

**Indigenous Peoples
and
United Nations Human Rights Bodies**

**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**

Volume VII

2015-2016

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Preface

This document contains Volume VII of the series of compilations of United Nations human rights bodies' jurisprudence pertaining to indigenous peoples. It covers the years 2015 and 2016.¹ 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 and Independent Experts). As with the last volume, it does not contain the results of the Human Rights Council's Universal Periodic Review as that procedure rarely elicits anything of normative value and appears to be primarily ritualistic in addressing human rights issues.²

In 2015/16, 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 procedures. Of particular note is the observation on Costa Rica that refers to the right to self-determination in the context of indigenous governing institutions. CERD stated that "bodies established by the State party ... have supplanted indigenous peoples' own institutions in their relations with the State; ... constitute an imposed institution that does not properly represent the indigenous peoples; [and] ... have extensive powers in relation, for example, to the award of land titles in indigenous territories...."³ It then recommended, "in the light of its general recommendation No. 21 (1996) on the right to self-determination and ILO Convention No. 169, that indigenous peoples' authorities and representative institutions be recognized in a manner consistent with their right to self-determination in matters relating to their internal and local affairs."⁴ CERD also continued to make reference to the UNDRIP, for example in the case of Suriname, reiterating "its recommendation concerning the drawing up of a framework law on the rights of indigenous and tribal peoples" and "that this framework law comply with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples."⁵

In addition to emphasizing various substantive obligations, the Human Rights Committee again highlighted the obligation to ensure that "necessary prior consultations are held with indigenous peoples to obtain their free, prior and informed consent before any measure is adopted or implemented that may substantively compromise their way of life and culture...."⁶ A number of Special Procedures of the Human Rights Council also emphasized FPIC in their thematic, annual or country mission reports.⁷ The Working Group on the issue of human rights and transnational corporations and other business enterprises, for example, explains in the context of state-investor contracts for large-scale agriculture that "Consultations ... which meet international standards, and respect for free, prior and informed consent, are key aspects of contract negotiations."⁸ CERD and others, including for the first time, the Committee on Elimination of Discrimination Against Women ("CEDAW"), continued to underscore the human rights aspects of business and the need to

¹ Volumes I-VI covering the years 1993-2014 are available at: <http://www.forestpeoples.org/tags/indigenous-peoples-and-united-nations-human-rights-bodies-series-compilations-un-treaty-body-ju>.

² For an extended critique of the UPR and discussion of 'rights ritualism' see H. Charlesworth & E. Larking, eds., *HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW. RITUALS AND RITUALISM* (Cambridge U. Press 2015). See also F. Adcock *The Limitations of the Current International Human Rights Law System in Regard to Monitoring of Rights? Does it Encourage 'Rights Ritualism'?*, <http://www.un.org/esa/socdev/unpfii/documents/EGM/2015/Experts-papers/Fleur-Adcock.pdf>.

³ Costa Rica, CERD/C/CRI/CO/19-22, 25 September 2015, para. 25.

⁴ *Id.* at para. 26.

⁵ Suriname, CERD/C/SUR/CO/13-15, 25 September 2015, at para. 24. See also Namibia, CERD/C/NAM/CO/13-15, 13 May 2016.

⁶ See e.g., Venezuela, CCPR/C/VEN/CO/4, 14 August 2015, at para. 21; and Costa Rica, CCPR/C/CRI/CO/6, 22 April 2016, para. 42. See however Cambodia, CCPR/C/KHM/CO/2, 27 April 2015, para. 28 (stating merely that "The State party should establish an effective consultation mechanism and ensure meaningful consultation with indigenous peoples in decision-making in all areas having an impact on their rights").

⁷ See e.g., *Report of the Special Rapporteur on the right to food on her mission to Philippines*, A/HRC/31/51/Add.1, 29 December 2015, para. 37; *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, A/HRC/30/40, 8 July 2015, para. 28; *Report of the Special Rapporteur on the situation of human rights defenders, Environmental human rights defenders*, A/71/281, 3 August 2016, para. 68; and *Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Philippines*, A/HRC/32/35/Add.3, 5 April 2016, para. 123.

⁸ *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/71/291, 4 August 2016, at para. 23.

regulate corporate operations extra-territorially, especially where they affect the human rights of indigenous peoples.⁹

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 this right. This is highly important as it grounds land and resource rights and associated guarantees in the right to self-determination, giving additional weight and scope to those rights, and provides an important avenue for raising these issues before the Committee, possibly also under the Optional Protocol to the Covenant. This stands in sharp contrast to the Human Rights Committee, which now only sporadically cites Article 1, even where it does so in a previous review of the same state (e.g., compare New Zealand 2012 and 2015).¹⁰

CEDAW continued to explicitly acknowledge “the multiple forms” of discrimination faced by indigenous women, as did CERD.¹¹ CEDAW now regularly includes specific sections in its concluding observations entitled ‘indigenous women’ or ‘indigenous and other minority women’.¹² Importantly, particularly as it is the first instance it has squarely addressed this issue, CEDAW recommended in 2015 that Ecuador “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.”¹³ Similar recommendations were adopted in reviews of other countries.¹⁴ Likewise, it has begun to address land rights concerns in a more positive manner, for example, recommending that Gabon “ensure that indigenous people, including women, have ... unobstructed access to their ancestral lands.”¹⁵ In general, CEDAW was more sensitive to indigenous issues during 2015-16, even invoking the UNDRIP in its concluding observations.¹⁶ Nonetheless, it continues to neglect any attention to indigenous women’s issues in some countries (e.g., Namibia and Vietnam, both reviewed in 2015).

CEDAW adopted General recommendation No. 34 on the rights of rural women in March 2016. It highlights that “Rural women often have only limited rights over land and natural resources. In many regions, they suffer from discrimination in relation to land rights, including with respect to communal lands, which are controlled largely by men;” and that it classifies their “... rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights.”¹⁷ Specifically addressing indigenous women, it

⁹ See e.g., Canada, CEDAW/C/CAN/CO/8-9, 18 November 2016, para. 18-19; and Mexico, CRC/C/MEX/CO/4-5, 3 July 2015, para. 52(c).

¹⁰ See e.g., Venezuela, CCPR/C/VEN/CO/4, 14 August 2015, para. 21; and Sweden, CCPR/C/SWE/CO/7, 28 April 2016, para. 38. It is unclear why Article 1 was referenced only in relation to these countries.

¹¹ See e.g., Colombia, CERD/C/COL/CO/15-16, para. 31-2; Guatemala, CERD/C/GTM/CO/14-15; and Paraguay, CERD/C/PRY/CO/4-6, 4 October 2016, para. 41-2.

¹² At times it refers to indigenous women under the heading ‘disadvantaged women’ or lumps indigenous women together with a variety of other persons/groups under the same heading. See e.g., Japan, CEDAW/C/JPN/CO/7-8, 10 March 2016, para. 46 (where CEDAW expresses concern “at reports that indigenous and ethnic minorities, such as Ainu, Buraku and Zainichi Korean women, and women with disabilities, lesbian, bisexual and transgender women and migrant women, continue to experience multiple and intersecting forms of discrimination”).

¹³ CEDAW/C/ECU/CO/8-9, 11 March 2015, at para. 39. See also Bolivia, CEDAW/C/BOL/CO/5-6, 28 July 2015, para. 34-5;

¹⁴ See e.g., Argentina, CEDAW/C/ARG/CO/7, 18 November 2016, para. 41(e) (recommending that the State “Set up a mandatory and effective consultation and benefit sharing mechanism to seek the free, prior and informed consent of indigenous women regarding the use of their natural resources and lands”).

¹⁵ CEDAW/C/GAB/CO/6, 11 March 2015, at para. 43. See also Russia, CEDAW/C/RUS/CO/8, 20 November 2015, para. 40(b) (recommending that Russia “Guarantee that indigenous women have full and unrestricted access to their traditional lands and the resources on which they depend for food, water, health and to maintain and develop their distinct cultures and identities as peoples”).

¹⁶ CEDAW/C/BOL/CO/5-6, 28 July 2015, para. 25(c) (recommending that Bolivia “Ensure[s] that indigenous women have access to education in compliance with the criteria enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295)”; Philippines, CEDAW/C/PHL/CO/7-8, 26 July 2016, para. 46(c); and Canada, CEDAW/C/CAN/CO/8-9, 18 November 2016, para. 29(c) (recommending that the State “Promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples”). See also Gabon, CRC/C/GAB/CO/2, 8 July 2016, para. 61(a) (recommending that Gabon “(Adopt a law for the protection of indigenous people based on the United Nations Declaration on Rights of Indigenous Peoples”).

¹⁷ General recommendation No. 34 on the rights of rural women, CEDAW/C/GC/34, 7 March 2016, at para. 55-6.

explained that “States parties should ensure that legislation ... ensure[s] that indigenous women in rural areas have equal access with indigenous men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession.”¹⁸ Note that the Special Rapporteur on the Rights of Indigenous Peoples recommended in 2015 that CEDAW “develop a general comment on the rights on indigenous women and girls.”¹⁹ She also highlighted the need for all United Nations human rights mechanisms to “direct additional attention to the nexus between individual and collective rights and how that impacts indigenous women and girls....”²⁰

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, and referenced the UN Framework on Business and Human Rights, adopted by the Human Rights Council in 2011. It has also started to include a new heading on “Environmental health” in its concluding observations, which often focuses on indigenous children/peoples,²¹ and held a ‘day of discussion’ – normally a precursor to a general comment - on the same subject in September 2016.²²

The CRC has also highlighted the logical connection between indigenous children’s rights and issues affecting indigenous peoples and their rights in general – something it did in its 2009 General Comment No. 11 on indigenous children, but has rarely done so previously or since in its concluding observations.²³ In the case of Honduras, for example, it expressed concern about the “impact of laws and programmes promoting the exploitation of natural resources on the right of indigenous children ... and their families to ownership of the lands they inhabit; [and] [t]he increased militarization and excessive use of force in the context of disputes over land and natural resources, especially in communities where indigenous peoples ... are settled, and the impact of evictions on children’s welfare.”²⁴ This also includes the first reference to FPIC in its concluding observations.²⁵

The Human Rights Council made important amendments to mandate of EMRIP in a September 2016 resolution. In particular, the EMRIP is now mandated to: 1) provide “expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples, and assist Member States upon request, to achieve the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples; and 2) to “[p]repare an annual study on the status on the

¹⁸ *Id.* at para. 59.

¹⁹ *Report of the Special Rapporteur on the rights of indigenous peoples (Rights of indigenous women and girls)*, A/HRC/30/41, 6 August 2015, at para. 82.

²⁰ *Id.* at para. 81.

²¹ See e.g., Brazil, CRC/C/BRA/CO/2-4, 30 October 2015, para. 66(c) (recommending that Brazil “Expediently end illegal mining activities, particularly in the Tapajós-Xingu area, and design and implement measures to mitigate the negative effects of these activities and those related to the construction of the Belo Monte dam on the rights of indigenous children and their families”); Mexico, CRC/C/MEX/CO/4-5, 3 July 2015, para. 51;

²² See <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx>.

²³ See e.g., Brazil, CRC/C/BRA/CO/2-4, 30 October 2015, para. 79(d) (expressing particular concern about “The delay in the demarcation of indigenous peoples’ lands, notwithstanding the constitutional rights to property and self-determination, as well as the enactment of legislation to facilitate the demarcation of land, which has negatively impacted indigenous children”); Suriname, CRC/C/SUR/CO/3-4, 30 September 2016, para. 36 (recommending that Suriname “ensure that Amerindian and Maroon communities are protected from illegal and uncontrolled logging and mining which has a negative environmental impact on these communities by adopting and enforcing legislation on sustainable land management in consultation with local communities, as well as corporate social responsibility”) and South Africa, CRC/C/ZAF/CO/2, 27 October 2016, para. 66(c) (recommending that the State “Prevent evictions and the displacement of indigenous peoples, including pastoralists, hunter-gatherers and forest people, and provide redress to those evicted or displaced from their lands”).

²⁴ Honduras, CRC/C/HND/CO/4-5, 3 July 2015, para. 77-8 (recommending that “the State party: (c) Review and refrain from implementing laws and programmes promoting the exploitation of natural resources that negatively affect the realization of children’s rights; [and] (d) Monitor and review governmental actions in the context of disputes over land and natural resources, and investigate and prosecute cases of excessive use of force”).

²⁵ Kenya, CRC/C/KEN/CO/3-5, 21 March 2016, para. 68(d) (recommending that Kenya “Consult and cooperate in good faith with the indigenous peoples concerned, including indigenous children, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, and provide effective remedies in cases of violation of their rights”).

rights of indigenous peoples worldwide in the achievement of the ends of the Declaration, focusing on one or more interrelated articles of the Declaration, decided by the Expert Mechanism....²⁶ The EMRIP also issued advice on the ‘Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage’ and ‘The right to health and indigenous peoples’.

The Working Group on the issue of human rights and transnational corporations and other business enterprises established a communications procedure by which complaints may be submitted concerning human rights violations in connection with business operations.²⁷

The Special Rapporteur on the rights of indigenous peoples issued a number of thematic and country mission reports (Paraguay, Brazil, Honduras and the Sápmi region of Norway, Sweden and Finland). The thematic reports contain important analysis of and recommendations on international investment and free trade,²⁸ the rights of indigenous women and girls, and conservation and indigenous peoples’ rights.²⁹

In December 2014, the Special Rapporteur in the Field of Cultural Rights recommended that “States should adopt measures to ensure the right of indigenous peoples to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge, and traditional cultural expressions.”³⁰ This was followed in August 2015 by a report on ‘Patent policy and the right to science and culture’.³¹ A year later, she issued a report on ‘Intentional destruction of cultural heritage’, which explains that the “right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law ... deriving its legal basis, in particular, from the right to take part in cultural life ... and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage.”³² She further observes that “the grievous history of destruction of diverse forms of indigenous cultural heritage in many parts of the world as a systematic part of, *inter alia*, colonialism or nationalist policies in post-colonial States. She agrees with the determination in the final report of the Truth and Reconciliation Commission of Canada that such policies can amount to cultural genocide.”³³

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health directly linked land and resource rights to the right to health, stating that “the right to health of indigenous people is threatened by changes in the use of land caused by development projects linked to logging operations, palm oil plantations and energy-intensive industries.... This has led to a substantial loss of access to traditional land and sources of livelihood, resettlement processes and instances of violence, which have had a direct impact on the physical and mental health of these communities.”³⁴ In a similar vein, the Special Rapporteur on adequate housing as a component of the right to an adequate standard

²⁶ Human Rights Council Resolution, Expert Mechanism, A/HRC/33/L.25, 26 September 2016, at para. 1 and 2(a).

²⁷ The procedure is described at: <http://www.ohchr.org/EN/Issues/Business/Pages/Submittingcomplaints.aspx>

²⁸ See also Canada, CEDAW/C/CAN/CO/8-9, 18 November 2016, para. 19(d) (recommending that Canada “Ensure[s] that trade and investment agreements negotiated by the State party recognize the primacy of its international human rights obligations over investors’ interests, so that the introduction of investor-State dispute settlement procedures shall not create obstacles to full compliance with the Convention”).

²⁹ *Report of the Special Rapporteur on the rights of indigenous peoples (Rights of indigenous women and girls)*, A/HRC/30/41, 6 August 2015; and *Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples (Conservation and Indigenous Peoples’ Rights)*, A/71/229, 29 July 2016.

³⁰ Special Rapporteur in the Field of Cultural Rights, *Copyright policy and the right to science and culture*, A/HRC/28/57, 24 December 2014, at para. 117.

³¹ *Report of the Special Rapporteur in the field of cultural rights: Patent policy and the right to science and culture*, A/70/279, 4 August 2015 (stating *inter alia*, at para. 114, that “States should (1) ensure availability of legal measures and remedies to ensure the control by indigenous peoples and local communities over their biocultural heritage; (2) prohibit unethical and/or unlawful appropriation of the heritage of indigenous peoples and local communities through patents; (3) ensure appropriate credit and compensation; and (4) ensure that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the free, prior and informed consent or approval and involvement of these communities, and that mutually agreed terms have been established”).

³² *Report of the Special Rapporteur in the field of cultural rights, Intentional destruction of cultural heritage*, A/71/317, 9 August 2016, at para. 14. See also *Report of the Special Rapporteur in the field of cultural rights, Mapping of cultural rights and preliminary views on destruction of cultural heritage as a violation of human rights*, A/HRC/31/59, 3 February 2016.

³³ *Id.* at para. 43.

³⁴ *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Malaysia*, A/HRC/29/33/Add.1, 1 May 2015, at para. 52.

of living identified article 7 of the United Nations Declaration on the Rights of Indigenous Peoples³⁵ as a “rich source for understanding the right to life and the right to adequate housing in international human rights law.”³⁶ She further observed that the “development and application of these rights has the potential to enhance the understanding of the social dimensions of the right to life and the interplay between the collective and individual dimensions of that right; it may also prompt a response to violations of rights to lands, territories or resources.”³⁷ Unfortunately, no further explanation was provided about this premise or the nature of the “interplay between the collective and individual dimensions of that right.”

