing climate and environmental crises require racial equality and justice lenses

A. Racist colonial foundations of ecological crisis

12. Systemic racism served as a foundational organizing principle for the global systems and processes at the heart of the climate and environmental crises. Understanding and addressing contemporary climate and environmental injustice alongside the racially discriminatory landscape requires a historicized approach to how “race” and racism have shaped the political economy of climate and environmental realities, as well as the governing legal frameworks and worldviews that these frameworks represent. At the centre of the climate crisis are levels of greenhouse emissions that are the product of centuries of natural resource extraction, industrialization and industrial processes and consumption of the outputs of these processes. In their submissions, a number of experts summarized an extensive body of research that charts the racist colonial regimes that underpinned the extraction of coal, gas and oil, forged a global capitalist system dependent on the maintenance of racial hierarchies, and are thus at the heart of the global ecological crisis. In her 2019 report on global extractivism and racial equality, the Special Rapporteur also outlined the racist colonial foundations of the extractivist and industrialization processes that have caused the global ecological crisis.

B. Contemporary manifestations of transnational environmental racism and climate injustice

13. The formal international repudiation of colonialism has by no means eradicated colonial domination and its racist legacies, including as they relate to the contemporary global ecological crisis. The Special Rapporteur on human rights and the environment has highlighted that, although all humans are exposed to ecological crisis, the burden of this crisis falls disproportionately on systemically marginalized groups, and that many environmental injustices are rooted in “racism, discrimination, colonialism, patriarchy, impunity and political systems that systematically ignore human rights”.
14. Peoples in formerly colonized territories who were racially designated as non-white bear the disproportionate environmental burdens of extraction, processing and combustion of fossil fuels. In her 2019 report on global extractivism and racial equality, the Special Rapporteur explained how the contemporary global extractivism economy remains racially stratified because of its colonial origins and the ongoing failure of Member States – especially those who benefited the most from colonial domination – to decolonize the international system and provide reparations for racial discrimination rooted in slavery and colonialism.
15. The territories subject to the most rapacious forms of extraction are those belonging to groups and nations that were colonially designated as racially inferior. The nations least capable of mitigating and responding to ecological crisis have

been rendered so both by histories of colonial domination, and in the postcolonial era by externally neoliberal and other economic policies. In the global North, racially and ethnically marginalized groups are similarly on the front lines.

16. ... The Special Rapporteur on the rights of Indigenous Peoples has shed a similar light on environmental racism and climate injustice as they affect the lives and very existence of Indigenous Peoples. A number of submissions highlight the ongoing racially disparate effects of the ecological crisis and its drivers, some of them highlighting colonial legacies.

[...]

Race, ethnicity, national origin and “sacrifice zones”

18. The term “sacrifice zones” is derived from a designation used during the cold war to describe areas irradiated due to production of nuclear weapons. Racially marginalized and formerly colonized peoples were among those whose communities were disproportionately “sacrificed” to the demands of nuclear proliferation, as prominently illustrated by the impacts of nuclear testing on the people of the Marshall Islands, as well as Indigenous Peoples and ethnic minorities living in territories controlled by military superpowers.
19. According to the Special Rapporteur on human rights and the environment, “today, a sacrifice zone can be understood to be a place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas”. Climate change is driving the proliferation of sacrifice zones, which in many places are, in effect, racial sacrifice zones.
20. In the Amazon and elsewhere in South America, Indigenous environmental human rights defenders are frequently targeted for persecution for protesting industrial projects that destroy their homelands. In several cases, environmental protectors have been threatened or murdered for their advocacy. At the same time, according to one submission, environmental disruption caused by development mega - projects in Brazil, for example, threaten long-time quilombola and Indigenous communities.
21. In South Asia, Indigenous peoples and those subject to caste-based discrimination face environmental devastation from development projects over which they have limited free, prior and informed consent. ...

[...]

24. In one submission it was reported that, in Canada, the Aamjiwnaang First Nation is surrounded by Sarnia, Ontario’s so-called “Chemical Valley”. Residents experience low air quality and high rates of negative health outcomes, such as miscarriages, childhood asthma and cancer.
25. ... In the Arctic, Indigenous peoples such as the Inuit and Sami are faced with rising sea levels and the total destruction of their livelihoods owing to changing climate patterns.

[...]

Race, ethnicity, national origin and climate-induced displacement

[...]

37. According to one submission, in Mozambique, the expansion of large international mining projects has intensified, and they have been a main source of socioenvironmental conflicts causing internal displacement. A total of 1,365 families

from the communities of Mithethe, Chipanga, Bagamoyo and Malabue were displaced by a coal exploration project operated by the Brazilian multinational Vale in Moatize, Tete province. The treatment of displaced populations by multinational companies in the region mimic violent colonial practices. The decision to implement the project was imposed upon the affected communities, who were excluded from decision - making, and subject to police intimidation. Most of the population harmed by transnational corporations are peasants, low-income, Indigenous Peoples and racially marginalized groups. Locals live in constant fear of reprisals for speaking against the company.

38. Another submission highlighted the long history of racism in the agricultural sector in the United States, which includes the forceful removal of Native Americans from their homelands, enslaving Africans and their descendants and exploiting Latinx farmworkers under inhumane conditions. ...
39. In one submission it was reported that, in Central America and Mexico, Indigenous and Black communities have been involuntarily displaced by their disparate exposure to the impacts of extractivism and their general socioeconomic marginalization. ...

[...]

40. In many submissions to the Special Rapporteur it was noted that Indigenous peoples faced the prospect of being forced out of their ancestral and traditional homelands owing to rising sea levels and natural disasters. In one submission it was reported that, in India, Indigenous Peoples account for 40 per cent to 50 per cent of those displaced despite making up just 8 per cent of the total population. The disruptive impacts of industrial projects in their territories are a main cause. Entire Indigenous territories, in particular those in the small island developing States, are at risk, and even the full-scale relocation of entire State populations will not rectify the fallout from the destruction of their islands. The permanent loss of Indigenous homelands is and will remain a massive global failure and a deep racial injustice in the absence of urgent rectificatory action.

III. Racially discriminatory environmental human rights violations

A. Applicable legal frameworks

[...]

44. Under international human rights law, States are in breach of their obligations if they fail to adopt or enforce anti-discrimination legislation regulating the conduct of both public and private actors; fail to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating discrimination; or fail to adopt all appropriate immediate and effective measures to prevent, diminish and eliminate the conditions, attitudes and prejudices which cause or perpetuate discrimination in all its forms, or, where necessary, fail to implement concrete special measures aimed at realizing de facto, substantive equality. Special measures or “affirmative action” – specific steps taken by a State aimed at achieving equality in effect, correcting inequality and discrimination, and/or securing advancement of disadvantaged groups or individuals – are a protected human rights remedy that States are required to implement where necessary.
45. The term “environmental racism” describes institutionalized discrimination involving “environmental policies, practices or directives that differentially affect or disadvantage (whether intentionally or unintentionally) individuals, groups or communities based on race or colour”. Environmental racism occurs within nations

and across borders, as noted by the Working Group of Experts on People of African Descent. People of African and Asian descent, Indigenous peoples, Roma, refugees, migrants, stateless persons and other racially and ethnically marginalized groups are all affected by environmental racism, which must be addressed to the fullest extent possible under international human rights law.

[...]

48. Environmental justice and climate justice are often linked to the right to development on sustainable terms. The right to development is intended to guarantee both a right to social and economic progress and the realization of all other human rights through self-determination and equal sovereignty. In the Declaration on the Right to Development, the General Assembly states that the right of peoples to self-determination includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. The right to development “implies the full realization of the right of peoples to self-determination”, which includes the right freely to determine their political status and to pursue their economic, social and cultural development.
49. In the United Nations Declaration on the Rights of Indigenous Peoples, the General Assembly explicitly recognizes the importance of environmental protection in preventing discrimination against Indigenous Peoples. In article 29 it affirms that “Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for Indigenous Peoples for such conservation and protection, without discrimination.” In article 29 it also applies the “free, prior and informed consent” principle to the storage or disposal of hazardous materials in the lands or territories of Indigenous Peoples. In article 32 it calls on States “to provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact”.

B. Racially discriminatory denial of economic and social rights, the right to self-determination and principles related to the right to development

[...]

52. ... While transnational corporations continue their industrial activities, residents are often unable to achieve accountability using local or state government forums. In other parts of the country, companies continue plans to extract and transport fossil fuels over Indigenous territories and sacred lands, fully supported by international financial actors eager to derive profits from fossil fuels. In these scenarios, marginalization along economic and political lines has prevented ... Indigenous Peoples from exercising their right to development and asserting their right to self-determination. As a result, they are unable to protect their territories from economic development that will largely benefit transnational corporations and elites outside their communities.

[...]

C. Racially discriminatory civil and political persecution

55. According to one submission, in Brazil, Indigenous and Afro-Brazilian leaders have been targeted by both public and private actors for their advocacy against industrial projects near their lands. Global Witness reports that Brazil has the fourth highest number of murdered environmentalists in the world. Traditional peoples,

quilombola, riverine and Indigenous communities suffer constant pressure from various economic activities in their territories and have been threatened or cruelly assassinated. In Pará, a region with heightened environmental conflicts, several cases of commissioned murders of environmental activists have been reported. In these incidents, all the victims were Black women who fought for a balanced way of life with forest conservation. Reported in another submission was the assassination of a South African environmental activist, also a Black woman, fighting against coal mining expansion. Yet another submission highlighted murder, rape and torture of Ogoni community activists in Nigeria, where Shell has destroyed the lives and livelihoods of Indigenous Peoples.

56. In another submission, it is reported that, in India, Indigenous and Dalit leaders have also faced detention and criminalization owing to their advocacy against local environmental policies which impinge upon their cultural autonomy.

D. Dispossession of Indigenous and Afro-descendant peoples

57. As noted in the Special Rapporteur's report on global extractivism, Indigenous and Afro-descendant peoples are frequently on the front lines of extractive projects, and thus bear an outsized risk of harm from environmental degradation. At the same time, climate change threatens indigenous peoples in the Pacific, the Americas, the Caribbean, Asia and Africa with the loss of their homelands. The profusion of extractive projects and the subsequent emission of greenhouse gases can be attributed to the systematic dispossession of Indigenous and Afro-descendant peoples and the denial of their lands and right to self-determination.
58. According to one submission, in Brazil, Sapê do Norte, certified as protected "quilombos" territory, has been the home of quilombo communities since 1960. Inhabitants of this region have been experiencing a drastic reduction in biodiversity, large-scale deforestation, drying up of streams and filling of springs, death of animals and high dumping of pesticides in the water and soil, owing to highway construction, agribusiness attacks, installation of a gas pipeline by Petrobras, and the rupture of the Fundão dam, operated by Samarco. The construction of the Alcântara Launch Center over the largest quilombola territory in Brazil resulted in the mandatory removal of 312 quilombola families, and more continue to be displaced across the country.
59. In another submission, grave human rights violations against the Chepang Indigenous community in Nepal were reported, including construction and development in their territories without free, prior informed consent, destruction of their homes and livelihood and brutal violence against community members. Notwithstanding the promulgation of laws intended to protect Indigenous peoples in Nepal, one submission highlights the absence of dedicated resources to give effect to these laws. It reported the case of the Sonaha and Haliya communities, who remain outside of the government framework intended to protect Indigenous communities.

IV. Towards environmental justice, climate justice and racial justice

A. Concerns with the dominant approaches

[...]

61. The responses and momentum of the global system remains woefully ill-equipped to halt racially discriminatory and unjust features and consequences of ecological crisis. The Special Rapporteur is concerned that dominant international approaches to governing environmental and climate issues amount to a doubling down on racial inequality and injustice.

Racially discriminatory mitigation and overreliance on market-based solutions

62. In several submissions it was noted that some “green” solutions to climate change challenges actually reinforce or perpetuate racial marginalization and inequities. The transition to alternatives to fossil fuels in some contexts is resulting in “green sacrifice zones” meaning that racially and ethnically marginalized groups are disproportionately exposed to human rights violations associated with the extraction or processing of these alternatives. Critiques of “green capitalism” or “green growth” point out that these approaches promote energy transitions that “tend to presuppose the perpetuation of colonial arrangements”. They seek to maintain unsustainable levels of consumption in the global North through transitions that require tremendous destructive extraction from the global South. As “green new deals” proliferate in the global North, their efficacy is contingent on their capacity to address the root causes of ecological crisis and undo the systemic racism embedded in fossil fuel economies. Even development initiatives and seemingly “green” private ventures in global South countries can mask their profit-seeking arc, resulting in worsened environmental conditions and conflicts.
63. Consultation participants reported that, in large part, because many climate - related initiatives are designed without the input, consideration or leadership of racially marginalized peoples, they can reinforce patterns of racial discrimination already present in national and international economies. Overreliance on technocratic knowledge and the exclusion of local communities from climate change leadership have worked to distract from the systemic changes demanded by front-line communities and required to truly solve the ongoing crisis.
64. For example, carbon capture and storage technologies are increasingly promoted as processes that can collect carbon dioxide generated by industrial activities before they reach the atmosphere, and transport captured emissions to sites where they can be used or stored. However, in one submission it was reported that carbon capture is neither necessary to avoid catastrophic levels of warming nor feasible at scale. In fact, it warns that carbon capture distracts from the reforms needed to ensure a fossil fuel-free future, an outcome which is essential to the health and rights of the marginalized communities on the front lines of the climate and environmental crisis. Carbon capture can lock current pollution in place, rather than facilitating energy transition. It is reported in the submission that many carbon capture programmes are launched in places already overburdened by the heavy concentration of toxic industrial pollution. These places overlap with the “racial sacrifice zones” described above. This trend is especially concerning because carbon capture can increase the emission of harmful air pollutants at the site of capture because of the increased energy required to power the capture equipment and the chemicals used in the process.
65. Other experimental or speculative technologies proposed in response to climate change potentially pose significant risks to human rights. For example, experts believe that some “geoengineering” projects meant to adapt to climate change may have significant adverse impacts, including termination shock, rainfall disruption, water depletion and the erosion of human and ecological resilience. The Intergovernmental Panel on Climate Change (IPCC) has warned against overreliance on unproven technologies that could disrupt natural systems and disproportionately harm global South communities.
66. Other programmes and policies could similarly have negative impacts on Indigenous Peoples and racially marginalized peoples in the global South. For example, some

experts have extensively criticized the REDD+ programme for its use of over-optimistic projections but also its use of Indigenous territories and denial of certain communities' rights of self-determination. In one submission the role of REDD+ is reported in providing cover for land grabs against Indigenous Peoples.

67. In one submission it was noted that access to available climate financing, especially at the local level, remains a critical challenge. It was also reported in the submission that experts have described the operation of international climate institutions as a form of indirect colonization. Projects are often envisioned and directed by international institutions that tend to privilege global North perspectives over global South contributions.

[...]

B. Recommendations

75. The present report conveys the grim picture on the ground, but there are racially and ethnically marginalized groups that challenge environmental racism and climate injustice on a daily basis, and that are charting paths toward climate justice and environmental justice more broadly. From consultations, the Global Tapestry of Alternatives offers one example. It is a “network of networks”, that is a non-hierarchical, horizontal initiative focused on solidarity, strategic alliances and systemic solutions at the local, regional and global levels. Other examples include Oil Change International and the Indigenous Environmental Network, 141 Native Conservancy, GenderCC Women for Climate Justice Southern Africa, the Global Alliance of Territorial Communities and Mouvman Peyizan Papay, which are but a few examples of grass-roots environmental and climate-justice initiatives that are also forging transnational alliances and centring racially and ethnically marginalized groups in environmental and climate-related knowledge production. Localism alone cannot be a solution to global ecological crisis, but global approaches to adaptation, mitigation and loss and damage must be shaped by and responsive to grass-roots organizations and networks of racially, ethnically and nationally marginalized groups which are on the front lines of the global ecological crisis.
76. The Special Rapporteur additionally recommends the following to Member States, and stakeholders within the United Nations environmental and climate governance regimes:
77. Adopt a global approach that effectively responds to the fact that climate justice requires racial justice, and that racial justice requires climate justice. The racially disparate impacts of environmental degradation and climate injustice require fundamental reorientation of political institutions, economic systems and legal principles to include racial justice and equality priorities. “Green transitions” must also be racially just transitions. Transitions to cleaner forms of energy, climate adaptations and other programmes must take steps, including special measures, to ensure that climate change responses do not continue patterns of racial marginalization and discrimination. True racial justice entails an end to environmental racism, and also entails adaptation, mitigation and loss and damage frameworks that uproot the systemic racism built into the global economy, political hierarchies and legal frameworks. This includes wholesale decolonization of legal and economic systems to ensure that racially marginalized peoples, including Indigenous Peoples, possess true self-determination, including sovereignty over their territories. As noted in one submission, racial justice and climate justice require fiscal justice.

78. Prioritize reparations for historical environmental and climate harms and for contemporary harms rooted in historic injustice. The Special Rapporteur urges Member States and stakeholders to consult her 2019 report on reparations for racial discrimination rooted in slavery and colonialism, which also applies to the context of climate and environmental justice. Reparations require addressing historic climate injustice, as well as eradicating contemporary systemic racism that is a legacy of historic injustice in the context of the global ecological crisis. To the extent that contemporary international legal principles present barriers to historical responsibility for climate change, United Nations Member States must decolonize or transform this law in a manner that makes it capable of guaranteeing genuine equality and self-determination for all peoples. Reparations, which entail equitable international economic, political and legal frameworks, are a precondition for reorienting the global order away from ecological crisis. Proposals for pathways to reparations are growing, and progress requires global, national and local collaboration and partnership with racially, ethnically and nationally marginalized groups.
79. The Special Rapporteur emphasizes that the right to self-determination includes Indigenous Peoples' right to development on their own terms and timelines and in accordance with their ideologies. Indigenous Peoples are diverse, with varied needs, priorities and governance structures. Indigenous Peoples should not be forced into categorical or stereotypical roles as "full-time stewards of the natural environment", nor should they be trapped into paternalistic development arrangements driven by State Governments.
80. Stop racially discriminatory human rights violations relating to climate and the environment and provide effective remedies to the individuals and groups affected. The Special Rapporteur urges States to implement the recommendations of the many special procedures mandates that have offered technical and other recommendations that can assist in this regard. Climate migrants and refugees should be provided with the requisite legal and substantive protections, especially in countries with historic responsibility for climate injustice. Racial equality and non-discrimination require that all necessary measures be taken to preserve Indigenous homelands and mitigate the effects of climate change on small island developing States. States and other stakeholders must also ensure human rights-complaint data collection on environmental and climate impacts, disaggregated on the basis of race, ethnicity and national origin.
81. Systematically hold transnational corporations accountable for environmental racism and climate injustice.

R. SPECIAL RAPPOREUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

1. Judicial independence in the context of the 2030 Agenda for Sustainable Development, A/77/160, 13 July 2022¹⁰⁰

I. Introduction

[...]

2. In the present report, the Special Rapporteur examines the challenges and outlook for judicial independence in the context of the 2030 Agenda for Sustainable Development and its reflection in Sustainable Development Goal, “Promote just, peaceful and inclusive societies”. The Special Rapporteur focuses on justice for all, a fundamental guiding concept running across his various reports.
3. Throughout the document, the Special Rapporteur refers to the outstanding challenges for the independence of judicial systems in the 2030 Agenda. The Special Rapporteur started making an express reference to the 2030 Agenda in the very first report he submitted to the Human Rights Council in 2017 when presenting the perspectives on his mandate (A/HRC/35/31, para. 78).

[...]

5. The 2030 Agenda has been a common thread throughout the mandate of the Special Rapporteur, conceptually guiding the activities and reports developed during his mandate and serving as a basis for the crafting of forward-looking guidelines and fundamental objectives.
6. Throughout his mandate, the Special Rapporteur was able to note a number of obstacles and threats to the realization of justice, the rule of law and basic human rights. The international context has paved the way for authoritarian currents exercising public power, international organized crime networks and corruption, with their corresponding manifestations in the violation of judicial independence and the fundamental rights of the population. All of this has been reflected, inter alia, in setbacks for gender equality and women’s rights, the impact of corruption and organized crime, attacks against human rights defenders, the violation of judicial independence and the legal profession, and violence against vulnerable groups.

[...]

9. The purpose of those visits was to examine different processes that could have an impact on the independence and impartiality of justice systems. During the visits, the Special Rapporteur assessed legislative and other measures (A/HRC/38/38/Add.1), the progress made by the various countries in fulfilling their international obligations to ensure the independence and impartiality of judges and prosecutors and the free exercise of the legal profession (A/HRC/44/47/Add.2), ongoing reforms of the justice system (A/HRC/44/47/Add.1), the status of the administration of justice, access to justice, and the capacity of the justice system to address major national challenges such as corruption, violence against women and the defence of the rights of indigenous peoples. Following the visits, the Special Rapporteur submitted his corresponding reports to the Human Rights Council (A/HRC/50/36/Add.1).

[...]

¹⁰⁰ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F160&Language=E&DeviceType=Desktop&LangRequested=False>.

III. Independence of judges and lawyers in the 2030 Agenda for Sustainable Development

11. The 2030 Agenda sets out the specific task of making human rights for all people a reality, achieving gender equality, empowering all women and girls, and ensuring the rule of law and justice. In the specific context of the work of the Special Rapporteur, the 2030 Agenda focuses on three fundamental areas: ensuring universal access to independent justice; fostering transparent, responsible and accountable institutions; and building national capacities to ensure the achievement of these goals.
12. Goal 16, in addition to being a goal in and of itself, facilitates the achievement of the other goals, since those goals require institutions capable of responding to the demands of society in a transparent and responsible manner. The 2030 Agenda entails an essential commitment to human rights, justice, accountability and transparency as prerequisites for ensuring an enabling environment in which people can live free, secure and prosperous lives.
13. The express reference in Goal 16 to one of the essential elements of the Special Rapporteur's mandate, namely access to justice for all, makes it one of the foundational elements of the mandate. It promotes independent and impartial justice based on fair, robust, effective and accessible systems that ensure access for all people, making the courts and the judicial system an intrinsic part of national accountability systems. This goal is complemented by targets 16.a and 16.b, which focus on strengthening the institutions of law and justice and combating discrimination.

[...]

IV. Outstanding challenges for judicial independence and access to justice in the 2030 Agenda

57. The independence, impartiality and integrity of the justice system are indispensable components of the rule of law and the goal of ensuring that justice is administered fairly. Judicial independence takes on special relevance in this context by enabling society to bring its disputes to court and have them resolved in accordance with the law. Without judicial independence, the other principles that make up the rule of law would be undermined. The rule of law is therefore an indispensable element for ensuring international peace and security, human rights and development.

[...]

Access to justice for all

[...]

Plurality in the high courts of justice

92. The 2030 Agenda envisages a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination. These goals are unattainable in the absence of equal opportunities permitting the full realization of human potential and contributing to shared prosperity.
93. The Special Rapporteur has identified a worrying lack of presence and representation of indigenous peoples in high courts of justice (A/76/142, para. 93), which impedes the full implementation of the 2030 Agenda in general and Sustainable Development Goal 16 in particular. In certain areas with a large concentration of indigenous or

Afrodescendent populations, very few, if any, of the women in these high positions belong to these groups. Measures must be taken to allow all women access to the justice system, regardless of their origin or race.

[...]

Traditional or customary justice

102. Leaving no one behind is one of the fundamental principles underpinning the 2030 Agenda. Countries have therefore made a commitment to strengthen inclusive and participatory political processes, reduce all forms of violence, ensure access to justice for all, and protect human rights by reaching out first to those furthest behind.
103. Traditional or customary justice systems are normally community-level dispute resolution mechanisms with non-State origins and cultural and historical foundations. These mechanisms are often more accessible than domestic State systems, because of their cultural relevance, availability and proximity (A/HRC/24/50, para. 50). The United Nations Expert Mechanism on the Rights of Indigenous Peoples has established that the cultural rights of indigenous peoples include access to justice (ibid., para. 28).
104. Traditional justice systems find their legitimacy in the leadership of the traditional authorities in the community where they operate. This circumstance can never prevent them from complying with international standards on gender and human rights.
105. This form of justice is especially rooted in the African and American continents. In Latin America, many national regulatory frameworks recognize the competence of indigenous authorities and their power to apply customary laws. In fact, some States, such as Bolivia, Colombia and Peru, have enshrined traditional justice in legislation as part of their legal system, making it an essential component of the justice system.
106. Community leaders as decision makers, public participation by community members and proceedings aimed at reconciliation and maintaining harmony are among the characteristics of traditional justice systems.
107. Given the importance of traditional justice in many communities worldwide, and the fact that for a large number of citizens it is the only known system of justice, it is up to each State – regardless of whether the traditional justice system has been incorporated into its legal order or not – to ensure that the decisions of traditional courts are consistent with international and regional human rights standards, and that traditional authorities enjoy the same independence in the performance of their functions as regular judges.

[...]

V. Conclusions and recommendations

[...]

A. Access to justice: key challenge

110. Under this pillar, the Special Rapporteur presents the following observations and recommendations:
 - (b) To that end, States have an obligation to ensure the availability of appropriate and accessible procedural systems and the use of the necessary languages, as well as the location and characteristics of the available infrastructure;

- (c) Facilitate and ensure the operation and exercise of customary justice within the spheres indicated by law and in full accordance with international human rights standards...

2. Visit to the Plurinational State of Bolivia, A/HRC/50/36/Add.1, 11 May 2022 (unoff. trans.)

12. With regard to its structure, ordinary jurisdiction is exercised by the Supreme Court of Justice, departmental courts, sentencing courts and judges. Agri-environmental jurisdiction is exercised by the Agri-environmental Tribunal and agri-environmental judges; and the original indigenous peasant jurisdiction is exercised by its own authorities. So far there is no special jurisdiction (art. 179).

Indigenous justice

47. The 2009 Constitution marked a reassessment of indigenous justice. Several provisions establish that indigenous nations and peoples enjoy, among other rights, the “exercise of their political, legal and economic systems in accordance with their worldview” and the right to prior consultation.
48. The constitutional norm sets out a clear principle by establishing the obligation to comply with “the decisions of the indigenous jurisdiction” and the obligation of the State to promote and strengthen it. In addition, it gives it the same hierarchy as the ordinary jurisdiction. However, there is an outstanding debt. The mechanisms for coordination and cooperation of constitutionally recognized jurisdictions should be regulated and clarified in a Jurisdictional Demarcation Law genuinely in accordance with the constitutional provisions (art. 192, para. III).
49. According to the information gathered, between 2008 and 2009 a preliminary draft was prepared with the organizations representing the original indigenous and peasant nations and peoples. However, this draft was modified when it was submitted to the Plurinational Legislative Assembly for consideration. This body approved the current Jurisdictional Demarcation Act (Act No. 073) in 2010, with substantial changes, especially with regard to the areas of competence of indigenous jurisdiction. It also excessively limits the right of indigenous nations and peoples to exercise their own legal systems given the extensive list of issues that do not fall within the scope of the material validity of this jurisdiction contained in article 10 of the Act.
50. The complaint against Bill No. 073 has existed since its adoption. One of the conclusions of the 2016 Justice Summit was the modification of this law, following the framework of the draft agreed between 2008 and 2009. The conclusions of the Summit were accepted as binding by the Government, which also committed to include the participation of nations and indigenous peoples in the implementation commission of the Summit. The delay in reforming this law was also addressed in August 2018, at the National Summit on Indigenous Justice in Cochabamba.
51. Civil society has highlighted the lack of a socio-legal study or map to identify the existing legal systems in the indigenous and original peasant justice system; their forms, worldviews and sanctions. It has been proposed that it would allow the generation of mechanisms for coordination and cooperation between jurisdictions.
99. The lack of judicial, prosecutorial and public defence authorities in much of the rural country, the lack of adequate funding, poor management and the neutralization of indigenous jurisdiction keep justice far removed from the people and the needs of

society. To this is added the tendency to judicialize, by ordinary means, cases and situations that could be processed in another way.

100. Several constitutional reforms have introduced important institutional changes in recent decades. Important milestones were the partial reforms adopted in 1994 that established the Constitutional Court, the Council of the Judiciary and the Ombudsman's Office, as well as a new system for the appointment of magistrates and the recognition of indigenous justice as a space for conflict resolution.
106. The original indigenous peasant jurisdiction, recognized in the 2009 Constitution, has been relegated by subsequent legislation (Jurisdictional Demarcation Act of 2010) to dealing only with issues of limited and marginal relevance for the administration of justice.
119. The Special Rapporteur urges the Government to affirm and guarantee the space for indigenous and original peasant jurisdiction, recognized in the Constitution, by amending the current Jurisdictional Demarcation Act, substantially expanding the jurisdiction of this jurisdiction and taking into account the participation, opinion and contributions of indigenous peoples.

S. SPECIAL RAPPORTEUR ON TOXICS AND HUMAN RIGHTS

1. The impact of toxic substances on the human rights of indigenous peoples, A/77/183, 28 July 2022¹⁰¹

I. Introduction

1. Indigenous peoples face a grave threat to their health, lands and territories from exposure to hazardous substances and wastes. Indigenous peoples intimately connect with the environment that they inhabit and consequently suffer disproportionate harm from encroachment on their territories due to industrial expansion, agribusiness, extractive industries and waste dumping, among others. Structural racism silences the voices of indigenous peoples and aggravates the disproportionate burden of toxic pollution.
2. Exposure to toxic substances is a form of environmental violence against indigenous peoples, and several factors drive and perpetuate it. Colonialism has imposed profit-centred activities that blatantly ignore the health and welfare of indigenous peoples and their lands. An expanding global economy prioritizes wealth for the few at the expense of indigenous peoples' rights. Extractive industries in indigenous territories often overlook the economic and other costs of environmental pollution and non-market use of natural resources.
3. Access to justice for indigenous peoples for the adverse effects of toxics on their lands and health is limited and often illusory. Minimal financial resources, State discrimination and corruption, and a lack of protective laws cement the continued marginalization of indigenous people.
4. In some cases, exposure to toxics leads to forced relocation of indigenous peoples, compromising livelihoods and cultural and spiritual practices. Severe toxic contamination results in proliferating sacrifice zones that threaten indigenous peoples' very existence as distinct peoples. There is also psychological and spiritual

¹⁰¹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F183&Language=E&DeviceType=Desktop&LangRequested=False>.

strain on indigenous peoples from forced relocation due to their lands and territories being rendered uninhabitable by toxics.

5. Indigenous people suffering from exposure to hazardous substances have limited access to primary health-care services. Traditional health practices cannot cope with new and unfamiliar health problems that emerge from exposure to toxics. Government authorities and businesses often attribute health disparities among indigenous people to neglect or cultural practices.
6. The overwhelming and disproportionate impact of toxics on indigenous peoples infringes on recognized collective and individual rights, including the rights of indigenous peoples to culture, land and natural resources, free, prior and informed consent, food, water, a healthy environment, life, health and personal integrity, among others. These violations are widespread and systematic and must stop now.
7. Under the toxics and human rights mandate, guidelines intended to help States, businesses, civil society and other actors “identify and address key problems that give rise to human rights abuses due to toxics” have been prepared. In the guidelines, it is acknowledged that “indigenous peoples continue to suffer grave rights abuses in connection with the contamination of their lands and territories with pollution from extractive industries, toxic chemicals that migrate long distances via wind and water, and the dumping or leaching of hazardous wastes”.

[...]

II. Activities imposing toxic impacts on indigenous peoples

11. Conquest and colonization on indigenous territory directly led to activities that pollute and adversely affect every aspect of indigenous peoples’ lives. Today, the new colonizers are dressed in the attires of mining, oil and gas, and agribusiness, often with States’ overt or silent complicity.
12. The influx of workers and settlers exposes indigenous peoples to viruses and diseases unknown in their communities, and for which indigenous people lack immune defences. The result of this exposure threatens indigenous peoples’ survival, particularly those peoples living in isolation.

A. Mining

13. Mining releases more than 180 million tons of hazardous waste each year into rivers, lakes and oceans worldwide, affecting vital sources of water for humans and wildlife. Indigenous peoples are disproportionately affected by extractive activities because their land and territories contain valuable deposits of minerals. About 70 per cent of copper and uranium production takes place, and 50–80 per cent of all mineral resources targeted for extraction by mining companies are found, on indigenous peoples’ lands and territories. Efforts to accelerate the decarbonization of national economies is increasing pressure to extract rare earths, lithium, zinc and cobalt, among others.

1. Large-scale mining

14. Large-scale mining releases massive amounts of toxics into the air, soil and water of indigenous lands and territories. Contamination comes from the projects’ management and final disposal of solid and liquid wastes, use and release of chemical substances during the mineral processing, and air emissions. Large-scale mining requires a substantial amount of water and produces high volumes

of wastes, with hazardous substances including lead, arsenic, cadmium, mercury, chromium, cyanide and other pollutants that are neurotoxic and carcinogenic.

15. Open pits, mine tailings and waste piles are some of the largest sources of toxic pollutants contaminating the quality of the soil, air and water necessary for indigenous peoples' subsistence. Sulfide in ore deposits can give off acid mine drainage that leaches toxic substances from mines, with serious impacts on water quality. Acid drainage impairs the soil, air, water and land of indigenous peoples globally, from coal mining in Assam, northern India, to hard rock mining in Fort Belknap Reservation, United States of America.
16. Mining often results in dust, which tarnishes the air and lungs of nearby indigenous peoples. Prolonged exposure to dust particles containing coal, silica and other fine powders can result in chronic lung and respiratory conditions. In 2020, the Special Rapporteur expressed serious concern over the Cerrejón mine in La Guajira, Colombia, causing severe health effects on the Wayúu people.
17. In many places, tailings remain unmanaged. The Banjima people in Australia suffer contamination from 3 million tons of uncontained tailings from closed asbestos mines. Across various regions, mining companies are allowed to dispose of mining waste in the sea, and these mine tailings can contaminate with heavy metals fish stocks on which indigenous peoples depend.

2. Small-scale gold mining

18. Artisanal and small-scale gold mining is the largest source of mercury pollution, with immediate and long-term effects on human health and the environment. An estimated 10–15 million people were directly engaged in such mining in 2017, including an estimated 1 million child workers and 4.5 million women. Mercury releases from such mining to land or water exceed 2,000 tons annually, and emissions to the atmosphere account for 37 per cent (838 tons annually) of global mercury emissions. Mercury can damage the nervous, digestive and immune systems and the lungs, kidneys, skin and eyes.
19. Small-scale gold mining is often carried out without the free, prior and informed consent of indigenous peoples and without permits from the Government. In the Amazon, there are an estimated 4,472 extraction points across 20 rivers in conjunction with an increase in mercury imports. The Plurinational State of Bolivia is becoming a regional hub for the illicit trafficking of mercury in the Amazon region and the mercury contamination affecting indigenous peoples.
20. The effects of mercury contamination are widespread and intergenerational. Gold miners have poisoned indigenous people in places such as Guyana since the 1990s. In Brazil, 90 per cent of the Yanomami population have highly hazardous levels of mercury in their bodies, with serious health effects. In the Peruvian Amazon, over 180 tons of mercury end up in rivers each year, leading the Government to declare an emergency in the Madre de Dios region. At times, indigenous peoples participate in small-scale gold mining, lacking information and awareness about its health and environmental effects.

3. Radioactive contamination: uranium mining

21. About 70 per cent of the uranium mined globally to fuel nuclear power is on indigenous peoples' lands. Uranium is extracted through open pit, leach and hard rock mining, often requiring large quantities of water. This type of mining leads to

the production of radioactive waste, which has an impact on the local environment and public health. As the uranium is mined, it also releases hazardous radioactive radon gas.

22. Radioactive contamination can be severe and permanent. Since the 1990s, indigenous nations living near abandoned uranium mines, such as the Navajo, have reported chronic health problems. In the United States, 11 per cent of the 4,225 abandoned uranium mines are on indigenous lands. Indigenous peoples near uranium mines in Mongolia expressed public concerns over uranium contamination, including congenital malformations and deformities. The Special Rapporteur also expressed his concern about the damaging environmental and human rights consequences of potential uranium mining in southern Greenland.

4. Tailings dam ruptures

23. The number of serious mine tailings dam failures grew significantly in the past decade. Mine tailings laden with toxic chemicals are one of the largest sources of pollution in many mining projects. Rupture of these massive structures, used to store tailings indefinitely, releases a slew of toxic waste material and devastates surrounding indigenous peoples' lands. Improper management, materials and use of upstream dams increase instability and the likelihood of collapse and ensuing contamination. For instance, indigenous people who depended on the Doce River in Brazil lost access to water, crop production and livelihoods, including fishing capacity, after the Mariana dam collapse.

B. Oil and gas

24. Oil and gas companies continue to explore and exploit hydrocarbon deposits even as the planet faces a climate emergency. This invariably results from States promoting fossil fuel industries, often in indigenous peoples' lands and territories.
25. The case of Chevron/Texaco in the Ecuadorian Amazon is telling of the toxic impacts. The Huaorani, Cofán and other indigenous peoples lived in a pristine rainforest environment prior to the arrival of Texaco (later acquired by Chevron) in the 1960s. The Texaco/Petroecuador project extracted oil without regard to the protection of the environment and the rights of affected indigenous peoples. Consequently, oil operations had a severe impact on indigenous peoples' traditional lands and their physical and cultural integrity. Indigenous peoples received no reparation for these human rights violations.

1. Exploration

26. Offshore oil and gas exploration can decimate subsistence hunting for indigenous peoples. To create patterns on the ocean floor to be mapped for drilling, seismic testing uses explosives, which create deafening echoes. These activities cause hearing loss and change migration patterns in marine mammals on which indigenous people rely for food.
27. Inland seismic testing can equally devastate indigenous peoples' lives. In 2012, the Inter-American Court of Human Rights held Ecuador responsible for the violation of several protected rights of the Kichwa indigenous people of Sarayaku, after it allowed a private oil company to conduct seismic surveys without prior consultations or consent. The Sarayaku declared a state of emergency, given the risks of high-power explosives introduced in their territory, which impeded their economic activities and depleted their food sources.

2. Exploitation

28. Oil extraction releases massive amounts of hazardous substances into rivers and soils, with devastating impacts on indigenous peoples. Oil and gas drilling uses fluids with high concentrations of barium, emulsifiers, and variable amounts of polycyclic aromatic hydrocarbons, which seep into the land and into the ecosystems. These substances can cause cancer and cardiovascular disease. Fracking and tar sands exploitation also generate carcinogenic toxic pollutants such as heavy metals and polycyclic aromatic substances that are released into surface and groundwater.
29. Oil and gas extraction releases high amounts of so-called “produced water” – contaminated water that leaves oil wells during extraction. Produced water is composed of a hazardous mixture that may contain hydrocarbons, heavy metals, salts and natural occurring radioactive material, which may be carcinogenic. Even when reinjected into the subsoil, wells are often defective, spreading contamination to groundwater, fish and other aquatic species.
30. Effluents and liquid wastes of oil and gas operations are often stored in open pits. Even when companies use plastic liners, these liners tend to overflow and leak, releasing oil and grease and contaminating the water and food sources on which indigenous peoples rely for subsistence. Effluents and liquid wastes are also kept in underground storage tanks, which nevertheless corrode or overflow, contaminating soils and water streams.
31. Gas flaring, which is the burning of gas generated during extraction processes, generates constant air pollution. Flaring releases several hazardous pollutants that can include benzene, formaldehyde, polycyclic aromatic hydrocarbons, acetaldehyde, toluene, xylenes and more. Gas flaring can cause reproductive abnormalities, asthma and cancer.
32. The abandonment of oil fields without proper removal of the infrastructure used to exploit oil causes harm to the surrounding environment as these structures erode. In its environmental assessment of Ogoniland, Nigeria, in 2011, the United Nations Environment Programme concluded that the pollution that resulted in some areas amounted to “total environmental devastation”, ended or displaced the Ogoni people’s fishing activities and polluted groundwater with benzene in amounts unacceptable under World Health Organization standards, among other negative impacts. The Ogoni people report little to no effective environmental remediation even a decade later.

3. Oil spills and contaminated sites

33. Oil spills are frequent and devastating. Aromatic carcinogenic substances from oil spills can remain in the water and sediments of streams for long periods of time, increasing exposure to toxic substances. Alaska is reportedly approaching 10,000 oil spills in 40 years from oil exploration and exploitation near Nuiqsut indigenous lands, spilling 3.8 million gallons of oil and hazardous material.
34. In 2015, the Peruvian environmental agency identified nearly 2,000 contaminated sites in oil block 192 that affect Amazonian Quechua, Kichwa and Achuar peoples and that have not been remediated. In Peru, 41 of 65 indigenous groups have been affected by oil extractions; from 2015 to 2019, they faced more than 100 oil spills.
35. Much of marine shipping uses heavy fuel oil, which is particularly dense, viscous oil that is persistent when spilled, smothering marine mammals and birds. Coastal and Arctic indigenous peoples are threatened by their reliance on these animals

and proximity to these toxics. Heavy fuel oil also produces high levels of black carbon, known to lead to premature death, which absorbs so much sunlight that it melts snow and ice, particularly threatening Arctic indigenous lands and territories.

C. Pesticides

36. In various countries, agribusinesses are taking over indigenous peoples' lands and cultivating a pesticide-dependent agriculture. As a result, indigenous peoples may be forced to live alongside such farms, regularly exposing them to hazardous pesticides. Furthermore, countries that have banned or have old stocks of highly toxic pesticides allow local production for export.
37. Indigenous people who produce crops on a small scale with the use of pesticides may have a general knowledge of crop protection but often are unaware of pesticides' health effects and methods of exposure. Because of this gap in knowledge, incidents involving the misuse of these chemicals led to acute and chronic exposures to pesticides among indigenous people in western Australia.
38. In addition, stocks of obsolete pesticides, including organochlorine and organophosphate pesticides, often lack proper inventory and are stored in inappropriate conditions, contaminating and deteriorating containers and causing leakage. The lack of a legal framework and institutional capacity in many countries to address this problem has heightened its harmful effects on indigenous peoples.

1. Monocrops

39. Pesticide use has been linked to large-scale monocultures which supply most of the world's agro-industrial staples. Monocultures increase risks of disease and pests, resulting in farmers' increased use of pesticides and herbicides. The pests then become resistant to the pesticides, which further increases pesticide use, creating a toxic cycle. In El Salvador, it appears that contamination from unregulated agrochemicals, intensive irrigation, and the expansion of sugar cane monocultures are contributing to the alarming number of chronic kidney disease cases and water shortages.

2. Aerial fumigation

40. Aerial fumigation indiscriminately spreads toxic substances on crops and waters on which indigenous peoples depend for material and spiritual sustenance. Pesticide dust or droplets drift through the air and harm non-target crops, as well as soils, waters, vegetation and wildlife.
41. Indigenous peoples and others in Brazil allege that agribusinesses intentionally sprayed pesticides on their crops and houses like "chemical weapons" to drive them from their lands for farmers and ranchers to use.
42. For decades, indigenous peoples in Colombia raised concerns about the massive aerial spraying of glyphosate formulations to eradicate illicit coca crops. In its recent report, the Truth Commission in Colombia, established pursuant to the 2016 peace agreement, calls for a definitive end to glyphosate spraying.
43. The Yaqui people advocated in Mexico and in international mechanisms to ban aerial fumigation on the basis of documented impacts on reproductive and intergenerational health, including birth defects, leukaemia and other childhood cancers. In response, the Committee on the Elimination of Racial Discrimination recommended to the United States to take measures to prevent the transboundary effects of pesticides used in aerial fumigation, to no avail.

D. Hazardous waste dumping

44. Hazardous waste dumping leaves indigenous people with decades-long health and psychological trauma. The toxic effects extend well beyond the area in which waste is dumped. Burning waste contaminates the air and generates pollutants harmful to human and animal life. Each year, 11 million tons of plastic waste are dumped into oceans. Marine litter and plastic pollution cause the leaching of toxic chemicals into water streams; and persistent pollutants capable of long-range transport hitch on currents and travel to the Arctic, affecting indigenous peoples in the region.
45. The outcries of harm done to indigenous peoples are often ignored. For instance, the Yami people on Orchid Island, Taiwan Province of China, have fought for decades to remove 100,000 barrels of nuclear waste placed there without their free, prior and informed consent, yet the Taiwan Province of China has still not removed the waste. The Kanien'kehá:ka community of Kanehsatà:ke, Canada, continue to fight for containment of a toxic waste dump operating without a permit next to the community and contaminating water systems.

E. Military activities

46. Around the world, militarization inflicts environmental violence on the lands of indigenous peoples. Military bases are constructed on indigenous peoples' land without their consent and often force their displacement. Once abandoned, these military sites leave a tragic remnant of contamination, filling these lands with hazardous and nuclear wastes affecting indigenous peoples for generations.
47. Abandoned military facilities reportedly leave materials including fuels, polychlorinated biphenyls, metals from heavy equipment, energy generators, oil containers and even radioactive waste buried on site. Leftover fuels, solvents and other organic chemicals can permeate the soil and travel long distances. The Government often does not disclose information on the extent, location and type of waste or provide complete risk assessments to affected indigenous peoples.
48. These military projects often occur on islands or in remote locations where water systems are interconnected, threatening the entire region. Stored fuel leaked over 2,000 gallons of petroleum at Kapūkakī (Red Hill), contaminating the water of Native Hawaiians nearby. Oil spills in the area are chronic, leaking oil at a rate of 5,000 tons per year, threatening the water supply of the entire island of Oahu. Debris from nuclear weapons testing and storage of hazardous chemicals and weapons threaten the Chamorro indigenous people and Guam's sole source aquifer.
49. Equally concerning is the continued detection of per- and polyfluoroalkyl substances, also known as "forever chemicals" because they resist decomposition in the environment and human body. Accidents, leaks, training and disposal have reportedly led to per- and polyfluoroalkyl substances contamination from United States and Japanese bases on the Ryuku Islands in Japan up to 1,600 times the national standard.
50. Arctic indigenous peoples also face compounding threats from the thawing of permafrost encapsulating layers of toxics underneath. Tons of toxic waste at Camp Century, including polychlorinated biphenyls and radioactive material, beneath the north-western Greenland ice sheet could be exposed owing to climate change and thawing ice.

III. Impact of toxics on the rights of indigenous peoples

51. To satisfy the expansion of a global economy addicted to fossil fuels and resource extraction, States and businesses step into remote regions searching for metals, minerals and hydrocarbons, leaving a legacy of pollution and dumping of hazardous substances. Exposure to such toxics imposes a heavy toll on the physical integrity and other rights of indigenous peoples.
52. In many parts of the world, State sovereignty and effective control over territory are but fictional principles, since the capability of the State to effectively regulate fossil fuel and extractive industries and to guarantee the effective protection of rights is an illusion. In many other parts, States use these principles to attempt to legitimize the extraction of natural resources found in indigenous peoples' lands and territories, despite the widespread violation of the rights of indigenous peoples.

A. Free, prior and informed consent

53. Indigenous peoples are systematically denied their right to free, prior and informed consent. As the Special Rapporteur on the rights of indigenous peoples highlighted, by denying free, prior and informed consent, indigenous peoples' autonomy and right to self-determination are sacrificed for national and economic interests, disregarding their safety and well-being.
54. The free, prior and informed consent process rests on good-faith engagement and respect for indigenous people's decisions. This includes engaging with indigenous peoples' representative institutions, abiding by consultation protocols mutually agreed upon, and giving effect to agreed outcomes. These elements form the basis of respect for indigenous peoples' rights to autonomy and self-determination as cornerstones of the right to free, prior and informed consent. At times, even when engagement and consultations exist, they do not occur prior to the start of development projects or continue throughout the various steps of development.
55. The free, prior and informed consent process involves the duty to provide comprehensive and culturally understandable information. However, information presented to indigenous peoples is often limited or inaccessible. Environmental impact assessments are often unavailable to indigenous peoples before consultations, and in too many instances, States do not provide the technical services to indigenous peoples needed to fully understand the information in the environmental assessments. The mining company Nornickel, which hosts its main operation in Norilsk, Russian Federation, one of the world's most polluted cities, eventually initiated a free, prior and informed consent procedure with indigenous people but instead imposed its own protocols.
56. The right to free, prior and informed consent is a right that enables and relates to several other rights, such as the rights to information, science, land, access to justice, meaningful participation and a clean, healthy and sustainable environment. In that regard, such consent is a critical safeguard of the rights of indigenous peoples, which may be compromised as a result of exposure to toxics. At the same time, and especially given that atmospheric and ocean currents transport toxics for long distances into indigenous peoples' territories, respect for free, prior and informed consent does not exhaust the duties of protection for indigenous peoples' rights.

B. Information, access to justice and science

57. States and businesses often do not guarantee indigenous peoples access to information and science on the toxic impacts of activities on or near their lands and territories. Information is often available only through the Internet and in a limited number of languages. In other circumstances, States flatly deny providing information related to toxics' impact on indigenous peoples. There are also structural issues that contribute to indigenous peoples' lack of information, such as many indigenous people living in poverty and lacking the technical resources or level of education to understand specialized information about toxics' impacts and their implications.
58. Lack of information compounds the challenges that indigenous people face to accessing justice for human rights violations. Indigenous peoples are often excluded from international accountability mechanisms and domestic legal systems owing to language and cultural barriers, remote locations and a lack of economic resources to get specialized legal defence. States rarely seek out indigenous knowledge and often deny the use of indigenous justice systems, so indigenous peoples must use their limited resources to advocate for themselves.
59. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) provide avenues and opportunities for indigenous participation in environmental decision-making, including on chemicals and wastes. The Escazú Agreement, for example, provides that each party shall guarantee that indigenous peoples receive assistance in preparing their requests for information and obtain a response.
60. Research and science on the environmental impacts of toxics specific to indigenous peoples are limited. In addition, to provide culturally specific solutions and preventative measures for toxic exposure, both science and indigenous knowledge have roles to play. When Governments conduct audits or perform surveys, they often do not make them public. For instance, the Guji people in Ethiopia continue to demand that the Government make public a report demonstrating the health and environmental impacts of the Lega Dembi gold mine.

C. Culture, land and natural resources

61. Toxic exposure from dumping or industrial releases is a form of violence against indigenous peoples. Owing to the spiritual and material bonds between their culture, lands and natural resources, severing the connection of indigenous peoples to their land threatens the survival of indigenous cultures and languages.
62. Contamination with hazardous substances interferes with indigenous peoples' right to self-determination, by virtue of which they freely pursue their economic, social and cultural development. Moreover, environmental degradation and displacement of indigenous peoples have a direct impact on their cultural practices, which are often intimately tied to their land. States should recognize indigenous rights to land, including areas used by indigenous peoples for spiritual, medicinal or other traditional practices.
63. In the case of the Ava Guaraní indigenous people of Campo Agua'e in eastern Paraguay, the Human Rights Committee recognized that the failure to prevent pesticide contamination of indigenous lands and territories is also an attack against indigenous culture and traditions. In reaching its decision, the Committee relied on

the United Nations Declaration on the Rights of Indigenous Peoples to interpret the International Covenant on Civil and Political Rights, which gives further normative strength to said Declaration.

64. Critical to the rights to culture, land and natural resources in cases of violations is the right to redress, including remediation, restitution and return of lands, territories and resources.

D. Life, health and personal integrity

65. Exposure to toxics presents short- and long-term effects on the life and health of indigenous peoples. Exposure to toxics is an assault on personal integrity. Even in small amounts, mercury, cadmium, lead and arsenic may cause serious health problems and are a threat to reproductive health and the development of infants. In the long term, the presence of toxics on or near indigenous land has caused intellectual and other disabilities that may undermine the ability of indigenous peoples to pass along culture and traditions.
66. Indigenous peoples living close to mines are more vulnerable to respiratory diseases. Exposure to particulate matter is associated with premature death and high morbidity from cardiopulmonary diseases. Radioactive wastes increase the risk of cancer, birth defects and mortality levels. Pathways of exposure also include inhalation of radioactive particulates and exposure to gamma radiation, both of which increase the risk of cancer.
67. Contamination of food and water supplies results in toxic exposure up the food chain, leading to immune suppression, hormone disruption and cancer, among other serious health conditions. These traumas can also cause serious mental health issues, including anxiety, loss of identity and loss of hope. Indigenous peoples' attempts to defend themselves against these incursions often result in violence against them.
68. Toxic agrochemicals have had particularly negative impacts on the human rights of indigenous peoples. Many pesticides bioaccumulate, increasing the risk of exposure through food sources. Bioaccumulation is known to have caused harmful effects including to endocrine and reproductive functions, cancer, accidental poisonings and death. Exposure to pesticides has also caused miscarriages, preterm delivery and birth defects.
69. Articles 6 and 9 of the International Covenant on Civil and Political Rights recognize the right to life and physical integrity, respectively. Accordingly, States have the duty to ensure and guarantee the right to a non-toxic environment for indigenous peoples.
70. Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of the "highest attainable standard of physical and mental health". In its general comment No. 14 (2000), the Committee on Economic, Social and Cultural Rights explains that the "right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health".
71. The right to health includes access to timely and accessible health care for the specific health impacts of toxics. This calls for integrating modern medicine with indigenous medicinal practices and traditional knowledge. Yet access to adequate health care is often lacking, and contamination in indigenous territories results in untreated chronic health conditions.

E. Food, water and a clean and healthy environment

72. Toxic impacts on vegetation and wildlife reduce biodiversity and affect indigenous peoples' water, food and medicinal sources.
73. Indigenous peoples rely on natural resources for their subsistence economies and therefore depend on natural water sources for drinking, eating and other traditional or domestic practices. However, toxic contamination impairs waters, spreading disease and death on the land and its people.
74. Mining alone results in hundreds of millions of wastes each year that contaminate vital water sources. Similarly, pollution from oil and gas drilling has a severe impact on freshwater quality. Contamination increases the risk of exposure to polycyclic aromatic hydrocarbons and heavy metals such as nickel and lead for indigenous peoples who depend on rivers and streams as their main source of water supply. Produced water in oil and gas reservoirs, contaminated water that leaves oil wells during extraction, can pollute rivers used by wildlife and indigenous peoples with high levels of heavy metals. The rupture of mine tailings dams has long-lasting effects on food and water sources. Indigenous peoples lose access to water, crop production and livelihoods, including fishing capacity.
75. According to general comment No. 12 (1999) of the Committee on Economic, Social and Cultural Rights, the right to adequate food requires "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture". Furthermore, availability requires productive land or other natural resources without contamination.
76. Blatant failures to protect indigenous people's right to food exist throughout various industries. Many toxics can spread contamination through food webs that often include wildlife species consumed by indigenous peoples. Indigenous people suffer from above-average rates of cancer and other diseases from pesticides in their food sources. Small-scale gold mining activities around the world spread mercury in water systems and contaminate fish stocks of indigenous peoples. Radioactive contamination from uranium can affect livestock, such as cattle, and make its way into cow's milk and meat for consumption.
77. Traditional food sources of indigenous peoples are regularly found to contain high levels of harmful chemicals. As persistent organic pollutants travel northward through long-range environmental transport via wind and water currents, indigenous peoples in the Arctic have been disproportionately affected. Persistent organic pollutants from materials left at abandoned military facilities can also bioaccumulate in the food chain and expose indigenous peoples to toxics.
78. Companies and States often destroy the vegetation and wildlife on and around indigenous lands and territories. Extractive industries and agrochemicals contaminate the air, soil, water and food chain with toxics. Toxic chemicals and hazardous waste degrade indigenous land and their role as protectors of most of the world's biodiversity.
79. The right to live in a non-toxic environment is one of the elements of the right to a clean, healthy and sustainable environment. In 2021, the Human Rights Council recognized this right, acknowledging that indigenous peoples experience the violence against their environment more acutely. Recently, the General Assembly also recognized this right.

80. The right to a clean, healthy and sustainable environment is a stand-alone right that derives from the rights to life, physical integrity, health and an adequate standard of living. Its content can be found in the acquis of human rights and environmental jurisprudence and doctrine developed over the past three decades. Accordingly, the right encompasses procedural elements, including information, participation and justice, and substantive elements, including clean air, safe and sufficient water, healthy and sustainably produced food, healthy biodiversity and ecosystems, non-toxic environments and a safe climate. Its content is also illuminated by the right to science and the imperative to confront environmental threats that impair the realization of human rights of present and future generations. The right to a healthy environment may require immediate protections, as when physical integrity is assaulted by exposure to toxics. Furthermore, progressive realization of the right requires strengthening institutions, norms, policies and measures, such as when Governments support agroecological practices and markets.

IV. Impacts on indigenous peoples in vulnerable situations

81. As a result of a history of dispossession of their lands and discrimination in the exercise of political and other rights, indigenous peoples are today particularly vulnerable to external forces that encroach on their lands and territories. These forces include a military complex and extractive, fossil and agricultural industries that seek to control and profit from natural resource exploitation. The technologies applied by these industries invariably release toxic chemicals to the environment. The ways in which these toxics have an impact on indigenous peoples depend on intersecting vulnerabilities.

A. Indigenous peoples in isolation

82. Indigenous peoples in isolation face devastating impacts from toxics because they are fully integrated with, and dependent on, their environment for their health, material and spiritual well-being, and development. The contamination of rivers that cross the territories of indigenous peoples in isolation, caused by the use of mercury in small-scale gold mining, is particularly insidious, as the liquid metal is otherwise invisible, and the affected peoples do not have knowledge of what causes their ills. Indigenous peoples in isolation do not have access to health-care systems other than their traditional practices, which may nevertheless be impaired by toxic contaminants in food sources and medicinal plants. Forced contact has been catastrophic for indigenous peoples lacking immune systems able to withstand germs carried by outsiders.

B. Indigenous persons with disabilities

83. Toxic exposure can cause disabilities in indigenous persons, including loss of IQ, physical malformations, and other serious conditions. Disabilities can affect the individual's ability to procure means of subsistence. Disabilities can also affect the community's ability to pass on traditional knowledge across generations. Indigenous persons with disabilities prior to contamination can feel compounding effects of additional health conditions. States fail to address disability rights for indigenous people by forcing individuals with disabilities to travel to non-indigenous lands for resources and health care. In many cases, indigenous peoples are impoverished and have limited resources to provide for the care and upbringing of children with disabilities.

84. The preamble to the Convention on the Rights of Persons with Disabilities recognizes the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination, including on the basis of indigenous origin. Indigenous persons with disabilities must deal with multiple forms of discrimination and barriers related to their multiple identities, which increase their challenges with employment, access to health and disability services, and social deprivation. Toxic contamination and its impacts on their bodies, lands and resources further aggravate these conditions and situations.

C. *Indigenous women*

85. Exposure to toxics is a form of environmental violence against women and girls. For many indigenous peoples, women play a key role as gatherers, producers and stewards of specific cultural practices. These roles put them in contact with the land that may be contaminated by heavy metals, pesticides and other toxics. Women also on average have a higher percentage of body fat, which is how some toxic substances are absorbed into the human body. This aggravates the risks of contamination and serious health conditions. These disproportionate effects can pull indigenous women into cycles of poverty and exposure to gender-based violence.

86. In addition, studies and experiences from indigenous peoples continually show the detrimental impacts of toxics on pregnancies and births. Contamination leads to increases in stillbirths, miscarriages, low-birth-weight babies and passing toxicity through the bloodstream. Shoalwater women in Washington State, United States, began experiencing miscarriages as a result of endocrine disruptors found in pesticides and herbicides sprayed on nearby cranberry plantations. In the Amazon, there have been cases where indigenous women were blamed for their babies' malformations and expelled from their communities.

D. *Indigenous children*

87. Indigenous children, like other children, are more sensitive to toxics, owing to the growth and development of their bodies, including their endocrine and immune systems. The increase of disabilities can impair learning languages and cultural traditions or create mobility and health concerns that reduce involvement in daily routines. Reduction in the birth of indigenous children risks nothing less than the survival of indigenous peoples.

E. *Indigenous older persons*

88. Older persons are particularly vulnerable to health challenges and suffer mental anguish from displacement caused by the contamination of the land. Challenges in passing on knowledge and understanding at the heart of indigenous cultures, traditions and languages can further aggravate the feelings of despair and identity loss. A healthy environment is vital for the realization of the rights of older persons.

V. International instruments relevant to toxics and indigenous rights

89. The international normative framework on chemicals and wastes has yet to explicitly embrace and articulate an integrated and holistic human rights-based approach. This shortcoming limits indigenous peoples' enjoyment of human rights. It also exacerbates the gaps in protections of human health and the environment that have resulted from the fragmented and ad hoc development of this framework over the past four decades.