The Special Rapporteur on the human rights of internally displaced persons observed that he “has been struck by the vulnerability of indigenous peoples to internal displacement,” adding that: they “are severely affected by displacement given their ties to ancestral lands and may have more challenges in adopting coping mechanism for survival when displaced. The protection of the rights of indigenous peoples displaced or threatened by displacement must be strengthened in law and practice. Legal provisions on land rights and the rights of indigenous peoples should be fully implemented and specific provisions on the rights of indigenous peoples should be included in laws on internally displaced persons where appropriate.”³⁸

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.

Para Berta who stood tall against “the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,” and on whose broad shoulders we all stand.³⁹

March 2017

³⁵ Article 7 reads: 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

³⁶ *Adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context*, A/71/310, 25 August 2016, at para. 56.

³⁷ *Id.*

³⁸ *Report of the Special Rapporteur on the human rights of internally displaced persons, Progress and challenges relating to the human rights of IDPs*, A/HRC/32/35, 29 April 2016, at para. 80.

³⁹ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 8 March 1999, preambular para. 4. See also Report of the Special Rapporteur on the situation of human rights defenders, *Environmental human rights defenders*, A/71/281, 3 August 2016, para. 9.

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I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

A. Concluding Observations

1. Denmark, CERD/C/DNK/CO/20-21, 12 June 2015

5. Following its recommendation in 2010, the Committee welcomes the Danish Parliament Act of 2014 aiming at improving the legal status of the “legally fatherless” of Greenland and notes with interest that in connection with the passing of this law, the Danish Parliament’s Greenland Committee called for a number of initiatives and that a joint Danish-Greenlandic working group has been established to follow up on this.

Greenland and Faroe Islands

19. The Committee expresses its concern at the lack of legal provisions prohibiting racial discrimination in the labour market, and at the lack of data as well as of a body to receive complaints on racial discrimination in Greenland and the Faroe Islands. While noting that the mandate of the Danish Institute for Human Rights has been extended to Greenland in 2014, the Committee regrets that there is no body with similar competence for the Faroe Islands. Also, the Committee is aware that Greenlanders living in mainland Denmark face prejudice and feel discriminated against in terms of access to economic, social and cultural rights (arts. 2 and 5).

The Committee recommends that the State party:

(a) Encourage Greenland and Faroe Islands to adopt relevant legislation on racial discrimination, develop ways and tools to collect data on racial discrimination and consider establishing a competent body to deal with complaints of discrimination based on race, colour, ethnic or national origin....

The Committee encourages the State party to consult with Greenlanders and Faroe Islanders living in mainland Denmark on possible prejudice and discrimination that might be experienced by them.

Indigenous peoples

21. The Committee notes that the State party maintains its view that there is only one indigenous people in the Kingdom of Denmark, the Inuit in Greenland, according to the Supreme Court 2003 ruling that the Thule Tribe are not a distinct indigenous people co-existing with the Greenlandic people. However, the Committee regrets the lack of consultation with the Thule Tribe of Greenland on this issue despite its previous recommendations (arts. 5).

In view of its General Recommendations no. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and no. 23 (1997) on rights of indigenous peoples, the Committee recommends that the State party engage in consultations with those concerned on matters of importance to them, keeping in mind the principle of self-identification as a fundamental criterion in the identification of people as a distinct indigenous people.

2. Guatemala, CERD/C/GTM/CO/14-15, 12 June 2015

3. The Committee takes special note of the State party’s commitment to promoting international instruments and policies in support of rights of indigenous peoples.

7. The Committee acknowledges the work of the national Human Rights Advocate, as well as the active participation and contributions made by civil society and organizations representing indigenous peoples.

Legal framework

9. The Committee notes with concern the gaps in implementation of the Agreement on Identity and Rights of Indigenous Peoples, one of the 12 peace agreements, and in this regard underscores the importance of structural reforms. The Committee takes note of the State party’s commitment to amending the Constitution as necessary to formally recognize indigenous peoples and their languages, religious beliefs, justice systems and other issues covered in the Agreement. The Committee continues to view with concern the stalled deliberations and delay in the approval by the Congress of draft legislation on consultation with indigenous peoples (draft bill 4051), indigenous jurisdiction (draft bill 3946), integral rural development (draft bill 4084), sacred sites (draft bill 3835), bilingual, multicultural and intercultural education (draft bill 3913), community

radio broadcasting (draft bill 4087), a national reparations programme (draft bill 3551), amendment of the Political Parties and Electoral Act (draft bill 4783) and amendment of the Mining Act (draft bill 4945). The Committee is concerned that this draft legislation has been pending in the Congress for over a decade.

The Committee recommends that draft legislation on combating racial discrimination and promoting the rights of indigenous peoples be given priority in the legislative agenda for urgent debate and adoption, in consultation with the indigenous population. The Committee also recommends making the structural reforms needed for full implementation of the Agreement on Identity and Rights of Indigenous Peoples, including the necessary reforms to the Constitution, and giving consideration to the possibility of establishing specific joint boards with the indigenous population for this purpose.

Impunity

10. The Committee welcomes the action taken to combat impunity, including the bringing to trial of high-profile cases such as the Sepur Zarco case. The Committee also welcomes the Constitutional Court's position on the inadmissibility of amnesty orders or time limitations for the prosecution of grave human rights violations, and its recognition of the jurisprudence of the Inter-American Court of Human Rights as being of mandatory application. The Committee underscores the importance of these trials for reparations and the rehabilitation of victims. However, it remains concerned by the numerous challenges remaining, as demonstrated by the annulment of the judgement against Efraín Ríos Montt. The Committee is concerned also that State institutions have issued statements on the legal merits or status of some cases before the courts have issued their decision, as occurred with Congressional Resolution 3-2014 (art. 6).

The Committee recommends to the State party that it step up efforts to investigate and prosecute the grave human rights violations perpetrated during the internal armed conflict, bearing in mind that many of the victims were members of indigenous peoples. It recommends in particular strengthening the Office of the Prosecutor for Human Rights of the Public Prosecution Service. It also recommends continuing with all necessary action to strengthen the independence of the judiciary.

Free, prior and informed consent

11. The Committee is concerned by the highly conflictual situations surrounding the awarding of licences or authorizations for hydroelectric projects, the exploitation of natural resources and [mono]single-cropping on lands and territories belonging to indigenous peoples or traditionally occupied by them.

12. The Committee notes with concern that these concessions were granted without respecting the indigenous peoples' right to be consulted. The Committee notes that, under article 46 of the Constitution, which gives the International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries pre-eminence over internal law, that right should be respected even in the absence of any national legislative framework. The Committee notes that consultation is mandatory both when the natural resources belong to indigenous peoples and when the State has reserved to itself the ownership of underground resources, as set forth in article 6 and article 15, paragraph 2, of ILO Convention No. 169. The Committee notes with interest the judgements handed down by the Constitutional Court in the San Juan Cotzal and San Juan Sacatepéquez cases, in which it ordered that such consultations be conducted.

13. The Committee takes note of the information provided on collective ownership. It notes with concern, however, that the legal framework governing land, territories and natural resources has not been adopted, despite the observation by the Special Rapporteur on the rights of indigenous peoples that the legal protection currently provided does not meet international standards. The Committee is thus concerned about the scant protection afforded to indigenous peoples, inasmuch as the State party continues to allow lands traditionally owned by indigenous peoples to be taken from them without consultation.

14. The Committee is further concerned by the acts of violence that occurred during the protests triggered by the concession of those projects and it is concerned by the State party's response in declaring a state of emergency (art. 5, para. (d) (v)).

The Committee underscores the impact produced by not observing the right to consultation and the right to land in these conflicts. Accordingly, and pursuant to its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee:

(a) Reiterates its recommendation on the right to consultation (CERD/C/GTM/CO/12-13, para. 11), and urges the State party to devise practical ways of consulting with indigenous populations through the institutions representing them. The Committee notes that only in exceptional cases may

indigenous populations be moved and resettled and that the consent of the population in question is necessary in those cases;

(b) Recommends the adoption, in consultation with indigenous peoples, of a national legal framework to govern the right to consultation. The Committee recommends as well updating the existing legal framework, including the Mining Act, the Environmental Protection and Enhancement Act and the Regulations on the Assessment of Environmental Impact Studies;

(c) Recommends strengthening the round-table dialogues with a view to ensuring compliance with signed agreements, and recommends a temporary moratorium on the granting of new licences for such projects until consultation mechanisms are in place;

(d) Recommends prompt implementation of court decisions, such as the ones handed down in the San Juan Cotzal and San Juan Sacatepéquez cases;

(e) Urges the State party to recognize the right of indigenous peoples to lands and territories by creating an appropriate legal framework in consultation with the indigenous population;

(f) Recommends fully safeguarding the free exercise of the right to protest, taking all necessary action to protect protesters and investigating any attacks against them. Special mention is made of the need to implement fully the Private Security Services Act (Decree 52-2010).

Human rights defenders

15. The Committee is greatly concerned by the persistent attacks and threats against human rights defenders and journalists in general and against indigenous defenders and journalists in particular. The Committee notes that, in many instances, these attacks and murders have occurred in connection with conflicts linked to the exploitation of natural resources. The Committee is concerned that, often, such protests lead to criminal proceedings being brought against the activists on charges such as terrorism, kidnapping, incitement to commit a crime or criminal association, which are disproportionate to the seriousness of the acts (art. 5, para. (b)).

The Committee reiterates its recommendation that those responsible for attacks on human rights defenders, particularly indigenous human rights defenders, be prosecuted and punished (CERD/C/GTM/CO/12-13, para. 9). The Committee recommends also the adoption and full implementation, in consultation with civil society and with indigenous peoples, of an effective mechanism for protecting human rights defenders and journalists, bearing in mind the extreme danger to which indigenous leaders are exposed when defending their right to consultation and right to land, including its natural resources.

Participation in political life

16. The Committee notes with concern the very small number of indigenous and Afro-descendent persons in high-level positions in the executive branch and the judiciary vis-à-vis their percentage share of the national population. It also notes with concern that only 23 of the country's 158 legislators are members of an indigenous population. Despite the efforts made by the State party, the Committee is concerned about the obstacles still standing in the way of full political participation by members of indigenous populations, in particular in rural areas. The Committee welcomes the decision of the Constitutional Court, taken in the framework of amending the Political Parties and Electoral Act, that special measures should be taken to ensure a level of representation of at least 30 per cent women and members of indigenous peoples (art. 5, para. (c)).

The Committee reiterates its recommendation on the participation of indigenous peoples (CERD/C/GTM/CO/12-13, para. 10), bearing in mind its general recommendation No. 23 (1997). The Committee recommends expanding the participation of indigenous peoples in the community development councils. The Committee also recommends amending the Political Parties and Electoral Act to improve the representation of indigenous and Afro-descendent peoples and to promote their participation in rural areas. It further recommends taking urgent action to ensure that all citizens have personal identity documentation. The Committee recommends that special measures or affirmative action be taken to ensure that indigenous and Afro-descendent populations are appropriately represented in high-level positions, bearing in mind its general recommendations 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.

Access to justice and legal pluralism

17. The Committee takes special note of the progressive incorporation of international standards relating to the rights of indigenous peoples into the jurisprudence of the Constitutional Court. The Committee notes the advances made in the area of access to justice, in particular the establishment of the Centre for Interpretation of Indigenous Justice Systems, the 15 offices for indigenous peoples' rights and the Department of Indigenous Peoples in the Public Prosecution Service. However, the Committee is concerned that challenges remain in ensuring full access to justice for indigenous peoples, in such areas as ethnic self-identification in official documents and records, culturally appropriate access to justice and the training of interpreters.

18. The Committee takes note of the memorandum issued by the Criminal Chamber of the Supreme Court on applying indigenous legal systems in coordination with the official legal system and of the information provided orally during the dialogue on the preparation of a protocol for multicultural justice and the information on the broad, acknowledged material competence of indigenous justice. While noting the two decisions by the Criminal Chamber absolving K'iche' authorities in Totonicapán who had been detained after administering justice, the Committee is concerned by the legal proceedings instituted against indigenous authorities for having applied their legal systems and by a decision by that Court's Chamber of Amparos denying the existence of indigenous jurisdiction. The Committee is thus concerned about the lack of a clear legal framework for recognition and application of legal pluralism (art. 5, para. (a)).

The Committee reiterates its recommendation (CERD/C/GTM/12-13, para. 8) on access to justice and legal pluralism in the light of 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 institutional policies be adopted on access to justice for indigenous peoples and that the programmes of the judiciary's training units be updated. It also recommends developing a specific legal framework for coordinating indigenous jurisdiction with the ordinary system of justice. The Committee recommends that the State party further strengthen the judiciary's Indigenous Peoples Affairs Unit and the Department of Indigenous Peoples in the Public Prosecution Service, including by means of financial and human resources.

Structural discrimination

20. The Committee notes with concern that poverty and social exclusion are especially widespread among indigenous and Afro-descendent populations. According to the data presented to the Committee, 47 per cent of the indigenous population lives in extreme poverty; and 87 per cent of that population lives in poverty as defined by multidimensional measurements. Chronic malnutrition is most prevalent among people living in municipalities where indigenous peoples constitute the majority. The Committee observes with concern the expansion of single-cropping and cultivation of cash crops, which has drastically reduced the farmland available for growing staple crops. While noting the State party's initiatives in this regard, including the "Zero Hunger" Pact, the Committee is concerned that these initiatives do not target the structural causes of the problem (art. 5, para. (e)).

The Committee urges the State party to incorporate human rights principles into existing policies on social inclusion, ensure that indigenous peoples participate in these policies and provide adequate funding and staff for implementing the policies. The Committee recommends adopting structural measures for the full implementation of the land-use policy. The Committee also recommends that special measures or affirmative action be taken to break the linkage between poverty and racism, bearing in mind its general recommendation No. 32 (2009).

Intercultural health

21. The Committee takes note of the State party's efforts in the health sphere, including the establishment of the Indigenous Peoples and Intercultural Health Care Unit, but notes with concern that access to health continues to be limited in areas with higher indigenous populations and that the State party still does not have a universal, culturally appropriate health-care system (art. 5, para. (e)).

The Committee reiterates its recommendation on the formulation of an intercultural health strategy with active participation by indigenous peoples (CERD/C/GTM/12-13, para. 13). The Committee recommends redoubling efforts to ensure access to suitable and culturally appropriate health-care services in rural areas, including adequate funding. It also recommends taking steps to collect information broken down by

ethnicity and community. It recommends adopting a policy on midwives, in consultation with indigenous populations and respecting their own forms of health care.

Bilingual education

22. The Committee applauds the efforts made by the State party in the area of bilingual education. It is concerned, however, that in many places bilingual education is not available beyond the pre-primary level. The Committee regrets that only 26 per cent of students in basic education and 17 per cent of those in secondary education are members of indigenous populations. The continued existence of discrimination in schools is an additional cause for concern. The Committee is further concerned by the high rate of illiteracy among indigenous and Afro-descendent populations, with it reaching 97 per cent among the Garifuna people (art. 5, para. (e) (v)).

The Committee reiterates its recommendation on efforts to combat discrimination and the need to extend the scope of bilingual education (CERD/C/GTM/12-13, para. 15). The Committee recommends strengthening bilingual education training in teacher training programmes.

Mass media

24. The Committee notes with concern that there continue to be manifestations of racial discrimination in the mass media. It underscores the importance of community radio broadcasting for indigenous peoples and notes with concern the action taken by the State party to close down community radio stations and the absence of a legal framework in this area (art. 7).

The Committee reiterates its recommendation that appropriate steps be taken to address racial prejudice in the mass media (CERD/C/GTM/CO/12-13 para. 17). The Committee recommends continuing the work, in consultation with indigenous peoples, to institute a legal framework for community radio broadcasting, including reserved frequencies for community radio stations.

Institutional strengthening

25. The Committee takes note of the strengthening of the State party's institutions in the area of indigenous peoples' rights, including the Office for Indigenous Peoples Affairs, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, the Guatemalan Indigenous Development Fund and the Office for the Defence of Indigenous Women. The Committee is concerned, however, that those institutions are under-resourced. Despite the efforts made by the State party, the Committee is concerned that indigenous peoples are still not enjoying full participation under the policies pursued by those institutions (art. 2).

The Committee recommends that the State party continue to strengthen its institutions to fight racial discrimination and promote indigenous peoples' rights by providing the necessary funding and staff. It also recommends that an evaluation be undertaken — with the participation of indigenous populations — to determine if those institutions are fulfilling their purpose and how they could be improved.

Multiple discrimination

26. The Committee is concerned that women in indigenous communities continue to face multiple forms of discrimination in all areas of social, political, economic and cultural life. The Committee notes with concern that indigenous women continue to be subjected to violence and face hurdles in seeking access to justice (art. 2, para. 2).

The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and include a gender perspective in all its policies and strategies to address the multiple forms of discrimination faced by indigenous women in particular. The Committee also recommends taking action to break the circle of violence and change the circumstances and patterns that make indigenous women vulnerable to violence, while taking steps to ensure protection and redress for them.

3. Sudan, CERD/C/SDN/CO/12-16, 12 June 2015

Nubian peoples' right to land

21. The Committee is concerned about reports indicating the Government's plan to resume the construction of the Kajbar dam on lands traditionally occupied or inhabited by the Nubian people. The

Committee is concerned that the dam, if pursued, may lead to the displacement of thousands of Nubians, who according to the delegation have been living there for more than 8,000 years, and to the destruction of many archaeological sites with historical and cultural significance for the Nubians. The Committee is also concerned that the amendment to article 43 of the Interim Constitution empowering the President to allocate and confiscate land for investment purposes without restriction, may further contribute to the above-mentioned consequences on Nubians. (art. 5)

Recalling its general recommendation no. 23 on the rights of indigenous peoples (1997), the Committee recommends that the State party create appropriate mechanisms for effective consultation with the Nubians and any other ethnic groups whose rights to the lands traditionally inhabited by them may be affected by development activities. It is also called upon to ensure adequate compensation to any eventual relocation due to such activities. It further recommends that the State party consider repealing the constitutional amendment to article 43.

4. France, CERD/C/FRA/CO/20-21, 10 June 2015

Demographic composition of the population

5. The Committee notes once again that the State party's report does not contain recent, reliable data on economic and social indicators that could be used, in particular, to compare the status of indigenous peoples, minorities and immigrants with that of the general population as a basis for arriving at a more accurate assessment of the extent of their enjoyment of their economic, social and cultural rights in the State party.

While understanding the concerns expressed by France to justify its position, the Committee invites the State party to consider refining the tools that it uses to compile and publish data, disaggregated by territorial collectivity, on the demographic composition of its population and to adopt suitable methods for doing so. In the light of both its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and paragraphs 10 to 12 of its reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party furnish it with all available indicators on the composition of its population, all other information provided by socioeconomic studies and data from social surveys on the mother tongues, commonly spoken languages and places of birth or origin of the members of its population. This information should be based on self-identification and should have been provided anonymously and voluntarily, and will enable the Committee to assess the status of the population in terms of the equitable enjoyment and exercise of human rights and fundamental freedoms in the light of the State party's policy in support of cultural diversity.

Minorities, indigenous peoples and persons of African descent in the overseas collectivities

11. The Committee remains concerned by the failure to fully recognize the existence of indigenous peoples in the overseas territorial collectivities. It fears that this may prevent the State party from adopting the most appropriate, targeted measures to respond to the specific needs and concerns of indigenous peoples and persons of African descent, among others, particularly in regard to their enjoyment of economic, social and cultural rights on an equal footing with the rest of the population (arts. 2 and 5).

The Committee recommends that the State party consider revisiting its position on the non-recognition of indigenous peoples in the overseas collectivities. It also recommends that the State party apply more targeted policies that are better suited to the needs and specific situations of these population groups, notably indigenous peoples and persons of African descent, in order to ensure that the different segments of its population are treated equally, particularly with respect to the enjoyment of economic, social and cultural rights.

Indigenous peoples of French Guiana

12. The Committee is concerned by: (a) the fact that indigenous peoples' collective land rights are not recognized and that the existing legal regime governing the use of these communities' ancestral lands — lands that they have possessed and used since time immemorial — does not permit them to follow their traditional lifestyle; (b) the many difficulties that members of these groups encounter in seeking to gain access to an education, in large part because schools are not located nearby; (c) the fact that these population groups do not fully enjoy their housing rights and are impeded from exercising their right to freedom of movement; (d) the difficulties that these groups have in gaining access to public services, especially in the case of the civil registry and justice system; and (e) the negative impact that the activity of panning for gold has on their health

and on the environment. The Committee also takes note with concern of reports indicating that indigenous peoples are often not consulted about mining and other projects being conducted in their territories (art. 5).

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:

- (a) Consider recognizing indigenous peoples' collective rights, in particular, to the ancestral lands that these communities have possessed and used since time immemorial and to the resources of which they have traditionally made use;
- (b) Redouble its efforts to ensure that these peoples enjoy the same treatment as the rest of the population in regard to access to education in their own languages;
- (c) Facilitate and guarantee the freedom of movement of these population groups and remove the obstacles that impede their access to housing; to public services, particularly those provided by the civil registry and the justice system; and to health care;
- (d) Find lasting and suitable solutions, in some cases in conjunction with neighbouring countries, that will remedy the impacts which panning for gold has on these population groups' health and on the environment;
- (e) Consult and work in cooperation with indigenous peoples before approving any project that could have an impact on their use of their lands or territories and other resources.

Indigenous peoples of New Caledonia

13. While taking note of the explanations provided by the State party's delegation, the Committee remains concerned by reports indicating that: (a) the land issues of concern to the Kanaks have not been entirely settled; (b) the Kanaks are underrepresented in public administration; (c) disparities in terms of the enjoyment of economic, social and cultural rights persist; (d) access to instruction in the local languages of all children and to instruction about the Kanak culture is limited; (e) voter registration procedures are discriminatory and the right to vote is subject to unjustified restrictions to the detriment of the Kanaks; (f) access to fishing grounds and to the sea is impeded (art. 5).

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:

- (a) Pursue its efforts to prepare the population of New Caledonia, including the Kanaks, to arrive at a decision on the issue of their self-determination;
- (b) Put an end to voter registration practices that discriminate against the Kanaks and lift all unjustified restrictions on the right to vote;
- (c) Find definitive solutions for the remaining land issues in New Caledonia, including the issue of how to guarantee access to fishing grounds and to the sea;
- (d) Redouble its efforts to provide equality of treatment in terms of employment, including employment in the public administration sector, housing, health care and the Kanak culture;
- (e) Redouble its efforts to ensure that Kanak children have access to education, including instruction in their local languages, and increase the number of teachers.

5. Suriname, CERD/C/SUR/CO/13-15, 25 September 2015

6. The Committee notes with satisfaction that, since October 2012, the State party has waived the enrolment fees for basic education at the primary and secondary levels, which will benefit children belonging to indigenous and minority groups.

11. While noting that the draft legislation to establish the Constitutional Court is in the last phase of adoption by the Parliament, the Committee reiterates its concerns (see CERD/C/SUR/CO/12, para. 11) about delays in the establishment of that body, which is of particular importance for the protection of groups such as indigenous and tribal peoples and vulnerable ethnic minorities (arts. 2 and 6).

12. The Committee reiterates its previous recommendations (see CERD/C/64/CO/9, para. 9, and CERD/C/SUR/CO/12, para. 11) to establish the Constitutional Court as soon as possible.

Situation of indigenous and tribal peoples Structural discrimination

21. The Committee is concerned about the situation of indigenous and tribal peoples in the State party and persisting discrimination faced by them in the full enjoyment of their collective and individual rights (arts. 1 and 2).

22. In accordance with its general recommendation No. 32 (2009) on the scope and meaning 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 in the enjoyment of their rights.

Legislative framework

23. The Committee is deeply concerned about the pervasive and persistent discrimination that characterizes the enjoyment of indigenous and tribal peoples' property rights and about the absence of any specific legislative framework guaranteeing the effective enjoyment of their collective rights. While noting the drafting of a law acknowledging the traditional authorities of indigenous and tribal peoples, the Committee is concerned that the current draft does not adequately reflect indigenous and tribal customs (arts. 2 and 5).

24. The Committee reiterates its previous recommendation (see CERD/C/SUR/CO/12, para. 12) urging the State party to ensure legal acknowledgement of 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. In accordance with its general recommendation No. 23 (1997) on the rights of indigenous peoples and its previous decisions under its early warning and urgent action procedures in 2005 and 2006, the Committee reiterates its recommendation concerning the drawing up of a framework law on the rights of indigenous and tribal peoples. The Committee recommends that this framework law comply with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples. The Committee further recommends that the planned law on traditional authorities reflect indigenous and tribal peoples' right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Exploitation of natural resources and the right to free, prior and informed consent

25. While noting that the State party is developing a protocol on free, prior and informed consent, the Committee is concerned that authorizations for mining and logging concessions, activities that pose substantial threats of irreparable harm to indigenous and tribal peoples, continue being granted to private companies without the free, prior and informed consent of the peoples concerned and without any prior impact assessment (arts. 2 and 5). The Committee is also concerned about discrimination reportedly faced by indigenous and tribal peoples in the full enjoyment of their cultural and economic rights in natural reserves established on their ancestral lands (arts. 2 and 5).

26. The Committee urges the State party to obtain the free and prior informed consent of indigenous and tribal peoples prior to the approval of any project affecting their lands. In addition, the Committee recommends that the State party ensure that an adequate cultural, environmental and social impact assessment is conducted in collaboration with those peoples concerned prior to the granting of concessions or the planning of activities; in that regard, the Committee refers the State party to the Akwé: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessment regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. Noting that indigenous and tribal peoples have the right to continue their traditional ways of living on natural reserves, the Committee recommends that the State party adopt all 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 indigenous communities.

Health and environmental contamination

27. While noting all the efforts made by the State party to reform and regulate the gold-mining sector and the use of mercury, the Committee remains concerned about reports of the high level of use and dispersion of mercury and its negative impact on the environment and on the means of subsistence and the health of indigenous and tribal peoples (art. 5).

28. The Committee recommends that State party take specific measures to ensure that no mercury is used or dispersed on territories occupied by indigenous and tribal peoples, 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.

Decisions of the Inter-American Court of Human Rights

29. While noting that the State party has already implemented some of the elements of the judgements of the Inter-American Court of Human Rights in the cases of *Moiwana Village v. Suriname* (2005) and *Saramaka People v. Suriname* (2007), the Committee expresses serious concern about the delay, and the lack of any concrete information indicating real progress made, in implementing these decisions. The Committee is especially concerned about the granting of a mining concession in 2013, in contravention of the decision made by the Court in the *Saramaka* case (art. 6).

30. The Committee urges the State party to comply with legally binding rulings of the Inter-American Court of Human Rights and, in particular, to take steps to expedite the demarcation and titling of territories, the granting of legal recognition of collective juridical capacity and the punishment of the perpetrators of the *Moiwana Village* massacre in 1986. The Committee also recommends that the State party suspend the granting of any new concessions until the State party has put in place the measures ordered by the Court.

Participation in public life and decision-making processes

31. While noting that a small number of Maroons and indigenous people hold positions in ministries, councils and the National Assembly, the Committee remains concerned about the limited participation of members of tribal and indigenous peoples in public life and governmental bodies, and in the development and approval of public standards and policies, including those directly affecting their rights. The Committee is particularly concerned by the absence of consultation of indigenous and tribal peoples as part of the process of drafting the law on traditional authorities or the negotiation of the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries in Suriname (arts. 2 and 5).

32. The Committee recommends that the State party take special measures to increase the number of representatives of indigenous and tribal peoples, in particular women, within political bodies and adopt mechanisms aimed at ensuring that representatives of indigenous and tribal peoples participate in the design and approval of public standards and policies. Recalling general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that State party ensure that no decision or legislation directly affecting the rights and interests of indigenous and tribal peoples is adopted or taken without their free, prior and informed consent.

Access to education

33. While noting the efforts made by the State party to improve access to education in the interior, the Committee reiterates its concern (see CERD/C/SUR/CO/12, para. 16) that no special measures are being taken to preserve the languages of the country's indigenous and tribal peoples, and that this is reflected in the area of education (arts. 5).

34. The Committee reiterates its previous recommendation (see CERD/C/SUR/CO/12, para. 16) and recommends that the State party take effective measures to ensure that children of indigenous and tribal peoples have access to an education that takes into account the need to preserve their languages and cultures and to consider introducing, as appropriate, the study of native languages.

35. The Committee recommends that the State party take special measures to increase attendance rates and reduce the dropout rates of children belonging to indigenous and tribal peoples, notably by:

- (a) Promoting the recruitment of teachers belonging to indigenous and tribal peoples, in particular in primary education;
- (b) Intensifying training of, and providing incentives for, teachers in the interior of the country;
- (c) Ensuring the availability of culturally appropriate textbooks, including in native languages, in schools with indigenous and tribal pupils
- (d) Increasing outreach of scholarship programmes for indigenous and tribal pupils and students.

Access to justice and right to remedies

36. While noting that every person in Suriname has the right to appeal to the competent authorities, the Committee is concerned about the persistent discriminatory nature of the judicial system in the State party, which does not allow indigenous and tribal peoples to have access to justice and effective remedies through

their institutional structures. In particular, the Committee is concerned that the collective legal personality of indigenous and tribal peoples is not recognized by the legal and judicial system or by the draft law on traditional authorities (arts. 5 and 6).

37. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and in line with article 40 of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee urges the State party 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 property rights, by facilitating their access to domestic courts through their institutional structures. The Committee urges the State party to recognize the collective legal personality of indigenous and tribal peoples.

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 22, 24, 26 and 37 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

6. Costa Rica, CERD/C/CRI/CO/19-22, 25 September 2015

3. The Committee notes with satisfaction the adoption of the bill (legislative file No. 17150) concerning the amendment of article 1 of the Constitution to recognize the multi-ethnic and pluricultural nature of Costa Rica.

9. The Committee welcomes the completion of the tenth national population census and sixth housing census of 2011, which include an ethnic self-identification variable. However, the Committee is concerned by the fact that the ethnic self-identification variable is not included systematically in the collection and compilation of disaggregated statistical data. The Committee is also concerned by the fact that the report does not contain information on the impact and results of the social inclusion measures that have been adopted (arts. 1 and 2).

10. The Committee encourages the State party to systematically include an ethnic self-identification variable in surveys and data-collection initiatives, along with indicators on the enjoyment of economic, social and cultural rights, so that the necessary disaggregated data can be made available as a basis for the adoption of special measures or affirmative action measures.

Legal framework

13. The Committee is concerned at the lack of progress made by the Legislative Assembly in considering and passing several bills, such as those on the autonomous development of the indigenous peoples (file No. 14352), the amendment of article 380 of the Criminal Code (file No. 19062), the prevention, elimination and punishment of racism and all forms of discrimination (file No. 19288) and affirmative action for persons of African descent (file No. 19628). The Committee is concerned by the fact that several of these bills have been pending before the Legislative Assembly for more than 10 years.

14. The Committee recommends that bills intended to combat racial discrimination and promote the rights of persons of African descent and indigenous peoples be moved higher up on the parliamentary agenda for debate and adoption as a matter of urgency, in consultation with those peoples, so as to create a proper legal framework for combating racial discrimination.

Racial stereotypes in school textbooks

15. The Committee is concerned at the use of school textbooks that contain, or could be considered to contain, elements that could be interpreted as presenting a stereotyped image of minorities, and especially of indigenous peoples and Afro-descendants. In particular, the Committee is concerned by the fact that the book *Cocorí*, regardless of what its literary value may or may not be, is required reading in the primary school curriculum. The Committee is also concerned by the fact that racist insults and threats have been levelled at Afro-descendent members of the legislature for having filed an application for amparo to contest the mandatory teaching of this book (art. 5).

16. The Committee recommends that the State party step up its efforts to ensure that the national education system fosters an awareness and fuller knowledge of the distinctive cultural practices of the Afro-

descendent and indigenous populations and their contributions to Costa Rican history and culture with the aim of providing objective and educational information about all societies and cultures in the State party. The Committee also recommends that the State party guarantee academic freedom of expression by, inter alia, taking the necessary steps to ensure that textbooks that have content with racist overtones are removed from the mandatory curriculum in primary schools.

Educational system

17. The Committee notes with concern that a number of schools have rules that prevent persons of African descent from giving expression to their cultural identity by such means as wearing dreadlocks. While the Committee welcomes the decision of the Minister of Education to authorize the use of that hairstyle, it also notes that this was an isolated decision in a specific case. The Committee notes the educational efforts carried out in indigenous territories but notes with concern that significant challenges remain. The Committee takes note of the efforts made to revitalize and strengthen the Boruca and Teribe languages by having language teachers in primary schools to teach in those languages. However, it observes that this initiative is still limited to specific territories and languages and is not available to all indigenous peoples or to Afro-descendants (art. 5).

18. Taking into account its general recommendations No. 23 (1997) on indigenous peoples and No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends the issuance of a school policy designed to do away with any school rules or regulations that discriminate against Afro-descendent or indigenous cultures. The Committee recommends that bilingual education initiatives be extended so as to make them accessible to all indigenous peoples and persons of African descent in their own languages. The Committee reiterates its recommendation that all necessary measures be taken to preserve the cultural heritage of indigenous peoples and Afro-descendants (A/62/18, para. 308).