90. In addition, the Sustainable Development Goals call for the increased protection of food, water and health, all of which are threatened by toxic violence against indigenous peoples.
91. The international meeting entitled “Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity” focused on ways to accelerate action towards a healthy planet. At the meeting, Member States and stakeholders recommended strengthening national implementation of agreements by drawing on “insights and expertise from indigenous and traditional knowledge” and called for strengthened cooperation and solidarity, including through indigenous peoples’ participation in policy formulation and implementation. Indigenous knowledge and values can contribute to reversing environmental degradation and shift the tide towards sustainability. A. Multilateral agreements on chemicals and wastes
92. While multilateral environmental agreements on chemicals and wastes share a common goal to protect the environment and human health, they have yet to embrace an integrated human rights-based approach. This may result in the exclusion of indigenous peoples from decision-making on chemicals and wastes. Indigenous peoples also lack full access to accountability mechanisms such as compliance committees to voice grievances and seek enforcement of these agreements, in contrast to the Aarhus Convention, the Escazú Agreement and other agreements.
93. Instruments on chemicals and wastes have started to work on vulnerable groups, but this work has yet to focus on indigenous peoples. Some States, however, limit the definition of “indigenous”, or lump indigenous people with “local communities”, to limit the land and other rights of indigenous peoples. In addition, States lack specific guidelines on implementing these agreements when they affect indigenous peoples and their lands.
94. The United Nations Declaration on the Rights of Indigenous Peoples could help to address these shortcomings by illuminating the interpretation of the chemicals and wastes conventions.

1. Minamata Convention on Mercury

95. The Minamata Convention on Mercury regulates activities resulting in the release of mercury to protect human health and the environment. In the preamble to the Minamata Convention, the parties to the Convention take note of “the particular vulnerabilities of Arctic ecosystems and indigenous communities because of the biomagnification of mercury and contamination of traditional foods, ... concerned about indigenous communities more generally with respect to the effects of mercury”.
96. The Minamata Convention is hindered by critical shortcomings on small-scale gold mining, which is by far the largest, and an increasing, source of emissions and releases of mercury into the environment. A major gap is that the Convention allows the use of mercury in small-scale gold mining. Another gap is that the Convention allows primary mercury mining to continue for up to 15 years from its entry into force in 2017. Yet another is the Convention’s failure to prohibit international trade in mercury for small-scale gold mining.
97. These weaknesses not only undermine the goals and effectiveness of the Convention. They also cause and aggravate mercury exposure among people in vulnerable situations, including indigenous peoples. Many indigenous peoples

suffer from contaminated fish in the rivers and oceans, which had previously served as the foundation of their customary subsistence lifestyles and culture.

98. At its most recent meeting, the Conference of the Parties to the Convention made some progress, calling upon States to engage indigenous peoples when developing national action plans for reducing and eliminating mercury in small-scale gold mining. As a next step, the Conference of the Parties should establish a process to ensure indigenous peoples' participation.

2. Stockholm Convention on Persistent Organic Pollutants

99. The Stockholm Convention on Persistent Organic Pollutants is aimed at eliminating or reducing the production and use of such pollutants. In the Convention, it is acknowledged that "the Arctic ecosystems and indigenous communities are particularly at risk because of the biomagnification of persistent organic pollutants and that contamination of their traditional foods is a public health issue". Yet, to date, neither the Convention's provisions nor the decisions adopted by the Conference of the Parties offer concrete guidance or establish specific programmes to prevent the deleterious impacts of persistent organic pollutants on indigenous peoples.

3. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade

100. The Rotterdam Convention is aimed at controlling the international trade in hazardous chemicals and pesticides by way of an informed consent procedure. The prior informed consent procedure is required for all chemicals listed in annex III to the Convention. Once a chemical is on the list, article 10 provides the importing parties with the authority to decide whether to import that chemical. The Rotterdam Convention does not set out a ban or prohibition of the import/export of the listed chemicals, but rather a platform to exchange information on them.
101. The prior informed consent procedure of the Rotterdam Convention does not specifically contemplate free, prior and informed consent from indigenous peoples for the import of toxics into their territories. It does not even envision indigenous peoples' participation in the process. The Convention's prior informed consent procedure also permits parties to export hazardous pesticides and other chemicals that are banned for use in their own jurisdictions, so long as there is consent of the importing country, regardless of the impacts on indigenous peoples.
102. The Conference of the Parties to the Convention has also failed to act on the recommendations of its Chemical Review Committee to prevent human health and environmental harms, as highlighted in the Special Rapporteur's report on the right to science in the context of toxic substances.

4. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

103. Under the provisions of the Basel Convention, indigenous peoples do not receive explicit, specific protection from the impacts of the transboundary movements and disposal of hazardous and other wastes. Indonesia and Switzerland led an initiative to improve the effectiveness of the Convention resulting, inter alia, in a set of practical manuals adopted at the thirteenth meeting of the Conference of the Parties. One of its recommendations under environmental performance

standards specifies that States' "[waste management] facilities and services should also take into consideration other applicable policies, such as customary or indigenous law and treaties".

B. International human rights instruments

104. Indigenous human rights are interrelated, interdependent, interconnected and indivisible. Under international human rights law, States have a duty to protect indigenous peoples from toxics exposure. In cases of environmental damage, the State must monitor and restore the environmental quality of indigenous peoples' land and territories and guarantee environmental remediation. States must take precautionary measures to guarantee a healthy and clean environment where medicinal plants, animals and lands are free of pollution. To protect indigenous peoples' rights, States must integrate these obligations and principles into the implementation of the chemicals and wastes multilateral environmental agreements.

1. United Nations Declaration on the Rights of Indigenous Peoples

105. The effective enjoyment of the rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples rests on respect for the right to live in a non-toxic environment. For example, article 24 declares that indigenous peoples have the right to their traditional medicines, including the conservation of their vital medicinal plants, animals and minerals. Article 20 recognizes the right of indigenous people to be secure in the enjoyment of their own means of subsistence and development and to engage freely in all their traditional and other economic activities.

106. The Declaration provides protections for indigenous peoples against toxics. Article 29 recognizes the right of indigenous peoples to the conservation and protection of their environment. It also requires States to take measures to ensure no storage or disposal of hazardous materials on indigenous land without their free, prior and informed consent, and to monitor and support their health if they are exposed to such materials.

107. Given that denial of land rights, encroachment on territories, and extraction of resources are key drivers of harms against indigenous peoples, the Declaration establishes several protections to confront these threats. Article 3 asserts indigenous peoples' right to self-determination, by virtue of which they freely pursue their economic, social and cultural development. Article 19 articulates the State's duty to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their consent before adopting and implementing legislative or administrative measures that may affect them.

2. International Convention on the Elimination of All Forms of Racial Discrimination

108. The disproportionate patterns of toxic exposure on indigenous peoples reflect structural discrimination and violence against indigenous peoples. The International Convention on the Elimination of All Forms of Racial Discrimination provides that indigenous peoples must be treated equitably so that they can access their full scope of human rights. The preamble considers United Nations condemnation of colonialism, segregation and discrimination and aims to prevent future manifestations of such violence.

109. The Committee on the Elimination of Racial Discrimination, in its general recommendation No. 23 (1997), asserts that States should provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics and ensure that indigenous peoples have equal rights to effectively participate in public life. Furthermore, no decisions directly relating to their rights and interests should be taken without their free, prior and informed consent.
110. Articles 2 (1) (d) and 5 (e) of the Convention require States parties to take appropriate legislative and administrative measures to protect indigenous peoples' rights to culture and social and economic development. In its general recommendation No. 23 (1997), the Committee recognizes the need to prevent the loss of "land and resources to colonists, commercial companies and State enterprises".

3. Indigenous and Tribal Peoples Convention, 1989 (No. 169)

111. The Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO) creates standards for States regarding indigenous peoples' rights, including the right to their lands, territories and resources. The preamble recognizes indigenous peoples' rights to take control over their development and ways of life to maintain their cultural and spiritual identities.
112. The United Nations Declaration on the Rights of Indigenous Peoples can illuminate key elements of ILO Convention No. 169. The duty to consult in good faith with a view to reaching agreement, articulated in article 6, should be interpreted in the light of the free, prior and informed consent standards in the Declaration regarding exploitation and use of indigenous lands. Similarly, the duty of Governments to "take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit", articulated in article 7, must include measures to ensure no storage and disposal of hazardous substances without free, prior and informed consent.
113. In June 2022, the International Labour Conference amended the Fundamental Principles and Rights at Work to include the right to a safe and healthy work environment as a fundamental right. This is a watershed development with legal and political significance and is fully consistent with the special protections under ILO Convention No. 169 for the rights of indigenous workers. Article 20 asserts that workers must not be subjected to working conditions hazardous to their health, "in particular through exposure to pesticides or other toxic substances". Furthermore, article 25 provides that Governments shall ensure that adequate health services are made available to affected indigenous peoples, so that they may enjoy the highest attainable standard of physical and mental health.

4. Convention on the Rights of the Child

114. The Convention on the Rights of the Child protects the right of indigenous children to enjoy their culture. Integral to indigenous children's right to culture is access to a clean, healthy and sustainable environment. In particular, States must prevent children's exposure to toxics including through water, food, air and other sources of exposure.
115. The Committee on the Rights of the Child, in its general comment no. 11 (2009) on indigenous children and their rights under the Convention, notes that for indigenous children the use of traditional land is significant to their development

and enjoyment of culture. It calls upon States to “closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival and development to the maximum extent possible”. The Permanent Forum on Indigenous Issues has called for the full implementation of the Convention by States, with an emphasis on the need to ensure that indigenous children are not exposed to toxics through water, food, air and other sources of exposure.

VI. Conclusions and recommendations

116. Indigenous peoples are suffering grave impacts to their fundamental human rights because of exposure to toxic and hazardous substances. However, indigenous peoples’ voices are too often silenced in decision-making on chemicals and wastes.
117. The irresponsible extraction of minerals, oil and gas denies enjoyment of basic rights to indigenous peoples. Exploration increases deforestation and affects biodiversity, and seismic testing used in exploration disrupts vital food sources. The vast toxic and sometimes radioactive contamination caused by exploitation spreads death and disease to the vegetation, animals, waters and bodies of indigenous peoples. These devastations displace indigenous peoples and separate them from vital aspects of their culture, language and livelihoods.
118. In too many instances, States ignore the health and well-being of indigenous peoples when authorizing activities that release hazardous substances in their territories. Companies export highly hazardous pesticides that are banned in their country of origin, and the toxic chemicals are sprayed over indigenous peoples. Dumping of hazardous wastes, particularly at military sites, leaves intergenerational scars on indigenous peoples. Decades of waste disposal on or near indigenous land have an impact on interconnected waterways and food sources.
119. These activities and industries burden all aspects of indigenous life, affecting indigenous peoples’ enjoyment of fundamental rights. Denial of free, prior and informed consent opens indigenous peoples’ lands, territories and resources to activities that cause their loss of food, water, life and a clean and healthy environment. Releases of hazardous substances have numerous, devastating consequences on human health and biodiversity as these substances travel long distances through wind or water, bioaccumulate, or persist in the environment. Lack of access to information limits indigenous peoples’ abilities to understand and engage in decision-making processes regarding activities that can cause adverse toxic effects.
120. Indigenous peoples in vulnerable situations, such as peoples in isolation, and women, children, older persons and persons with disabilities, face additional impacts and challenges. Toxic exposure causes disabilities and also intensifies difficult conditions for indigenous persons with disabilities. Sociocultural roles in indigenous societies can aggravate environmental violence against women. The severe consequences of toxics and hazardous substances on children and the elderly impair the passage and cultivation of traditional knowledge.
121. There is also a glaring failure within the international instruments regulating chemicals and wastes to protect the internationally recognized rights of indigenous peoples. States additionally fail to effectively implement international human rights obligations to prevent, protect from and remedy the effects of toxics exposure on indigenous peoples.

122. Addressing the toxic violence on indigenous peoples is an imperative for their survival, self-determination and cultural autonomy. The effective realization of indigenous peoples' rights requires respect, protection and fulfilment of their right to a healthy environment, including their right not to be exposed to toxic and hazardous substances.

123. The Special Rapporteur recommends that States:

- (a) Identify the threat of activities and industries causing toxic effects on indigenous peoples, including through the atmospheric and ocean current transport of toxics, and adopt urgent and immediate actions to stop the influx of toxic and hazardous substances into indigenous territories;
- (b) Develop and implement programmes to monitor activities that discharge toxics and wastes in indigenous territories and to clean up wastes and remediate contaminated ecosystems;
- (c) Respect the right to and obtain free, prior and informed consent, including for activities that may impose toxic impacts on indigenous peoples;
- (d) Work with indigenous peoples to create mechanisms for providing full reparations to them for the impacts of toxics, including full and comprehensive rehabilitation of their lands, territories and resources;
- (e) Create an enabling environment for the conduct of scientific inquiry on the risks and harms to indigenous peoples' health and environment from hazardous substances;
- (f) Adopt a national strategy to eliminate mercury in small-scale gold mining, informed by human rights principles and consultations with indigenous peoples;
- (g) Ban the production and export of chemicals that are banned for use within the State;
- (h) Ban aerial fumigation of pesticides that adversely affect indigenous peoples, and effectively enforce it;
- (i) Require businesses to fully disclose information to affected indigenous peoples about their activities on indigenous lands, including their environmental impact;
- (j) Develop and implement initiatives in State institutions and legislation to address the disproportionate impact of toxics on indigenous peoples, especially on people in vulnerable situations;
- (k) Create health-care plans to address health disparities for indigenous peoples, including guidelines on addressing the specific health, environmental and cultural impacts of toxics on indigenous people;
- (l) Provide resources to support indigenous-led initiatives for culturally and ecosystem-specific, rights-based solutions to toxic exposure;
- (m) Enforce and abide by treaties or other agreements concluded between States and indigenous peoples;
- (n) Ratify and effectively implement the Basel, Rotterdam, Stockholm and Minamata Conventions with a human rights approach, particularly integrating free, prior and informed consent and the rights to participation, information, access to justice, and effective remedy;
- (o) Join and effectively implement the Escazú Agreement and the Aarhus Convention;

- (p) Protect the cultural and spiritual development of indigenous peoples, including by preventing exposure to toxics and securing remediation in cases of contamination.

124. The Special Rapporteur recommends that business enterprises:

- (b) Obtain free, prior and informed consent from indigenous peoples whose rights, land and livelihood would be affected by their activities at every stage of project planning, implementation, monitoring and, if needed, restoration and clean-up;
- (c) Conduct research efforts on the impacts of their activities on indigenous peoples and make public all methods and data used, protocols followed and findings;
- (d) Provide all information in a culturally accessible manner and engage in a culturally appropriate dialogue regarding activities and their impacts on or affecting indigenous lands, waters, food and ecosystems with indigenous peoples and throughout each phase of such activities.

125. The Special Rapporteur recommends that international bodies and mechanisms in the field of chemicals and waste management:

- (a) Integrate a human rights approach into all chemicals and wastes multilateral environmental agreements, with an emphasis on the risks and harms to indigenous peoples, including:
 - (i) Establishing processes for the full and effective participation and free, prior and informed consent of indigenous peoples in the chemicals and wastes multilateral environmental agreements;
 - (ii) Launching programmes for awareness-raising and dissemination of information to indigenous peoples on the chemicals and wastes multilateral environmental agreements;
 - (iii) Reducing language and access barriers for indigenous peoples to participate in the chemicals and wastes multilateral environmental agreements;
- (a) Adopt specific workplans and programmes on policies, actions and capacity development relevant to indigenous peoples under each chemicals and wastes multilateral environmental agreement, including respect for the United Nations Declaration on the Rights of Indigenous Peoples, free, prior and informed consent and indigenous peoples' participation.

2. Mercury, small-scale gold mining and human rights, A/HRC/51/35, 8 July 2022¹⁰²

I. Introduction

1. Millions of men, women and children around the world are engaged in artisanal and small-scale gold mining (henceforth referred to as “small-scale gold mining”). For most, it provides a subsistence livelihood based on hard labour in difficult conditions with many hazards. They use hand tools, panning, sluices, floating dredges and rudimentary mining equipment to extract tiny fragments of gold from low-grade ore. Those supported by small investors may have excavators. Their activities are destroying vast areas of jungle, forests and riverbanks, leaving wastelands of tailings and mining pits.

¹⁰² <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F35&Language=E&DeviceType=Desktop&LangRequested=False>.

2. The most devastating aspect of this mining, for the workers and for the global community, is the use of mercury to extract the gold from the ore. Elemental mercury is a highly toxic, persistent liquid metal, a neurotoxin that forms dangerous vapours at room temperature and when heated to burn off the mercury to purify the gold. The mercury enters the atmosphere, washes from mine tailings into rivers, lakes and oceans and converts to bioavailable, highly toxic methylmercury, contaminating fish and other aquatic life, building to dangerous levels in the food chain and contaminating those who eat the fish.

[...]

6. The Minamata Convention is a strong instrument that comprehensively addresses mercury. In respect of small-scale gold mining, however, it exhibits design and implementation weaknesses. Instead of banning global trade in mercury and prohibiting its use in such mining, the Convention pinned its hopes on mining formalization, allowing these practices to continue. At the time of adoption of the treaty, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment expressed strong concern that the Convention had no end-date for the phase-out of mercury in that sector, and that trade in mercury was allowed within the regulations.
7. The concerns of human rights experts about the Convention's shortcomings were well founded. The contribution of mercury releases and emissions of mercury from the small-scale gold mining sector has continued to grow, with grave consequences for millions of miners, vulnerable women and children, indigenous peoples, ecosystems and aquatic life. There is a growing flow of mercury into the rainforests of the Amazon basin, the villages and rivers of Indonesia, the gold mining towns along the banks of Lake Victoria in Kenya, Uganda and the United Republic of Tanzania, and many other locations.
8. Demand for mercury supply, both legal and illegal, surges in lockstep with the price of gold. It is the insatiable demand for gold in the financial and jewellery markets of the wealthiest countries that now drives mercury trade. It is the gold market's ambition to exploit new deposits that sees thousands of miners invading indigenous lands, corroding indigenous culture and laying waste to protected environments.

[...]

III. Human rights impact

37. In most small-scale gold mining locations worldwide where mercury is used, the human rights of miners, their families and communities, and the indigenous people and traditional owners of the land are increasingly compromised by mercury contamination. Adverse social effects and human rights violations in these localities are rampant, with trafficking in persons, slavery, disease, crime and violence. In Brazil alone, 333 people have been rescued from slavery conditions in small-scale gold mining over the past 13 years.
38. These human rights violations and abuses from such unmanaged, informal and illegal mining activity also highlight States' failure to adhere to the Sustainable Development Goals to end poverty and hunger; to ensure healthy lives, clean water, decent work, sustainable consumption and inclusive access to sustainable development; and to protect and conserve lands and waters.

A. Rights to life, health, food and a clean and healthy environment

39. Many people in small-scale gold mining locations lose their lives in accidents, mining collapses, violence over gold-dealing and violence by criminal gangs and paramilitaries controlling gold production. Many more have their physical integrity and health compromised by exposure to mercury and to mercury-contaminated food such as fish and rice.

1. Deforestation, biodiversity loss and contaminated sites

40. Small-scale gold mining heavily disturbs and fragments local environments. Deforestation related to such activity has decimated forests and aggravated biodiversity loss, placing further stresses on species already in danger of extinction. Almost 100,000 hectares were cleared for small-scale gold mining in Peru between 1984 and 2017, and half of this deforestation occurred in the last 6 years of that time period. Deforestation reduces the capacity of rainforests to remove mercury vapour from the air. This mercury can then cycle through the air as inorganic mercury, fall to the ground as rain and transform into methylmercury, which more easily enters the food chain.

41. In some cases, deforestation encroaches on protected lands. In Indonesia, an audit found that 115 companies had conducted small-scale gold mining activities on over 471,000 hectares of productive and protected forests without a licence. Clearing land for roads and other infrastructure also causes further deforestation as more miners gain access to forests to initiate mining activities.

42. Landscapes of abandoned deep pits fill with stagnant water, creating breeding grounds for mosquitoes, while rivers are contaminated with mercury and tailings. The scarring of the landscape is so severe in some locations, such as in La Pampa in the southern Peruvian Amazon, that the deforestation damage from small-scale gold mining can be seen in satellites imagery. Much of the damage to rivers and forests in the Amazon basin has been described as irreversible and accelerating, threatening to cause a “new Minamata”, by reference to the Japanese city.

43. In 2019, at the fourth meeting of the Conference of the Parties to the Minamata Convention, updated guidance on the management of contaminated sites was adopted, including on managing the risks of mercury in small-scale gold mining.⁴⁵ The guidance stresses the importance of community engagement and education, given the nature of settlements and contamination in and around these sites.

2. Bioaccumulation and contamination of food sources

44. The process of bioaccumulation of mercury through trophic levels of certain species such as fish is well known. For much of history, global mercury pollution was largely limited to natural sources such as volcanic eruptions and erosion processes in areas of naturally occurring cinnabar ores. However, with the advent of industrialization and growing activity in small-scale gold mining, mercury pollution sources grew unabated, resulting in widespread contamination of the world’s oceans, rivers and lakes.

[...]

B. Groups in vulnerable situations

1. Mining communities

53. Small-scale gold mining communities are on the fenceline of exposure to mercury, often pushed into such mining activity by sheer poverty, and unaware of the deleterious impact of mercury. Between 14 million and 19 million people work in

small-scale gold mining in 70 countries, and estimates report that 25 to 33 per cent of miners suffer from chronic intoxication from metallic mercury vapour. Some indigenous communities also practise small-scale gold mining using mercury, which breeds conflict within and among indigenous peoples.

54. In Peru, the Arakbut indigenous people in the Madre de Dios region, despairing at the invasion of their land by illegal miners, are now resorting to harmful gold mining themselves. The Arakbut report that mining drove away their food sources, such as wild animals, led to widespread deforestation, contaminated fish with mercury, and damaged sacred sites, undermining their spirituality and cultural norms. Social effects brought by the miners include use of alcohol, drugs and violence, with an increase in sexual exploitation and sexually transmitted diseases. One Arakbut leader identified globalized finance as a key driver, noting the responsibility of multilateral banks: “not only [are they] financing the extractive industry in our Amazon, [but] their reserves of gold bullion came from the soil of our ancestral territories”.

2. Indigenous peoples

55. The human rights of indigenous peoples, including those living in isolation, are being trampled in the rush to extract gold, especially in protected biodiverse areas where industrial gold mining is not permitted. This raises the question as to whether the global gold industry is knowingly using small-scale gold miners to gain access to gold deposits that otherwise cannot be legally obtained.
56. Indigenous peoples living a subsistence lifestyle and taking no part in gold mining are being heavily affected by the contamination and violence associated with the wildcat goldmining activity. The indigenous peoples of the Amazon basin are under increasing threat from gold mining, with their traditional lands increasingly being invaded by miners, known as *garimpeiros*, who are often armed and are intent on establishing *garimpos* (makeshift gold mines) and using violence to obtain access to indigenous lands.
57. The environmental injustice of this situation is plain. The lack of effective protections and remedies for the harm caused by small-scale gold mining using mercury reveals structural racism against indigenous peoples.
58. Brazil claims to have mercury restrictions and legal clauses to protect indigenous people, even as it attempts to regress on existing standards and open up indigenous lands to gold mining and other extractive industries. This has led to a culture of impunity among miners, who believe they have government support. The push by miners into protected lands affects the most remote indigenous peoples through direct contact, destruction of habitat and food sources, and contamination of river fish.
59. Recent research conducted with the Munduruku indigenous people in the State of Pará, Brazil, detected mercury in all hair samples analysed from 200 people – men and women, adults (including older persons) and children – without exception. The highest levels of mercury contamination were reported in the villages closest to small-scale gold mining activities. People with the highest levels of contamination had a greater frequency of neurological symptoms, such as changes in tactile and pain sensitivity, motor and memory challenges, and delay in verbal fluency. Children under 6 years old showed neurodevelopmental issues, anaemia and malnutrition.
60. Also in the State of Pará, the Kayapó indigenous territory is home to several indigenous communities, including groups in voluntary isolation from the outside

world. The rate of deforestation in the Kayapó region due to gold mining has doubled since 2000. While it is illegal to mine on indigenous lands in Brazil, the indigenous people say that this has not stopped widespread encroachment by miners onto their land. The National Indian Foundation – the government agency tasked with protecting the interests of indigenous peoples in Brazil – has identified almost 3,000 indigenous people contaminated by mining residues.

61. Approximately 1,000 Yanomami people live in communal houses in Palimiú, a village on the banks of the Uraricoera River in the largest indigenous reserve in Brazil. It can be reached by boat or light aircraft only. In May 2021, several boats operated by garimpeiros opened fire on the Yanomami tribe on the riverbanks with automatic weapons. The villagers responded with arrows and shotguns. There were injuries on both sides and two young boys drowned in the chaos, with the miners threatening to return for vengeance. The police arrived the next day and the garimpeiros returned by boat, opening fire on the federal agents, who drove them away with counterfire. Government prosecutors in the State of Roraima believe that miners may have hired one of the largest criminal gangs in Brazil – known as Primeiro Comando da Capital, which has smuggling routes in the area – to terrorize indigenous people.
62. The Wayana people of Suriname are affected by the mercury contamination of rivers and fish, escalation of health issues and deforestation that result from small-scale gold mining.⁶⁰ Making matters worse, Suriname is alleged to be selling indigenous land to goldmining organizations.
63. In Sumatra, Indonesia, indigenous community-based forest management initiatives in the Batanghari Protected Forest are being rapidly undermined by a resurgence of small-scale gold mining. Indigenous people are concerned that the frequent police and military patrols that ended the mining in 2014 have dwindled, to the point that miners feel that they are no longer at risk of penalties. Despite government claims that such mining had been eradicated, Indonesian non-governmental organizations recently identified 6 active and 22 abandoned mines, and 33 excavators operating inside the Batanghari Protected Forest in the district of South Solok alone, along the Batang Bangko River. Disturbingly, the miners claim that local government officials and police receive a percentage of the operation to protect them.
64. In the Plurinational State of Bolivia, in April 2022, a group conducting an inspection of an illegal mining operation was attacked with dynamite, stones and fireworks. Members of the Senate's Commission on Land and Territory, Natural Resources and Environment, and representatives from Amazonian indigenous peoples' organizations came under attack near the Chushuara community. While they were forced to leave the area within the Madidi National Park and Integrated Management Natural Area, they were able to confirm the presence of a massive dredger, La Reina, operating on the river just outside the protected zone. Indigenous peoples in the Plurinational State of Bolivia are now fearful that these violent incursions will lead to State militarization of indigenous lands and further marginalization of their customary rights, practices and autonomy.
65. These examples of sweeping and systematic incursions into indigenous lands and territories and conservation areas highlight the growing violence and intimidation experienced by indigenous peoples from some small-scale gold miners. They also illustrate the long-term environmental, social and cultural damage that undermines indigenous autonomy, self-determination and ability to rely on natural resources. A notable complaint of many indigenous people is the loss of food sources from

the forests and contamination of fish in the rivers, which had previously served as the foundation of their customary subsistence lifestyles and culture. Fish contamination results from mercury use in small-scale gold mining and evidences grave environmental injustice.

[...]

IV. Minamata Convention on Mercury

[...]

86. The Convention also seeks to regulate the informal practice of gold mining or smallscale gold mining. In this regard, however, it has several weaknesses that limit its effectiveness in reducing and eliminating mercury use in small-scale gold mining. These shortcomings undermine the human rights of the people involved and “innocent bystanders” affected by mercury contamination. They also enable the onslaught of illegal miners in indigenous lands and protected areas.

[...]

D. Gaps and shortcomings

108. The Minamata Convention is well constructed and is proving to be effective, including with respect to product and process phase-outs, and emission and releases controls. However, the Convention’s approach to small-scale gold mining has shortcomings that are allowing the use of mercury in such mining to increase, as evidenced by the growth in mercury supply. These weaknesses not only undermine the goals and effectiveness of the Convention, with small-scale gold mining the world’s largest emitter of mercury into the environment. They also cause and aggravate mercury exposure among people in vulnerable situations, including indigenous peoples, women, children, and miners living in extreme poverty.

109. A major gap is that the Convention allows the use of mercury in small-scale gold mining (arts. 2 (k) and 7). This sends the wrong signal and suggests that mercury use and release can be tolerated if profits can be made from gold, despite the heavy human toll and proliferation of contaminated sites. While most other global processes using mercury are banned or subject to scheduled phase-out, there are no restrictions on mercury use to extract gold.

110. It is not just gold miners who are harmed by such use of mercury. Countless indigenous peoples, island peoples, and women and children gain no benefit from gold mining, but suffer the impact of food chain contamination, exposure, body burden and intergenerational developmental effects. Small-scale gold mining pollutes rivers, causes deforestation and destroys protected habitats, driving away native animals that are important food sources and spiritual symbols to indigenous peoples.

[...]

V. Conclusions and recommendations

[...]

118. The rights of indigenous peoples, in the Amazon particularly, are being trampled, their environments destroyed and their cultures fragmented by the legions of lawless miners invading their protected lands, bringing with them toxic mercury, violence, diseases, drugs, alcohol and the exploitation of women. This is tacitly enabled by high-level vested political and economic interests that occupy the

shadowy space of illicit gold. The lucrative trade in smuggled gold and mercury has attracted the attention of poorly-paid and corrupt military, police and customs officials, together with unscrupulous agents of organized crime, paramilitaries and criminal gangs who prey on miners with violence, protection rackets and extortion.

119. Indigenous people who stand in the way, protecting the land and culture, are intimidated, attacked and murdered. The gold market drives this oppression, and the mercury market facilitates it.
120. Protected lands, forests and rare biodiversity are being destroyed in the quest for access to gold reserves that are just outside of the legal reach of industrial gold extraction. The small-scale gold miners who plunder these environments have become the agents of wealthy global gold traders seeking the next El Dorado of fat profit margins and an endless flow of cheap gold.
121. It is not just the miners who pay dearly to prop up this market. Mercury used by miners is dumped in tailings flowing through the soils to rivers and oceans, contaminating everything in its path, being magnified in the food chain, accumulating in fish and marine mammals and poisoning those who consume them. Downstream from the gold mines and river dredgers, Amazonian indigenous peoples, heavily reliant on fish for protein, have a skyrocketing body burden of mercury. In Pacific islands, far from any gold-mining location, mothers live with the anxiety of knowing that their mercury levels are increasingly unsafe and their children's future is at risk.

T. SPECIAL RAPPOREUR ON THE RIGHTS TO WATER AND SANITATION

1. Visit to Peru. End of mission statement, 15 December 2022¹⁰³

My official visit to Peru took place in a context of political turmoil. In this statement, I seek to analyse the problems that undermine the human rights to water and sanitation, beyond the current situation, and that are the result of decades-long acts and omissions.

I thought I knew Peru's tremendous diversity. But this time I got to fully experience it. Its coastal strip is as rich in fish as it is desert and is where most of the population live. Its rugged mountain range where indigenous peoples and Andean peasant communities preserve ancestral cultures and take care of the rivers that serve as the lifeline of coastal cities. And its luxuriant Amazonian territory where water abounds, and indigenous peoples struggle to survive despite the oblivion of many and the greed of some.