Access to justice

21. The Committee takes note of the progress made by Costa Rica towards the adoption of an institutional policy for the judiciary on access to justice for persons of African descent and the establishment of a subcommittee to facilitate access to justice for indigenous peoples; it also notes, however, that challenges in those respects remain. The Committee is concerned that, of the 17 decisions regarding complaints of racial discrimination handed down by the Constitutional Court between 1993 and 2015, only 1 found in favour of the complainant, although not on grounds of racial discrimination. The Committee also notes that these decisions have been taken despite the fact that international human rights treaties take precedence over the Constitution (art. 6).

22. The Committee recommends that the State party take into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In particular, it recommends that training in human rights and intercultural understanding be promoted within the judicial system. It also reminds the State party of its obligation to guarantee all persons an effective remedy against any act of racial discrimination and to continue to facilitate access to justice. The Committee recommends that the State party step up its efforts to ensure that indigenous peoples have equal access to justice. While taking note of the progress made, the Committee recommends that, in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), the methods traditionally used by indigenous peoples to punish offences committed by their members should be respected, insofar as they are consistent with internationally recognized human rights.

The right to consultation

23. The Committee is concerned that the right to free, prior and informed consultation is not always respected when legislative or administrative measures are adopted that are likely to have an effect on indigenous peoples. The Committee notes with concern that, despite the fact that the State party has stated that it has taken up the recommendations made by the Special Rapporteur on the rights of indigenous peoples regarding the situation of indigenous peoples affected by the El Diquís hydroelectric project (see A/HRC/18/35/Add.8), there has not yet been any free, prior and informed consultation process or any “consultations on consultations”. Though work on the main part of the project has stopped and Costa Rican Electrical Institute installations have been removed from Terraba lands, an exploratory tunnel was built there without any prior consultation. The Special Rapporteur also stressed the need to create an atmosphere of trust among the parties. However, according to information before the Committee, there are still obstacles to the

dissemination of information about the project in the affected communities. The Committee also notes that the right to prior consultation is not applied in cases involving persons of African descent in the State party (art. 5).

24. In the light of its general recommendation No. 23 (1997), the Committee urges the State party to establish, in consultation with indigenous peoples, practical mechanisms for upholding the right to free, prior and informed consultation and to ensure that consultations are carried out systematically and in good faith. The Committee reminds the State party that it is up to indigenous peoples to choose their representative bodies using their own procedures. The Committee recalls that ILO Convention No. 169 is directly applicable and that the absence of national legal provisions in this regard does not release the State party from its obligation to honour the right to consultation. The Committee also recommends that the State party consider implementing prior consultation for persons of African descent. The Committee recommends that the State continue to act upon the recommendations of the Special Rapporteur on the rights of indigenous peoples regarding the situation of indigenous peoples affected by the El Diquís hydroelectric project.

Right to self-determination

25. The Committee is concerned that bodies established by the State party, such as the comprehensive development associations and the National Commission on Indigenous Affairs, have supplanted indigenous peoples' own institutions in their relations with the State. As noted by the Special Rapporteur on the rights of indigenous peoples, and as acknowledged by the State party's delegation during the dialogue with the Committee, the development associations constitute an imposed institution that does not properly represent the indigenous peoples. The Committee is concerned by the fact that the associations have extensive powers in relation, for example, to the award of land titles in indigenous territories (art. 5).

26. The Committee recommends, in the light of its general recommendation No. 21 (1996) on the right to self-determination and ILO Convention No. 169, that indigenous peoples' authorities and representative institutions be recognized in a manner consistent with their right to self-determination in matters relating to their internal and local affairs. The Committee therefore reiterates its recommendation (A/62/18, para. 297) to remove without delay the legislative obstacles that stand in the way of the adoption of the bill on the autonomous development of indigenous peoples.

Access to land

27. While the State party acknowledges in its report that the current legal framework for the recovery of lands and land tenure for indigenous peoples does not adequately protect the rights of indigenous communities and that it is aware of indigenous peoples' vulnerability as a result of that and as a result of the severe tensions created by the illegal occupation of their lands, the Committee notes with concern that, apart from the establishment of a discussion forum, little action has been taken. The Committee is also concerned about Afro-descendants' right to land, particularly in the southern Caribbean coastal area. The Committee is particularly concerned by the lack of any systematic action to evict illegal occupants and by the failure to systematically implement such decisions. The Committee is also concerned by the failure to take legal action against the occupation and illegal sale of land and against acts of violence carried out in that context. The Committee is concerned by the fact that, according to information provided to it, the indigenous territories recognized by the State — many of them illegally occupied — do not include all the lands that indigenous peoples claim to have traditionally occupied (art. 5).

28. The Committee reiterates its recommendation (A/62/18, para. 303) to redouble efforts to guarantee the right to land tenure for indigenous peoples and persons of African descent. It also recommends that, as a matter of priority, the State take decisive administrative and legal action, including eviction and prosecution of those responsible, to enable indigenous peoples to recover the lands within their territories, including in cases where those lands have been occupied or purchased illegally or where the tensions caused by this situation have led to clashes or threats. The Committee also recommends that consultations on the demarcation and titling of indigenous territories be held.

Migrant workers

29. The Committee takes note of the General Act on Migration (Act No. 8764), which establishes the principles of equality, equity, non-discrimination and interculturalism. It remains concerned, however, about the situation of migrant workers, who are at particularly high risk of legal and social exclusion. It is especially

concerned about the particularly vulnerable situation of indigenous migrants who have temporary jobs on coffee plantations and the situation of migrant women employed as domestic workers (art. 5).

30. The Committee reiterates its recommendation (A/62/18, para. 304) that the State party continue its efforts, in the light of general recommendation No. 30 (2004) on discrimination against non-citizens, to improve the situation of migrants in Costa Rica. It also recommends that steps be taken to: ensure decent working conditions for all workers — including domestic workers — by means of labour inspections, including inspections of coffee plantations; facilitate access to justice; facilitate coverage for migrants under the Social Insurance Fund; and ensure equal access to health-care services.

Multiple discrimination

31. The Committee is concerned that indigenous and Afro-descendent women still face multiple forms of discrimination in all aspects of social, political, economic and cultural life (art. 2, para. 2).

32. The Committee reiterates its recommendation (A/62/18, para. 305) that the State party take into account general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it mainstream the gender perspective in all its policies and strategies for combating racial discrimination as a means of addressing the multiple forms of discrimination to which indigenous and Afro-descendent women, in particular, are subjected. It also recommends that the State party compile disaggregated statistics on this subject.

Follow-up to concluding observations

39. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 16 and 24 above.

Paragraphs of particular importance

40. The Committee also wishes to draw the State party's attention to the particular importance of the recommendations set forth in paragraphs 18, 26 and 28 above and requests the State party to provide detailed information in its next periodic report on the specific measures taken to act upon them.

7. Colombia, CERD/C/COL/CO/15-16, 25 September 2015

3. The Committee welcomes the fact that the State party has developed an extensive legal and institutional framework for the protection of indigenous peoples, Afro-Colombians and Roma. The Committee welcomes in particular:

(a) The adoption of the Victims and Land Restitution Act No. 1448 of 2011 and Legislative Decrees No. 4633, 4634 and 4635 of 2011, which set out differentiated measures to provide support, assistance and comprehensive redress for indigenous peoples, Roma and Afro-Colombian communities that were victims of the armed conflict. ...

4. The Committee welcomes the important role that certain institutions of the State party have played in the protection and promotion of the rights of indigenous peoples, Afro-Colombians and Roma, such as the Constitutional Court, the Ombudsman's Office and the National Centre for Historical Memory.

Demographic composition of the population

7. The Committee notes with concern the lack of information appropriately reflecting the demographic composition of the population of the State party, in particular socioeconomic indicators to assess progress towards the equal realization of the rights contained in the Convention. In addition, the Committee notes with concern the discrepancy between the official data of the State party and data provided by other sources on indigenous peoples and the Black, Palenquero and Raizal communities (Afro-Colombian peoples) (art. 2, para. 1).

8. Recalling its general recommendation No. 4 (1973) concerning reporting by States parties on the demographic composition of the population, as well as its previous concluding observations, the Committee reiterates its recommendation and urges the State party to collect and provide the Committee with 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. Bearing in mind that the next census is due to take place in 2016, the Committee urges

the State party to facilitate active participation by indigenous peoples and the Afro-Colombian and Roma populations, through their representative institutions, in developing the methodology to be used and to ensure that such a methodology is based on the criterion of self-identification.

Impact of the armed conflict and peace negotiations

11. The Committee welcomes the information on progress in the peace negotiations taking place in Havana and the Early Warning System developed by the Ombudsman's Office to monitor and prevent human rights violations and breaches of international humanitarian law in the context of the internal armed conflict. However, the Committee is concerned that:

- (a) The armed conflict continues to disproportionately affect indigenous and Afro-Colombian peoples, owing to such factors as the militarization of their territories, the high incidence of sexual violence against indigenous and Afro-Colombian women, the use of indigenous and Afro-Colombian children by non-State armed groups and extrajudicial executions, including the practice known as "false positives";
- (b) The peace negotiations do not involve the effective participation of indigenous peoples and the Afro-Colombian population;
- (c) Risk reports issued by the Early Warning System are not duly considered by the Inter-Agency Early Warning Committee (arts. 5 and 6).

12. The Committee recommends that the State party:

- (a) Redouble its efforts to ensure full respect for human rights and international humanitarian law in relation to the territories of indigenous peoples and the Afro-Colombian population, inter alia by ensuring that the risk reports issued by the Early Warning System are duly taken into account by the relevant authorities, particularly the Inter-Agency Early Warning Committee;
- (b) Carry out thorough investigations into human rights violations against members of indigenous and Afro-Colombian peoples in the context of the armed conflict and take the necessary measures to ensure that victims receive full redress;
- (c) Take the necessary measures to 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;
- (d) Step up its efforts to prevent the recruitment of indigenous and Afro-Colombian children by non-State armed groups and ensure the effective implementation of the measures taken for their demobilization and reintegration;
- (e) Allocate the necessary human, material and technical resources to the Attorney General's Office for the effective discharge of its duties; and
- (f) Ensure that members of indigenous and Afro-Colombian peoples, including women, are properly consulted in peace negotiations so that the process of truth, justice and redress effectively takes into account their legitimate interests.

Indigenous peoples facing extinction and indigenous peoples living in isolation or at the initial-contact stage

15. The Committee regrets that the State party has not effectively implemented the decisions of the Constitutional Court, which has ruled that some indigenous peoples are at risk of physical and cultural extinction. The Committee regrets that the State party has not yet finalized the design of ethnic protection plans for the benefit of the majority of these peoples and that the implementation of the plans that have already been designed is still at the initial stage. The Committee is also concerned about the absence of measures for the effective protection of indigenous peoples living in voluntary isolation or at the initial-contact stage (art. 2, para. 2).

16. The Committee urges the State party to give full effect to the decisions of the Constitutional Court and to expedite the design and implementation of ethnic protection plans for peoples that have been identified by both the Constitutional Court and the National Indigenous Organization of Colombia as being at risk of physical or cultural extinction and to ensure the effective participation of affected indigenous peoples in the development and implementation of such plans. The Committee recommends that the State party take the necessary urgent measures to ensure the physical and cultural survival of the indigenous peoples who are in a situation of greater vulnerability, particularly the Awá, Hitnu and Wayúu peoples, and indigenous peoples living in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people of the Colombian Amazon region.

Forced displacement

17. Despite the measures taken by the State party for the protection of the displaced population, the Committee reiterates its concern at the persistence of forced displacement, which continues to disproportionately affect indigenous peoples and Afro-Colombian communities (art. 5).

18. The Committee urges the State party to take the necessary urgent steps to ensure the practical and effective implementation of the Programme to Guarantee the Rights of Indigenous Peoples Affected by Displacement, or at risk of displacement, and the Comprehensive Plan to prevent displacement and provide protection and care for the displaced Afro-Colombian population. The Committee recommends that the State party ensure the provision of the human and material resources needed for their implementation and the mainstreaming of a differentiated approach into these measures and plans.

Land rights and land restitution

19. Although the Committee notes with satisfaction the progress made by the State party in recognizing the rights that indigenous and Afro-Colombian peoples have over their territories, and the efforts made to return their lands following forced displacement, the Committee is concerned about:

- (a) The constant threats and violence that prevent indigenous and Afro-Colombian peoples from effectively exercising their land rights;
- (b) The failure to adopt the necessary regulations and the lack of effective implementation of Act No. 70 of 1993, which recognizes the right of collective ownership of Afro-Colombians over their territories;
- (c) The obstacles to the effective implementation of Act No. 1448 of 2011, including a lack of human and material resources, a lack of coordination between the authorities responsible for its implementation and the fact that the right to restitution is restricted to victims displaced from their lands after 1991 (art. 5).

20. The Committee recommends that the State party:

- (a) Guarantee the right of indigenous and Afro-Colombian peoples to possess, use, develop and control their lands, territories and natural resources, freely and with full security, by such means as providing legal recognition and the necessary legal protection;
- (b) Ensure the implementation of Act No. 70 of 1993 and the adoption of the corresponding regulations;
- (c) Take the necessary steps to ensure that the agencies responsible for implementing Act No. 1448 of 2011 have adequate human and material resources and cooperate with each other effectively, thus ensuring the effective participation of indigenous and Afro-Colombian peoples.

Right to prior consultation

21. Although the Committee notes that the State party has recognized the right to consultation as a fundamental right of both indigenous peoples and Afro-Colombians, it is concerned at information about the lack of effective implementation of this right, partly because consultation is carried out without proper information, sometimes hastily, or without due consideration for the concerns of these peoples. In addition, it is concerned that the bill under consideration to regulate the process of prior consultation is not fully in conformity with international standards. The Committee regrets that Afro-Colombian peoples were not consulted about the National Development Plan (2014-2018). Lastly, the Committee notes with concern reports of statements made by high-level government officials to the effect that the right to prior consultation is an obstacle to development and infrastructure projects (arts. 2 and 5).

22. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee calls upon the State party to:

- (a) Fulfil its obligation to ensure consultation, with a view to obtaining the free, prior and informed consent of indigenous and Afro-Colombian peoples, as a means of effective participation in any activities relating to legislative or administrative provisions that could affect their rights, particularly their right to the land and natural resources that they own or have traditionally used;
- (b) Adopt procedural protocols for carrying out prior consultation ensuring respect for the cultural characteristics, traditions and customs of each people;
- (c) Avoid statements criticizing or stigmatizing the efforts of indigenous and Afro-Colombian peoples to exercise their fundamental right to free, prior and informed consent and their right to sustainable development.

Impact of projects involving natural resource exploitation

23. The Committee notes with concern the reports regarding the negative impact of projects involving the exploitation of natural resources, including illegal mining, on the territories of indigenous and Afro-Colombian peoples, which cause irreparable damage to the environment and affect their traditional forms of subsistence and exploitation of land and resources, such as hunting, fishing, farming and traditional mining. The Committee is also concerned at the tensions between outsiders and the indigenous and Afro-Colombian peoples living in those territories. The Committee is particularly concerned at the situation faced by Afro-Colombian communities in northern Cauca, the Wayúu people in La Guajira and the indigenous peoples in Putumayo and Nariño.

24. In view of the fact that the protection of human rights and the elimination of racial discrimination are essential for sustainable economic development, and recalling the role of both the public and the private sectors in this regard, the Committee urges the State party to:

- (a) Guarantee the full and effective enjoyment by indigenous and Afro-Colombian peoples of their rights over the lands, territories and natural resources that they occupy or use, in the face of incursions by outsiders who exploit natural resources, both legally and illegally;
- (b) Ensure the effective implementation of protection measures and safeguards against negative environmental impacts and in support of the traditional ways of life of indigenous and Afro-Colombian peoples;
- (c) Guarantee that indigenous and Afro-Colombian peoples affected by natural resource activities in their territories receive compensation for damage or loss suffered and participate in the benefits arising out of such activities.

Human rights defenders and leaders of indigenous and Afro-Colombian peoples

27. While it takes note of the work done by the National Protection Unit, the Committee is concerned at the ineffectiveness of the protection measures adopted to provide security and guarantee respect for the lives and personal safety of human rights defenders and leaders of indigenous and Afro-Colombian peoples. In particular, the Committee is deeply alarmed at the constant threats against and the murders of human rights defenders and leaders of indigenous and Afro-Colombian peoples, such as the murder of the Afro-Colombian leader Genaro García the day before the interactive dialogue with the State party (arts. 5 and 6).

28. The Committee recommends that the State party:

- (a) Adopt effective and timely measures to prevent acts of violence against human rights defenders, including leaders and defenders of the rights of indigenous and Afro-Colombian peoples, and to ensure the effective protection of their lives and personal safety;
- (b) Ensure the effective functioning of the National Protection Unit as a special mechanism for the protection of human rights defenders by such means as the review and improvement of existing protection strategies, the adoption 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;
- (c) Conduct thorough investigations and bring effective prosecutions of persons who threaten the lives and physical safety of human rights defenders, including leaders and defenders of the rights of indigenous and Afro-Colombian peoples.

Discrimination against indigenous and Afro-Colombian women

31. The Committee is concerned about the multiple forms of discrimination faced by Afro-Colombian and indigenous women in the State party, particularly as regards their inadequate access to education, employment, justice and health care, including sexual and reproductive health services (arts. 2 and 5).

32. The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and include a gender perspective in all policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination affecting indigenous and Afro-Colombian women. The Committee also urges the State party to take measures with an intercultural focus to improve access by women who are victims of discrimination and violence to education, employment, justice and health care, including sexual and reproductive health services.

Right to health

33. The Committee remains concerned about the lack of availability, accessibility and acceptability of health services in regions inhabited mostly by indigenous and Afro-Colombian peoples, which is reflected,

inter alia, in the high infant and maternal mortality rates compared with other regions of the State party (art. 5).

34. The Committee recommends that the State party allocate adequate resources to the health sector and redouble its efforts to ensure accessibility, availability, affordability and quality of health care, paying particular attention to the needs of indigenous and Afro-Colombian peoples through such action as the development and implementation of intercultural health service plans that take account of the geographical characteristics of rural areas and provide for the active participation of indigenous and Afro-Colombian peoples.

Right to safe drinking water

35. The Committee notes with concern the lack of access to safe drinking water and basic sanitation by indigenous and Afro-Colombian peoples living in rural and remote areas. It is also concerned about the impact of the disproportionate and uncontrolled use of water and pollution of rivers owing to the development of mining activities. The Committee notes with great concern the negative impact that the operations of the El Cercado dam and the El Cerrejón mine and the diversion of the Ranchería River have on access to water for the Wayúu people in La Guajira (art. 5).

36. The Committee recommends that the State party guarantee access to safe drinking water and sanitation services for indigenous and Afro-Colombian peoples, particularly those living in rural and remote areas. The Committee also recommends that the State party take the steps necessary to ensure that water use by the mining industry does not negatively affect access to water by indigenous and Afro-Colombian peoples living in those territories, including the adoption of water processing and desalination standards. The Committee urges the State party to take urgent steps to ensure access to water by the Wayúu people.

Right to education

37. The Committee welcomes the progress made by the State party to improve the right to education by indigenous and Afro-Colombian peoples. It is concerned, however, that there are still significant differences in access to education, primarily affecting indigenous and Afro-Colombian children living in rural and remote areas. It is also concerned that the current education policy fails to comply fully with the aim of preserving the right to cultural identity of indigenous and Afro-Colombian peoples (art. 5).

38. The Committee recommends that the State party redouble its efforts to ensure the availability, accessibility and quality of education for indigenous and Afro-Colombian children. The Committee also recommends that the State party should take the necessary steps to ensure that the policies of ethnic education and intercultural education fulfil the objective of promoting and preserving the cultural identity of indigenous and Afro-Colombian peoples.

Access to justice

39. The Committee is concerned that the mechanisms introduced by the State party to provide access to justice for indigenous, Afro-Colombian and Roma peoples, such as the National Houses of Justice Programme, are not sufficient to ensure timely access to justice, as they are not yet available in all the territories of indigenous and Afro-Colombian peoples. The Committee is also concerned at reports of alleged irregularities in legal proceedings involving indigenous persons (art. 6).

40. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee calls on the State party to improve the functioning of the special indigenous courts. It also recommends that the necessary steps be taken to guarantee access to justice, including the establishment of houses of justice in those territories where they do not currently exist and to uphold respect for the fundamental right to due process, with guarantees, in cases involving members of indigenous, Afro-Colombian and Roma peoples.

8. Norway, CERD/C/NOR/CO/21-22, 25 September 2015

5. The Committee further welcomes the facilitation by the State party of the participation of the vibrant and dynamic civil society organizations in the Committee's work, as well as the participation of the national human rights institution of Norway, the equality and anti-discrimination ombudsman, the ombudsman for children and representatives of the Sami Parliament. It welcomes the establishment by the State party of an annual national conference to promote dialogue with minority organizations.

Norwegian companies operating abroad

23. While noting that the State party has issued a white paper entitled “Active ownership: Norwegian State ownership in a global economy”, the Committee is concerned that the State party has not yet adopted measures with regard to companies registered in Norway whose activities, in particular with respect to mining, negatively affect the human rights of local communities, in particular those of indigenous peoples and minority groups, outside Norway (art. 5).

24. The Committee recommends that the State party take appropriate legislative measures to prevent companies registered in Norway from carrying out activities that negatively affect the enjoyment of human rights of local communities, in particular the rights of indigenous peoples and minority groups, outside Norway, and hold such companies accountable, taking into account the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

The situation of Sami

27. While taking note of the Action Plan for Sami Languages adopted by the State party, the Committee remains concerned at reports that mother-tongue instruction for Sami students is not adequately protected and that schools do not always fulfil the requirements for mother-tongue instruction owing to a lack of sufficient teaching materials, financing and staffing. The Committee is also concerned about the vulnerable situation of the Eastern Sami culture, due in particular to the restrictive regulation of reindeer herding, fishing and hunting, which constitute an important part of the culture, and about the insufficiency of measures to preserve the culture. (art. 5).

28. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party reinforce its measures to effectively ensure the promotion and preservation of the Sami languages, in particular those under threat, by ensuring that mother-tongue teaching requirements are fulfilled and by securing teaching materials and financial and staffing resources for schools, and that it guarantee the effective implementation of the Action Plan for Sami Languages. The Committee also recommends that the State party increase its efforts to effectively apply the Finnmark Act and preserve the land rights and culture of Eastern Sami, including by finding an appropriate solution to secure the reindeer herding, fishing and hunting that is important to their culture.

29. The Committee is concerned that, while the Finnmark Act recognizes that Sami have acquired collective and individual rights in Finnmark through long-term usage of land and resources, there remain significant gaps in translating the legal recognition into practice, thus resulting, in reality, in limited recognition and protection of Sami rights over their lands. The Committee is also concerned that:

- (a) Little progress has been made in establishing legal frameworks or specialized mechanisms to identify Sami land and resource rights outside Finnmark, despite the proposals contained in the Sami Rights Committee report regarding the clarification of those rights;
- (b) Legislation, in particular the Finnmark Act, the Mineral Act and the Reindeer Husbandry Act, does not provide sufficient safeguards regarding the obligation to consult with Sami, in particular the right to free, prior and informed consent, on all projects and concessions granted to companies for extractive activities, among others, and on other development projects that have an impact on reindeer herding and other Sami livelihoods;
- (c) The funds used to provide legal aid to those seeking recourse before the Uncultivated Land Tribunal for Finnmark come out of the budget of the Tribunal, thus limiting the work of the Tribunal;
- (d) The 2012 amendments to legislation relating to fisheries, namely, the Marine Resources Act, the Participation Act and the Finnmark Act, did not include a recognition that Sami have established rights to fisheries and other renewable marine resources in the Sami coastal area, and that the legal frameworks may therefore require future reform.

30. The Committee recommends that the State party:

- (a) Take concrete steps to give full effect in practice of the legal recognition of the Sami rights to their lands and resources as provided for in the Finnmark Act to enable Sami to maintain and sustain their livelihoods;
- (b) Follow up on the proposals of the Sami Rights Committee, including by establishing an appropriate mechanism and legal framework, and identify and recognize Sami land and resource rights outside Finnmark;

- (c) Put in place consultation procedures for the establishment of necessary economic parameters for the Sami Parliament, and ensure that the Sami Parliament is consulted on financial initiatives and budgetary measures that may have a direct impact on the Sami community;
- (d) Guarantee that all administrative and legislative mechanisms under the Finnmark Act, the Mineral Act and the Reindeer Husbandry Act, among others, that allow for extractive activities in Sami lands be reviewed in order to guarantee adequate consultation with the affected Sami communities, in particular with respect to the right to free, prior and informed consent, mitigation measures, compensation and benefit sharing;
- (e) Follow up on the allocations for the survey and recognition work of the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark and ensure that the Commission and Tribunal have adequate financial resources at their disposal, including for providing legal aid to those seeking recourse before the Tribunal;
- (f) Review the fisheries legislation and ensure that it fully recognizes the Sami fishing rights based on immemorial usage and local customs.

9. Niger, CERD/C/NER/CO/15-21, 25 September 2015

Special measures

16. The Committee notes with interest that article 10 of the Constitution provides for special measures in respect of certain categories of citizens with regard to elected office; as a result of these measures, minority groups enjoy representation in the National Assembly. However, to ensure equality before the law and in practice for everyone, the Committee notes that a number of other special measures still need to be taken, in particular with regard to the enjoyment of economic, social and cultural rights by some groups, notably nomadic populations (art. 1, para. 4; art. 2, para. 2 and art. 5).

17. In line with its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party continue to implement special measures, including with regard to the right to education, employment and housing, and to adopt a comprehensive strategy on the situation of persons belonging to minority groups and those self-identifying as indigenous peoples. The Committee also recommends that the State party take the necessary steps to strengthen its mobile schools programme with a view to boosting enrolment and literacy rates within nomadic populations. The State party should also open more mobile clinics for nomadic populations in order to ensure adequate access to health services, including especially obstetrical care.

Exploitation of natural resources

18. The Committee is concerned by the harmful effects on the environment, health and safety of groups living in regions where the country's natural resources (especially uranium) are exploited. It is concerned by information indicating the absence of serious consultation with the communities involved about the impact of extractive activities on racial and ethnic minorities, such as water pollution and restricted access to water. The Committee is similarly concerned at the poor management of these resources, which do not appear to be benefiting the regions concerned despite the levying of a mining royalty of 15 per cent that is to be paid to the communes in which exploitation activities are under way (arts. 2 and 5).

19. While taking note of the efforts deployed to better manage the country's resources, the Committee recommends that the State party:

- (a) Strengthen safety and protection measures for the exploitation of natural resources in order to rigorously enforce provisions to protect the environment and the health of local residents. The Committee recommends that the State party declare a moratorium on projects for which independent studies on the human rights impact have not yet been commissioned or completed and that it engage in a public consultation with local communities with a view to securing their agreement and consent;
- (b) Guarantee access to appropriate quality and quantities of water for populations in the areas where they have traditionally lived, especially in the Air region;
- (c) Engage in consultations with the population, or their representative associations, to ensure that their rights are not violated and, in cases of expropriation in the public interest, that they receive indemnification. The State party should also ensure that uranium mining activities are conducted in such a way as not to harm people's health or the environment. Lastly, the Committee invites the State

party to institute arrangements for regular inspections of such sites as well as effective monitoring of how funds transferred to local governments are managed.

Management of conflicts between nomadic populations and other groups

20. While noting with interest the official adoption of the practice of joking kinship, a cultural form of conflict resolution between communities that is supposed to foster social cohesion between different ethnic groups, the Committee is concerned by information indicating the existence of tension, and even conflicts, between nomadic groups and the rest of the population, especially sedentary farmers. The Committee welcomes the adoption of the Rural Land-Use Code, the Water Resources Code and the Pasture Resources Code to address recurrent problems associated with nomadic farming, but it is concerned by the contradictory provisions between Codes, especially with regard to access to water. In this connection, the Committee regrets that the Pasture Resources Code, which was adopted in 2010 and grants a series of rights to nomads, has not yet been promulgated (arts. 2, 5 and 7).

21. The Committee recommends that the State party:

- (a) Publicize and disseminate throughout the country the practice of joking kinship as a tool to settle conflicts between communities, and conduct awareness-raising activities among the respective communities or ethnic groups;
- (b) Harmonize the legislation that has been adopted to resolve issues between practitioners of pastoral and sedentary farming (Rural Land-Use Code, Water Resources Code and the Pasture Resources Code) by conducting a cross-reading of the Codes to ensure they complement each other and fulfil the role that each should have;
- (c) Promulgate the 2010 Pasture Resources Code and adopt the necessary implementing legislation for its effective application.

10. Holy See, CERD/C/VAT/CO/16-23, 11 January 2016

Indigenous peoples

16. While welcoming the statement made by Pope Francis in the Plurinational State of Bolivia in July 2015, in which he apologized for the actions of the Catholic Church in the context of colonialism against indigenous peoples in the Americas, the Committee notes the concerns expressed by indigenous peoples regarding the current legacy and effects of the Doctrine of Discovery endorsed in the Inter Caetera from 1493 and its related papal bulls, as well as other issues (arts. 2, 5 and 6).

17. The Committee recommends that the State party engage in meaningful dialogue with indigenous peoples with the aim of effectively addressing their concerns. In this regard, the Committee takes note of the information provided by the State party delegation concerning a high-level dialogue that is scheduled to take place in Rome to address the concerns expressed by indigenous peoples, and recommends that the State party ensure that its interlocutors in this dialogue include appropriate representatives designated by indigenous peoples. The Committee requests the State party to provide information in its next periodic report on the outcome of the meeting and concrete follow-up measures taken.

11. Namibia, CERD/C/NAM/CO/13-15, 13 May 2016

4. The Committee welcomes the adoption of the following legislative and policy measures: ... (e) Submission to Parliament of the White Paper on indigenous peoples prepared by the Ombudsman with assistance of the International Labour Organization....

5. The Committee notes the provision of some statistical data in the common core document and State party report, in line with its previous recommendation. However, the Committee notes with concern that updated disaggregated data necessary to properly evaluate the situation of various groups (in particular indigenous peoples, national and ethnic minorities, refugees and asylum seekers) is not provided in the report, limiting the Committee's ability to properly analyze the situation of such groups, including any potential progress achieved by programs implementing special measures for these groups (art. 1).

6. While noting the State party's concern for avoiding societal divisiveness through the collection of data, the Committee refers the State party to its revised reporting guidelines under this Convention (CERD/C/2007/1, paras. 10-12), and recommends the State party collect and provide in its next report updated and comprehensive statistical data on the demographic composition of the population and disaggregated data

by ethnic groups on the enjoyment of economic and social rights. This data will provide the Committee and the State party with an empirical basis to evaluate the effectiveness of implementation of the rights in this Convention.

Indigenous peoples

15. While noting measures taken by the State party to improve the situation of indigenous peoples, including development programmes, the Committee expresses concern at the continued high rate of poverty and challenging economic and social situation of indigenous peoples, who face obstacles in accessing education, housing, employment, health care (including treatment for HIV/AIDS), ownership of ancestral lands, and political representation (arts. 3 and 5).

16. The Committee recalls its general recommendation no. 23 (1997) on the rights of indigenous peoples, and recommends the involvement of indigenous communities in the planning, implementation and review of development programs aimed at improving their situation. The Committee also recommends that the State party monitor the impact of measures taken on the enjoyment of rights by indigenous peoples, and update the Committee on the effectiveness of these measures, and on the work of the Division of Marginalized Communities. The Committee further recommends that the State party implement the recommendations made by the Special Rapporteur on the rights of indigenous peoples, following his visit to Namibia in 2012 (see A/HRC/24/41/Add.1).

Violence against San women

17. The Committee notes the information provided by the State party on the rape of San women, which has an ethnic dimension, in the State party report, but regrets that the information on preventing such acts and bringing perpetrators to justice is not recent or comprehensive. The Committee is further concerned by possible obstacles faced by San women in accessing proper mechanisms for reporting and judicial redress for these crimes, which may lead to low reporting of such incidents and prevent prosecution of these crimes (art. 5 (b)).

18. Recalling its general recommendation no. 25 (2000) on the gender dimension of racial discrimination, the Committee requests the State party to provide detailed information in its next periodic report on cases of rape of San women, including statistical data on the number of cases reported, prosecutions and convictions. The Committee also requests information on efforts taken by the State party to combat negative stereotypes about indigenous peoples, as previously recommended, as well as efforts taken by the State party to raise awareness among indigenous peoples on mechanisms for reporting and judicial recourse for violations of their rights.

Political participation of indigenous peoples

19. The Committee, while noting that the State party has recognized 50 traditional authorities, including 5 San indigenous groups under the Traditional Authorities Act No. 25 of 2000, remains concerned that there are other indigenous peoples that have not been included in this process, who may not have the ability to participate fully in political processes, and may face exclusion from decision making in matters which concern them (arts. 2 and 5).

20. Bearing in mind article 18 of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recalls the importance of ensuring the effective participation of all groups in political and public life as well as in all public institutions, including the parliament, public administration, police and judiciary. The Committee recommends that the State party take measures to ensure a revised system for effective and inclusive participation of all indigenous peoples in public affairs at all levels, including those individuals belonging to indigenous groups without traditional authorities. The Committee requests the State party to provide information in its next periodic report on the effective and inclusive participation of indigenous peoples in political and public life at all levels.