From the experiences and testimonies gathered during these two weeks, I would like to highlight the eight major challenges that most concern me. These challenges are driven by two key facts:

- The criminal poisoning of water that undermines the health of ten million Peruvians and of future generations, especially that of indigenous peoples and peasants; and
- Peru's extreme vulnerability to climate change in terms of water and sanitation exacerbated by the prevailing extractive model.

[...]

Toxic water pollution. According to data provided by the Ministry of Health, more than ten million Peruvians (about 31.15% of the population) are ingesting toxics – such as arsenic and heavy metals – through the water they receive. Specifically, more than half

¹⁰³ In English: <https://www.ohchr.org/sites/default/files/documents/issues/water/statements/2022-12-14/2022-12-15-eom-statement-peru-sr-water-sanitation-en.pdf>.

of the population of Pasco, Puno, Amazonas, Callao, Madre de Dios, Moquegua, Cusco, Ucayali and 100% of the population of Lambayeque.

“No one warned us that the water was polluted. My son’s anaemia and health problems were explained when his blood tests showed high levels of heavy metals. Even though I boil and filter the water they serve us, I am always tormented by the thought of whether I’m poisoning my own son or not” a woman in Puno told me.

Our visit to the region of Cajamarca confirms how serious are the health effects of mining activities on the population. In addition to the severeness of the environmental damage, the drying up of lagoons, wetlands and springs, and the mortality and disappearance of fish species, the blood tests promoted by the municipality of Bambamarca are alarming. These tests reveal that 100% of Bambamarca’s inhabitants have heavy metals in their blood. In light of the inaction of the National Water Authority, which – denies the evidence of toxic contamination – the testimonies reveal the population’s distrust towards the relevant public institutions.

Both in Tumbes and Lake Titicaca, in Puno, the devastating impacts of mining pollution on public health also pressures and threaten the regional economy with the aggravating factor that these are transboundary ecosystems.

In Iquitos, the testimonies of the mothers of the communities and of the indigenous women regarding the toxic oil pollution impressed me. “I attend births in my community...” said Isabel “... and I have never seen so many abortions and children with malformations. Boys and girls die, but also mothers and fathers are leaving orphans behind. This is why we women have organized ourselves to defend the health of our children and our sacred rivers...” Another woman asked Father Miguel – the Bishop of Iquitos, who was seated discreetly at the back of the room – to speak. “Oil companies have earned 32 billion dollars from their exploitation activities and paid about two billion to the authorities of Loreto, yet the value of their impacts on the territory, as far as money can measure, already amounts to 12 billion” he stated.

Since 1997, over 1,000 oil spills have been registered in the country. Particularly, Amazonian waters, riverbeds and environments were seriously polluted and thus affecting its indigenous peoples. To date, adequate prevention and redress measures are not guaranteed for them. Once again, oil economic interests prevail over the human rights to water and sanitation and the rights of indigenous peoples as recognized internationally. In short, beyond the direct impacts, these spills have generated what can be characterized as a huge diffuse environmental liability in watercourses and water spaces in the Amazon. In 2021, 7668 environmental liabilities were identified in Peru. Ancash, Cajamarca, and Puno ranked as the most affected regions. According to the testimonies collected, considering the pace and effort made to remediate these liabilities, it would take more than a century to resolve this urgent situation which affects public health.

Third challenge: Combating social and territorial discrimination

Water and sanitation differ between urban and rural populations, and from region to region, leading to realities that are as unfair as they are paradoxical. For example, in the water-rich region of Loreto (the Amazon) barely 56% of the population has access to water through the public network, whilst in the province of Lima, on the desertic coast, 97% of the population has access to water through the network.

This dramatic paradox evidences the unjust marginalization of rural populations, particularly, that of indigenous peoples, who continue to migrate to big cities where irregular settlements and urban belts of misery are growing.

[...]

Fourth Challenge: Human rights to water and sanitation of indigenous peoples and peasant communities

I welcome the Peruvian state's efforts to provide a legal framework for the recognition and protection of indigenous peoples and peasant communities. However, I am concerned that the legislation does not acknowledge the control and management of their territories, including natural resources and water and is limited to property rights over land.

I have collected testimonies about the restrictions on the right to water and sanitation in the Amazon – where forests have been ceded in use to logging companies – and how the State uses free disposal and administrative expropriations to give in concession headwaters, marshlands, and wetlands of indigenous territories in the Andean region. In fact, in the words of indigenous leaders, these assignments of for use are like a 'system of dispossession.'

It is noteworthy that this situation occurs even though the country has made significant legislative progress in establishing the right of indigenous or aboriginal peoples to prior consultation. However, the testimonies I have gathered from indigenous organisations and individuals indicate that there is still a long way to go for its effective enforcement.

In fact, the information received indicates that they have not been consulted about extractive activities taking place within their territories and affecting their water sources nor about drinking water and sanitation projects in their territories. Furthermore, I am concerned about the repeated testimonies on the scarce intercultural approach and true dialogue with indigenous peoples. This makes me recall the words of a Kukama indigenous leader "water does not come from a pipe. It comes from freshwater springs" when she was explaining the relevance of the Marañon River, as a living being, for her people. Respecting the worldview of indigenous peoples should always come first.

PRELIMINARY RECOMMENDATIONS:

- The Ministry of Agrarian Development and Irrigation and the Regional Governments and the National Water Authority should guarantee the participation, the consultation, and the free, prior, and informed consent of the indigenous peoples before granting authorizations and permits and executing projects that may affect aquatic ecosystems in their territories.
- Ensure the effective and equal participation of indigenous peoples in watershed planning when the watershed exceed their territorial boundaries.
- Respect the governance mechanisms of indigenous peoples in the design and implementation of water and sanitation projects with the corresponding support of the State and respect for the timing of indigenous peoples.

[...]

Sixth challenge: Water and territory governance of the communities

Indigenous peoples and peasant communities have a rich community tradition for water and land management that is vital to guarantee the human rights to drinking water and sanitation in rural areas. Based on their history, prestige and formation,

Rondas Campesinas organized in the Central Única de 8 Rondas Campesinas (CUNARC) and their duties of imparting justice and resolving conflicts in their territories and communities were recognized and in Article 149 of the Peruvian Constitution and Law 27908 of 2002. However, their determination to oversee and have control over their territories to preserve the good condition of their ecosystems and particularly their bodies of water together with other social organizations – like the Environmental Defence Fronts – often comes into conflict with the interests of companies with mining, oil, or other resource exploitation concessions but without consultation or agreement with the affected communities.

On the other hand, JASS are community institutions that manage water and sanitation services in rural communities where the State does not reach. They often lack the necessary support from the State. Funding, which hardly ever reaches rural municipalities is usually allocated to main centres but not to the JASS in the communities under their purview.

In this context, the so-called Nucleos Ejecutores represent a decentralized option for financing projects that should strengthen the JASS. However, in addition to positive experiences, serious problems were identified with the indigenous peoples of the Amazon since their indigenous knowledge and practices were overlooked by the State during the groundwork of the projects, as well as their full sovereignty and responsibility in the design, development, and implementation of the projects.

PRELIMINARY RECOMMENDATIONS:

- Recognize the authority of indigenous authorities and community institutions – such as Rondas Campesinas – for the surveillance of their aquatic ecosystems to preserve their good condition and sustainability.
- Conduct a participatory evaluation of the executing units experience in rural areas considering the problems faced with indigenous peoples, especially in the Amazon, and ensure the acceptability of water and sanitation projects and the responsible appropriation of these projects by the communities.

2. Human rights to safe drinking water and sanitation of indigenous peoples, A/HRC/51/24, 27 June 2022¹⁰⁴

I. Introduction

1. Indigenous peoples have preserved much of the existing biodiversity and aquatic ecosystems and the quality of their waters in their ancestral territories for their own benefit as well as that of society at large. Moreover, their concept of water as a common good, available to all but not owned by anyone, offers a valuable example of community-based management of safe drinking water and sanitation.
2. Indigenous peoples can teach us lessons about how to tackle the global water crisis, both in terms of the sustainable management of aquatic ecosystems and the democratic governance of safe drinking water and sanitation.
3. Indigenous women have traditionally occupied the role of water caretakers, including rites and spiritual practices. Nevertheless, despite bearing the burden of carrying water for consumption, domestic use and sanitation, they are often sidelined in decision-making.

¹⁰⁴ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F24&Language=E&DeviceType=Desktop&LangRequested=False>.

4. In recent years indigenous peoples have achieved international recognition of their right to self-determination and to own and use their territories and resources, including waters and aquatic ecosystems. However, they face many problems and challenges in realizing these rights.
5. In some States, the lack of recognition of the existence of indigenous peoples as distinctive peoples jeopardizes their human rights. When formal recognition exists, it does not necessarily translate into respect for the worldviews of indigenous peoples nor effective control over their water sources.
6. As a consequence, land and water grabbing are ongoing in the territories of indigenous peoples, including through the construction of large hydroelectric dams and the growth of agribusiness, mining operations, deforestation and tourism developments, which ignore the rights of indigenous peoples and damage their sources of water, often with toxins.
7. Increasingly, there are cases of the criminalization of indigenous leaders that oppose such projects, often accompanied by threats, violence and the killing of indigenous leaders and environmental human rights defenders.
8. In order to guarantee compliance with the rights of indigenous peoples and effective control over their territories, their right to free, prior and informed consent should be implemented before any action that affects them, including actions that affect their water and aquatic ecosystems.
9. Enforcing this right is an obligation of all Governments, which must also effectively guarantee the right of indigenous peoples to oppose projects, the security of human rights defenders and leaders and adequate access to justice, remedy and compensation.
10. The right to self-determination also implies that indigenous peoples participate as equals with non-indigenous persons in the management of basins outside their territories that affect their water sources and in the planning and implementation of actions on climate change.
11. The present report focuses on indigenous peoples living in their own territories and on indigenous peoples who have been displaced and resettled in rural areas. It does not assess the situation of indigenous peoples who have migrated and live outside their communities.
12. Following the methodology of the sociologist Johan Galtung, inspired by health sciences, diagnosis, prognosis and treatment, the Special Rapporteur identifies: (a) the risks and violations of the human rights to safe drinking water and sanitation of indigenous peoples; and (b) the lessons that indigenous peoples have to offer from their worldviews, knowledge and practices in community-based water management.
13. In the preparation of the present thematic report, the Special Rapporteur consulted indigenous peoples and organizations, Governments and other stakeholders.

II. Water management from the worldviews and knowledge of indigenous peoples

A. Who are indigenous peoples and where do they live?

14. Indigenous peoples have been subjected to colonization and violent domination, entailing cultural extermination and forced integration into mainstream societies. As a result, many indigenous peoples have been displaced from their territories to areas that are often difficult to access, with fewer resources and harsh living conditions, where States do not, or are unwilling to, provide public services, particularly drinking water and sanitation.
15. The Special Rapporteur acknowledges that there is no single universally agreed definition of indigenous peoples and that the use of the term “indigenous peoples” remains contested in Asia and Africa. ... In this regard, in line with the United Nations Declaration on the Rights of Indigenous Peoples, the scope of the report is based on the self-identification of indigenous peoples.

[...]

B. Water, territory and respect for nature from the worldviews of indigenous peoples

18. The term indigenous peoples embodies their beliefs, languages, cultures and livelihoods and their intrinsic connection with traditional territories and ecosystems. Indigenous peoples, living within their territories, maintain and reinforce their ancestral traditions and their economic, social and cultural activities by exercising their right to self-determination. To ensure their survival, dignity and well-being and to exercise their inherent rights, indigenous peoples must own, conserve and manage their territories, lands and resources.
19. The Indigenous Peoples Kyoto Water Declaration, presented at the third World Water Forum in Kyoto, Japan, in 2003, conceives of water as a fundamental gift of Mother Earth and affirms responsibility to transgenerational stewardship. In the traditions of many indigenous peoples, water is life itself. Water is not considered or managed as a resource but is considered to be part of an interconnected whole that encompasses other natural resources and living beings, so that its management is based on an integrated territorial vision and on deep respect and care for rivers, springs, lakes and wetlands.
20. In Mexico, the Zapotecan people believe that water is life and that, to preserve life, they need to preserve their forests and territories. In the language of the Lakota nation in North America, “mni wiconi” means “water is life”. For the Saami people from Northern Europe and Siberia, access to and use of traditional lands and waters is a precondition for the development of their árbediehtu (traditional knowledge) and they are under an obligation to diligently manage those resources.
21. The Special Rapporteur is concerned about the approach that sees water as an economic good. In his view, water should not be parcelled out or appropriated as a resource to be extracted from nature. Instead, he advocates transitioning from a water resource-based approach to a new paradigm centred on an ecosystem-based approach to water management that promotes the sustainability of the water cycle. Indigenous peoples’ integrated vision of water, rivers, springs and wetlands is in line with this ecosystem approach and the consideration of water as a common good.

22. After centuries of caring for their rivers, wetlands, lakes and springs and managing water as a common good, indigenous peoples have been actively opposing the commodification and privatization of water for decades. Following the approach of indigenous peoples within the current complex environment where water is needed for multiple uses, sustainable water management requires planning and management at the basin level, which, in many cases, goes beyond the borders of the territories of many indigenous peoples. In this regard, the quality and the flow of all rivers in indigenous peoples' territories depend on how they are managed, both upstream and downstream, even beyond the territorial boundaries.

C. Self-determination, community-based water management and ancestral knowledge of indigenous peoples

23. In the worldviews of indigenous peoples, water belongs to everyone and should remain available to all, as a common good. For centuries, they have developed participatory, holistic, and sustainable community water management systems, providing water for drinking, spiritual ceremonies, cooking, washing, livestock and farming. For instance, the intersectional water management systems of indigenous peoples in Tonicapán, Sololá and Chimaltenango in Guatemala, which have similar decision-making mechanisms organized through community assemblies, share a vision of water as a sacred living being, including the people and forests in their territories. The Borana people, in Ethiopia, have a traditional system for the community management of water, known as Gedaa, based on a local governance system of well councils. As pastoralist people who move with their livestock, they have the right to obtain water from the nearest well by requesting permission from the relevant well council. Neighbouring communities work together to maintain their wells and approach the central Gedaa if a problem cannot be solved at the local level.

24. The Special Rapporteur observes that mainstream approaches to water management often dismiss indigenous peoples' water knowledge and management systems as unscientific or folkloric, disregarding the fact that their knowledge is based on empirical experience, resulting from living in their territories from generation to generation. For instance, the ancestral system of Waru Waru or camellones used in the Andean region (Ecuador, Peru and the Plurinational State of Bolivia) is a way to manage soil and water for agricultural purposes through the use of temporary flooding. The Konso people in southwest Ethiopia are considered to be world leaders in soil conservation practices: they terrace hillsides to retain and direct rainfall runoff and build sediment traps to prevent the clogging of strategically placed ponds where they store water in the rainy season. The Indigenous Observation Network, coordinated by the Yukon River Inter-Tribal Watershed Council and the United States Geological Survey, involves First Nation tribes in the Yukon and British Columbia in Canada and Alaskan native tribes in the United States of America. The Network develops community monitoring programmes to protect the waters and lands of their territories and to strengthen indigenous environmental governance: it is the largest indigenous water quality network in the world.

25. Indigenous peoples have long traditions of self-determination, decision-making and institutional autonomy, as recognized in the United Nations Declaration on the Rights of Indigenous Peoples (articles 3, 4 and 32 (para. 1)). A key element of the right of indigenous peoples to self-determination includes their right to be consulted on projects that may affect their lives and territories and to give or withhold their

free, prior and informed consent. In Mexico, in 2021, after a long negotiation, the Government recognized the role of the Coordinadora de pueblos unidos por el cuidado y defensa del agua (an organization formed by 16 indigenous peoples' communities in the central valleys of Oaxaca) as representing their rights to self-determination, autonomy and participation in the administration of an aquifer. The Government granted a concession title for the extraction of groundwater managed by the indigenous peoples' communities on the basis of their own laws.

26. In Malaysia, the state of Sabah recognizes the tagal system, a traditional community water management practice used by indigenous peoples for generations, based on conserving and protecting waterways and water sources in their territories to ensure clean and uncontaminated water.
27. The Special Rapporteur is of the opinion that self-determination and effective participation of indigenous peoples in the management of water in large territorial spaces, such as river basins or aquifers that extend beyond the boundaries of their territories, require their representation in corresponding decision-making bodies, on an equal footing with the non-indigenous populations involved.
28. Indigenous peoples, African descendants and other non-indigenous persons in the two Caribbean coast autonomous regions of Nicaragua have joint autonomy over the management of water. Water and sanitation committees promote equal governance over such services between indigenous peoples and non-indigenous persons. In New Zealand, the Government and the Ngāti Maniapoto Māori have secured co-governance agreements to co-manage the Waipā River.

D. Indigenous women and their relationship with water

29. In many indigenous cultures, the role of women as carriers and stewards of water is linked to their role as life-givers. They have a sacred mission to care for water for present and future generations. Water is therefore essential to the identity of indigenous women, their cultural traditions, spiritual practices, knowledge and wellness. For the First Nations, just as water from Mother Earth carries life to us, women carry life and water in their wombs during pregnancy.
30. Indigenous women and girls not only ensure the availability of quality water, they also play an essential role in spiritual ceremonies. They protect water bodies from pollution, care for the forests and plant trees, plants and herbs to maintain the ability of the soil to absorb and retain water. For instance, indigenous women of the Anmatyerre people in Australia organize camping trips to waterholes to transmit their knowledge on to young girls and to fence water points to prevent access by animals to protect water quality.
31. From its inception, indigenous women have been prominent in the Working Group on Indigenous Populations and actively participated in the formulation of the United Nations Declaration on the Rights of Indigenous Peoples, article 22 of which draws attention to their rights and special needs. Women's leadership in advocating for the human rights to safe drinking water and sanitation is also growing worldwide, including, for example, the case of the indigenous women of the Mazahua people. The women led the march to Mexico City to demand drinking water and sanitation in their home territories, from which area the Cutzamala water supply system transfers massive amounts of water to the capital. With overwhelming support from the population, an agreement was reached with the Government to build drinking water systems in the communities and to support community reforestation and wetland conservation projects.

III. State of realization of the human rights to safe drinking water and sanitation for indigenous peoples

A. Human rights to safe drinking water and sanitation in connection with indigenous peoples' rights

32. The human rights to safe drinking water and sanitation have been recognized by the General Assembly in its resolution 64/292, the Human Rights Council in its resolution 15/9 and the Committee on Economic, Social and Cultural Rights in its general comment No. 15. Furthermore, the Assembly, in its resolution 70/169, and the Council, in its resolution 33/10, have recognized that water and sanitation are distinct but interrelated human rights.
33. According to article 25 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to own, occupy and use lands, resources and waters in their territories, with legal recognition and due respect for their customs, traditions and land tenure systems. In addition, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) recognized, in articles 7, 13, 15.1 and 32, the rights of indigenous peoples to access natural resources, including water, and to decide their priorities in development processes, including respect for their spiritual and cultural values and their relationship with their lands.
34. When indigenous peoples claim sovereignty over their waters, they include the use of their rivers, wetlands, lakes and springs not only for safe drinking and domestic uses but also as sources of food, including for fishing, irrigation purposes or watering livestock. The so-called "Water War" involving the indigenous peoples around Cochabamba, Plurinational State of Bolivia, was triggered when a joint venture, Aguas del Tunari, informed them that all of the water coming down from the mountains, which they drank and used to irrigate their lands, would become the property of the company and that they would have to pay for it.

B. Availability

35. Until some decades ago, the availability of quality water in indigenous peoples' territories was preserved on the basis of their sustainable practices and was favoured by the difficult accessibility of their territories. However, the impact of extractivism on natural resources, jointly with climate change, has reversed this trend and many indigenous peoples no longer have access to safe drinking water under international human rights standards.
36. In Canada, First Nations peoples experience a disproportionately higher number of drinking water advisories, warning people to not drink water that may be unsafe or is known not to be safe, and more drinking water advisories are issued for extended periods of time than in communities of non-indigenous persons. In the United States, approximately 9.5 per cent of American Indian and Alaska native homes lack adequate sanitation facilities and 1.8 per cent lack access to a safe water supply and/or waste disposal facilities, in comparison to less than 1 per cent of homes in communities of non-indigenous persons. Available data for countries in Latin America reveal that 57.5 per cent of indigenous peoples' households in rural areas have a safe water supply and 24 per cent have sanitary facilities. In Southeast Asia, many indigenous peoples live in rural communities where they face challenges in accessing clean water and basic sanitation due to the impact of dams, mining and agribusiness.

C. Accessibility

37. Indigenous peoples' territories are usually located in the most disadvantaged areas in terms of access to infrastructure and services. Water sources are often far from where indigenous peoples live and water is generally taken directly from rivers, ponds, streams, wells or springs, many of which are contaminated with various toxins. Some indigenous peoples have water delivered to their houses through tubing, but in most cases it is untreated and the water is not safe to drink. There is a persistent failure by States to provide infrastructure, to maintain water and sanitation services and to control polluting factors particularly with regard to indigenous peoples forcibly displaced from their territories. For instance, many people from the Orang Asli community in Malaysia have been displaced and relocated to make way for economic development initiatives. Although they initially enjoyed acceptable living conditions, over time, the lack of maintenance of facilities and their limited capacities have led to the failure to ensure access to safe water and sanitation.
38. During consultations held in the lead-up to the present report, indigenous peoples indicated that when available water is polluted, reliance on bottled water, in addition to being expensive, poses serious problems for people with disabilities, the elderly, children and pregnant women. Moreover, extreme weather events, aggravated by climate change, hinder access to water sources. In terms of access to sanitation, many indigenous peoples still defecate in the open or use pit latrines, notwithstanding the human right to sanitation. Oftentimes, there are no drainage systems and septic tanks are not properly built and maintained, leading to contamination of the water sources from which they are supplied. Generally speaking, there is no system for the collection of wastewater, which is left untreated, and water points used for cooking are also where community members wash their hands.
39. In many cases, indigenous peoples in the Arctic collect their water themselves from lakes and rivers or receive unsafe water delivered by tanker truck. Furthermore, they must remove human waste in plastic containers, commonly called "honey buckets". Due to the difficulty in transporting water and limited storage capacity in households, indigenous peoples lack sufficient water to meet their needs.³² Partnerships between indigenous peoples, States, non-governmental organizations (NGOs) and research centres promote effective solutions to ensure access to safe drinking water and sanitation. The Alaska Native Tribal Health Consortium worked jointly with the Cold Climate Housing Research Center and the community of Kivalina to construct the portable alternative sanitation system pilot, which provides handwashing facilities using treated water, eliminating the use of honey buckets and reducing exposure to human waste.

D. Quality of drinking water

40. Indigenous peoples often consider the clear water of rivers, springs and wells to be safe for drinking because, traditionally, that has been the case. But this is no longer true, however, as external interventions are affecting water quality, requiring action by the State to prevent contamination and to ensure drinkability. The Special Rapporteur considers that the State must guarantee access to safe water, in consultation with indigenous peoples, including the provision of reliable information and guarantees of an intercultural approach. Poor water quality and lack of adequate sanitation affect the right to health of indigenous peoples, particularly women and children.

41. Organic or biological contamination can be treated, but toxic contamination can neither be purified by the usual means nor solved by chlorination. Pesticides and toxic discharges from mining, in addition to compromising the drinkability of water, have serious consequences, inter alia, for forestry, agriculture, livestock and fisheries, on which many indigenous peoples depend. For instance, in the United States, as a result of mining in the Black Hills, South Dakota, the ground water on the Pine Ridge Indian reservation has been polluted by mercury and other toxins.

E. Affordability

42. Globally, indigenous peoples represent 18.7 per cent of the extremely poor and around 33 per cent of those living in extreme poverty in rural areas. In such conditions, they often have difficulty in paying for water and sanitation or providing the necessary investment to ensure such services. Due to water scarcity, lack of infrastructure and/or unsafe water quality in their communities, indigenous peoples are faced with several options: paying for bottled water, which is unaffordable for many families; building wells and water supply networks, which are unaffordable investments for many communities; and boiling water, which takes time, especially for women, and incurs costs in electricity or for other fuels. In this context, indigenous peoples are often forced to rely on a supply of poor quality water through informal systems.

43. Indigenous peoples affirmed that water and sanitation programmes and infrastructures can fail due to a lack of funding, monitoring and maintenance. Programmes are usually limited to a certain period, with no sustainable strategy, and finish when funding is exhausted. Although some Governments provide subsidies to make water affordable, such programmes are often challenging for indigenous peoples to access. In Cambodia, the Government has provided wells to some indigenous peoples, although they are insufficient to meet their water needs. In addition, monitoring of water quality seems to be lacking, and while the technology used is new to indigenous peoples, there is a lack of financing to provide training to operate the technology adequately.

44. In the Marshall Islands, through a collaboration among universities, international cooperation and the Ailuk Ook local fisheries committee, an innovative low-cost and lowtech version of a solar-powered water distillation system has been developed. This is a positive initiative that provides affordable and effective solutions to ensure safe drinking water and sanitation.

F. Acceptability

45. The implementation of programmes related to safe drinking water and sanitation often fail due to the lack of an intercultural approach and respect for indigenous peoples' worldviews, practices, knowledge and traditional water management systems, resulting in their disinterest in such initiatives. Water and sanitation projects for remote rural areas are sometimes promoted without understanding the specific issues affecting indigenous peoples communities compared to communities of non-indigenous persons. It is essential to include intercultural dialogue in discussions on all water and sanitation projects.

46. The National Water Initiative in Australia includes social, spiritual and customary values that are essential to indigenous peoples in water planning by ensuring their effective participation in planning, policies and projects that affect them. Safe drinking water projects led by the World Bank in Chaco, Argentina, and in la Guajira, Colombia, have also benefited the Wichi and Qom peoples and the Wayuu people by reducing the time they spend in fetching water.

G. Role of the courts in ensuring access to bodies of water and safe drinking water

47. Indigenous peoples often resort to strategic litigation in national and international courts or to indigenous laws and institutions to realize their rights. In North America, this has brought about some level of recognition and different institutional and operational outcomes. Some notable examples include the Yinka Dene' Uza'hné (hereditary chiefs) of the Nadleh Wut'en and Stelat'en First Nation, which has developed its own water management policy and quality standards and successfully advocated for their implementation in their traditional territories. In 2021, the Government of Canada reached a settlement with First Nations communities on prolonged drinking-water advisories on their reserves across the country. The plaintiffs sought compensation for suffering from a lack of reliable access to clean water and a declaration that the Government must work with First Nations communities to provide access to clean water.
48. The Inter-American Court of Human Rights has issued landmark decisions favouring the Yakye Axa, Sawhoyamaxa and Xákmok kásek indigenous peoples, ordering the Government of Paraguay to provide a sufficient supply of drinking water and to build latrines while setting a minimum supply of drinking water per person. Meanwhile, in the case of the indigenous peoples of the Lhaka Honhat, the Court ordered Argentina to adopt measures to ensure the enjoyment of the right to water by guaranteeing permanent access to drinking water and ensuring the conservation of surface and/or groundwater in their territories. In 2012, the Court ruled against the Government of Ecuador for having granted an oil exploration and exploitation licence without the required prior consultation with the Kichwa indigenous people of Sarayaku.
49. The Special Rapporteur also acknowledges the importance of recognizing legal personhood by courts, governments and parliaments to rivers for the preservation of aquatic ecosystems in indigenous peoples' territories and ensuring their access to safe drinking water. Some emblematic cases are the Atrato River in Colombia, the Yarra River in Australia, the Turag River in Bangladesh, the Vilcabamba River in Ecuador, the Muteshekau Shipu (Magpie River) in Québec, Canada, and the Whanganui River in New Zealand. The Plurinational State of Bolivia legally recognizes Mother Earth and her rights as a collective subject of public interest.

IV. Constraints and failures in the fulfilment of the human rights to safe drinking water and sanitation of indigenous peoples

A. Lack of recognition of the existence of indigenous peoples and realization of their collective rights

50. The Special Rapporteur notes that the first barrier to indigenous peoples' access to water and sanitation is that several States, despite the solid international legal framework, do not recognize the existence of indigenous peoples within their national borders. The absence of adequate legal recognition allows States to take actions that disregard the practices and knowledge of indigenous peoples, including water management.
51. In addition to the formal recognition of indigenous peoples, recognition of their tenure over their territories and resources is an essential precondition in order to ensure that they conserve the ecologically stable conditions of water bodies in their territories and harvest and provide safe drinking water for their people, following

their traditional water management systems or to adopt other practices when they freely choose to do so.

B. Lack of respect of the right to free, prior and informed consent and participation in water and sanitation decision-making processes

52. During the consultations for the present report, indigenous peoples argued that they are barely consulted on policies and projects affecting their rights to safe drinking water and sanitation. They have been excluded from the decisions made by their respective States and are not included in discussions on finding solutions to their demands related to water and sanitation. Additionally, there is a lack of legal frameworks regulating the supply of drinking water and sanitation in their territories. Laws, regulations and programmes on drinking water and sanitation are embedded in dominant Euro-Western legal concepts and rarely adopt an indigenous approach that addresses their holistic relationship to water, land and natural resources. In that context, indigenous peoples are not allowed to challenge laws and policies or projects that seriously affect the safety of drinking water and sanitation.
53. Furthermore, indigenous peoples do not trust Governments and multisector organizations when participating in consultations because of a lack of transparency and the reluctance of Governments, companies and organizations to share reliable and complete information. In many circumstances, the relevant information is not translated into indigenous peoples' languages and technical information that is difficult to understand is not adequately explained to indigenous peoples. The right to free, prior and informed consent is often pursued through manipulative strategies, disregarding indigenous authorities and assembly processes. For instance, the Guji people living near the Lega Dembi gold mine in southern Ethiopia, who have experienced adverse impacts of large-scale mining on safe drinking water, have been denied their rights to free, prior and informed consent and access to information.
54. The Special Rapporteur is concerned about the processes of privatization of rural water and sanitation management, in particular in countries in Africa and Asia that do not recognize their indigenous peoples and where Governments negotiate with transnational corporations without mandatory prior consultation processes with affected communities and indigenous peoples.

[...]

V. Challenges faced by indigenous peoples in the context of the global water crisis

[...]

B. Land and water grabbing

63. Land grabbing is the large-scale acquisition or leasing of land, including water rights attached to that land, for wide-ranging farming and ranching, biofuel, mining and logging concessions or tourism facilities. These lands, which in many cases are part of indigenous territories, are de facto expropriated and sold or leased without the agreement of indigenous peoples, often under the pretext that the territories or their tenure are not legally registered. According to Oxfam data, between 2000 and 2011, land grabbing involved some 227 million hectares of indigenous territories. In 2022, a legal initiative in Brazil that attempted to allow the use of water resources in

indigenous peoples' territories for mining and hydropower initiatives raised alarms worldwide.