Access to Education

21. The Committee takes positive note of measures taken by the State party to overcome educational inequality and to increase access to education for ethnic minorities and indigenous peoples, through: the extension of free education to the secondary level, the school feeding program, mobile school units, and other measures. The Committee, however, notes with concern continued challenges faced by these groups in obtaining quality education, and in particular notes:

- (a) Information that the mobile school units are not properly resourced with teachers and materials;
- (b) Information that indigenous native attire is only allowed until level 6 and instruction in mother tongues is provided only until level 3;
- (c) Lack of updated information on drop out rates among ethnic minority and indigenous children;
- (d) Lack of information on educational outreach programs for children from ethnic minorities and indigenous peoples, in particular those living in informal settlements, on communal farms, in rural areas and the refugee settlement (art. 5(e)).

22. The Committee recommends the State party guarantee all children access to all levels of education, without discrimination, and in particular:

- (a) Continue to develop the mobile school unit programs and allocate the adequate resources necessary to its proper functioning. Monitor the impact of these units on the enjoyment of the right to education, and provided updated information to the Committee in its next periodic report on progress.
- (b) Continue to take the necessary steps to adapt education programs to the indigenous way of life and culture and to address special needs including dress and language, in consultation with these communities;
- (c) Address the root causes of school dropout, and provide updated information on these efforts and on current status of school dropout rates;
- (d) Strengthen educational outreach programs targeted at ethnic minorities and indigenous peoples with the goal of increasing educational enrolment and matriculation, and allocate necessary resources to ensure quality education.

Land reform and resettlement

23. The Committee notes the challenges in remedying skewed land ownership patterns from the colonial past, and appreciates the update on resettlement of persons from “previously disadvantaged communities.” The Committee remains concerned that all ancestral indigenous lands remain under State ownership and that indigenous peoples continue to face challenges to own, develop and control communal lands. The Committee is also concerned about the limited consultation with indigenous peoples regarding extraction activities carried out on or nearby their ancestral lands (art. 5).

24. In the light of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee recommends the State party to work with indigenous peoples on titling their ancestral lands and securing their rights to these lands. The State party should also seek the informed consent of indigenous groups prior to granting licences to extractive industries. The Committee requests an update on the recognition of ownership of indigenous peoples over the lands that they traditionally occupy or have occupied in the next periodic report of the State party.

12. Rwanda, CERD/C/RWA/CO/18-20, 10 June 2016

10. The Committee takes note of 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, including the fact that the Rwandan population is now formed of a single national group sharing the same language and the same culture. The Committee nevertheless regrets the absence in the State party report of statistical and socioeconomic data on the “historically marginalized groups”, in particular the Batwa, and on non-citizens residing in the territory of the State party.

11. In the light of its general recommendations No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention and No. 30 (2004) on discrimination against non-citizens, and paragraphs 10 to 12 of its Guidelines for the CERD-Specific document (CERD/C/2007/1), and with reference to Sustainable Development Goal No. 17, the Committee recommends that the State party provide any available information from socioeconomic studies on the “historically marginalized groups”, in particular the Batwa, as well as on non-citizens living in its territory, disaggregated by sex and nationality, to allow the Committee to assess the extent to which these groups enjoy their rights under the Convention on an equal footing with the rest of the population.

Situation of the Batwa

14. While taking note of the explanations provided by the State party, the Committee remains concerned about the population decline among the Batwa, a “historically marginalized group”. It also remains concerned

about persistent reports of negative stereotypes, stigmatization of and discrimination against the Batwa in several areas, and particularly that: (a) the literacy rate for Batwa children remains very low in comparison with that of the rest of the population, and obstacles remain to the effective access of Batwa children to education; (b) the Batwa experience difficulties in practice in gaining effective access to health and social services, notably because of the requirement to pay user fees; (c) despite the efforts of the State party, the Batwa are discriminated against with regard to access to employment and working conditions; (d) not all Batwa enjoy adequate housing, despite the programme established by the State party. The Committee also regrets that the State party has not provided statistical data to make it possible to assess the impact on the living conditions of the Batwa of the various plans and programmes established by the State party, or on the Batwa's effective participation in the establishment and implementation of monitoring mechanisms for such plans and programmes (art. 5).

15. Recalling 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, and taking into account the fact that the State party considers the Batwa as a “historically marginalized group”, the Committee recommends that the State party take the special measures indicated below with the aim of bringing the Batwa to a level comparable to that of the rest of the population and combating the stereotypes, marginalization and poverty of which they are still victims. In particular, the Committee recommends that the State party should:

- (a) Combat stereotypes and the marginalization to which the Batwa are subject, ensure the effective implementation of its legislation to combat racial discrimination and ensure that, in the decentralized governance put in place by the State party, the Batwa play an effective part and are involved in the implementation and monitoring mechanisms and benefit equally with the rest of the population from the various plans and programmes implemented by the State party;
- (b) Ensure that Batwa children do not face barriers in access to primary and secondary education and strengthen measures designed to avoid a high dropout rate, especially among girls;
- (c) Continue to raise the awareness of Batwa adults of the importance of education;
- (d) Ensure that all Batwa have access to adequate and accessible housing;
- (e) Remove all obstacles to effective access for the Batwa to health care, health services and social protection in order to avoid the extinction of this population group;
- (f) Strengthen vocational training for the Batwa, with a view to combating discrimination against them and facilitating their integration into the labour market on an equal footing with the rest of the population, including in the Hanga Umurimo project and the Kuremera programme;
- (g) Protect the labour rights of the Batwa, including in respect of access to employment and working conditions, step up the inquiries into discrimination against them at the workplace and increase their ability to bring complaints.

Participation by the Batwa in political and public affairs

16. The Committee takes note of the explanations provided by the State party, including the appointment by the Head of State of a senator from the Batwa community, but is of the view that these are too general and do not give a clear picture of the Batwa's participation in political and public affairs, despite the provisions of the Constitution (art. 80) on the representation of “historically marginalized groups” at both national and local levels (art. 5).

17. Given that the Batwa are recognized as one of the “historically marginalized groups” in the country, the Committee recommends that the State party take special measures to establish a more ambitious, bold and dynamic policy in order to facilitate the effective integration of the Batwa into political and public affairs, including in positions in public administration, the police, the army and elected assemblies. The State party should also step up awareness-raising campaigns among the Batwa on the importance of their participation in political and public life, and among the rest of the population on the need for integration of the group into society.

Land issues

18. The Committee takes note of the information provided by the State party concerning the eviction of the Batwa from the forest lands in which they lived and the explanations seeking to justify why they have not been compensated. The Committee also takes note of the information on the free housing programmes set up for the Batwa and the efforts made to integrate them into the rest of the population. However, the Committee remains concerned at the fact that the forced eviction of the Batwa from their traditional lands in order to

create and develop national parks, which may have contributed to the decline in their population, has seriously disrupted their traditional way of life, since it prevents them from engaging in income-generating activities and has increased their poverty. Moreover, the Committee notes with concern the absence of appropriate measures to ensure the full integration of the Batwa, such as the allocation of land to compensate them for the lands that they have lost (art. 5).

19. The Committee reiterates its recommendation that the State party consider putting in place specific measures, in consultation and agreement with the Batwa, whereby those who so wish are provided with plots of land, so that they can engage in income-generating activities. The Committee emphasizes that such measures are necessary to end the decline in the Batwa population, to promote their integration into the rest of society and to reduce their poverty.

Access to effective remedies and provision of data relating to the application of article 6

22. The Committee notes that the State party has not provided information concerning complaints, prosecutions, sanctions or compensation in cases of racial discrimination, including discrimination in employment, handled by the courts, the Ombudsman and the National Human Rights Commission. While noting the State party's comments about equal access to justice for all and the measures put in place, including legal assistance, the Committee remains concerned at reports that the Batwa do not always enjoy equal access to justice (arts. 5 and 6).

23. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee again reminds the State party that the absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, fear of social disapproval or reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee therefore recommends that the State party increase its efforts to disseminate the Convention among the population and continue to train officials in the application of the law to the provisions of the Convention and put in place a system to register and collect data relating to complaints, prosecutions sanctions and compensation in cases of racial discrimination, including discrimination in employment, brought before the courts and other appellate bodies and addressed by them. The Committee also recommends that the State party ensure that complaints of racial discrimination are properly registered and that, where appropriate, they should be subject to prosecution, sanctions and compensation. The Committee recommends lastly that the State party take all necessary steps to facilitate the access of the Batwa to justice, to disseminate information on legislation relating to racial discrimination, in particular among the Batwa, and to inform the latter of all the legal remedies available to them and of the possibility of obtaining legal assistance.

13. Spain, CERD/C/ESP/CO/21-23, 13 May 2016 (Spanish only)

Empresas y derechos humanos

33. El Comité acoge con satisfacción la ratificación del Convenio 169 de la OIT por el Estado parte y la adopción del borrador del Plan Nacional de Empresas y Derechos Humanos. Sin embargo, le preocupa que aún no se han adoptado medidas respecto a empresas transnacionales con domicilio social en España, cuyas actividades, en particular las mineras, afectan negativamente los derechos de los pueblos indígenas y afrodescendientes en los países donde llevan a cabo sus operaciones (art. 2, 5 y 6).

34. Se recomienda que tome las medidas legislativas adecuadas para impedir que dichas empresas realicen actividades que afecten negativamente los derechos de los pueblos indígenas y afrodescendientes en los países donde llevan a cabo sus operaciones y que se les exijan responsabilidades. Asimismo, recomienda que el Plan Nacional de Empresas y Derechos Humanos sea adoptado de manera expedita y definitiva, mediante un proceso transparente, con la participación de la sociedad civil y representantes de los pueblos indígenas y afrodescendientes, garantizando que los proyectos que puedan tener algún impacto sobre los derechos de pueblos indígenas y afrodescendientes respeten la consulta previa.

14. Paraguay, CERD/C/PRY/CO/4-6, 4 October 2016

Positive aspects

...

4. The Committee also welcomes the legislative and institutional measures adopted by the State party during the period under review, in particular:

- (a) The adoption of Act No. 5469/2015 on Indigenous Peoples Health, promulgated on 7 September 2015, which established the National Directorate for Indigenous Peoples Health and the National Council for Indigenous Peoples Health;
- (b) The establishment of the National Council for Indigenous Peoples Education, in July 2016. ...

5. The Committee notes with satisfaction that the State party has extended an open, standing invitation for special procedures mandate holders of the Human Rights Council to visit the country. In that connection, the Committee welcomes the visit made by the Special Rapporteur on the rights of indigenous peoples in November 2014 and encourages the State party to ensure that all the recommendations contained in her report are duly implemented (A/HRC/30/41/Add.1, paras. 78-92).

Structural discrimination

9. The Committee is concerned by the ongoing structural discrimination against indigenous peoples and by the discrimination against and invisibility of Afro-Paraguayans, as seen in the gap between these groups' exercise of their human rights and the rest of the population (arts. 1, 2 and 5).

10. The Committee recommends that the State party adopt a comprehensive national policy to combat racism and racial discrimination that promotes social inclusion and seeks to reduce the high levels of inequality and poverty prevalent among indigenous peoples and Afro-Paraguayan men and women. Bearing in mind its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee calls on the State party to take special affirmative action measures to eliminate structural discrimination against indigenous peoples and Afro-Paraguayans. In view of its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee also recommends that the State party adopt a plan to acknowledge the Afro-Paraguayan population and give it greater visibility.

National Institute of Indigenous Affairs

15. The Committee regrets that the State party has not taken the necessary steps to ensure the representation of indigenous peoples in the National Institute of Indigenous Affairs or to strengthen that body's institutional autonomy. In addition, it notes with concern that there has been a significant drop in the budget allocated to the Institute, which limits its ability to carry out its mandate effectively (art. 2 (1)).

16. In the light of its previous recommendation (CERD/C/PRY/CO/1-3, para. 14), the Committee urges the State party to take all necessary steps to make the National Institute of Indigenous Affairs an autonomous body that represents indigenous peoples and has sufficient authority to formulate and coordinate all public policy relating to indigenous peoples. In addition, it recommends that the State party ensure that the Institute has adequate material, financial, technical and human resources to effectively carry out its tasks.

Prior consultation

17. The Committee takes note of the information that the delegation provided during the dialogue with regard to the planned presentation, in the near future, of draft legislation on prior consultation and to the exercise of the right to prior consultation under the Secretariat for Social Action's protocol on providing services to indigenous communities. The foregoing notwithstanding, the Committee is concerned that prior consultation is not undertaken routinely, which means that indigenous peoples' right to prior consultation with a view to securing their free, prior and informed consent is not always respected in processes involving decisions that could affect them. The Committee notes with concern that environmental permits are reportedly being issued for farming, lumbering and oil prospecting activities without any prior consultation with the indigenous communities concerned (arts. 2 and 5).

18. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party:

- (a) To launch a broad process of consultation and participation with indigenous peoples on the draft legislation on prior consultation, ensuring that it complies with international standards, in particular

International Labour Organization (ILO) Convention No. 169 (1989) concerning Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples;

- (b) To take appropriate steps to ensure that, with a view to securing free, prior and informed consent, prior consultations are carried out systematically, in good faith, in a timely fashion and with the appropriate information being provided to the indigenous peoples concerned, while respecting the traditions and cultural characteristics of each people;
- (c) To ensure that all projects for development or exploitation of natural resources and all legislative or administrative measures that could affect indigenous peoples are subjected to a process of prior consultation with a view to securing their free, prior and informed consent.

Indigenous lands, territories and resources

19. While taking note that the Constitution recognizes indigenous peoples' rights over their territories and welcoming the efforts deployed to restore lands to indigenous peoples, the Committee is concerned that the State party does not yet have appropriate, effective mechanisms for the filing of claims and the restitution of ancestral territories and lands and that many indigenous peoples have no land of their own or have not yet obtained legal title of ownership. It is further concerned by the lack of effective mechanisms to protect the rights of indigenous peoples over their lands, territories and resources, owing in part to shortcomings in the land registry system and to widespread land-grabbing by private companies and individuals, which has resulted in social conflict and forced evictions of indigenous peoples from their lands or territories (art. 5).

20. The Committee urges the State party:

- (a) To establish an appropriate and effective mechanism for the filing of claims and the restitution of ancestral territories and lands, ensuring that adequate human, technical and financial resources are allocated for it to operate properly;
- (b) To adopt the necessary legislative and administrative measures to ensure and 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 line with international standards;
- (c) To take all necessary steps, including through early warning systems and urgent action procedures, to prevent members of indigenous populations from becoming the victims of illegal occupation or use of their lands, territories or resources by third parties and to ensure protection against forced eviction from their lands and territories.

Enforcement of judgments of the Inter-American Court of Human Rights

21. The Committee welcomes the State party's efforts to abide by and enforce the judgments of the Inter-American Court of Human Rights in the Yakyé Axa, Sawhoyamaxa and Xákmok Kásek cases. It remains concerned, however, that the judgments have not yet been fully enforced, as that is undermining the exercise of those communities' rights (art. 6).

22. Recalling its previous recommendation (CERD/C/PRY/CO/1-3, para. 17), the Committee calls on the State party to redouble its efforts to promptly and effectively enforce all pending aspects of the judgments of the Inter-American Court of Human Rights in Yakyé Axa Indigenous Community v. Paraguay, Sawhoyamaxa Indigenous Community v. Paraguay and Xákmok Kásek Indigenous Community v. Paraguay.

Impact of the exploitation of natural resources

23. The Committee is concerned by the negative effects caused by some natural-resource exploitation activities, such as extensive soybean cultivation and logging activities, on indigenous peoples' living conditions, given the significant impact on those peoples' traditional forms of subsistence and the water resources located on their lands and territories (art. 5 (e)).

24. Bearing in mind that the protection of human rights and the elimination of racial discrimination are a crucial part of sustainable economic development and recalling the roles of both the State party and the private sector in this regard, the Committee urges the State party:

- (a) To take the necessary steps to control soybean cultivation and logging activities so that those practices do not have a detrimental impact on the living conditions of indigenous peoples;
- (b) To assess the possible social and environmental impact of the exploitation of natural resources in indigenous peoples' territories with a view to protecting those peoples' traditional means of subsistence and water resources;

- (c) To ensure that indigenous peoples affected by natural-resource exploitation activities in their territories receive compensation for losses or damage incurred and share in the profits generated by those activities.

Indigenous peoples in voluntary isolation or initial contact

25. The Committee is concerned by the lack of appropriate measures to protect the indigenous peoples of the Chaco and Eastern regions who live in voluntary isolation or are at a stage of initial contact. The Committee is also concerned by the special situation of vulnerability of the Ayoreo Totobiegosode community because of the deforestation of its territories, as that is jeopardizing the community's physical and cultural survival (art. 5).