64. It is estimated that the crops of the total land grabbing imply a yearly consumption of about 450,000 cubic hectometres of water, seriously affecting the availability of drinking water for the indigenous peoples affected.

C. Protected and conservation areas and the human rights to water and sanitation of indigenous peoples

65. While the establishment of protected areas and national parks is aimed at safeguarding biodiversity and ecosystems, in several instances their establishment has had adverse effects on indigenous peoples. In 2016, the Special Rapporteur on the rights of indigenous peoples noted that indigenous peoples may lose their land, sacred sites, resources and livelihoods under agreements on environmental conservation that ignore their right to self-determination and their authorities, leading to forced displacement and land expropriation. For example, forced evictions of indigenous peoples in India were allegedly justified by asserting that the presence of human beings was harmful to tigers.
66. Similarly, the Special Rapporteur on human rights and the environment noted that the post-2020 global biodiversity framework draft, which aims to protect 30 per cent of land and waters by 2030, enhances the risk of violating indigenous peoples' rights owing, inter alia, to their absence in decision-making processes, with devastating impacts on their access to safe drinking water and sanitation once their effective participation is marginalized and their right to free, prior and informed consultation is ignored.
67. In the United Republic of Tanzania, thousands of indigenous Maasai pastoralists are at risk of being forcibly evicted from their traditional lands and their homes demolished in the Ngorongoro conservation area, which could result, among other serious impacts, in the loss of access to their traditional water sources both for human consumption and livestock.

D. Megaprojects and extractivism

68. In 2019, the former Special Rapporteur on the human rights to safe drinking water and sanitation noted that the socio-environmental collapse brought about by megaprojects often has a devastating effect on access to water and sanitation and essential livelihoods for many indigenous peoples. 88 In fact, activities such as mining, oil and gas extraction, hydropower projects, including and the construction of large dams, and logging, industrial fishing and farming, livestock grazing and tourist developments have come at a disproportionate cost to indigenous peoples.
69. Megaprojects and extractivist ventures are frequently accompanied by land grabbing, forced displacement, deforestation and degradation, impacting indigenous peoples' government systems, livelihoods, social cohesion and health. In arid and semi-arid territories, competition for water has led to the appropriation of rivers and springs traditionally used by indigenous peoples to develop irrigation schemes, generally headed by large landowners. Lakes, wetlands, aquifers, rivers, springs and streams that are water sources for indigenous peoples are often depleted or polluted by toxic residues from extractive industries or by pesticides from agribusinesses.

70. In Brazil, illegal mining activities and the associated mercury pollution and deforestation have threatened access to safe drinking water for the indigenous Munduruku people in the Tapajós River basin. In the Philippines, the Didipio River, contaminated by heavy metals, has affected indigenous peoples' access to safe drinking water and water for irrigation. In Colombia, the Wayuu people claim that they have been deprived of access to safe drinking water due to the deviation and pollution of water sources by a coal company. In the United States, a Lakota reservation in South Dakota has reported mercury levels in the public water supply eight times above the accepted limit as the result of mining activities. In Sonora, Mexico, as the result of large-scale irrigation and diversion for urban uses, the waters of the Yaqui River belonging to the Yaqui indigenous people have dried up: fortunately, after years of indigenous protests, the federal Government has initiated prospects for a negotiated solution.
71. Massive diversion of water or mining upstream can undermine the human rights of indigenous peoples, even if these activities originate outside their territory. Frequently, it is not only drinking water that is affected but also sources of food, including fishing, which is key to the diet and the economies of some indigenous peoples. For instance, in Guatemala, it is claimed that the chemical runoff from an oil palm plantation has polluted the San Roman River, the only water source for the Q'eqchi people who live in the area.
72. The Special Rapporteur considers that the responsibility to ensure respect for the rights of indigenous peoples by transnational corporations operating in indigenous territories extends beyond the Governments of the countries where such territories are located to include the responsibility of the Governments of the countries from which the corporations originate.

E. Criminalization, attacks and the killing of indigenous peoples

73. The Special Rapporteur on the rights of indigenous peoples has expressed concern about the alarming growth of criminal acts, including violence against and the killing of indigenous peoples defending their natural resources and territories worldwide.
74. In Honduras, in 2016, the indigenous woman defender of water and rivers, Berta Cáceres, was murdered for opposing the Agua Zarca dam. In Guatemala, 444 people, mostly women and children, were killed for opposing the construction of the Chixoy hydroelectric dam. The case, which was tried in the Inter-American Court, is of particular relevance to the rights of indigenous peoples. In Colombia, many indigenous leaders have been murdered, including Kimy Pernía of the Embera indigenous people, and threats against environmental human rights defenders are on the rise. In Brazil, measures adopted to address the coronavirus disease (COVID-19) pandemic that promote racial inequality and degrade indigenous rights have prompted the Inter-American Commission on Human Rights to call for specific protection measures for the Yanomami people. The killings and excessive use of force against indigenous peoples in the provinces of Papua and West Papua, Indonesia, have resulted in the displacement of over 5,000 indigenous Papuans, who face a lack of access to food, water and sanitation.

F. Impact on health

75. Illnesses caused by a lack of access to safe drinking water and sanitation continue to increase among indigenous peoples, particularly among children, including respiratory, skin, invasive bacterial and intestinal infections, dental diseases and

reproductive health problems such as miscarriages, stillbirths and congenital disabilities. In 2021, the Special Rapporteur reported that during the ongoing COVID-19 pandemic, the lack of essential health services and sanitation has increased the vulnerability of indigenous peoples. For the Inuit people, limited access to drinking water and rudimentary sanitation systems have contributed to a higher prevalence of infectious diseases and illnesses.¹⁰⁸

76. Because of poor access to piped drinking water, indoor sanitation facilities and trash collection services, indigenous children are more susceptible to being stunted or underweight.¹⁰⁹ In Brazil, about a quarter of indigenous children are at a greater risk of being affected by diarrhoea due to the unavailability of safe drinking water and adequate sanitation facilities.
77. Often times, as a result of water-related conflicts, mental and emotional health problems arise among indigenous peoples, and there are disproportionately higher suicide and depression rates among indigenous peoples worldwide compared to the non-indigenous population. Although researchers and policymakers seldom address such problems, for indigenous populations the destruction of their sacred rivers, lakes and springs and drinking water sources can induce depression and forms of solastalgia, post-traumatic stress disorder and feelings of loss of individual and collective identity and heritage.

VI. Conclusions

78. The Special Rapporteur observes with deep concern that indigenous peoples, as a result of multiple factors arising from colonization and decolonization processes, such as systemic discrimination, marginalization, expropriation and displacement, face increased barriers to their access to safe drinking water and sanitation regardless of their geographic location. The majority of representatives of indigenous peoples and indigenous organizations reported on the lack of infrastructure, inadequate or underfunding and lack of resources to support water management in indigenous peoples' territories.
79. It is paramount that States legally recognize the status of indigenous peoples and their rights to land, territory and resources, including aquatic ecosystems, as a precondition to ensuring the realization of their human rights to safe drinking water and sanitation. The situation of poverty and marginalization in which indigenous peoples have been forced to live increases the responsibility of States to provide indigenous peoples with the necessary means to guarantee those human rights through the exercise of their self-determination.
80. External factors, such as lack of recognition of their rights, the development of large-scale projects, lack of consultation and participation in decision-making, land and water-grabbing processes, climate change and even the criminalization of the claims of indigenous peoples hamper their rights to safe drinking water and sanitation worldwide.
81. Indigenous peoples are willing to exchange their knowledge and experience of water management practices and to work collectively with States and other stakeholders to provide access to safe drinking water and sanitation. However, collaborative dialogue and efforts must be carried out with mutual respect and must acknowledge the authority, knowledge and ways of life of indigenous peoples, who should be able to determine their priorities regarding the use and management of water, including their traditional practices and spiritual relationships with water, and the design and implementation of sanitation practices.

82. The worldviews of indigenous peoples, including in the management of aquatic ecosystems based on respect for nature, and their concept of water as a common good involving the community management of drinking water and sanitation, offer valuable lessons in the sustainable management of aquatic ecosystems and the democratic governance of drinking water and sanitation. These lessons should be recognized and valued as ways to resolve the challenges facing humanity in the present global water crisis.
83. Indigenous women have a responsibility to protect and care for water for present and future generations. Moreover, as in communities of non-indigenous persons, women often bear the burden of ensuring safe drinking water and sanitation although they frequently have little voice in decision-making about water and sanitation.

VII. Recommendations

84. In line with the United Nations Declaration on the Rights of Indigenous Peoples and the international human rights standards, the Special Rapporteur proposes the following framework to ensure the rights of indigenous peoples to safe drinking water and sanitation and recommends that all States implement it by:
 - (a) Recognizing in national legislation the existence of indigenous peoples within their borders and their collective rights to lands, territories and natural resources, including aquatic ecosystems, with legal communal ownership of the lands, resources and water rights of indigenous peoples in their territories, in accordance with current international agreements and bilateral treaties: this legislation must respect the worldviews, knowledge and customary laws and practices of indigenous peoples;
 - (b) Ensuring, in law, the right of indigenous peoples to consultation, including their right to free, prior and informed consent, when formulating, adopting, implementing and monitoring legislative and administrative measures, policies, programmes and projects involving their lands, territories, resources or aquatic ecosystems that may directly or indirectly affect their human rights to safe drinking water and sanitation, including the provision of information in their languages and culturally appropriate communication: States and stakeholders intervening in the territories of indigenous peoples should ensure their right to choose their own experts during such consultations and should respect the dynamics of participation organized by indigenous peoples, based on their right to self-determination and their representative institutions;
 - (c) Guaranteeing the human rights to safe drinking water and sanitation of indigenous peoples and establishing a minimum essential supply of safe drinking water for all, without discrimination, when extraordinary circumstances beyond their control, such as those resulting from extreme water-related events, endanger access to safe drinking water and sanitation;
 - (d) Recognizing and supporting indigenous peoples' concept of water as a common good and their community-based management systems of safe drinking water and sanitation in their territories, as well as their use of aquatic ecosystems based on their worldviews and ancestral practices and customs;
 - (e) Ensuring the effective participation of indigenous peoples in decisionmaking processes related to safe drinking water and sanitation at the local, national and international levels, in particular in designing and implementing plans

for the prevention, adaptation and management of water-related risks arising from climate change, including droughts, floods, melting glaciers and rising sea levels;

- (f) Ensuring the full and adequate participation of indigenous women in discussions and decision-making related to safe drinking water and sanitation at the local, national, regional and global levels, as well as ensuring their own spaces for A/HRC/51/24 19 deliberation and elaboration of proposals to strengthen their active participation, recognizing their involvement in drinking water and sanitation tasks and their ability to protect, manage and care for water;
- (g) Ensuring indigenous self-determination concerning watersheds and aquifers that are entirely within their territories, as well as the democratic governance of watersheds and aquifers shared with others, thus guaranteeing equal participation of indigenous peoples and non-indigenous persons: equal participation must also be guaranteed when decisions are taken on water sources, drinking water and sanitation that affect indigenous peoples;
- (h) Prioritizing indigenous peoples' territories in order to address the existing discrimination gap in water and sanitation and ensuring access to the necessary investments, means and measures to indigenous authorities so that they can guarantee their human rights to drinking water and sanitation: drinking water and sanitation programmes must respect the worldviews of indigenous peoples, take their socioeconomic conditions and technical capacity gaps into account, promote intercultural dialogue that enhances the engagement of indigenous peoples from the beginning of all negotiations and increases their autonomy over the management of their systems, including budget allocations for adequate training, technical support and maintenance;
- (i) Adopting policies, guidelines and protocols to effectively protect environmental human rights defenders in indigenous territories and ensuring access to justice and redress for indigenous peoples, particularly regarding their human rights to safe drinking water and sanitation;
- (j) Bringing possible violations of indigenous peoples' rights before the courts in the countries of origin of companies involved, in addition to national courts;
- (k) Promoting and supporting indigenous peoples' sovereignty through the collection and storage of data on access to safe drinking water and sanitation and by incorporating such information into official statistics.

85. The Special Rapporteur recommends that United Nations agencies, intergovernmental development organizations and international financial institutions:

- (a) Respect, support and monitor the effective exercise of indigenous peoples' rights to participation and to free, prior and informed consent in all programmes and projects related to safe drinking water and sanitation, as well as in all programmes and projects affecting their aquatic ecosystems;
- (b) Support, together with Governments, initiatives driven by indigenous peoples on documenting traditional knowledge and water management practices through the provision of funding and mechanisms to ensure that such traditional knowledge is not lost;
- (c) Advance the view that water and sanitation projects require a human rights-based approach to guide strategies, based on intercultural dialogue, respect for indigenous peoples' traditional knowledge and worldviews and the participation of indigenous women;

- (d) Establish an international protocol to follow up and monitor compliance with international agreements on indigenous rights in projects affecting their territories, with the participation of indigenous peoples themselves.
86. The Special Rapporteur recommends that companies and investors:
- (a) Publicly commit to the Guiding Principles on Business and Human Rights and carry out human rights due diligence in order to identify, prevent, mitigate and account for any adverse or potentially adverse impacts of their activities on the human rights of indigenous peoples;
 - (b) Conduct free, prior and informed processes to obtain the consent of indigenous peoples before carrying out activities in their territories, including the A/HRC/51/24 20 allocation of adequate resources for this purpose: the consent of indigenous peoples could include the sharing of benefits generated;
 - (c) Establish grievance mechanisms for individuals and communities who may be adversely impacted, based on engagement and dialogue with indigenous peoples, in line with the guiding principle 31, ensuring that mechanisms and remediation are culturally appropriate;
 - (d) Comply with internationally recognized human rights standards, including free, prior and informed consent, even in the absence of national legislation, as enshrined in the Guiding Principles;
 - (e) Make sure not to compromise the security of indigenous peoples and environmental human rights defenders in indigenous territories and hold themselves accountable under international human rights obligations if found to be doing so.
87. The Special Rapporteur recommends that academia and research centres:
- (a) Promote collaborative research with indigenous peoples, based on knowledge-sharing, build shared results and promote effective public policies for water and sanitation in their territories;
 - (b) Develop, in partnership with indigenous peoples, protocols that strengthen indigenous peoples' knowledge, methods of research and scientific knowledge construction to face extractivist interests.
88. The Special Rapporteur strongly recommends that all actors and stakeholders comply with the recommendations of the Permanent Forum on Indigenous Issues in implementing the United Nations Declaration on the Rights of Indigenous Peoples, in particular regarding their human rights to safe drinking water and sanitation.
89. The Special Rapporteur on the rights of indigenous peoples endorses the present report and its recommendations.

U. SPECIAL RAPPORTEUR ON TORTURE

1. Accountability for torture and other cruel, inhuman or degrading treatment or punishment, A/76/168, 16 July 2021¹⁰⁵

I. Introduction

1. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is universally recognized as absolute and non-derogable. Since the end of the Second World War, States have made unprecedented efforts towards establishing domestic and international normative and institutional frameworks for its practical implementation. Nevertheless, today torture and ill-treatment continue to be practised with almost complete impunity throughout the world, and victims of such abuse or their relatives rarely obtain the redress, reparation and rehabilitation to which they are entitled under international law.
2. The aim of securing accountability for torture and ill-treatment has been a critical motivation in the development of legal standards and institutional mechanisms for the effective implementation of the prohibition of torture and ill-treatment. In these efforts, accountability for torture and ill-treatment has been tied not only to punishment, redress and reparation, but also more broadly to ensuring justice, reconciliation and the rule of law, and preventing future violations. Furthermore, accountable institutions are intrinsically linked to the achievement of Sustainable Development Goal 16, aimed at creating transparent and inclusive societies where justice is accessible to all. Nonetheless, normative, institutional and procedural shortcomings, as well as systematic denial, deliberate obstruction and purposeful evasion of accountability, remain widespread globally and, in conjunction, maintain a structural “accountability gap” of systemic proportions.
3. In the vast majority of cases, those responsible for perpetrating, instigating, or consenting or acquiescing to torture or ill-treatment – whether States, their officials and agents, organizations, corporations or private individuals – are not being held to account. This creates a culture of impunity which severely undermines the effectiveness and credibility of States’ international commitments towards eradicating torture and ill-treatment. It also compounds the pain and suffering inflicted by torture and ill-treatment by proliferating and prolonging the trauma and injustice endured by individual victims and wider communities.
4. In the light of these sobering observations, and in line with the encouragement by the Human Rights Council to observe a victim-centred approach in the exercise of the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the present report examines questions relating to accountability for torture and ill-treatment. To inform work on the report, the Special Rapporteur conducted broad consultations with experts, States and other stakeholders, including through the circulation of a questionnaire. For the purposes of the report, accountability is understood in a broad sense:
 - (a) As referring to processes, mechanisms and other circumstances in which relevant stakeholders are called upon to account for their acts or omissions in respect of torture or ill-treatment and to face consequences and make amends for any violations, and through which victims of such abuse can obtain appropriate reparation, including redress and rehabilitation;

¹⁰⁵ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F168&Language=E&DeviceType=Desktop&LangRequested=False>.

- (b) As being not only reactive but also proactive, and not only corrective but also restorative;
 - (c) As taking many forms, from legal accountability to political and public forms of accountability, including the recognition that torture or ill-treatment occurred, assigning responsibility and providing acknowledgment and redress of the suffering and harm endured by victims;
 - (d) As pertaining not only to the accountability of individuals, but also to that of States, institutions, organizations and other collective or corporate entities that may commit or enable torture or ill-treatment.
5. The present report offers an overview of the most important legal and practical challenges conducive to the current systemic accountability gap for torture and ill-treatment, examines various functions and forms which accountability can take and, based on a clarified, consolidated and more comprehensive understanding of accountability, makes recommendations on measures that can be taken to improve worldwide accountability for torture or ill-treatment

[...]

IV. Accountability and reparation, including rehabilitation

44. Accountability for torture and ill-treatment requires processes and mechanisms to be available and effectively deployed to deliver, either individually or in combination, full reparation to victims of torture and ill-treatment. Full reparation is understood to encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. It should be emphasized that the reparations offered must be, and be implemented in a manner that is, gender-sensitive, and furthermore must take into account the race, ethnic, religious or indigenous background, social or migration status, sexuality, age or disability of the victim(s).

[...]

VI. Conclusions and recommendations

[...]

Full reparation, including rehabilitation

71. States should establish and implement accountability procedures that deliver, either individually or in combination, full reparation to victims of torture and ill-treatment, understood to include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Reparations programmes must be designed and implemented in consultation with victims and their representatives and must be, and be implemented in a manner that is, gender-sensitive, and furthermore take into account the race, ethnic, religious or indigenous background, social or migration status, sexuality, age or disability of the victim(s). Victims of torture or ill-treatment, and their families, must be provided with the means for as full a rehabilitation as possible at the earliest possible time within accountability proceedings.

V. SPECIAL RAPPORTEUR ON THE PROMOTION OF TRUTH, JUSTICE, REPARATION & GUARANTEES OF NON-RECURRENCE¹⁰⁶

1. Promotion of truth, justice, reparation and guarantees of non-recurrence, A/76/180, 19 July 2021¹⁰⁷

I. Introduction

1. The present report is submitted to the General Assembly by Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolution 45/10. The Special Rapporteur devotes the report to analysing the role of transitional justice measures in addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts. In preparing the report, three expert meetings and one open consultation were held with States, members of civil society, victims, experts and relevant stakeholders. The Special Rapporteur is grateful for the responses received.
2. The mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence includes “to study trends, developments and challenges, and to make recommendations thereon”. The search for truth, justice and reparation relating to colonial injustices is an ineluctable duty, posing inherent challenges that make it particularly apt for the involvement of the Special Rapporteur. Prior to the presentation of this report, the Special Rapporteur addressed the issue in his communications with States.

[...]

II. Need to examine gross human rights violations committed during colonial times

4. Given the lack of effective response to violations of human rights and international humanitarian law stemming from colonialism and the realization that those violations continue to have negative effects today, it is important to emphasize that the components and tools developed by transitional justice over the past 40 years offer lessons and experiences that could be useful in responding to the legacy of these violations and in some cases are already being put into effect.
5. One criticism that has been levelled at transitional justice pertains to the limits that it has imposed on itself in dealing only with the consequences, namely, the violations of rights to life and bodily integrity, and not the root causes of conflict, such as structural violence and systematic exclusion in the economic, political and social spheres. In short, critics have argued that transitional justice has not sufficiently addressed underlying structural inequalities and historical grievances.
6. Nonetheless, transitional justice offers a privileged vantage point from which to address the deeper causes of colonial violence, through the establishment of its own mechanisms, namely truth commissions with a holistic mandate to address the colonial past and violations of civil, cultural, economic, political and social rights; reparation programmes that remedy the structural inequalities suffered in particular by the victims; public apologies that restore the dignity of the victims;

¹⁰⁶ <https://www.ohchr.org/en/special-procedures/sr-truth-justice-reparation-and-non-recurrence>.

¹⁰⁷ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2F76%2F180&Language=E&DeviceType=Desktop&LangRequested=False>.

memorialization and education measures that comprehensively address the patterns, causes and consequences of rights violations; and guarantees of non-recurrence that change the cultural and institutional standards, structures and processes that perpetuate discrimination, racism and the exclusion of affected populations. The adoption across the board of inclusive mechanisms with the strong and active participation of victims empowers affected populations and provides legitimacy and sustainability to efforts to address the legacy of colonialism and, ultimately, to achieve reconciliation.

7. The Special Rapporteur emphasizes that, for transitional justice processes to be holistic and appropriately comprehensive, it is imperative to include the study of the colonial legacy, where appropriate.

III. Colonial contexts and challenges to transitional justice

8. The report examines the legacy of rights violations resulting from colonialism in the following contexts:
 - (a) Settler States and other contexts of dispossession and oppression of indigenous peoples and people of African descent;
 - (b) Former colonies that are now independent States. These contexts have a common denominator: those rights violations have clear direct and indirect consequences today.

A. Settler States and other contexts of dispossession and oppression of indigenous peoples and people of African descent

9. In these cases, the settlers who arrived in new territories and settled in them appropriated the land and resources of the original peoples; displacing and dispossessing them. In many cases, the indigenous populations were extraordinarily reduced as a result of disease – mostly caused by dispossession – and massacres, some of which amounted to genocide. In turn, there was what might be termed a “cultural logic of elimination” in support of settler hegemony, which included invasion and dispossession, incarceration in reservations or missions, and assimilation programmes that took on brutal and inhumane characteristics.
10. In these contexts, the impact of colonialism remains evident in the overrepresentation of indigenous people in detention, the distrust harboured by indigenous people for the police, the general social disadvantages experienced by these people and the lack of any official and comprehensive commitment fully to redress the abuses suffered by them. Colonialism resulted in a State that perpetuated it through a legal, institutional and cultural apparatus that subjected colonized populations to discrimination, assimilation, criminalization and, in some cases, violence; and denied them basic rights such as ownership of ancestral lands and resources, and access to justice, health, education and economic opportunities.
11. When the transition processes adopted in these contexts do not seek to reverse the situation of domination still suffered by the colonized peoples, they are bound to fail. Components of transitional justice may, however, offer important contributions in this regard, such as establishing the facts and conditions that made such rights violations possible; the acknowledgement of responsibility and public apology; individual and collective action; the memorialization and restoration of the dignity of the victims; and the inclusion in various educational curricula of an accurate account of the rights violations committed.

12. Among the components that can bring about the most extensive changes in these contexts are guarantees of non-recurrence, insofar as they make it possible to identify and reform the oppressive standards and structures of the State, and also the material and ideological conditions that maintain the structural injustices suffered by indigenous peoples.
13. Some mechanisms adopted in these contexts that we now associate with transitional justice were established years ago, such as the Waitangi tribunals in New Zealand, set up in 1975, which provide truth-telling measures, reparations, and other responses to gross human rights violations. More recently, transitional justice mechanisms to address the colonial legacy have been developed in Australia, Belgium, Canada, Greenland, Norway and Sweden, among other countries.
14. Other contexts that may be mentioned in this section include those in which the settlers arrived in territories and displaced the original peoples, yet these original peoples continue to constitute a high percentage of the total population, as is the case in some Latin American countries, the occupied Palestinian territories, the Western Sahara and the island of Okinawa, where the majority of the inhabitants are Ryukyuan or Okinawan, although Japan does not recognize them as indigenous groups.

[...]

V. Components of transitional justice in addressing human rights violations arising from colonial and historical injustices

[...]

B. Truth

38. Other truth commissions have begun to study the colonial past and its impact on the present. The Mauritius Truth and Justice Commission (2009–2011) examined the impact of the legacy of slavery from 1638 onwards, including the various colonial periods. The Tunisian Truth and Dignity Commission included the pre-independence period in its mandate. The Truth and Reconciliation Commission of the Republic of Korea examined the period 1905–2005. The Commission for the Clarification of the Truth, Coexistence and Non-Repetition in Colombia seeks to clarify the origins of the conflict, including the experiences of indigenous communities. The mandate of the Truth and Reconciliation Commission in Burundi was extended to investigate colonial crimes committed since 1885.

[...]

40. Besides the processes adopted in some classic transitional contexts, truth commissions have been established with the explicit aim of addressing the colonial legacy suffered by indigenous peoples in settler States and former colonizing Powers.
41. Canada saw the establishment of the Royal Commission on the Peoples of Canada (1991–1996), which investigated the period 1500–1996; the Truth and Reconciliation Commission of Canada (2009–2015), which examined human rights violations that occurred in indigenous residential schools over the period 1874–1996; and the National Inquiry into Missing and Murdered Indigenous Women and Girls (2016–2019). In Australia, the Human Rights and Equal Opportunity Commission and the Yoo-rook Justice Commission were established, the former to investigate the separation of Aboriginal and Torres Strait Islander children from their families

(1995 – 1997), and the latter to examine the impact of European colonization on the Aboriginal communities of Victoria State (2021 to date).

42. In Scandinavia, mechanisms were established to investigate the policies of dispossession and assimilation suffered by indigenous peoples, such as the Greenlandic Reconciliation Commission (2014–2017); the Commission to Investigate the Norwegianization Policy and Injustice against the Sámi and Kven/Norwegian Finnish Peoples (2018 to date); and the Truth and Reconciliation Commission for the Tornedalians, Kvens and Lantalaïset in Sweden (2020 to date); there are also plans to set up a truth commission for the Saami community in Sweden and a truth and reconciliation commission for the Saami peoples in Finland.

[...]

44. Nations that have gained independence must also adopt truth-seeking initiatives. In 2019, the Kenyan National Land Commission determined, for example, that the Kipsigis and Talai peoples had been victims of historical land injustices perpetrated during the colonial period and adopted recommendations addressed to the Government of the United Kingdom, the Government of Kenya and transnational corporations that maintain ownership of land expropriated from these victims. In the Niger, no formal truth-seeking initiatives about the colonial past have been established, despite the fact that, for generations, affected communities have been conducting informal community-based investigations.
45. A truth commission to consider rights violations stemming from a colonial past or slavery must be set up to establish a proper factual account of the violations committed, the resulting patterns of conduct and the power structures involved, and also the way in which colonial practices, standards and processes still have repercussions, or even continue, today.
46. If the colonial legacy is to be satisfactorily addressed, truth commissions should prioritize facts that reveal connections between past violations with implications for present events (such as current economic and social injustices and outstanding grievances or claims). If this connection is not established, the truth-seeking exercise could lose political and historical credibility. This is no easy matter, as there can often be a chain of events that stretches over decades or centuries and facts that, by their nature, are subject to different interpretations; for that reason, serious and detailed studies must be carried out.
47. The National Inquiry into Missing and Murdered Indigenous Women and Girls in Canada was able to address historical grievances against indigenous peoples, and to situate contemporary physical violence against indigenous women and girls in the broader context of colonial harm.
48. A thorough search for the truth may also require forensic investigation, as in the case of the lawsuits brought by indigenous peoples in Canada following the discovery of mass graves of hundreds of children on the grounds of former boarding schools for indigenous children.
49. At the same time, it is necessary to examine the reasons and ways in which policies of discrimination, oppression, dispossession and marginalization of indigenous populations and of people of African descent were instituted, along with the mechanisms facilitating their perpetuation. In the case of the former independent colonies, although the power structures were reformed at independence, it is important to analyse whether there was any continued application of some of these policies and how they subsequently influenced the emergence of conflicts

and human rights violations. In a number of cases, the marginalization of victimized communities continued after independence.

50. The full participation of affected communities is essential to the success of truth commissions and the sustainability of transitional justice processes that address colonial legacies, from the design of these processes to the monitoring of their effective implementation. Belgian civil society and the diaspora of the former colonies concerned were not involved in the formation of the commission set up to examine the country's colonial past.
51. The Yoo-rrook Justice Commission provides a positive example of a broad approach and the involvement of affected communities. Four of its five members are indigenous people from Victoria, three of them – including its Chair – women. Created after years of activism by indigenous communities, the Commission will investigate historical systematic injustices committed against Aboriginal Victorians since colonization (such as the destruction of cultural heritage, massacres, wars and forced removal of children), and current systematic injustices (including problems with the police, criminalization – including of young people – and the lack of child protection, health and health care). The Commission will determine how to recognize and redress historical injustices in an effective, just and culturally appropriate manner.
52. In order to ensure access to information and facilitate fact-finding, settler States, former colonial Powers and nations that have gained independence should cooperate fully and in good faith with the work of truth commissions by providing unrestricted access to the necessary information and archives. In former colonizing Powers such as Belgium and the United Kingdom, among others, there have been problems gaining access to archives. It is also important that the Holy See should cooperate in affording access to archives under its authority that may shed light on the pattern of rights violations committed in Catholic institutions established in certain colonial contexts.
53. There is widespread denial of the heinous crimes committed during colonialism. The search for truth and its publication and dissemination constitute a vital tool in efforts to combat such denialism.
54. The Special Rapporteur recalls that truth, albeit an indispensable component, is not the end point of the transitional justice process; victims often have a legitimate expectation that the revelation of the truth will lead to other necessary responses. Transitional justice, through its multiple components and holistic approach, can respond to those expectations. Such remedies must be provided without excuses in order to strengthen the peacebuilding process.

C. Reparation

55. Reparations are a component of transitional justice that, from its inception, seeks to benefit victims directly. For a measure to count as reparation, it must be accompanied by recognition of responsibility, be aimed at remedying the harm suffered by the victims and be linked specifically to truth, justice and guarantees of non-recurrence.

[...]

Restitution

63. The restitution of land expropriated from colonized populations is a central issue in the demands for reparations for the victims of colonialism. Both in countries where the settlers continued to settle on the occupied lands and in those where the majority of the settlers withdrew from the colony after losing wars of independence, the colonized peoples who had been expelled from their ancestral lands did not recover them. Instead, these lands remained for decades and centuries in the hands of settler governments, people involved in killings or the dispossession of indigenous lands, and even in the hands of transnational corporations. For their part, communities dispossessed of their ancestral lands and natural resources have seen their livelihoods, jobs, subsistence, basic services, cultural roots and social cohesion taken away and have been plunged for generations into poverty and exclusion.

[...]

67. The restitution of the plundered cultural heritage of indigenous peoples, such as artefacts, monuments and archaeological remains, represents another indispensable and still outstanding element of reparations in post-colonial settings and in settler States. For example, the people of Okinawa are demanding the return of 26 human skeletons extracted from graves in 1928 and 1929 and taken to Japan. The United Nations Declaration on the Rights of Indigenous Peoples stipulates that States shall endeavour to facilitate the obligation to “enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.”

68. New Zealand is actively seeking the return of human remains removed from the country during its colonial period through the Protected Objects Act 1975. The Karanga Aotearoa Repatriation Programme at Te Papa has made it possible to recover Maori remains from over 40 museums around the world. The Government of Australia and its museums have developed agreements and programmes with other countries to facilitate the return of archaeological remains. The United States enacted the Native American Graves Protection and Repatriation Act (NAGPRA) in 1990.

69. Worrying manifestations of institutional and legal reticence and impediments to repatriation have been identified in several European countries. Recently, however, a collection of Aboriginal remains discovered at the University of Birmingham and the Birmingham Museum and Art Gallery were returned to their traditional owners in Australia. Germany will start returning the Benin Bronzes to Nigeria from 2022, as announced by the ministries of culture and foreign affairs of the two countries in April 2021. A number of Swiss museums have faced restitution claims for colonial artefacts. Eight Swiss museums have joined forces in the “Benin Switzerland Initiative”, with a view to stepping up research into the provenance of their bronzes and engaging in dialogue with Nigeria. Sweden has concluded an agreement with the Yaqui Pueblo in Mexico to initiate a process of repatriation of the Maaso Kova and other items in the Yaqui Collection.

[...]

Satisfaction

73. In 2008, 2017 and 2020, the Government of Canada apologized to the indigenous peoples for the role played by Canada in the indigenous residential schools. The Government of Belgium apologized for the mistakes made by Belgium during the colonial period that had contributed to the genocide of the Tutsis in 1994, for the kidnapping of thousands of mixed-race children from the Congo between 1959 and 1962, and for the role played by Belgium in the assassination of Patrice Lumumba; these apologies were not accompanied by reparations, however, and were considered insufficient by some communities. The Australian Government apologized in 2008 for systemic oppression and racism practised against Aboriginal Australians, in particular those known as the “Stolen Generations”. The King of the Netherlands apologized to Indonesia in March 2020 for political violence administered during colonial rule. The United Kingdom offered an apology to Kenya as part of the settlement reached with a victims’ group. The Government of Mexico offered apologies to the Mayan people for abuses committed during colonial rule and after independence, and requested the same from the Government of Spain and the Holy See, but the Mayan communities rejected the apologies for not having included reparations. Germany offered apologies in the context of the agreement reached with Namibia, although representatives of the Nama and Herero communities criticized the process.

[...]

D. Memorialization

77. Beyond the adoption of measures to memorialize rights violations, it is also important to review the way in which colonialism is commemorated, in particular in settler States. In many of these countries, ceremonies offensive to indigenous peoples continue to be celebrated, such as Australia Day, commemorating Captain Cook’s landing; or the “Day of the Race” or “Discovery of America Day” in several Latin American countries. State initiatives have been mounted, however, that seek to expiate this wrong. For example, in Australia, National Sorry Day is celebrated every 26 May to remember and commemorate the mistreatment of indigenous peoples.

[...]

79. In memorialization processes, the participation of victims is of critical importance. Furthermore, while some of these processes may have been undertaken on the initiative of the victims or their families, they should be officially promoted and supported. In the United States, the most important memorialization processes concerning the harm suffered by the Lipan Apache community have emerged from civil society.

[...]

E. Guarantees of non-recurrence

[...]

82. State standards, institutions and processes are determinants in the treatment of indigenous peoples in settler States. In many cases, the State apparatus actually perpetuates racism and the exclusion of these peoples and denies them rights such as access to justice, education or health and ownership of ancestral lands, among others.

83. The need for reform of the security apparatus and the judiciary lies at the root of the demands of communities affected by colonialism, both indigenous and of African descent, in view of the treatment and violence that they receive at the hands of the former, and the criminalization that is inflicted on them by the latter. In the United States, the Black Lives Matter movement is calling for pending reforms and the passage of the Breathe Act, which proposes that taxpayer money be used to invest in alternative community-based approaches to public safety.

[...]

85. Legislative and institutional reforms that guarantee the effective enjoyment of the human rights of indigenous peoples and former colonized peoples, without discrimination, and favour their empowerment are State obligations and essential guarantees of non-recurrence. This purpose is also served by the promulgation of treaties with these peoples, recognizing their existence and the dispossession that they have suffered. In Australia, the absence of a treaty is evidence of the insufficient engagement and relationship between indigenous and non-indigenous Australians. It is a positive development that the Government of Victoria and the indigenous peoples of that State are currently developing a treaty that seeks to improve legal protections, strengthen the rights of Aboriginal peoples in Victoria and facilitate the transfer of authority and resources.

86. Another important measure is the inclusion of information on the legacy of colonialism in curricula and educational material at all levels to ensure that society and future generations are aware of that past. It is also important to protect and ensure access to the cultural heritage of indigenous or formerly colonized peoples, including their narratives of violence suffered. For communities that have endured and survived gross and systematic human rights violations (genocide, apartheid, crimes against humanity), these experiences are often a crucial part of their history, culture and identity. International human rights law obliges States to protect a community's right to its cultural heritage and to ensure that educational materials provide a fair, accurate and informative picture of indigenous peoples' societies and cultures.

87. In Canada, recommendations in the 2015 final report of the Truth and Reconciliation Commission led to the inclusion of the history of the indigenous residential schools in educational curricula. In Belgium, the legislation establishing the Special Commission on the colonial past provides for an examination of the extent to which the colonial past is reflected in educational syllabuses.

F. Participation of victims

88. Besides the applicability of the components of the analytical framework of transitional justice to the violations examined in this report, this framework offers important lessons about the need to place victims and communities at the centre of its processes, as subjects and rights-holders.

89. Effective participation of victims and communities is not “only” a political issue, but also a human rights issue. International human rights law recognizes the right of persons directly affected by decision-making to participate in and be consulted on the process, by virtue of the rights to take part in the conduct of public affairs and to equal participation in cultural life, and also the right to an education that enables effective participation in society. The right of indigenous peoples to adequate participation and the collective human rights to free, prior and informed consent and to freely elect representatives of a group are enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

90. The adoption of a top-down approach in decisions on measures to address colonial legacy falls short of the standards set by current international law. On the contrary, that law requires States to actively seek the participation of representatives of affected communities and their free, prior and informed consent. In addition, the importance of consulting the victims entails the need to listen to and seriously analyse colonial grievances, in order to understand perceptions in the affected country. This requires a reflective and systematic presence on the part of those who listen and engage with the facts. The same criteria for participation in the negotiation of agreements apply to implementation of the agreed measures. It is important that civil society stakeholders and, in particular, affected communities, including those in the diaspora, are properly engaged.

[...]

V. Conclusions

[...]

100. The responsibilities and expectations relating to efforts to address the legacy of violations of human rights and international humanitarian law in colonial settings through measures of truth, justice, reparation, memorialization and guarantees of non-recurrence differ among those States that were colonizing Powers, those that were colonies and are now independent nations, and those where the colonization of indigenous peoples and the oppression of people of African descent persist in different forms. As the Special Rapporteur details below, however, in all cases the authorities must take appropriate measures tailored to their specific contexts and responsibilities to respond promptly and effectively to the long-standing grievances of victims and affected communities.

VI. Recommendations

101. The Special Rapporteur offers the following recommendations on the adoption of transitional justice mechanisms designed to address the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts.

[...]

Truth

103. The former colonizing Powers, States in which the colonization of indigenous peoples and the oppression of people of African descent persist in various forms, and former colonies that have gained independence must establish mechanisms for investigation and truth-seeking within their areas of competence and jurisdiction in order to shed light on colonial violence and on the oppression, racism, discrimination and exclusion that affect those peoples today.

[...]

Reparation

107. States that were colonizing Powers and States where the colonization of indigenous peoples and the oppression of people of African descent persists in various forms should consider mechanisms to redress the harm caused to victims and affected communities. Such reparations, whether individual or collective, should aim to be comprehensive and include the following:

- (a) Satisfaction, including restoration of the victims' dignity, recognition of the harm caused and the responsibilities involved, the dissemination of information in this regard, and the issuance of public apologies that meet the requirements set out in the Special Rapporteur's previous report to the General Assembly (A/74/147);
- (b) Restitution of lands and natural resources, through mechanisms for the return of usurped lands, and/or the granting of other lands agreed upon with the affected persons and communities, including through land reform mechanisms that make it possible to overcome inequality in access to lands and natural resources; and the restitution of cultural heritage and archaeological remains;
- (c) Compensation, including sums of financial compensation that are considered adequate and commensurate with the harm suffered by the victims, and to which they have agreed;
- (d) Physical and psychosocial rehabilitation and access to essential rights, infrastructure and services that ensure a dignified life, including housing, health, education and access to water and sanitation.

[...]

Guarantees of non-recurrence

- 111. States in which the colonization of indigenous peoples and the oppression of people of African descent persist in various forms must identify and reform State standards, structures and processes that perpetuate the oppression, the violence, the exclusion and the racism that affect those peoples. They must also identify and reform the concomitant material, cultural and ideological conditions, including the revision of curricula.

W. SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

1. Addressing the gender dimensions of trafficking in persons in the context of climate change, displacement and disaster risk reduction, A/77/170, 15 July 2022¹⁰⁸

I. Introduction

- 1. Submissions received by the Special Rapporteur on trafficking in persons, especially women and children, in preparing this report, and consultations with communities affected by the devastating impact of climate change, bring into sharp relief the urgency of addressing the serious human rights violations that are occurring and likely to increase as a consequence of climate change. These human rights violations include increased risks of trafficking in persons, particularly in the context of climate-related displacement and migration and climate-related disasters. ... Similarly, law and policy reforms that are based in international human rights law and are effective in preventing trafficking in persons must be incorporated into responses to the climate crisis and measures to ensure just transitions.

[...]

¹⁰⁸ <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F170&Language=E&DeviceType=Desktop&LangRequested=False>.

31. The Special Rapporteur also highlights and agrees with the resolution adopted by the Working Group on Children's Rights and Climate Change of the African Committee of Experts on the Rights and Welfare of the Child, in which the Working Group calls upon States to "incorporate a child-rights-based approach to climate action, ensuring that the specific risks faced by children are taken into account in the development and implementation of climate policies and programmes, paying particular attention to the needs of those children who are most vulnerable to the effects of climate change, such as girls, indigenous groups and children with disabilities".

VIII. Intersectional approaches to trafficking in persons in the context of climate change

33. The Special Rapporteur stresses the necessity of recognizing the intersections of discrimination and exclusion that exacerbate the negative impact of climate change. Specific groups experiencing both intersectional discrimination and heightened risks of trafficking in the context of climate change include, among others, indigenous women... African descent. Indigenous women and girls are at increased risks of trafficking arising from climate-related disasters and displacement.

XI. Rights of indigenous peoples

37. The Special Rapporteur is concerned that, as a result of climate change, indigenous peoples may be forced to migrate or may be forcibly displaced, in precarious conditions, thus becoming at risk from forms of exploitation that include debt bondage, domestic servitude, forced labour and trafficking in persons.
38. The combined impacts of dependency on natural resources, climate change and environmental degradation (including loss of biodiversity) are increasingly forcing indigenous peoples to seek alternative sources of livelihoods. In the context of climate-related displacement or migration, indigenous peoples are at increased risk of exploitation, owing to discrimination and other social, economic and environmental risks, as compared to other groups. They may face multiple and intersecting forms of discrimination as both migrants and as indigenous peoples. Limited regular migration opportunities and more limited access to information and opportunities for safe, regular migration, particularly in the context of sudden-onset disasters, may increase the risks of exploitation. Discrimination may limit access to planned relocation or resettlement opportunities.
39. In the consultations for this report, one example given of increased risks of trafficking in persons for indigenous peoples is that of the Sundarbans region of West Bengal, where climate change is having a negative impact and there is a high incidence of trafficking in persons, with indigenous peoples recognized as being particularly at risk. In its gender strategy and action plan for the period 2019–2023, the Indigenous Peoples of Africa Coordinating Committee highlights the gendered impact of climate change on indigenous women arising from structured inequalities in control over natural resources and land use and tenure, as well as caring roles and household management. The Special Rapporteur also highlights the particular risks faced by indigenous children, including in situations arising from actions taken to mitigate climate change. Projects related to the production of biofuel or hydroelectric power, for example, have on some occasions resulted in the displacement of indigenous communities, including children, without their free, prior and informed consent.

40. The Special Rapporteur recalls that, in its general recommendation No. 34 (2016), the Committee on the Elimination of Discrimination against Women underscores the importance of indigenous women's rights to land and collective ownership, natural resources, water, seeds, forests and fisheries (CEDAW/C/GC/34, para. 56). The Committee, in its draft general recommendation on indigenous women, points out that the lack of harmonization of laws and their ineffective implementation at the national and local levels hinder the effective implementation of those rights, increasing the risks of exploitation of indigenous women.

XII. Climate change, business and human rights

41. The Special Rapporteur highlights that the sectors recognized as having a negative impact on climate change and causing environmental degradation and loss of biodiversity are also high-risk sectors where trafficking for the purposes of forced labour and other forms of exploitation frequently occur. The importance of taking decent work into account in action to combat climate change, in order to ensure just transitions and sustainable development, is explicitly highlighted in paragraph 85 of the Glasgow Climate Pact. Much work remains to be done to achieve this objective. The Special Rapporteur stresses the continuing reliance on the exploited labour of victims of trafficking in sectors that, owing to limited regulation and intensive and often violent working conditions, have a negative impact on climate change.

[...]

45. Concerns have also been expressed by civil society in relation to the trafficking of children for purposes of forced labour in cobalt mines linked to extractive industries developing new green technologies. 80 The Human Rights Council, in paragraph 9 of its resolution 45/20 on the situation of human rights in the Bolivarian Republic of Venezuela, expressed, "deep concern at the human rights and environmental situation in the Arco Minero del Orinoco region, which is the site of labour exploitation of miners, including child labour, trafficking in persons and forced prostitution, and expresses particular concern about the violations of the rights of indigenous peoples in the region".

[...]

XVIII. Recommendations

[...]

64. States must ensure that climate policies, including those on adaptation, mitigation and financing, address the rights of persons at risk of trafficking in the context of climate change, ensuring gender equality, the rights of the child, the rights of persons with disabilities, the rights of indigenous peoples, non-discrimination and racial justice.

66. States should ensure protection of livelihoods and provide meaningful alternatives in the face of environmental degradation, including by taking steps to transform systems of production and consumption in order to create a more sustainable relationship with nature. States must ensure effective protection of the rights of indigenous peoples, who are particularly affected by climate change and increased risks of exploitation, and fully implement the United Nations Declaration on the Rights of Indigenous Peoples.

2. Trafficking in persons in the agriculture sector: human rights due diligence and sustainable development, A/HRC/50/33, 25 April 2022¹⁰⁹

I. Introduction

1. The agriculture sector employs an estimated 28 per cent of the total labour force globally, and employs an estimated 60 per cent of the labour force in low-income countries. Practices of exceptionalism remain widespread within the agriculture sector, limiting the rights of workers to freedom of association and collective organizing as well as respect for labour rights. The agricultural sector is characterized by high levels of informal employment, increasing risks of exploitation. Human rights defenders, workers' associations and committees, non-governmental organizations and trade unions advocating for greater protection of agricultural workers receive limited support and are frequently the target of reprisals. The Special Rapporteur, Siobhán Mullally, recalls general comment No. 23 (2016) of the Committee on Economic, Social and Cultural Rights, on the right to just and favourable conditions of work, recognizing that agricultural workers often face severe socioeconomic disadvantages, forced labour, income insecurity and lack of access to basic services. The intersections of discrimination on grounds of race, ethnicity and gender are brought into sharp relief in experiences of trafficking in persons in the agricultural sector, affecting indigenous peoples, refugees, stateless persons, migrants and minorities, who are often marginalized from equal protection of the law by States and non-State actors.

II. Intersectional discrimination

2. The incidence of forced labour, including trafficking for forced labour in agriculture, is linked to systemic discrimination against “scheduled” castes and tribes, indigenous peoples, minorities and persons of African descent, and/or of slave descent. Discrimination on grounds of migration status of workers and their families creates situations of vulnerability in which trafficking occurs. In the landmark case of *Hacienda Brasil Verde Workers v. Brazil*, the Inter-American Court of Human Rights found a violation of the prohibition of discrimination, concluding that the failure to ensure protection of the workers was related to a preconception of the conditions to which it might be normal for workers on the farms in the north and northeast of Brazil to be subjected. ...

[...]

B. Rights of indigenous women

9. Indigenous women and girls may experience increased risks of trafficking, owing to the intersections of discrimination and violence, based on gender, race and ethnicity, indigenous origin and poverty. Submissions received by the Special Rapporteur for the present report document the specific risks for indigenous refugee and migrant women, which are exacerbated by language barriers and lack of access to information about their rights and to legal assistance. The Special Rapporteur is concerned that discrimination against indigenous women and girls, including discriminatory stereotypes and practices, greatly increases risks of trafficking, and limits access to protection for indigenous women who are victims of trafficking. Those risks are of particular concern in the agricultural sector, given the impact of agribusiness

¹⁰⁹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F50%2F33&Language=E&DeviceType=Desktop&LangRequested=False>.

expansions on the rights of indigenous peoples to their land and collective ownership. The Special Rapporteur recalls that, in its general recommendation No. 34 (2016), the Committee on the Elimination of Discrimination against Women underscored the importance of indigenous women's rights to land and collective ownership, natural resources, water, seeds, forests and fisheries (para. 56). The Committee, in its draft general recommendation on indigenous women, pointed out that the lack of harmonization of laws and their ineffective implementation at the national and local levels hinder the effective implementation of those rights, increasing risks of exploitation of indigenous women. The Special Rapporteur highlights the intersecting discrimination faced by indigenous women and girls with disabilities, owing to the lack of accessibility and reasonable accommodation and the failure to ensure inclusive anti-trafficking measures.

[...]

VII. Human rights due diligence: combating trafficking in persons in supply chains

[...]

38. The proposed European directive on corporate sustainability due diligence is a welcome development and a critical opportunity for transformative change. The proposal, which complements Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, seeks to combat the use of forced labour by effectively prohibiting the placing on the European Union market of products made by forced labour, including forced child labour. Both domestic and imported products fall within the scope of the proposed directive, which is expected to ensure a robust, risk-based enforcement framework. In addition to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the annex to the proposed directive lists the relevant human rights and labour rights instruments and environmental law conventions that must be considered in identifying actual or potential adverse impacts, including core United Nations human rights treaties, ILO core conventions and, importantly, both the United Nations Declaration on the Rights of Indigenous Peoples and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

39. Nevertheless, the proposed directive continues to be limited in scope, falling short of ensuring an effective mechanism to combat trafficking for forced labour in supply chains. ...

[...]

41. The Special Rapporteur is also concerned at the limited provision for engagement with affected groups, as expressed in draft article 6 (4), which states that "Companies shall, where relevant, carry out consultations with potential affected groups including workers and other relevant stakeholders". There is no explicit reference to the rights of women, gender equality, the role of human rights defenders or groups that may be particularly adversely affected, such as indigenous peoples.

[...]

VIII. Climate change: the nexus with trafficking in persons

[...]

53. The Special Rapporteur highlights the particular impact of climate change and intensive agriculture on indigenous peoples, who may rely on natural resources for livelihoods or housing. Intensive agriculture has been linked to land grabbing, pollution, deforestation and overuse of scarce water, contributing to the forced displacement of indigenous peoples and exposing them to the risk of human trafficking for labour or sexual exploitation. For indigenous women and girls, climate change may exacerbate particular vulnerability to discrimination, exclusion and exploitation, while creating new risks. Indigenous peoples may be subject to exploitative working conditions in agriculture, facing wage discrimination, limited social protection, weak contractual arrangements, and health and safety risks, along with forced labour situations.

[...]

55. The intersectional effects of climate change on the agricultural sector, on children, indigenous peoples, women and girls, and refugees, stateless persons and migrants, and persons with disabilities, must be addressed, if anti-trafficking measures are to be effective. They include ensuring that policy responses to disasters take into account gender roles in agricultural and food systems so that national, regional and global policies prevent and address gendered impacts of disasters on agriculture. As highlighted by the Intergovernmental Panel on Climate Change, policies and institutions relating to land, including land tenure, create conditions in which rural people and agricultural workers become vulnerable to exploitation, also constraining adaptation to and mitigation of climate change.

56. The links between strengthening women's land tenure, reducing vulnerability to exploitation and combating environmental and land degradation were recognized by the Conference of the Parties to the United Nations Convention to Combat Desertification in its Decision 26/COP14 on land tenure, in which it invited the States parties "to legally recognize equal use and ownership rights of land for women and the enhancement of women's equal access to land and land tenure security" (para. 4). It also called upon States parties to promote equal tenure rights and access to land for all, in particular "vulnerable and marginal groups". The decision is important in recognizing the urgency of reform and in removing such structural barriers as inheritance or land tenure rights, discriminatory norms and gendered roles and stereotypes. Strengthened implementation is needed also of the voluntary guidelines on the responsible governance of tenure, forests and fisheries.

[...]

X. Conclusion and recommendations

A. Conclusion

59. Risks of trafficking in the agricultural sector remain significant. Urgent action is required to ensure the protection of all workers, including temporary, seasonal and migrant workers and their families, and is essential to prevent trafficking in persons. It is critical that States apply the principle of non-discrimination and recognize that comprehensive prevention of trafficking requires ensuring just and favourable conditions of work and decent work for all workers. Combating trafficking in persons in agriculture will also contribute to reversing environmental degradation, loss of biodiversity and climate change, through reform of agricultural working methods

and by ensuring land equality and security of tenure. The present moment is critical in recognizing the need for mandatory human rights and environmental due diligence, protection of workers' rights and gender equality to achieve the objective of combating trafficking in persons.

B. Recommendations

60. States should: ...

(b) Ensure respect for the principle of non-discrimination, and equal protection of the law for all agricultural workers, including women, minority groups and indigenous peoples, persons with disabilities, lesbian, gay, bisexual and trans persons and migrant workers, who may be particularly at risk of trafficking;

[...]

(d) Recalling general recommendation No. 38 (2020) of the Committee on the Elimination of Discrimination against Women, ensure that anti-trafficking legislation addresses the social and economic challenges faced by rural women and girls; provide gender-responsive training on prevention measures, protection and assistance for victims to the judiciary, police, border guards, other law enforcement officials and social workers, especially in rural areas and indigenous communities; and uphold extraterritorial obligations with respect to rural women, inter alia, by taking regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing upon or abusing the rights of rural women outside their territory;

[...]

(II) Recalling article 17 of the United Nations Declaration on the Rights of Indigenous Peoples, and the particular risks of exploitation in agricultural work, ensure that indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law, and that States, in consultation and cooperation with indigenous peoples, take specific measures to protect indigenous children from economic exploitation, taking into account their special vulnerability and the importance of education for their empowerment...

X. SPECIAL RAPPORTEUR ON THE SALE AND SEXUAL EXPLOITATION OF CHILDREN, INCLUDING CHILD PROSTITUTION, CHILD PORNOGRAPHY AND OTHER CHILD SEXUAL ABUSE MATERIAL

1. Addressing the vulnerabilities of children to sale and sexual exploitation in the framework of the Sustainable Development Goals, A/77/140, 12 July 2022¹¹⁰

I. Introduction

1. The present report, submitted pursuant to General Assembly resolution 76/147, contains information on the activities undertaken by the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, from August 2021 to August 2022.
2. The report also includes a thematic study on addressing the vulnerabilities of children to sale and sexual exploitation within the framework of the Sustainable Development Goals.

[...]

III. Thematic study on addressing the vulnerabilities of children to sale and sexual exploitation within the framework of the Sustainable Development Goals A. Scope, objective and methodology

13. In the report outlining the vision of the Special Rapporteur in 2020 (A/75/210), the Special Rapporteur emphasized the need to identify those children who are at risk of falling victim to sale and sexual exploitation and what needs to be done to mitigate their vulnerability and protection needs. In the same report, she highlighted the importance of analysing this issue in the context of targets 5.3, 8.7 and 16.2 of the Sustainable Development Goals with focus on specific groups of children who are at greater risk of being left behind. The aim of the present report is therefore to address these issues with a view to informing the national reviews and follow-up reports on the Goals in the context of protecting the most vulnerable groups of children from sale and sexual exploitation.

[...]

B. International legal framework

18. Children are recognized in the 2030 Agenda for Sustainable Development as rights holders and a vulnerable group that needs to be empowered. The Convention on the Rights of the Child, and the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, comprise provisions that protect children from sexual abuse and exploitation. Article 2 of the Convention prohibits discrimination of any kind, irrespective of the child's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Refugees, indigenous communities, ethnic minority groups and children with disabilities are also protected under article 2. The extensive body of jurisprudence, general comments and concluding observations of the Committee has encapsulated the special needs of other groups of children,

¹¹⁰ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F140&Language=E&DeviceType=Desktop&LangRequested=False>

such as those in poverty, those who are abused, displaced or impacted by conflict or climate and those in street situations or in institutional care. Regional instruments, such as the African Charter on the Rights and Welfare of the Child, and the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse, comprise obligations on the State parties to prevent, protect and ensure adequate support and access to justice for all children.

[...]

C. Analysis of risks and drivers for vulnerable groups of children in the process of attainment of the Sustainable Development Goals

[...]

(a) Children vulnerable by virtue of the situational status of their families

[...]

27. Children belonging to minority and indigenous communities, or in rural settings, also face heightened vulnerabilities.¹⁶ The issues by which they are often affected relate to homelessness, limited access to formal education and language barriers. These factors make them especially vulnerable to the risks of sexual exploitation and trafficking.

[...]

(c) Children in institutional and alternative care settings

31. Children in alternative or institutional care settings such as orphanages, residential or foster care, residential schools or correctional facilities can be vulnerable to sexual abuse and exploitation in the absence of adequate safeguards and regulations to protect them. Furthermore, various studies point to the impacts of institutionalization as being harmful to the development of children. The Committee on the Rights of the Child has remained concerned about the high rates of institutionalization of children, in particular those with disabilities or from ethnic minorities and indigenous communities. Children coming out of institutions without a support system in their transition process to adulthood are also exposed to a myriad of risks.

[...]

D. Manifestations and protection needs under targets 5.3, 8.7 and 16.2

[...]

2. Eradicate forced labour, end modern slavery and human trafficking

43. In low- and middle-income countries, disproportionately high numbers of vulnerable groups, often linked with low economic status of children, are involved in child labour in dominant sectors of the economy. For children impacted by poverty, child labour is one of the biggest driving forces for the survival of the family, as income from a child's work is felt to be crucial for the survival of the family.

44. The voluntary national reviews report 2021 emphasizes that holistic efforts are required to take stock of the widespread prevalence of an informal economy and its existence in rural settings across the nations. Additionally, the reviews point to the need for measures to address increasing youth unemployment and barriers in creating sustainable tourism. From the demand side, children from vulnerable groups are viewed as easier to manipulate and less likely to demand higher wages

or better working conditions. Indigenous children face specific problems such as debt bondage and other manipulations by labour intermediaries, placing them in economic hardship, with families unable to repay. Impacts on indigenous children by the extractive businesses recorded have included illegal child labour and work as domestic servants. Child domestic workers also come primarily from rural families, and girls who move to the cities to avoid marriage frequently end up as child domestic workers or in other forms of abuse and exploitation. ...

3. *End abuse, exploitation, trafficking and all forms of violence and torture against children*

[...]

46. For children in alternative or institutional care such as orphanages, detention centres and shelters, neglect as a form of abuse, experience of peer violence and maltreatment are known to have lasting impacts. A 2020 Lancet Commission found that children residing in institutional care were “at risk of severe physical or sexual abuse, violation of fundamental human rights, trafficking for sex or labour, exploitation through orphan tourism, and risk to health and well-being after being subjected to medical experimentation”. Orphanage trafficking is one form of trafficking and modern slavery to which children in institutional care may be exposed for exploitation and profit. Children from minority and indigenous groups are found to be overrepresented in institutional care and as candidates for international adoption.

[...]

E. *Contextual challenges*

1. *Coronavirus disease (COVID-19)*

48. The challenges posed by the COVID-19 pandemic in terms of increased risk and the various manifestations of the sale and sexual exploitation of children have been extensively examined by the Special Rapporteur. Family stress and anxieties over incomes, basic necessities and services have led to greater isolation of children. A surge in pandemic-induced economic crisis, poverty and the inaccessibility of social services have increased the vulnerabilities of migrants and ethnic, indigenous and rural groups. ...

F. *Practical measures to address the vulnerabilities of children and protect them from sale and sexual exploitation*

53. This section incorporates good practices derived from contributions received on measures to protect children from sale and sexual exploitation within the context of: (a) the situational status of the family; (b) the digital space; and (c) institutional and alternative care. The examples and lessons can be effectively tailored to national settings in pursuit of the attainment of the Sustainable Development Goals to leave no child behind.

1. *Situational status of the family*

[...]

57. **Education, training and awareness-raising.** Education has significantly been shown to build resilience with regard to the risks to child marriage, child labour and trafficking among vulnerable groups.¹⁰⁴ As underlined in the report of the Special Rapporteur on a practical approach to addressing the sale and sexual exploitation

of children, prevention strategies such as education should place families at the centre. Kenya, for example, introduced free basic education for all in a bid to retain vulnerable children in school. This policy is also a prevention strategy, to protect children from exposure to other risks. Teachers, parents and caregivers should also be sensitized on the risks to which children may be exposed by information and communications technologies (ICTs) and be provided with information that would provide protection from risks in the digital space. Another good practice is the strategy of working across cultures to reach vulnerable groups, in particular to transmit key messaging on protecting children from sexual abuse and exploitation. For example, Guyana developed a programme called the Communication 4 Development Programme, aimed at reducing the gap between culture and law in some indigenous communities on topics such as child sexual abuse, under-age sexual activity and early marriages.