26. The Committee recommends that the State party adopt, without delay, appropriate measures to protect the physical and cultural survival of indigenous peoples in voluntary isolation or initial contact and take the necessary steps to ensure that the measures are fully implemented, taking into account the guidelines for the protection of indigenous peoples in isolation or initial contact in the Amazonian, Greater Chaco and Eastern regions of Paraguay. Furthermore, it encourages the State party to fully abide by and enforce the precautionary measures ordered in support of the Ayoreo Totobiegosode people by the Inter-American Commission of Human Rights on 3 February 2016 in the matter of communities in voluntary isolation of the Ayoreo Totobiegosode people (PM 54/13).

Participation in political life

27. The Committee notes with concern the lack of adequate measures for promoting participation by indigenous peoples and Afro-Paraguayans in public decision-making processes. It is also concerned that the State party has not provided information on the representation of indigenous peoples at all levels of government (arts. 2 and 5).

28. The Committee recommends that the State party take the necessary steps to ensure full participation by members of indigenous peoples and Afro-Paraguayans in government bodies, in particular with regard to decision-making positions, and that it take effective steps to ensure equal opportunities for members of indigenous peoples and Afro-Paraguayans to be present at all levels of government, national as well as local, such as to contribute to the design and implementation of public policies to safeguard their rights. The Committee also recommends that the State party take steps to make members of indigenous peoples and Afro-Paraguayans aware of the importance of being actively involved in public and political life.

Situation of human rights defenders and indigenous leaders

29. The Committee is concerned by reports received of acts of retaliation, intimidation, threats and possible arbitrary acts by public authorities against human rights defenders, including indigenous leaders and defenders of the rights of indigenous peoples (arts. 2, 5 (b) and 6).

30. The Committee recommends that the State party:

- (a) Take all necessary steps to protect human rights defenders, including indigenous leaders and defenders of the rights of indigenous peoples, against all acts of harassment, intimidation, retaliation, threats and any arbitrary act by a public authority or private entity in response to a human rights defender's performance of his or her functions;
- (b) Investigate all acts of harassment, intimidation, retaliation or threats against human rights defenders and ensure that perpetrators are punished appropriately;
- (c) Conduct information and awareness-raising campaigns about the crucial work performed by human rights defenders, including indigenous leaders and defenders of indigenous peoples' rights, with a view to fostering a climate of tolerance in which they can perform their work free of any type of intimidation, threats or retaliation.

Working conditions

31. The Committee continues to be concerned by reports of the precarious working conditions faced by many indigenous people, in particular on farms in the Chaco region, including reports that some are victims of labour exploitation (arts. 2 and 5 (e) (i)).

32. The Committee reiterates its previous recommendation (CERD/C/PRY/CO/1-3, para. 16) and urges the State party to take immediate and effective action to ensure the full enjoyment of rights by the indigenous peoples of the Chaco region. The Committee also urges the State party to take action to prevent, investigate

and duly prosecute all cases of discrimination and labour exploitation of indigenous labourers in the Chaco region, ensuring that victims have access to justice and receive adequate protection and redress and that the perpetrators are tried and punished in accordance with the seriousness of the crime. The Committee further urges the State party to take the necessary action to strengthen its labour inspection system and to include in its next periodic report information on investigations conducted under that system and the number and type of sanctions imposed, if any.

Right to food and water

33. While welcoming the State party's efforts to ensure indigenous peoples' right to adequate food and right to water, the Committee is concerned that there are still significant gaps in the enjoyment of those rights by members of the indigenous population and Afro-Paraguayans with regard to the rest of the population (art. 5 (e)).

34. The Committee recommends that the State party step up its efforts to provide an effective response to the situation of food insecurity and child malnutrition that is especially prevalent among indigenous populations and that it ensure access to a secure supply of drinking water and sanitation services for indigenous peoples and Afro-Paraguayans, especially in remote, rural areas.

Access to health

35. While welcoming the advances made in the preparation of the enabling legislation for the Indigenous Peoples Health Act, the Committee is concerned at the weak infrastructure, unavailability of medicines and poor quality and availability of health-care services in remote, rural areas inhabited mainly by indigenous peoples (art. 5 (e) (iv)).

36. The Committee recommends that the State party take the necessary action, including allocating the necessary resources, for effective implementation of the Indigenous Peoples Health Act and its enabling legislation, as well as for the effective operation of the National Directorate for Indigenous Peoples Health and of the National Council for Indigenous Peoples Health. In addition, it recommends that the State party continue its efforts to ensure the accessibility, availability and quality of health care, taking into special consideration the needs, traditions and cultural specificities of indigenous peoples.

Access to education

37. The Committee is concerned by the significant differences in access to education observed mainly among children of indigenous and Afro-Paraguayan populations. It is also concerned by the high rates of illiteracy among the indigenous and Afro-Paraguayan populations (art. 5 (e) (v)).

38. The Committee recommends that the State party step up its efforts to eradicate illiteracy and to ensure the availability, accessibility and quality of education for indigenous and Afro-Paraguayan children, including in their mother tongue, through the formulation of cross-cultural curricula that seek to promote and preserve the cultural identity of indigenous peoples and Afro-Paraguayans. It also recommends that the State party continue its efforts to open schools in remote rural areas, which are home to higher concentrations of indigenous residents, and to enhance the quality and infrastructure of those schools.

Access to justice

39. The Committee takes note of the State party's efforts to ensure access to justice for indigenous peoples, such as through the acknowledgement and harmonization of the State and indigenous criminal justice systems, but it is concerned that those actions have been focused exclusively in the area of criminal justice. In particular, it is concerned by reports of racial discrimination against indigenous peoples based on attitudes that are deeply rooted in the judicial system (art. 6).

40. The Committee, in the 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:

- (a) To step up its efforts to acknowledge and respect the traditional justice systems of indigenous peoples in keeping with international human rights standards;
- (b) To take the necessary action to ensure access to justice for indigenous peoples, ensuring that their basic rights and guarantees of due process are respected;
- (c) To eliminate racial discrimination within the judicial system, including by providing training to police officers, prosecutors, defence attorneys, judges and professionals in the judicial system on the rights of indigenous peoples and human rights.

Multiple forms of discrimination

41. The Committee is concerned that Afro-Paraguayan women and indigenous women continue to face multiple forms of discrimination with regard to participation in decision-making processes and access to an adequate standard of living, education, work and health care, including in the area of sexual and reproductive health (art. 2 (2)).

42. The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it include a gender perspective in all policies and strategies to counter racial discrimination as a way to address the multiple forms of discrimination that affect, in particular, Afro-Paraguayan and indigenous women. In addition, it urges the State party to formulate measures with a cross-cultural approach aimed at improving access to education, work, justice and health, including sexual and reproductive health, for indigenous and Afro-Paraguayan women.

15. South Africa, CERD/C/ZAF/CO/4-8, 5 October 2016

Special measures

14. The Committee appreciates the particular challenges the State party faces with implementing special measures to redress inequalities of the former apartheid era, and notes the information provided by the State party on the implementation of special measures including the Employment Equity and Black Economic Empowerment Act. While the Committee appreciates some statistics provided by the State party on the current distribution of persons belonging to various ethnic groups at management levels and in the judiciary, the Committee is concerned at the lack of comprehensive disaggregated data on the impact of special measures on affected groups, especially on the most disadvantaged and vulnerable among them, in the areas of employment, education and representation in public and political affairs at all levels. The Committee is also concerned at the lack of information on the impact of special measures on indigenous peoples (arts. 2 and 5).

15. Recalling its general recommendation no. 32 (2009) on the meaning and scope of special measures, the Committee requires the State party to provide detailed qualitative and quantitative information in its next periodic report on the impact of the special measures in employment, education and public and political affairs. The Committee also requests further information on specific special measures for indigenous peoples and their impact.

Situation of Indigenous peoples

24. The Committee expresses concern at the situation of indigenous peoples who continue to suffer from extreme poverty and marginalization and face discrimination and difficulty with language, education, land redistribution and lack information on their rights under the Convention. The Committee notes that the Khoi-San Leadership Bill was introduced into parliament in 2015. However, it is concerned that this Bill may not provide adequate redress, as it may recognize traditional leaders without taking into consideration the particular approach of indigenous peoples to leadership (arts. 2 and 5).

25. In the light of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party take necessary measures to address the situation of indigenous peoples and ensure their equal enjoyment of the rights under the Convention. It further recommends implementing recommendations of the NHRI following its investigative hearings on the rights of indigenous peoples in 2004 and 2016. The Committee also requests the State party continues to ensure the involvement and consultation of indigenous peoples in the finalization of the Khoi-San Leadership Bill and other matters concerning them, taking into consideration the approach to leadership of indigenous peoples.

16. Argentina, CERD/C/ARG/CO/21-23, 11 January 2017

Structural discrimination

6. The Committee remains concerned about the persistent structural discrimination against indigenous peoples and people of African descent and the invisibility of people of African descent in terms of their rights. Structural discrimination prevents indigenous peoples and people of African descent from enjoying the minimum international standards for development, including those set out in the Sustainable Development Goals. The Committee regrets the lack of access to basic services experienced by indigenous communities,

people of African descent and migrants, in particular those in an irregular situation. The Committee is particularly concerned about cases of malnutrition in children from indigenous communities. The Committee also takes note with concern of the difficulties experienced by indigenous communities in gaining access to water, which are compounded by the lack of titling of their lands and the activities of companies that exploit natural resources (arts. 1, 2 and 5).

7. The Committee recommends that the State party:

- (a) Adopt a comprehensive policy to combat racism and racial discrimination that promotes social inclusion and seeks to reduce the high levels of poverty prevalent among indigenous peoples, people of African descent and migrants, particularly those in an irregular situation. The Committee recommends that the State party strengthen its efforts to address the situation of child malnutrition that is especially prevalent among indigenous populations;
- (b) Bearing in mind its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, take special measures or affirmative action to eliminate structural discrimination against indigenous peoples and people of African descent. The Committee urges the State party to develop and properly implement its programme entitled “Promoting and Raising Awareness of the Rights of the Afro-descendent Community” with a view to acknowledging the Afro-descendent population, giving it greater visibility, bearing in mind the Committee’s general recommendation No. 34 (2011) on racial discrimination against people of African descent, and recognizing its rights;
- (c) Take the necessary steps to meet the Sustainable Development Goals.

Public policies

8. The Committee takes note of the recognition by the State party of the multi-ethnic and multicultural character of its population. However, the Committee notes with concern that, despite the existence of legal provisions relating to the protection of the rights of indigenous peoples, there is no comprehensive legislative framework or appropriate mechanisms for fully and effectively implementing those rights uniformly throughout the State party (arts. 2 and 5).

9. The Committee suggests that the State party reflect in its laws its vision of the country’s multi-ethnic and multicultural character. The Committee recommends that draft legislation on combating racial discrimination and promoting the rights of indigenous peoples and people of African descent be given priority in the legislative agenda, in consultation with those groups, so as to put in place a proper legal framework throughout the country.

Demographic composition of the population and statistical data

10. While the Committee takes note of the information provided by the State party regarding the 2010 national housing, household and population census, it regrets that the question on self-identification was not included in the general form, with the result that no full picture of the real situation of indigenous peoples and people of African descent could be obtained. The Committee regrets the lack of information on gypsies. The Committee also regrets the lack of reliable, disaggregated data to enable it to assess the levels of discrimination against minority groups and the absence of human rights and socioeconomic indicators to assess living conditions and the progress made towards full realization of the rights set forth in the Convention (art. 2, para. 11).

11. In the light of its general recommendation No. 4 (1973) concerning reporting by States parties and its revised reporting guidelines (see CERD/C/2007/1, paras. 10 and 12), the Committee urges the State party to collect and provide to the Committee reliable, up-to-date and complete statistical data on the demographic composition of the population, in particular on indigenous peoples, people of African descent, gypsies and migrants, as well as civil, political, economic and social rights indicators that reflect the content of those rights appropriately. The Committee further requests information on the evaluation of the implementation of the present concluding observations, the National Human Rights Action Plan (2017-2020), which is currently under development, and existing programmes to combat racial discrimination, including the 2013 INADI National Discrimination Map.

Institutional strengthening

16. The Committee regrets the failure to obtain the full and consistent participation of members of the indigenous community in organizations intended to represent them, such as the National Institute of

Indigenous Affairs, the Council on Indigenous Participation and the Indigenous Peoples' Advisory and Participatory Council. The Committee takes note of the increase in the budget allocated to the National Institute of Indigenous Affairs. However, it regrets: (a) that insufficient budget allocation to the Institute will not allow it to function effectively; (b) the Institute is not adequately represented at the provincial level; and (c) the Institute lacks staff from indigenous communities with relevant training. The Committee is also concerned about the administrative intervention measure taken in respect of the National Institute to Combat Discrimination, Xenophobia and Racism (INADI) since 2011, which might limit the Institute's independence and capacity to act (art. 2).

17. The Committee urges the State party to:

- (a) Take all necessary steps to ensure the full and effective participation of indigenous peoples, people of African descent and migrants in the institutions that represent them or that work to combat racial discrimination;
- (b) Continue to strengthen institutions working to combat racial discrimination and promote the rights of indigenous peoples by ensuring that they are fully autonomous and provided with the necessary funding and staff; and to consider establishing offices of those institutions in all of the country's provinces.

Prior and informed consultation

18. The Committee remains concerned about the lack of regulations governing the consultation procedures established with a view to obtaining the free, prior and informed consent of indigenous peoples and the lack of effective mechanisms to carry out such consultations. The Committee regrets that only a small number of consultations have been undertaken in the State party and that, when such consultations take place, they are discretionary in nature and fail to observe international standards (arts. 2 and 5).

19. Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee calls upon the State party to:

- (a) Establish appropriate regulations and mechanisms throughout the country to ensure that prior consultations conducted with a view to securing free, prior and informed consent are carried out systematically and in good faith with the relevant representative authorities and through appropriate procedures, with adequate information being provided to the persons concerned;
- (b) Ensure that legislative or administrative measures that could affect indigenous peoples and all infrastructure and natural resource exploitation projects are subjected to a process of prior consultation with a view to securing their free, prior and informed consent.

Land rights and land restitution

20. The Committee notes with concern that, despite the legal framework recognizing the right of ownership of lands traditionally occupied by indigenous peoples, the State party still does not ensure the full enjoyment and effective exercise of this right. Act No. 26160 provides for the surveying and demarcation of the lands traditionally occupied by indigenous peoples with a view to their regularization. However, its implementation has been hindered by complications and delays, and surveying and demarcation operations have been completed in only six provinces; and even in those places where such operations have been completed, they have not necessarily led to community possession and ownership of those lands being recognized. The Committee remains concerned about the situation of the Lhaka Honhat Association of Indigenous Communities (art. 5).

21. The Committee urges the State party, in coordination with the federal, provincial and municipal authorities, to ensure and protect indigenous peoples' right to own, use, develop and exercise full control over their lands, territories and resources, including through:

- (a) Full implementation of Act No. 26160 and the early completion of operations to survey ancestral territories and lands;
- (b) The establishment of the necessary legislative and administrative measures and appropriate and effective mechanisms to facilitate the ownership and titling of those lands and territories, to grant effective access to relevant judicial procedures and to guarantee due process.

22. With regard to the Lhaka Honhat Association of Indigenous Communities, the Committee calls on the State party to complete the land demarcation process, to grant collective title to the communities and to provide Creole families with relocation assistance.

23. The Committee is especially concerned about the high number of evictions involving indigenous people which are carried out despite the entry into force of Act No. 26160 and, in particular, the very violent incidents targeting indigenous communities that occur during evictions and protests against such evictions. The Committee is particularly concerned about impunity for the killing of Javier Chocobar, which occurred seven years ago, and the violent incidents suffered by the Potae Napocna Navogoh (La Primavera) community, the Nam Qom community of the Qom people and the India Quilmes community, among many others. The Committee regrets that no investigations have been carried out or sanctions imposed in relation to the violent acts committed by the security forces and others against human rights defenders and members of indigenous peoples and that no measures have been taken to prevent such violent acts (art. 5).

24. The Committee urges the State party to:

- (a) Take all necessary steps to ensure that indigenous peoples are protected from forced evictions and ensure the full and effective implementation of Act No. 26160;
- (b) Take steps to ensure the safety of indigenous peoples who are subjected to threats, harassment and other violent acts involving public officials and/or private individuals; and to take measures to prevent and investigate such acts and to punish the perpetrators.

Situation of human rights defenders

25. The Committee is concerned about acts of retaliation, intimidation and threats against human rights defenders and members of indigenous peoples, people of African descent and migrants and the criminalization they endure because of their human rights activities. In this connection, the Committee is concerned about, among other things, the situation of Félix Díaz, the leader of the Potae Napocna Navogoh (La Primavera) community, and Milagro Sala, the leader of the Tupac Amaru neighbourhood association. The Committee is particularly concerned about the death of Massar Ba, the leader of the Senegalese community, in March 2016. The Committee regrets the lack of progress in the investigation of his killing and the failure to permit his association, the Senegalese Residents' Association, to become a party to the criminal proceedings (art. 5).