Y. INDEPENDENT EXPERT ON HUMAN RIGHTS AND INTERNATIONAL SOLIDARITY

1. International solidarity and climate change, A/HRC/44/44, 1 April 2020¹¹¹

I. Introduction

1. After reporting to the Human Rights Council in June 2019, the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, presented his second thematic report to the General Assembly, in which he discussed human rights-based international solidarity in the context of global refugee protection. The Independent Expert conducted one country visit in 2019, to Qatar from 2 to 10 September. The Independent Expert thanks Costa Rica and Bolivia for the positive replies received from his requests for visits and reminds other States about the need for positive replies to his requests to visit.
2. In the present report, the Independent Expert engages with one of the thematic priorities that he established for his mandate, namely the enjoyment, or lack thereof, of human rights-based international solidarity in the context of climate change. This subject is consistent with the promise made in his first report to the Human Rights Council (see A/HRC/38/40) to examine matters that lie at the intersection of international solidarity and climate change. An important goal of the report is to better illuminate the role of human rights-based international solidarity in responding to climate change, which is a common concern of humanity. A complementary objective is to strengthen the appreciation of the role that the lack of human rights-based international solidarity plays in exacerbating the challenges brought upon the world by climate change.

[...]

¹¹¹ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F44&Language=E&DeviceType=Desktop>.

II. Background on human rights-based international solidarity in the context of climate change

6. The experience of climate change has become part of the daily lives of peoples around the world. Countless individuals and groups are suffering in appalling ways from the effects of climate change, something long predicted by the scientific community. In 2019, thousands fled their homes or were killed in Africa and the Caribbean due to Cyclone Idai and Hurricane Dorian. Raging wildfires devastated large parts of Australia, North America and Europe. In the Arctic, landscapes are being altered in ways that severely threaten indigenous cultures and health. These facts are all well known, and are examples of the negative human rights impacts of climate change that are occurring globally. Human rights-based international solidarity in the context of climate change arises partly due to the physical interdependence between humankind and nature, which has no political boundaries, and deeply interconnects disparate regions through ecological dynamics that tend to implicate all States and peoples. Protecting the global environment and addressing the local impacts of climate change through human rights-based international solidarity are, therefore, an objective necessity that can no longer be delayed.

[...]

11. Given the insufficiency of State and corporate action, indigenous peoples, civil societies, subnational jurisdictions and others have been pursuing “climate justice”, which emphasizes a human rights approach to the impacts of climate change on socially vulnerable peoples; the prevention of harm from mitigation activities; redress for loss and damage; and meaningful civic participation. Similarly, acknowledging that high-emitting economic sectors will need to reform their operations in the coming years, some labour unions, Governments and employers are struggling to ensure that the international rights of workers dependent on those sectors are not compromised. They are doing so through planning for a so-called just transition that guarantees the right to decent work. Importantly, the Paris Agreement acknowledges a just transition, human rights and climate justice. Drawing on these discourses, people who lack direct regulatory power are demanding that Governments and corporations do better. They are also realizing human rights-based international solidarity in their own right through their pursuit of justice for individuals and groups who are owed protection from the precarities of climate change.

III. Positive expressions of human rights-based international solidarity in the context of climate change

A. Civil society and non-State practices

12. Civil society and non-State actors have consistently been at the forefront of addressing climate change through positive expressions of human rights-based international solidarity and of requesting those with direct authority do so as well. Acknowledging the breadth of such positive expressions, the Independent Expert wishes to highlight some relevant practices of indigenous peoples, youth and environmental defenders. Their efforts described in this report reflect international solidarity because they aim to push forward needed political, social and economic transformations through human rights strategies that are proactive and collaborative, are often supported by allied States and international organizations, and are complementary to conventional endeavours in the same direction. Insofar as these groups suffer disproportionately from climate change, yet are excluded from direct policymaking, their efforts to be heard also realize a subtle quality of international solidarity: when marginalized

peoples share their lived experience, it may enrich understanding about the oppression that global climate change perpetuates and foster greater awareness of the need for solidarity with them and others.

13. Human rights-based international solidarity in the context of climate change has a bearing on pressing questions about the persistent negative repercussions of colonialism on the ability of indigenous peoples to make decisions that affect their own lives and to contribute to the lives of others. Indeed, the recognition that indigenous peoples have rights to self-determination, and that indigenous knowledge advances environmental stewardship, means that there are entwined local and global imperatives for ensuring indigenous peoples can make decisions on climate change that can affect everyone else. Indigenous peoples have fought to gain entry into, and to reshape, political forums on climate change, advancing “both a positive vision of social and economic systems, while also contesting and engaging with dominant understandings of climate change and their hegemonic and neocolonial causes”. For example, they established a caucus in international negotiations that worked alongside allies to institutionalize the Local Communities and Indigenous Peoples Platform, which facilitates the integration into the international legal process of matters such as traditional knowledge. Priorities and strategies have also been adopted by global, national and local indigenous organizations, such as the group Indigenous Climate Action, which supports indigenous peoples to reclaim their “roles and responsibilities” as caretakers of the earth to achieve “a climate stable future for all”. Such achievements, while ongoing, are positive steps towards the expansion of human rights-based international solidarity in the climate change field, understood as the engagement of indigenous peoples as partners in responding to the common, global problem of climate change.

[...]

15. For their part, environmental defenders are struggling for climate justice, each in solidarity with the other, on the frontlines of carbon intensive projects, as well as projects that limit emissions but still have detrimental effects on local peoples and environments. The Independent Expert sees defending lands, resources and waters against such projects as positive expressions of human rights-based international solidarity because this could curb global emissions and protect the applicable rights of indigenous and local peoples to self-determination, civic participation and security, to the benefit of all. Environmental defenders have mobilized against mining projects in Asia. They protest the land grabs by, or for, extractive industries in Latin America. They set up blockades and pursue judicial review to halt fossil fuel infrastructure across North America. There is troubling evidence that environmental defenders face criminalization, which exacerbates oppression on the basis of race, given that many are racialized and indigenous peoples. In the spirit of fellowship, however, “defenders” of these defenders are organizing to assist those on the frontlines. Therefore, environmental defenders, and their defenders, are demonstrating the utmost solidarity with communities and everyone who faces the negative effects of climate change-related projects by upholding human rights through their direct actions.

[...]

B. Country-level laws and practices

18. Beyond these examples, the Independent Expert highlights two countries whose commitments and partnerships manifest human rights-based international solidarity because they reflect their responsibilities, capacities and social justice goals. One industrialized country in the Pacific is notable for legislating a net-zero target by 2050. It is ending fossil fuel exploration permits and planting one billion trees. This country has also pledged \$300 million to global climate finance, of which \$150 million will go to developing countries in the Pacific. It is committing to support the self-determination and environmental stewardship of indigenous peoples. The country has also focused on climate change adaptation for workers and communities by supporting water quality and the agricultural sector. Finally, this country is prioritizing well-being over economic growth, which carries great potential for human rights-based international solidarity as it promises to catalyse new thinking globally about the relationship between humanity, nature and development. It will also mean that its contributions to the impact climate change has in other lands will be reduced significantly.

[...]

C. Regional laws and practices

20. Some regional laws and practices have contributed significantly to enhancing human rights-based international solidarity in the context of climate change as they cultivate fellowship among States in this field, often to their mutual benefit and that of the international community at large. The Inter-American Human Rights System stands out in this connection, as it has produced manifold hearings, reports and other practices that address the development of international human rights law on climate change. Crucially, in 2018, the Inter-American Court of Human Rights released an Advisory Opinion confirming that States have duties to prevent activities within their territories that contravene the human rights of peoples in other States due to the environmental damage that such actions lead to, a ruling that has implications for dealing with the transboundary nature of climate change. The Inter-American Commission on Human Rights has provided a forum for indigenous peoples and local communities to voice their experiences on the issue of extractivism and climate change, enabling civic participation regarding this question at the international level, which is a mode of solidarity. Furthermore, countries in this region adopted the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), which aims to empower all persons to make decisions that affect their lives and the environment, and to access justice when those rights have been infringed. The Agreement specifically guarantees the rights to life, personal integrity and peaceful assembly in solidarity with environmental defenders.

[...]

D. The laws and practices of cities and other local governments

[...]

24. In addition to cities, other local governments are seeking to demonstrate international solidarity by compensating for deficiencies in the ambitions of their respective States. One example is the We Are Still In coalition, whose signatories are committing to the Paris Agreement, despite their national government's recalcitrance, and include indigenous leaders, mayors, governors, non-governmental organizations,

businesses and university chancellors. Subnational jurisdictions that put a price on carbon are also linking their programmes, such as networked cap-and-trade schemes. Turnover is a challenge for carbon pricing networks, as some jurisdictions have reneged on their commitments. Market mechanisms also experience volatility and gaming, encourage privatization and cannot alone yield the transformation needed to address climate change. Given these and other problems with market mechanisms, discussed throughout the report, carbon pricing networks are a limited form of human rights-based international solidarity. Specifically, carbon pricing networks aim to reduce emissions (which in itself is an expression of human rights-based international solidarity) and generate public revenues to fund social programmes that foster goodwill towards climate action and enhance human rights in daily life, such as public transportation systems, resilient buildings and financial assistance to households.

E. Global laws and practices

25. There are extensive global laws and practices that manifest human rights-based international solidarity in the context of climate change. For example, there are regular global summits that generate momentum for cooperative actions among the diverse actors discussed in the present report: States, indigenous peoples, regions, cities, youth, civil societies and United Nations bodies, among others. There are, however, precious few accountability mechanisms in these summits to gauge the hundreds of commitments announced there about addressing climate change in one way or another, and this may obscure climate inaction. Nonetheless, efforts are ongoing to monitor such transnational commitments, for instance at the United Nations Environment Programme. These efforts express international solidarity because they foster and enhance bottom-up endeavours that diverse groups are making to meet common goals for all human beings.

[...]

IV. Key human rights-based international solidarity gaps in the context of climate change

A. Transforming the fossil fuel economy

29. There is a growing consensus that fossil fuel exploitation must be radically transformed to avoid further dangerous climate change. The burning of fossil fuels and biomass produces the vast majority of global emissions (70 per cent) (A/74/161, para. 12). The burning of coal alone is responsible for nearly a third of temperature rise since the Industrial Revolution. Clearly, from the point of investment until use, fossil fuels are entrenched in our lives and the global economy. Overcoming our reliance on fossil fuels is therefore an imperative and a tremendous collective action problem. In the Independent Expert's view, this situation poses a dual challenge to human rights-based international solidarity. States and corporations that persist in exploiting fossil fuels produce a major gap in international solidarity as their behaviour does not reflect the highest possible ambition, nor cooperation, and it compromises the human rights of peoples around the world. On the other hand, there may be unfair outcomes of restructuring the fossil fuel economy on the rights to an adequate standard of living in the poorest of the States that produce fossil fuels. This dual problem threatens the willingness of differently situated fossil fuel producers to take collective action. At the same time, it perpetuates global asymmetries between those who profit the most from, and people who suffer the greatest from the consequences of, climate change.

[...]

D. Access to justice for vulnerable countries, individuals and groups

[...]

2. Protecting indigenous peoples, local communities and workers against the negative consequences of mitigation actions

49. Ensuring access to justice for indigenous peoples and local communities affected by climate change mitigation projects is yet another key gap in human rights-based international solidarity. Not unlike international development projects, climate mitigation may involve infrastructure and land use projects that displace local communities and indigenous peoples, cause environmental damage and contravene rights to free, prior and informed consent. For example, significant human rights risks are understood to arise from hydroelectric dams and biofuel projects. The Clean Development Mechanism provided few avenues to object to such projects and no rights of appeal or to compensation. For its part, the Paris Agreement acknowledges that parties should respect, promote and consider human rights, the rights of indigenous peoples, and local communities, among others, in taking actions to mitigate climate change. However, States have continued to resist the inclusion of human rights safeguards in the rules they are negotiating for projects that will feed into carbon markets. Setting aside other drawbacks of relying heavily on carbon markets, the absence of procedural and substantive rights for groups affected by mitigation measures clashes with the requirements of human rights-based international solidarity in this area.

[...]

3. Differential impacts on transnational rights holders in marginalized groups

51. The international community is only beginning to grapple with the inequities that climate change perpetuates for marginalized groups who have otherwise made important gains as transnational rights holders under core international human rights instruments. Special procedure mandate holders and treaty bodies have begun to acknowledge the impacts of climate change on indigenous peoples, children, persons with disabilities, older persons, persons living in poverty, workers and women. Novel studies are also being produced on this lived experience. For example, researchers are shedding light on the “ecological grief” that Inuit peoples and Australian farmers experience from the loss of natural surroundings. ... In addition, one researcher has explored how Arctic indigenous representatives vernacularize understandings of climate change as a “form of life”. These studies capture how encounters with climate change redefine what it means to be socially vulnerable. Still, from the perspective of international solidarity, there is negligible evidence of the concrete steps that Governments, employers, building owners and service providers are taking to implement international human rights commitments that would respond to these emerging issues.
52. In 2019, the Human Rights Council adopted a resolution urging States to formulate a comprehensive, integrated, gender-inclusive and disability-inclusive approach to climate change adaptation and mitigation policies. This provides a starting point for thinking about how marginalized groups ought to be protected through concerted global action to be operationalized at the local level. More information is required, however, to integrate peoples’ lived experience into the laws and policies

that jurisdictions use to fulfil their existing international human rights obligations. Therefore, in the Independent Expert's view, there remains a serious gap in the expression of human rights-based international solidarity towards marginalized groups who are connected transnationally by experiences of disempowerment that climate change compounds.

V. Conclusions and recommendations for human rights-based reform

53. Given the existential threat posed by climate change and the negative human rights implications of the deficient progress made thus far to address many facets of the problem through cooperation, common but differentiated responsibilities and respective capabilities and the highest possible ambition for direct action (i.e., human rights-based international solidarity), it is imperative that States and other actors vastly strengthen their efforts to address the concerns raised in the present report. The Human Rights Council is very well positioned to facilitate that process.
54. In light of the topics discussed in the report, the Independent Expert makes the following recommendations:
- (a) All States, corporations and international organizations should take all necessary separate and joint steps towards achieving net-zero emissions by 2050, consistent with their highest possible ambitions to reduce emissions and the common objective of keeping the global temperature rise below 1.5°C under the Paris Agreement;
 - (b) To that end, States, corporations and financial institutions, particularly the highest emitting States, in historical and contemporary terms, should consider ceasing to pursue the exploration of and new investments in fossil fuels as a matter of human rights-based international solidarity, since the shared carbon budget will be exceeded if already existing and proposed fossil fuel developments proceed;
 - (c) States, corporations and financial institutions should cooperate to ensure that any transformation of the fossil fuel economy (which is imperative) does not perpetuate asymmetries between richer and poorer States and peoples. As countries phase down or even phase out their fossil fuel operations, wealthier countries should provide poorer countries that are less adaptable to the transition with support based on the right to development of the poorer States, and the social and economic rights of their people that are tied to energy systems;
 - (d) States and corporations should cooperate to reform basic transnational norms of corporate governance to ensure that corporate decision-making prioritizes the protection of international human rights threatened by climate change over profits and other financial interests;
 - (e) States should cooperate in good faith towards elaborating a treaty to regulate the activities of transnational corporations and other business enterprises under international human rights law to – in part – help correct the inability, or unwillingness, of States to regulate the contributions that such entities make to climate change as a result of their transnational organization and operations;
 - (f) States should meet their obligations to provide financial and technological support to other States under the international climate regime, scale up these obligations as much as possible, and stipulate precise obligations where this level of precision is lacking, consistent with the principle of common but differentiated responsibilities and respective capabilities. In doing so, they should

eliminate barriers that prevent developing countries, especially the poorest and most vulnerable among them, from accessing international climate finance and technologies, including barriers created by intellectual property rights regimes;

- (g) States should cooperate through the international climate regime and international human rights community, including through ILO, to guarantee access to justice in the context of climate change with respect to the following:
- (i) Rectifying loss and damage associated with the inequalities perpetuated by climate change, including by giving this agenda the same priority as mitigation and adaptation and providing meaningful financial support to affected countries and peoples;
 - (ii) Safeguarding the enjoyment of international human rights among indigenous peoples and local communities affected by climate change-related projects, including protecting environmental defenders from criminalization;
 - (iii) Formulating and implementing concrete plans from the global to the local levels for a just transition towards sustainable economies that ensures the right to decent work for all;
 - (iv) Cooperating to realize international human rights obligations as they apply to marginalized groups uniquely affected by climate change, including indigenous peoples, the elderly, children, persons with disabilities, persons living in poverty and women.

Z. INDEPENDENT EXPERT ON THE PROMOTION OF A DEMOCRATIC AND EQUITABLE INTERNATIONAL ORDER

1. The interplay between the economic policies and safeguards of international financial institutions and good governance at the local level, A/HRC/45/28, 10 August 2020¹¹²

I. Introduction

1. The present report of the Independent Expert on the promotion of a democratic and equitable international order, Livingstone Sewanyana, is submitted to the Human Rights Council in accordance with Council resolutions 18/6 and 42/8. It is the third report of the current mandate holder since his appointment by the Council at its thirty-seventh session, in 2018.
2. In paragraph 17 of its resolution 42/8, the Human Rights Council invited the Independent Expert to examine the impact of financial and economic policies pursued by international financial institutions on a democratic and equitable international order. He has decided to devote his present report to the interplay between the economic policies and safeguards of international financial institutions¹ and good governance at the local level.
3. The Independent Expert believes that among the key tenets of a democratic and equitable international order is the principle of good governance. In fact, several components of what constitutes good governance, which will be elaborated

¹¹² <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F28&Language=E&DeviceType=Desktop&LangRequested=False>.

upon in the present report, may be found in the successive Council and General Assembly resolutions pertaining to the promotion of a democratic and equitable international order. For instance, the Council and the General Assembly have referred to the aspirations of all peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, the rule of law, pluralism, development, better standards of living and solidarity. Furthermore, the Council and the General Assembly have recognized that democracy, respect for all human rights, including the right to development, transparent and accountable governance and administration in all sectors of society, and effective participation by civil society are an essential part of the necessary foundations for the realization of social and people-centred sustainable development.

4. The international financial institutions referred to in this report are the World Bank, the International Monetary Fund (IMF), the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank and the Inter-American Development Bank (IDB). These institutions provide loans, credits and grants to developing countries, policy advice, technical assistance, and global public goods. They aim, inter alia, at reducing global poverty and achieving sustainable economic, social and institutional development, and most of them have committed to supporting the 2030 Agenda for Sustainable Development. Through their activities, international financial institutions can have a direct influence on how national authorities deliver on good governance and therefore abide by their obligation to respect the human rights of their population. All the institutions studied in this report have adopted safeguards relevant to good governance in their activities, and the Independent Expert does not question their commitment to this principle. He intends to look at the various provisions, policies and practices of international financial institutions and propose ways towards improvement whenever deemed pertinent.
5. For the purposes of this report, and owing to the word limit, the Independent Expert has decided to focus on the following key issues, which relate to some of the thematic priorities laid down in his vision-casting report (A/HRC/39/47): stakeholder engagement and issues of public participation, transparency and reprisals; State responsiveness to the needs of the population and retrogressive measures; and the fight against corruption. The issue of accountability is addressed throughout the report. The Independent Expert wishes to focus mainly on State responsibility in upholding good governance and human rights: that is, through loans by international financial institutions to, and other interventions aimed at, the public sector. While this report was being prepared, the coronavirus disease (COVID-19) pandemic struck throughout the world, taking a heavy toll on the world's population, including the most vulnerable people. It is therefore impossible to ignore this dire context in the present report.

[...]

III. Good governance, human rights and sustainable development

12. As pointed out by OHCHR, there is no comprehensive definition of “good governance”, as it encompasses a multitude of notions that vary depending on the field of study and context, such as respect for human rights, the rule of law,

effective participation, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, political empowerment, equity and sustainability. However, a significant degree of consensus exists that good governance is related to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development. Critically, the true test of good governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.

13. The 2030 Agenda similarly recognized good governance as a cornerstone of the construction of peaceful, just and inclusive societies with a view to achieving sustainable development. Sustainable Development Goal 16 epitomizes the very idea of good governance, and more largely encompasses the human rights dimension of the 2030 Agenda, by stressing the importance of, inter alia, promoting the rule of law, reducing corruption, developing effective, accountable and transparent institutions, ensuring responsive, inclusive, participatory and representative decision-making, and ensuring public access to information and protecting fundamental freedoms (targets 16.1–16.10).
14. The Human Rights Council, in its successive resolutions on the role of good governance in the promotion and protection of human rights, has delineated the scope of what good governance is and clearly articulated the interconnection of good governance, human rights and sustainable development. In its latest resolution on the matter, the Council recognized that transparent, responsible, accountable, open and participatory government, responsive to the needs and aspirations of the people, was the foundation on which good governance rested, and that such a foundation was one of the indispensable conditions for the full realization of human rights, including the right to development. Fundamentally, it further recognized the importance of a conducive environment, at both the national and international levels, for the full enjoyment of human rights and fundamental freedoms and of the mutually reinforcing relationship between good governance and human rights.

[...]

17. As observed by the Committee on Economic, Social and Cultural Rights, citing a decision of the International Court of Justice, international financial institutions are “bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties”. As a result, they are obligated to uphold human rights, as listed in particular in the Universal Declaration of Human Rights, that are part of customary international law or of the general principles of law (E/C.12/2016/1, para. 7). In addition, the Committee has stressed that the respective Articles of Agreement establishing IMF and the International Bank for Reconstruction and Development, which are specialized agencies of the United Nations, cannot be interpreted as not requiring these organizations to include human rights considerations in their decision-making (ibid., para. 8).
18. Over the years, international financial institutions have elaborated and updated environmental and social safeguard frameworks to manage the related impacts and risks associated with investment lending. These safeguards cover a number of issues, including environmental and social assessment, labour conditions, land acquisition, indigenous peoples, public participation and access to information. In order to implement their safeguards, international financial institutions have devised due diligence processes to assess environmental and social risks, as well as impacts associated with the project context, the project itself and the client.

[...]

20. The importance that international financial institutions attach to human rights in their respective safeguard frameworks varies. For instance, the European Investment Bank recognizes its own responsibility to apply human rights in its own due diligence, while the World Bank and AfDB refer to support for human rights in aspirational rather than operational terms and recognize the responsibility of clients to comply with human rights. The International Finance Corporation, the private sector arm of the World Bank, considers respect for human rights as solely the responsibility of its clients. The Independent Expert believes that human rights compliance should be key in the architecture of international financial institutions' safeguard systems.

IV. The interplay between the economic policies and safeguards of international financial institutions and good governance at the local level

A. Stakeholder engagement

1. Public participation

21. Often large in scale, development activities funded by international financial institutions can threaten in a deep and irreversible manner the livelihood of communities, including indigenous peoples. It is therefore crucial that communities be involved in the design, implementation and evaluation of plans and programmes for development that may have a direct effect on them. In the case of a development project that will affect land owned, occupied or used by indigenous peoples, their free, prior and informed consent should be sought. It is worth noting that meaningful and early involvement is a key element in a strategy to prevent tensions between different actors and violence against environmental human rights defenders, through recognition of their legitimate role in decision-making (A/71/281, para. 66).

[...]

23. However, despite these overall sound safeguards, stakeholder engagement at the project level reportedly remains a regular problem in many countries, which is of serious concern to the Independent Expert. These experiences have been documented in many reports by civil society and by independent accountability mechanisms in charge of receiving grievances from stakeholders about projects funded by international financial institutions. It is reported that 57 per cent of complaints received by such mechanisms up to 2015 dealt with infrastructure projects, and one of the most commonly raised concerns was about inadequate consultation and disclosure. Importantly, the requirements of international financial institutions for consultations fail to address the inherent power imbalances that exist between the borrower and the communities affected by the project. This is all the more problematic as the responsibility to carry out consultations lies with the borrower, including the public sector.
24. Another hurdle to the effective public participation of communities is the extensive use by international financial institutions of financial intermediaries, such as equity funds and commercial banks. Civil society actors have complained to the Independent Expert that they have little to no information on the identity of the financial beneficiaries (whether company or project), and public participation is therefore impossible. While the international financial institutions require their financial intermediaries to abide by their own standards when investing, there is reportedly no information pertaining to compliance with such standards.

[...]

26. The Independent Expert supports the emerging practice led by some international civil society organizations to empower communities affected by a project to conduct their own due diligence on the impact of the project, as they are best placed to inform such a process. Evidently, the enabling environment for community-led human rights due diligence should be secure. If it is not, as with any assessment, the international financial institutions should question the appropriateness of their investment in that country.

[...]

3. Reprisals in the context of development activities

31. Those seeking participation in consultations around development projects funded by international financial institutions, critics or plain opponents of such projects – be they community members, indigenous peoples, farmers, land activists, workers, or members of civil society organizations – have increasingly been the subject of egregious acts of reprisal. These acts range from acts of intimidation, stigmatization (such as labelling as “antidevelopment” and “terrorist”), criminalization and judicial harassment to physical attacks and killings. These instances occur in different parts of the world, against the backdrop of the global closing of civil society space.
32. The Independent Expert is extremely concerned by such disturbing instances of reprisals and expresses his solidarity with all victims, their relatives and their colleagues. By way of an illustrative example, among many others pertaining to projects funded by international financial institutions, he and other special procedure mandate holders raised concerns in 2019 with the World Bank about alleged death threats and attempted kidnappings against a human rights defender, and allegations of possible acts of reprisal for his cooperation with the World Bank and its Inspection Panel for documenting and denouncing human rights violations related to the World Bank-funded High-Priority Roads Reopening and Maintenance Project (ProRoutes) in the Democratic Republic of the Congo. The World Bank responded that it was taking the allegations very seriously and clarified several points contained in the letter. A delegation of the World Bank further briefed the Independent Expert on the tools developed by the institution to combat reprisals. The Independent Expert notes the commitment expressed to fight reprisals, and the subsequent public statement issued in March 2020, in which the World Bank stressed that it did not tolerate reprisals and retaliation against those who shared their views about Bank-financed projects, and that it worked with appropriate parties to address any complaints brought to its attention.
33. The Independent Expert further notes that some other international financial institutions and their independent accountability mechanisms have voiced publicly their opposition to reprisals, and have developed specific protocols to address risk of reprisals against defenders. For example, instances of reprisals in the context of projects financed by EBRD fall into the category of coercive practice under the Bank’s Enforcement Policy and Procedures, and guidance on reprisals has been developed by the World Bank Inspection Panel and the ADB Accountability Mechanism. AfDB, however, does not have clear policies or statements on reprisals. The Independent Expert notes with particular interest the practical toolkit on reprisals commissioned by the IDB Independent Consultation and Investigation Mechanism, which provides very useful guidance for the independent accountability mechanisms of international financial institutions on how to assess, prevent and respond to

reprisals. As stressed by the United Nations High Commissioner for Human Rights, this toolkit, which she has endorsed, is in fact a valuable resource for all development organizations.

34. While the Independent Expert welcomes these positive developments, the several cases of reprisals of he was apprised remain of the utmost concern. He calls for further concrete progress across the spectrum of international financial institutions in that area. Most notably, international financial institutions have a key role to play, and in fact a lot of leverage, in pushing local authorities to investigate acts of reprisals and bring the perpetrators to justice. These institutions should recognize publicly the legitimate role of civil society and intervene firmly whenever an alleged act occurs in connection with a project that they fund directly or indirectly, and should not hide behind their clients' discretion or the use of financial intermediaries.

[...]

B. State responsiveness to the needs of the population

1. Maximum use of available resources

42. As stressed by the Committee, among those disproportionately affected by austerity measures in the form of job cuts, minimum-wage freezes and cutbacks in social assistance benefits are low-income families and workers with the lowest qualifications. Similarly, women bear a disproportionate cost when austerity measures affect childcare or family support services (E/C.12/2016/1, para. 2). Other disadvantaged and marginalized groups disproportionately affected include children, persons with disabilities, older persons, people with HIV/AIDS, indigenous peoples, ethnic minorities, migrants, refugees and unemployed persons (E/2013/82, para. 49).

[...]

V. Conclusions and recommendations

68. International financial institutions are important actors in the financing of development and the achievement of the Sustainable Development Goals. Through the various policies that they pursue and the safeguards that they have put in place, they have a direct influence on how good governance is realized at the local level – including with regard to stakeholder engagement, responsiveness of the needs of the population and the fight against corruption – and ultimately on the enjoyment of a democratic and equitable international order.
69. International financial institutions must systematically take all the measures necessary to ensure that their activities and the projects that they support do not lead to human rights violations, including those committed by clients, whether in the public or private sector. They must similarly use their substantial leverage to ensure that those clients respect human rights and the principle of good governance.
70. While international financial institutions should always aspire to be actors of positive change on the ground, it is first and foremost the responsibility of States, in particular in their capacity as clients of international financial institutions, to ensure that good governance and respect for human rights on the ground. This responsibility starts with ensuring a safe environment that is conducive to the exercise of fundamental rights and freedoms, and pursuing accountability.
71. Crucially, respect for human rights, good governance and the interests of local communities must be at the very heart of what drives sustainable development.

This requirement is all the more important in the context of the current COVID-19 pandemic, which has exacerbated several of the challenges identified in the present report and increased the vulnerability of groups at risk.

72. In the spirit of continuing the constructive dialogue that he has held with various stakeholders since the beginning of his tenure, the Independent Expert wishes to offer the following general recommendations, in addition to the several specific ones made and the good practices identified throughout the report.
73. The Independent Expert recommends that international financial institutions:
- (a) Ensure that their safeguard frameworks contain a clear commitment to respecting human rights and to conducting human rights due diligence, and to requiring their clients to respect human rights and conduct human rights due diligence;
 - (b) Include assessment of the enabling environment for the participation of communities and civil society, of potential reprisals and, more generally, of the human rights situation in project- and country-level engagement in due diligence processes;
 - (c) Engage with clients and States on the importance of ensuring a safe environment that is conducive to the exercise of fundamental rights and freedoms;
 - (d) Ensure that continued operations during the COVID-19 pandemic are safe and are in line with the good practices identified with respect to stakeholder engagement; concerning new projects approved during the COVID-19 pandemic, raise the bar as to the safety of stakeholders and the strict enforcement of applicable safeguards;
 - (e) Provide adequate space and concrete support for community-led human rights due diligence;
 - (f) Provide information on how financial intermediaries comply with the institutions' safeguards;
 - (g) Explicitly recognize the right to access to information;
 - (h) Enforce the presumption of proactive disclosure of information, with limited, specific exemptions;
 - (i) Translate all documents in a language understood by affected communities;
 - (j) Take proactive measures to prevent the occurrence of reprisals, systematically and publicly denounce instances of reprisals and push local authorities to investigate promptly and thoroughly such instances and bring the perpetrators to justice;
 - (k) Give independent accountability mechanisms sufficient powers and resources and make their decisions enforceable;
 - (l) Obtain consensus from the affected communities as to the design and membership of grievance mechanisms at the project level;
 - (m) Conduct human rights impact assessments prior to imposing loan conditionalities that compel States to take retrogressive measures;
 - (n) Embrace a human rights-based approach to combating corruption that focuses on the victim, State responsibility, prevention and redress;
 - (o) Strengthen measures on governance reform in client countries;
 - (p) Conduct robust anti-corruption due diligence processes;

- (q) Extend whistle-blower protection to external whistle-blowers when it is not yet in place;
- (r) Automatically flag instance of corruption to the national authorities and, as necessary, put pressure on them to take the required action;
- (s) Establish basic measures to ensure that the emergency funds given to States in the context of the COVID-19 pandemic are spent in a transparent and accountable manner;
- (t) Formally recognize the role of civil society as independent monitoring groups in the fight against corruption and strengthen their capacities in this respect.

74. The Independent Expert recommends that States:

- (a) Ensure a safe environment that is conducive to the participation of communities and civil society;
- (b) Promptly and thoroughly investigate instances of reprisals and bring the perpetrators to justice;
- (c) Allocate the maximum available resources to the progressive realization of human rights and avoid potential retrogression;
- (d) Conduct human rights impact assessments before considering taking retrogressive measures;
- (e) Systematically investigate instances of corruption flagged by international financial institutions;
- (f) Spend all the emergency funds received from international financial institutions in the context of the response to COVID-19 pandemic in a transparent and accountable manner and only for the benefit the population in need;
- (g) Ratify the United Nations Convention against Corruption;
- (h) As shareholder countries of international financial institutions, hold them accountable for respecting human rights in their activities.

75. The Independent Expert recommends that local communities and civil society:

- (a) Continue actively participating, or seeking participation, in projects related to international financial institutions;
- (b) Continue their strong human rights monitoring of projects related to international financial institutions;
- (c) Empower the communities affected by development projects to conduct their own due diligence on the impact of such projects.

AA. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

1. Final warning: death threats and killings of human rights defenders, A/HRC/46/35, 24 December 2020¹¹³

I. Introduction

[...]

7. The present report has been prepared because the killing of human rights defenders is a priority for the Special Rapporteur. She regards the killing of defenders as a red line that no State or non-State actor should ever cross. Such killings can and should be prevented. Human rights defenders have asked the Special Rapporteur to contribute useful data and ideas on how best to prevent more killings from occurring.
8. The Special Rapporteur has decided to focus part of the present report on death threats, including the extent to which they can be seen as predictors of attacks, and what interventions might be beneficial in reducing the likelihood of an attack after a death threat has been received. In “The highest aspiration: a call to action for human rights”, the Secretary-General noted how threats to human rights defenders were part of a wider attack on civil society. He noted that repressive laws were spreading, with increased restrictions on the freedoms to express, participate, assemble and associate. Journalists and human rights defenders, especially women, were increasingly being threatened.
9. The Special Rapporteur notes that many Governments are failing in their obligations to protect human rights defenders from attacks and killings by State and non-State actors. Some States, in particular those with high numbers of such killings, have established dedicated protection mechanisms to prevent and respond to risks and attacks against human rights defenders. While these mechanisms have been successful in part, human rights defenders often complain that the mechanisms are under-resourced, or that States lack the necessary political will to properly protect defenders.
10. Businesses also have responsibilities to protect human rights defenders, and many defenders are killed after protesting negative human rights impacts of business ventures. In too many cases, businesses are also shirking their responsibilities to prevent attacks on defenders or are even perpetrators of such attacks.

[...]

16. Human rights defenders working on some issues appear to be particularly vulnerable to attack. They include environmental human rights defenders, those protesting land grabs or those defending the rights of people, including indigenous peoples, by objecting to Governments that are imposing business projects on communities without free, prior and informed consent. One in two victims of killings recorded in 2019 by OHCHR had been working with communities around issues of land, environment, impacts of business activities, poverty and rights of indigenous peoples, Afro-descendants and other minorities.
17. As noted by the previous mandate holder, States must take special measures to protect human rights defenders, in particular their rights to life and to humane treatment, when there are specific threats or pre-existing patterns of violence.

¹¹³ <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F46%2F35&Language=E&DeviceType=Desktop>.

Failure to adopt such measures to fulfil the heightened obligations must be considered by international bodies when determining the legal consequences of non-compliance (see sect. III below).

[...]

III. Regulatory framework

24. The Special Rapporteur reminds States that the General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) by consensus, representing a strong commitment of States to its implementation.

[...]

30. Importantly, the duty to protect the right to life requires States to take special measures of protection for persons in vulnerable situations whose lives are at risk as a result of specific threats or pre-existing patterns of violence. Such persons include human rights defenders and special measures to protect them would comprise round-the-clock police protection. Moreover, States must create and maintain a safe and enabling environment for defending human rights. It also requires States to address the general conditions in society that may give rise to direct threats to life, such as high levels of criminal and gun violence or deprivation of indigenous peoples' land, territories and resources, which are particularly relevant for human rights defenders.

[...]

V. Threats

49. Testimonies of human rights defenders and civil society actors that were shared with the mandate holder, together with data built up over many years, primarily from civil society, suggest that the killings of defenders are often preceded by signs or forewarnings. Many human rights defenders report that they and their work are often demonized and stigmatized, smeared in the press and otherwise attacked, leaving them vulnerable to physical attacks or murder.

[...]

54. Human rights defenders have reported a vast range of types of death threats to the Special Rapporteur. Defenders report that threats can be veiled or explicit, individual or collective. Many are followed by murder. The protection of environmental human rights defenders, including indigenous peoples' leaders and defenders, is inherently linked to the protection of their communities and peoples. It can only be fully achieved in the context of a holistic approach that includes the strengthening of democratic institutions, the fight against impunity, a reduction in economic inequality and equal access to justice.

[...]

A. Killings following threats

72. In March 2019, indigenous Bribri leader Sergio Rojas Ortiz was killed in Costa Rica. He had worked for more than four decades defending the rights of indigenous peoples against the illegal occupation of their territories. He had been repeatedly threatened over a number of years before his murder and had survived an assassination attempt in 2012 when a car he was in was shot at six times. At the time of his killing, he had been living alone to avoid putting his family at risk.

[...]

B. Death threats

75. On 29 January 2019, Cacique Babau, an indigenous leader and human rights defender from Brazil, received information from a confidential source about a plan to assassinate him and at least four of his relatives, namely three of his brothers and one of his nieces. Reportedly, the plan was developed in a meeting with local farmers and representatives of civil and military police. Mr. Babau has been formally included in the Government's programme for the protection of human rights defenders. However, he apparently still faces severe threats in his community, and no investigation was opened into the alleged assassination threats.

[...]

VIII. Conclusions and recommendations

[...]

C. Additional recommendations

[...]

113. Businesses and international financial institutions should: ... (b) Acknowledge that land and environmental defenders and those defending indigenous peoples' rights are at specific risk.

2. Visit to Peru, A/HRC/46/35/ADD.2, 22 December 2020¹¹⁴

I. Introduction

1. The Special Rapporteur on the situation of human rights defenders, Michel Forst, conducted an official visit to Peru from 21 January to 3 February 2020 at the invitation of the Government. The main objective of his visit was to assess the situation of human rights defenders in the country. That assessment was conducted in the light of the State's obligations and commitments under international human rights law and under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

[...]

II. Legal and institutional framework for the protection of human rights defenders

6. Peru is a party to all nine core international human rights treaties and to seven of the nine optional protocols. The country reports regularly to the human rights treaty bodies and has extended a standing invitation to the special procedure mandate holders of the Human Rights Council since 2002. It voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (resolution 73/165), adopted by the General Assembly in September 2007 and December 2018 respectively.

7. Peru has ratified the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

¹¹⁴ <https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F46%2F35%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>.

[...]

III. Situation of human rights defenders in Peru

16. The situation of human rights defenders in Peru remains of concern to the Special Rapporteur. The Special Rapporteur concludes that large number of human rights defenders, and in particular environmental, land and indigenous peoples' rights defenders, are unable to operate in a safe and enabling environment.
17. He has identified the following four trends of concern:
 - (a) Stigmatization and lack of recognition of defenders;
 - (b) Criminalization of defenders;
 - (c) Persistent problematic practices in the management of assemblies in the context of social protests;
 - (d) Lack of effective protection responses for human rights defenders at risk.
18. The Special Rapporteur has also identified that the following categories of defenders that face greater risks and obstacles when promoting and defending human rights: land and environmental defenders (particularly defenders from indigenous peoples and peasant communities), women human rights defenders, defenders of the human rights of lesbian, gay, bisexual, transgender and intersex persons, defenders of sexual and reproductive rights, journalists that document human rights abuses and corruption, and defenders of victims of the period of violence (1980–2000) and its aftermath.

[...]

B. Criminalization of human rights defenders

[...]

26. According to information provided by civil society, at least 960 individuals have been subjected to criminalization in connection with their defence and promotion of human rights since 2002. Out of these, 538 were subjected to criminalization in the context of social protests. This pattern of criminalization was overwhelmingly confirmed in interviews with civil society organizations and human rights defenders, in particular environmental and land rights defenders belonging to peasant or indigenous communities in rural areas. In its guidelines on defending human rights defenders, the national human rights institution listed criminalization as one of the forms of attacks most frequently suffered by human rights defenders. The authorities rejected the claims regarding the practice of criminalization and the numbers provided by civil society. Indeed, during the meeting with the provincial office of the Public Prosecution Service in Cuzco, the practice was dismissed in its entirety.
27. Although tracking the root causes of this phenomenon is complex, the Special Rapporteur received many reports highlighting the role of the Public Prosecution Service at the various provincial levels in the practice of criminalization. The Special Rapporteur met with public officials from the Public Prosecution Service in the course of the country visit. Prosecutors at the local, provincial and State levels held that action was taken by the Public Prosecution Service in accordance with the law only, and where there was sufficient evidence that an offence was likely to have been committed. However, the numerous testimonies received revealed a clear pattern of the Public Prosecution Service investigating and charging human rights defenders and appealing their acquittals, in a way that suggested bias in favour of the

corporate or economic interests that the human rights defenders were challenging. On many occasions, criminal investigations and proceedings were initiated by the volition of the Public Prosecution Service upon receiving information about a specific occurrence, such as a protest. In other instances, criminal complaints were initiated by private actors. Testimonies received further suggested a practice of private actors using criminal law to silence opposition to their activities. The Special Rapporteur received many testimonies in different parts of the country pointing to the exertion of considerable pressure by private actors, including businesses, on the Public Prosecution Service to initiate investigations or criminal proceedings. Moreover, during interviews, several examples revealed a practice by the Public Prosecution Service of appealing acquittals, leading to prolonged legal battles, without consideration of the prospects for conviction. The groups of human rights defenders particularly affected by this practice are defenders of environmental and land rights, and those belonging to indigenous or peasant communities.

Land and environmental defenders belonging to indigenous and peasant communities

28. Within and outside social conflicts, indigenous and peasant communities experience widespread criminalization. The most common categories of offences used to criminalize human rights defenders under the Criminal Code and the Organized Crime Act reportedly include the crimes of public disorder, obstruction of the functioning of public services, aggravated damages, violence and resistance to authority, extortion, kidnapping, usurpation, and criminal association to commit a crime.
29. Another category of cases concerned access to ancestral lands by indigenous and peasant communities. In this context, the activities of corporate actors is also manifest, as they represented the actors who in the first instance raised criminal complaints. For example, human rights defenders in San Juan Bautista de Catacaos, in a dispute with private companies over access and title to their lands, were charged with multiple offences. Under efforts by agricultural company Santa Regina, in particular, to evict members of the community, 39 members, including those opposing the eviction and claiming land rights, are facing or have faced criminal charges and investigations raised by the company and the Asociación Civil San Juan Bautista. Many of the defenders are facing trial.
30. In other instances, including in Madre de Dios, indigenous and peasant communities holding titles to their ancestral lands were reportedly facing criminal charges for failing to prevent illegal logging on their territories, as mandated by existing environmental regulations. The perverse effect has been to make the community leaders of peasant and indigenous peoples and human rights defenders responsible for the actions of the actors who threaten and harass them and their communities.
31. The Special Rapporteur also learned of several examples in which the exercise of peasant patrol jurisdiction had given rise to criminal prosecution. In Peruvian domestic law, *rondas campesinas*, or peasant patrols, are recognized as social organizations formed by communities of peasants, hunters and indigenous peoples, which are entitled to exercise certain types of public powers, including law enforcement. Despite this recognition, the exercise of such jurisdiction has led to criminal prosecution in the past, and the Special Rapporteur witnessed the use of such criminalization as a means of discrediting human rights defenders.

A notable example concerns the media professional and human rights defender César Estrada, who was an active member of the peasant patrols until late 2016, and about whose case the Special Rapporteur has raised concerns on several occasions.

32. The Special Rapporteur observes with concern that leaders of indigenous or peasant communities who are also environmental and land rights defenders are at higher risk of being charged, placed in pretrial detention and subjected to long prison sentences in the context of the mobilization of their communities and in the exercise and defence of their human rights. The Special Rapporteur wishes to recall article 10 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), under which the State is under an obligation to take into account the effects for the indigenous community of imprisoning its members, and to give preference to alternative modes of punishment.

Lawyers defending the rights of human rights defenders

33. The Special Rapporteur learned of examples of cases in which the lawyers of human rights defenders are subject to criminalization. Lawyer Juan Carlos Ruíz and medical doctor Fernando Osoreo were criminally prosecuted for their human rights work in support of the legal cases filed by four indigenous peoples' organizations in Espinar (Cuzco) against the Glencore mining project. Both defenders were acquitted at first instance of the charges of use of a false public document and issuance of false medical certificate.

[...]

C. Obstacles to defenders' right of peaceful assembly

[...]

Policing and criminalization of assemblies blocking transit roads

44. Serious threats to defenders arise when they advocate for their rights with the effect of disrupting extractive activities by private companies, particularly through the disruption of road traffic. For indigenous and peasant communities, a historically disenfranchised section of the population who inhabit territories where mining, gas or oil projects are approved, such methods are in practice the only means by which they can make their voices heard by the authorities. During the country visit, civil society actors and the authorities alike referred to this particular context as a trigger for the dispersal of assemblies. Such dispersals often involve the use of force, leading to further escalation of violence.
45. In interviews with representatives of the authorities, the prevailing perception was that this type of assembly was unlawful, albeit occasionally tolerated. This notion of an inherent unlawfulness in the blocking of roads was also expressed in interviews with the extractive sector. The Peruvian legal system contributes to this perception. Through a 2015 amendment to article 200 of the Criminal Code, on extortion, the provision now criminalizes, inter alia, blocking transit roads or impeding the execution of lawful business through the use of threats or violence, to gain an undue economic advantage from the authorities or any other form of advantage. The punishment is imprisonment of no less than five years, and of no less than 15 years if two or more persons participate.

[...]

46. Given the perception of illegality, these assemblies are often disrupted through the use of force when the communities have not received prior authorization or when they are protracted.
47. The dispersal of the assembly on occasion leads to further escalation of violence. After the disruption of assemblies, there is a practice of criminally charging the leaders and defenders of the indigenous or peasant communities for crimes committed by third parties. Because of this troubling trend, the Special Rapporteur encourages greater awareness among the authorities and private actors of the scope of protection of these forms of assemblies. As highlighted by the Human Rights Committee, the mere fact of an assembly blocking transit roads does not place its participants outside the scope of protection under article 21 of the International Covenant on Civil and Political Rights. Moreover, the right applies even where the assembly does not meet all requirements under domestic law, and also where it is used as a form of civil disobedience.

[...]

Targeting of human rights defenders organizing assemblies

49. Under international human rights law, the permissibility of holding organizers responsible for the acts of participants is narrow, precisely because of the serious chilling effect that such a practice has on the exercise of the right of peaceful assembly. Thus, there are exceptions to the principle of individual responsibility. Despite this, organizers of assemblies, particularly in the context of social conflicts, are targeted for their role in organizing and leading assemblies. In assemblies organized by indigenous or peasant communities against the activities of extractive businesses, the organizers are often also the leaders and defenders of the respective communities. The Special Rapporteur learned of numerous instances in which such community leaders had been charged with or held criminally responsible for the acts of participants in the assemblies.

D. Failure to protect human rights defenders at risk

[...]

Failure to register complaints brought to the attention of the authorities

51. Testimonies were received confirming that in practice, local law enforcement and other authorities, in particular the prefecture, exercised some level of discretion in the registration of criminal complaints by human rights defenders about threats that they had received. No such discretionary power is afforded to those authorities under domestic law, however. This practice was prevalent, in particular, in relation to defenders of land and environmental rights, particularly members of indigenous and peasant communities, and defenders of lesbian, gay, bisexual, transgender and intersex rights. The failure to register complaints impairs both the ability of the authorities to prevent attacks against human rights defenders, and the prospects for ensuring accountability for attacks against defenders, leading to a climate of impunity.

Lack of effective systems for ensuring the physical safety and protection of human rights defenders at risk

52. The Special Rapporteur did not encounter an effective system for offering protection measures to defenders at risk in areas with social conflicts, namely environmental and land rights defenders, particularly those belonging to indigenous or peasant communities.

53. The protocol guaranteeing the protection of human rights defenders aims to set up a scheme of protection for defenders at risk. From the adoption of the protocol in April 2019 until November 2020, the Directorate General of Human Rights of the Ministry of Justice and Human Rights and its coordination team, composed of three members of staff, has received 21 requests for activation of the protocol, most of which concern defence of the right to a healthy environment (seven requests) and indigenous peoples' rights (eight requests). The Ministry has admitted nine cases for assessment, of which it has issued four early warnings, three of which include urgent measures of protection. The Ministry has often aimed to hold dialogue and liaise directly with local authorities to ensure that support to the individual defender is provided at the local level. The Special Rapporteur commends the genuine efforts made by the Ministry and its officials for these diligent efforts. However, the Special Rapporteur notes that the effects and scale of these measures remain limited. In particular, since the protocol is binding only on the Directorate General, part of the Ministry, ensuring the implementation of protection measures could pose a challenge.
54. Sub-prefectures, which are regional representatives of the Ministry of the Interior, have the competency to adopt protection measures with respect to individuals at risk. Although everyone may thus apply for protection measures at sub-prefectures, there seemed to be failures in terms of both the procedure and the effectiveness of response. With regard to the procedure, the standard of proof seemed to be set unreasonably high and the burden of proof placed on the applicant. Particularly in the context of illegal mining and logging, the task of acquiring ample proof of the threat places the defender at serious risk of irreparable harm. Where guarantees were granted, the effectiveness of the response remained a serious challenge.
55. Intervention by law enforcement officials in situations of risk or attacks varied markedly between regions and areas. The indigenous and peasant communities in the Amazon region of Ucayali have for a number of years suffered a sustained threat from local corporate actors and criminal groups originating from the Valle de los Ríos Apurímac, Ene y Mantaro region and operating along the border with neighbouring Brazil. Despite precautionary measures having been decided by the Inter-American Commission on Human Rights in respect of the community of Nueva Austria del Sira for the purpose of ensuring their personal safety, no effective means of doing so had been implemented. Indigenous community leaders and human rights defenders from these regions have raised the matter with the authorities at various levels and requested that they implement safety measures, with no effective response to date. A defender with whom the Special Rapporteur met during the visit had faced numerous threats over a long period, a situation known to the authorities. Subsequent to the visit, the same defender was murdered. Similarly, the indigenous and peasant communities in Madre de Dios were suffering attacks and threats with the influx of illegal mining activities, particularly after the construction of the interoceanic highway. Efforts by the authorities to combat the illegal activities and protect the communities and defenders from threat had proved ineffective.
56. The reasons for the failure to ensure the safety of human rights defenders can be partly attributed to the lack of resources, particularly for law enforcement officials to reach remote areas. An egregious result, the Special Rapporteur learned, was demands from local law enforcement officials in Ucayali that victims pay for the cost of transportation to deploy to remote areas. Equally worrisome were numerous allegations of widespread corruption at the local level of authority and

collusion with criminal or corporate actors, seriously hampering the efficiency of law enforcement officials in protecting members of indigenous communities and environmental defenders. Lack of effective investigations of attacks against human rights defenders and failure to prosecute and punish those responsible

57. The pattern observed during the visit of criminalization of human rights defenders and community leaders active in denouncing adverse impacts of extractive industries or violations by the illegal business sector should be contrasted with the numerous examples of failure by the police and prosecution to investigate attacks against human rights defenders and to prosecute and punish those responsible.
58. In Ucayali, the Special Rapporteur learned of the constant threat faced by numerous of the indigenous Amazonian communities, including threats to life, physical attacks, and murder by illegal loggers and other unknown actors. In 2014, four leaders and human rights defenders of the indigenous community of Saweto were murdered after denouncing illegal logging on their ancestral territories. The investigation into the murders, involving known suspects, had been ongoing for over half a decade when, in March 2020, the hearings for the formulation of charges were postponed for a third time. Meanwhile, the relatives of the victims, one of whom the Special Rapporteur met, were facing constant threats to their life for advocating for justice for the murders and against the continued illegal logging on the territories of the community.
59. This was not an isolated case. In Piura, defender members of the San Juan Bautista de Catacaos community had experienced two murders, gunfire injuries, death threats, harassment and other violent attacks by individuals with reported links to corporate actors operating on their territories. Despite the long and clear patterns of threats, the Special Rapporteur learned of limited success in apprehending and prosecuting those responsible for the offences. In Madre de Dios, defenders alerting the authorities to illegal mining activities and attacks and harassment by the actors concerned were required to accompany prosecutors and the police to identify the site and the perpetrators, putting the lives of defenders at risk through retaliation and deterring future reporting of such violations to the authorities.
60. In this respect, the Special Rapporteur wishes to emphasize that effective investigations, with a view to prosecuting and punishing those responsible for abuses, are a necessary precondition for ensuring accountability, preventing impunity and avoiding the denial of justice. More broadly, the failure to investigate acts of violence and threats against human rights defenders has a chilling effect on their ability to defend human rights.

IV. Specific groups of human rights defenders at risk

A. Environmental and indigenous peoples' rights defenders

61. Environmental and indigenous defenders, particularly leaders or members of indigenous or peasant communities, are those facing greater risks and threats in connection to their human rights work denouncing the adverse impact of extractive industries, legal and illegal. The indigenous and peasant communities they defend remain in a situation of structural discrimination and poverty, including lack of access to essential services such as health, water, electricity as well as education. It is estimated that 35 per cent of territories belonging to peasant communities currently have concessions for exploitation and 9 per cent of the amazon region has been designated for exploitation, affecting the territories of 69 indigenous communities and 1,952 peasant communities.⁴³ It is in this context that most social conflicts are taking place in Peru. In September 2020, the national human rights

institution reported that 66.1 per cent of the 142 active social conflicts were related to environmental issues, out of which 61.6 per cent were related to mining, 19.2 per cent to oil and gas and 6.4 per cent to environmental pollution.

62. In order to effectively address the threats faced by environmental and indigenous human rights defenders, the Special Rapporteur urges the Government to take all necessary measures to tackle the underlying root causes of social conflicts: lack of legal protection, lack of legal security for acquired rights, lack of effective consultations and lack of remedy following environmental pollution. While understanding that these factors relate to broad structural challenges faced by the State, and consequently that change will necessarily be progressive, the Special Rapporteur found that insufficient measures have been put in place to effectively achieve change, particularly given the risks to the life and health of the affected population, including human rights defenders.

Lack of legal protection

63. The Special Rapporteur heard testimonies about the cumbersome process that indigenous or peasant communities needed to follow for the acquisition of legal title to their ancestral lands or the lands that they have traditionally occupied. This has also been well documented by the national human rights institution. In practice, acquiring title to their ancestral lands and securing their demarcation required the leadership of courageous indigenous human rights defenders and the legal support of civil society actors and lawyers, and often involved legal obstacles, as well as physical attacks against and criminalization of the leaders and human rights defenders of the communities.
64. In some examples, the titling and demarcation process has lasted many years, with concessions being granted to exploit the land while the process was ongoing. The process for the Ashéninka native community of Saweto started in 2006, with the titling to a portion of their ancestral lands being granted only in 2015. The Shipibo-Conibo native community of Santa Clara de Uchunya initiated the process of the extension of their communal titling in 2015, which was granted in 2020.⁴⁸ Meanwhile, illegal loggers had acquired parcels of the territory for exploitation, which were sold to palm-oil company Plantaciones de Pucallpa and later to Ocho Sur P, another palm-oil company currently operating on the ancestral lands of the community. An attempt was made to formalize such predatory acquisition of land titles by loggers in the region through a regional decree. The Special Rapporteur welcomes the repeal of the decree in 2020 by the regional government.

Lack of legal security for acquired rights

65. As previously mentioned, there is also the challenge of legal security for acquired land rights. Even when they have been granted legal title to land, these communities are still under threat from the formal and informal business sectors and illegal exploitation. The indigenous community of Tres Islas, with the support of civil society organizations and its community leaders and human rights defenders, won a legal battle for the annulment of more than 140 mining concessions and 11 agricultural projects unlawfully granted in violation of the rights of the community.

Lack of effective consultations

66. In matters affecting communities, including the exploitation of natural resources, the communities concerned must be consulted, as required under international

and domestic law. According to the information received by the Special Rapporteur during the mission, consultations are perceived not to be conducted in good faith, and are seen as a mere formality. Consultations are held either too early or too late in the process, often in a language not spoken and understood by the affected communities, and without adequate participation by indigenous women. This prevents effective participation and influence in the process by the affected communities. The Peruvian legal system does not recognize the requirement under article 19 of the United Nations Declaration on the Rights of Indigenous Peoples that the indigenous peoples concerned be consulted with a view to acquiring their free, prior and informed consent. The consequent inability of communities to veto decisions affecting them hampers the extent to which their views and interests are taken into account in decisionmaking. In addition, there has been an alleged failure to fulfil agreements reached between the Government and the affected communities to address their concerns related to extractive projects.

Lack of remedy following environmental pollution

67. Another major cause of social conflict is environmental pollution. The Special Rapporteur commends the State for its efforts made to address pollution caused by ongoing activity by business or industry, through the Environmental Assessment and Enforcement Agency, and the establishment of a specialized unit in the Public Prosecution Service dealing with environmental crimes. Despite this, the Special Rapporteur found that the Public Prosecution Service lacked the resources and powers required to operate effectively to combat existing impunity for environmental crimes, and there seemed to be a lack of coordination with other administrative bodies in effectively combating such crimes. In particular, the Special Rapporteur notes that there are no legal grounds to administratively annul concessions for extractive businesses where they demonstrably violate environmental standards or face credible allegations of human rights abuse. The Government has developed funds to remedy the consequences of past pollution. Despite this, in situations where no existing company can be held liable, environmental and indigenous defenders and their communities have had no effective means of holding anyone accountable for the damage done to their territories or ensuring that such damage is remedied.

B. Women human rights defenders

[...]

69. Indigenous and rural women human rights defenders are some of the most at-risk groups of defenders in Peru. Persistent historical discrimination and racism have hampered their access to the most basic human rights, such as their rights to health, to education and to a safe, clean, healthy and sustainable environment. The negative, racist and sexist stereotyping of indigenous women is perpetuated by media outlets, in particular through television shows such as *La paisana Jacinta*. During the official visit, the Special Rapporteur met with one of the four courageous indigenous women rights defenders who had filed a lawsuit in 2014 to end the broadcasting of the show. A judicial sentence of November 2018 ordering Channel 2 (now known as “Latina”) to stop broadcasting the programme and to remove it from YouTube was annulled in June 2019. A subsequent judgment, of October 2020, prohibited the reproduction of the show. Women who have opposed large-scale projects such as those of the extractive industry have also faced intimidation and physical attacks, as in the case raised by the Special Rapporteur concerning

defenders denouncing the negative impact of the Yanacocha mine. The Special Rapporteur received testimonies of women defenders receiving threats of sexual violence and public shaming. They have also been subject to criminalization by companies.

[...]

VI. Conclusions and recommendations

77. During the visit, the Special Rapporteur encountered diametrically opposed views on the challenges facing Peru. A genuine effort to protect and promote the work of defenders must begin with recognition across State institutions and the private sector of current challenges. In the light of the above findings, the Special Rapporteur recommends the following measures.

[...]

79. The Government should promote the active public participation of women human rights defenders, including indigenous and rural women, in the design, implementation and evaluation of all policies and protocols that affect them and their communities.

80. The Government should end the practice of criminalization of human rights defenders, in particular by: ... (c) Ensuring the effective implementation of article 10 of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), in respect of the sentencing of members of indigenous communities, and ensuring its application also with respect to pretrial detention, in accordance with article 9 of the International Covenant on Civil and Political Rights.

[...]

83. Given the serious and sustained threats to land and environmental defenders, particularly those belonging to indigenous peoples and peasant communities, the Government should take immediate steps to address the root causes of these threats, in particular by:

- (a) Ratifying the Escazú Agreement;
- (b) Ensuring legal recognition and the effective protection of the ancestral lands of indigenous peoples through the provision and registration of land ownership titles and demarcation procedures. To this end, it should review the current legislative framework and administrative procedures to avoid undue delays in the titling process;
- (c) Reviewing its practice of granting concessions to extractive businesses in areas in which the title to land is subject to dispute or ongoing titling processes by indigenous communities, given the irreparable harm that these activities cause to the communities' enjoyment of the right to land, territories and natural resources;
- (d) Ensuring respect for the right of indigenous communities to be consulted in order to obtain their free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, and ensuring meaningful consultation processes to guarantee the protection and respect of the rights of indigenous communities, as guaranteed in that Declaration and in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169);
- (e) Ensuring respect for human rights by non-State actors, including corporate actors, by taking appropriate legislative and other measures. For example, the necessary amendments to the legal framework should be made to permit the

annulment of concessions for extractive activities where there are consistent and credible reports of human rights abuse and violations of environmental standards.

86. The Special Rapporteur recommends that private companies take immediate steps to demonstrate their commitment to human rights and human rights defenders through adherence to the United Nations Guiding Principles on Business and Human Rights. They must immediately cease any practice of stigmatization and criminalization of human rights defenders.
87. Private companies must assess human rights due diligence throughout their operations, and ensure cooperation with human rights defenders and meaningful consultations with communities affected by their activities. They should establish or strengthen grievance mechanisms, in particular where human rights defenders are under threat of attacks in connection with business operations, adopting specific measures for specific groups of human rights defenders.