26. The Committee urges the State party to:

- (a) Take all necessary steps to protect human rights defenders, including the leaders and members of indigenous communities, people of African descent and migrants against all acts of intimidation and violence and any arbitrary act by a public authority or private entity in response to a human rights defender's performance of his or her functions;
- (b) Investigate all acts of intimidation and violence against human rights defenders and their communities and ensure that perpetrators are punished appropriately. In this connection, the Committee draws the State party's attention, in particular, to the death of Massar Ba;
- (c) Ensure effective access to justice and respect for fundamental rights and due process guarantees in proceedings against human rights defenders, members of indigenous communities, people of African descent and migrants, including the proceedings concerning Milagro Sala and Félix Díaz. In the case of Milagro Sala, the Committee invites the State party to implement the measures requested by the Working Group on Arbitrary Detention (A/HRC/WGAD/2016/31, para. 117).

Access to education

27. The Committee regrets the lack of disaggregated statistical data on the level of literacy and access to primary, secondary and university education of members of indigenous peoples. The Committee takes note of the efforts made to implement the right to intercultural bilingual education but regrets the lack of progress resulting from, among other causes, the low number of teachers from indigenous communities and the difficulties they face in gaining access to training courses (art. 5).

28. The Committee recommends that the State party step up its efforts to ensure the availability, accessibility and quality of education at all levels for indigenous children, including in their mother tongue. It further recommends that the State party continue its efforts to increase the number of teachers from indigenous communities, including by facilitating their access to training courses.

Access to justice

29. The Committee regrets the lack of disaggregated statistical data on complaints of racial discrimination and the action taken as a result of such complaints. While the Committee takes note of the State party's efforts to ensure access to justice for indigenous peoples, it regrets the difficulties that they face in enjoying this right because of, among other reasons, (a) insufficient awareness on the part of judicial authorities, public defenders

and lawyers of indigenous customary law; (b) the lack of interpreters and translators of indigenous languages; and (c) the lack of legal assistance and justice centres in the most remote and vulnerable parts of the country. The Committee is also concerned about the lack of equal access to justice for people of African descent (art. 6).

30. The Committee, in the 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) Step up its efforts to acknowledge and respect the traditional justice systems of indigenous peoples in keeping with international human rights standards;
- (b) Take the necessary action to ensure access to justice for indigenous peoples, ensuring that their fundamental rights and due process guarantees are respected, including by increasing the number of interpreters and specialists in the traditional systems of justice of indigenous peoples; to continue to increase the provision of legal assistance and the number of justice centres in the most remote and vulnerable parts of the country and to increase the availability of free legal assistance;
- (c) Promote training programmes for police officers, public defenders, lawyers, judges and professionals in the judicial system on indigenous customary law and the rights of people of African descent and migrants, and the fight against racial discrimination.

Labour rights

31. The Committee notes with concern the difficulties faced by members of indigenous peoples, people of African descent and migrants in gaining access to the formal sector of the labour market and their concentration in work that does not allow them to gain access to fundamental labour rights (art. 5).

32. The Committee recommends that the State party continue to do everything possible to increase access to the formal sector of the economy and ensure fair, satisfactory working conditions consistent with international human and labour rights standards; and to investigate the exploitation and discrimination that occur and provide the Committee with statistical information in that connection in the next periodic report.

Multiple forms of discrimination

35. The Committee is concerned that indigenous, Afro-descendent and migrant women, including women from the Dominican Republic, lesbian, gay, bisexual, transgender and intersex persons and women belonging to other minorities still face multiple forms of discrimination in all aspects of social, political, economic and cultural life (art. 2 (2)).

36. The Committee recommends that the State party take into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it mainstream a gender perspective in all its policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination faced by, in particular, indigenous, Afro-descendent and migrant women, including lesbian, gay, bisexual, transgender and intersex persons and women belonging to other minorities. It also recommends that the State party compile disaggregated statistics on this subject.

Ratification of other treaties

37. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to ratify the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance of 2013 and the Inter-American Convention against All Forms of Discrimination and Intolerance of 2013.

Dissemination of reports and concluding observations

41. The Committee recommends that the State party make its reports available to the public as from the time of their submission and that it disseminate the present concluding observations, including in the languages of the indigenous communities.

Paragraphs of particular importance

44. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 7, 19, 21, 30 and 34 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

B. Early Warning/Urgent Action and Follow Up Procedures

1. Russia, EW/UA, 15 May 2015

I write to inform you that in the course of its 86th session, the Committee on the Elimination of Racial Discrimination received information on recent developments regarding the situation of the indigenous Shor people in Myski municipal district, Kemerevo Oblast, submitted by non-governmental organisations. The information alleges that the predominantly Shor village of Kazas has been destroyed by mining activities and that further predominantly Shor villages, in particular the village of Chuvashka, are currently at risk to be destroyed in the same way, which, the submitting organizations claim, would put the collective survival of the Shor as a distinct community into acute jeopardy and requires an urgent response.

According to the information received, the Chuvashka National Rural Council, a form of local peoples' self-administration, the territory of which constituted ancestral Shor land and included the predominantly Shor villages of Chuvashka and Kazas, has been abolished by the regional parliament in 2007, leading to the territory being signed over to Orlovskoye rural settlement.

The organizations submitting information claim that mining activities since 1971 have had severe environmental impacts on Shor settlements of Kazas and Kurya, including the contamination of the Kazasik stream, and have furthermore severely scarred and damaged the mountain of Karagai-Nash (Russian: Lysaya Gora), which is the main place of worship of the Shor community of Kazas as well as severely impeded access to the cemetery where the villagers' ancestors are buried. Furthermore, according to the information before the Committee, in 2011, the administration of Myski allegedly stopped providing drinking water to the village of Kazas and discontinued all public services, and since the 1980s the villagers of Kazas had been forced to pass through an armed checkpoint to reach their village.

The information received sets out allegations that in 2005, the Federal Agency for Natural Resource Use of the Russian Environmental Ministry issued the mining license "KEM No 13273 TE" to the coal mining company OAO Yuzhnaya for the "Beregovoi" mine, which stipulated the resettlement of over half of the houses of Kazas. The inhabitants of Kazas were allegedly kept unaware of this license condition. In December 2012, allegedly 53 % of the inhabitants of Kazas voted in favour of the termination of their village and their resettlement.

The Committee is concerned at allegations that the inhabitants were asked to vote 10 minutes after announcement of the vote, which, if true, severely infringes their free, prior and informed consent. Moreover, the Committee is concerned that allegedly no resettlement plan was offered, and that the villagers have allegedly solely obtained 40 hectares of substitute land which is in inadequate condition.

The Committee is furthermore concerned about information that in 2013, following an investigation conducted after manifold complaints by villagers in 2012, the federal environmental agency Rosprirodnadzor allegedly revoked the mining license "KEM No 13273 TE" held by OAO Yuzhnaya, a decision which however was never enforced.

In addition, the Committee is concerned that between November 2013 and March 2014 the five remaining houses of Kazas were allegedly destroyed by arson attacks and that perpetrators have so far not been identified. The Committee is also concerned that Shor activists allege to be currently subjected to discrediting and intimidations.

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. In this regard, the Committee refers to its General Recommendation 23 on the rights of indigenous peoples in which the Committee calls upon the State parties "to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and natural resources and, where they have been deprived of their lands and territories traditionally occupied otherwise inhabited or used without their prior, free and informed consent, to take steps to return those lands and territories".

The Committee recalls its recommendation to the State party (CERD/C/RUS/CO/20-22), particularly paragraph 20 (d) where it recommended to ensure that indigenous communities are effectively and meaningfully consulted through their freely elected representative bodies for any decisions that may impact them and that adequate compensation is provided to communities that have been adversely affected by the activities of private companies, in accordance with the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples.

The Committee also refers to the recommendations by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, following his visit to the Russian Federation from 4 to 16 October 2009, (A/HRC/15/37/Add.5), in particular paragraph 85, which recommended to the State party that “additional federal legislation is needed to regulate the interaction between industrial and extractive enterprises and indigenous communities, with a special emphasis on the right of indigenous peoples to be effectively consulted about industrial activities affecting them, and the right to compensation and mitigation measures. The federal legislature should develop standards and models for consultation mechanisms between indigenous peoples and industrial and extractive industries, in accordance with relevant international standards, and should enact a requirement for ethnographic impact assessments and ensure that ecological resources are shared with a view towards their sustainable long-term usefulness. It is essential to note that indigenous peoples’ right to be consulted about decisions that affect them should be protected whenever industrial development affects their communities, even when there is no established territory of traditional nature use or other recognized land use entitlement”.

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 and concerns as outlined above by 31 October 2015, as well as on any action already taken to address these. In particular, it requests that the Russian Federation provide information on how and to what extent the Shor people have been effectively consulted regarding the granting licenses to extractive industries and on measures taken to provide them with adequate compensation for the loss of land. Furthermore the Committee would appreciate receiving information on measures taken to appropriately relocate the former inhabitants of Kazas and ensure their unimpaired access to the cemetery where their ancestors are buried. It recommends that the State party take all necessary measures to ensure the safety of the Shor activists and to protect them from any forms of harassment, intimidation and threat.

2. Indonesia, EW/UA, 28 August 2015

I write to inform you that in the course of its 87th session, the Committee on the Elimination of Racial Discrimination received information on recent developments regarding the situation of the Aru indigenous peoples of the Aru Islands District, Moluccas Province.

The information alleges that the PT. Menara Group Consortium has been granted a permit for monocrop sugar cane plantations over nearly 50 percent of Aru indigenous peoples’ ancestral territory, in spite of opposition to the by a coalition of representatives of the affected indigenous peoples and without any prior consultation with them, according to the information received in contravention of requirements under the 2004 Plantations Act and under international law. The Committee has also received information alleging that the State party currently lacks effective legal guarantees to protect the rights of indigenous peoples.

As the territory’s forest reportedly constitutes the main means of subsistence for the Aru indigenous peoples and also contains sites of fundamental cultural and spiritual relevance to them, the submitting organizations claim that the intended conversion of the forest into sugarcane plantations would place the culture and the economic resources of the Aru indigenous peoples in serious peril and therefore requires an urgent response.

Furthermore, the Committee has been informed that Indonesia’s National Commission on Human Rights (“Komnas HAM”) has found several violations of domestic law regarding the Aru situation and issued related recommendations. According to the submitting organizations, Komnas HAM has also, after conducting a National Inquiry on “Indigenous Peoples Rights Violations in Forest Areas” in 2014, found, inter alia, that the State party “had ignored the rights of indigenous peoples in Aru Islands”, issuing recommendations in this regard.

In addition, the Committee has received information that the Constitutional Court in its decision No. 35/PUU-X/2012, issued in May 2013, reclassified traditional indigenous lands as privately owned by indigenous peoples, rather than as “state forests”. On the information available to the Committee, it appears that the State party has not taken any measures in response to these recommendations and Court ruling. The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. In this regard, the Committee refers to its General Recommendation 23 on the rights of indigenous peoples in which the Committee 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”.

The Committee recalls its recommendations to the State party (CERD/C/IDN/CO/3) of 15 August 2007, particularly paragraph 16 where it recommended that the State party amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are (...) not used as a justification to override the rights of indigenous peoples, and paragraph 17, where it *inter alia* recommended that the State party review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands. The Committee notes with concern that so far, no follow-up information has been provided on paragraph 17, nor on the other paragraphs follow-up information had been required on.

The Committee also recalls its previous letters sent to the State party on 13 March 2009, on 28 September 2009, on 2 September 2011 and on 30 August 2013, and notes with concern that the State party has not yet responded to any of these.

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 and concerns as outlined above by 15 November 2015, as well as on any action already taken to address these.

3. Russia, EW/UA, 26 January 2016

I refer to your letter of 14 August 2015 and to the information provided in response to the Committee’s letter of 15 May 2015, in which it raised concerns about the situation of the indigenous Shor people in Myski municipal district, Kemerevo Oblast, in particular allegations of the destruction of the Shor villages of Kazas and Chuvashka resulting to the threat of the survival of the Shor, as distinct community.

The Committee would like to thank your Government for its response and takes note of its contents.

In accordance with Article 9(1) of the Convention and Article 65 of its Rules of Procedure, the Committee urges the State party to submit its twenty-third to twenty-fourth periodic reports which are due by 6 March 2016. The Committee requests the State party to include further information on the issues outlined above, in particular on the effective meaningful consultations with freely elected representatives of Shor villages and measures to effectively implement the free, prior and informed consent for any decisions affecting indigenous peoples. The Committee also requests information on the outcomes of investigations, and if appropriate, prosecutions and sanctions in relation to the destruction of the five remaining houses of Kazas that took place between November 2013 and March 2014, and the compensation provided to victims as well as measures taken to protect the Shor activists involved, from any intimidation and harassment. The Committee would like to inform your Government that it will discuss these issues further in the context of the consideration of these forthcoming periodic reports.

4. Papua New Guinea, EW/UA, 17 February 2016

I write to inform you that in the course of its 88th session, the Committee further considered, under its early-warning and urgent action procedure, reports of allegations received from a non-governmental organization concerning the threat of alienation of indigenous lands through, in particular, the issuance of “Special Agricultural and Business Leases” (SABLs). In this regard, the Committee would like to refer to its letter dated 11 March 2011 (copy attached for ease of reference), to which the State party has regrettably not yet provided any response.

According to information at its disposal, the Committee notes that the State party set up a Commission of Inquiry on SABLs in 2011, which issued its final report in June 2013. It also notes reports of support expressed by the Prime Minister to the Commission of Inquiry’s conclusions as well as the establishment of a task force to develop a new legislative framework to ensure greater respect of the rights of indigenous landowners. However, in spite of these developments, the Committee reiterates the concerns expressed in its previous letter of 11 March 2011. In particular, the Committee is concerned about information that no concrete action has been taken by the State party to cancel SABLs and that logging operations continue to take place.

The Committee requests the State party to provide information on measures taken or envisaged to be taken: to ensure that the application of the Land Act (1996) does not result in alienation of lands belonging to

indigenous peoples; to ensure that indigenous landowners are systematically informed about the purposes of land leases and that all leases are granted with prior and informed consent of indigenous peoples; and, to grant indigenous landowners access to justice and an effective remedy in case of violation of their rights. In addition, the Committee would like to be informed of any measures or any action planned to be taken to implement the recommendations of the Commission of Inquiry on SABLs.

Finally, the Committee requests information on measures taken to protect indigenous landowners and those who protest against SABLs from any kind of intimidation, harassment, attack or physical harm.

In accordance with Article 9(1) of the Convention and Article 65 of its Rules of Procedure, the Committee would be grateful urgently to receive information on all of the issues and concerns outlined above before 22 April 2016. The Committee also urges the State party to submit its periodic reports which are overdue since 1984. The Committee would like to inform your Government that, in absence of the periodic reports, it will consider the implementation of the Convention in the State party under its review procedure.

5. Canada, EW/UA, 27 May 2016

I write to inform you that in the course of its 89th session, the Committee on the Elimination of Racial Discrimination has considered, under its early warning and urgent action procedure, the following situations that have been brought to its attention by non-governmental organisations: (1) the allegations of violations of the rights of indigenous women in the village of Lote Ocho in Guatemala by the Canadian company Hudbay Mineral Inc.; (2) the situation of the Lubicon Lake Nation (Muskotew Sakahikan Enowuk) with regard to its land claims.

Concerning the alleged violations of the rights of indigenous women in Lote Ocho (Guatemala), the Committee was informed of the following. According to the information received, in 2007, soldiers, police officers and mining security officials swarmed into Ms. Margarita Caal Caal's house located in the village of Lote Ocho in eastern Guatemala, in order to forcibly evict her from her land. It is alleged that soldiers, police officers and mining security officials also raped her and dragged her from her home that they further set ablaze. Ten other women from the same village were reportedly raped the same day in similar circumstances. It is claimed that those who committed these facts were employees of the Canadian company Hudbay Mineral Inc which is based in Toronto. The information indicates that Ms. Margarita Caal Caal filed a negligence claim against Hudbay Mineral Inc before Canadian courts as did the ten other women. However, the information suggests that Canada has not yet adopted legislative or administrative measures to hold corporations registered in Canada accountable for human rights violations carried out abroad, including violations of the rights of indigenous peoples.

Concerning the situation of the Lubicon Lake Nation, the Committee has been made aware of the following. The submission alleges that for more than 40 years, extraction of oil and gas has been done in the Lubicon Lake territory without the free, prior and informed consent of the Lubicon Lake people. Such extractive activities reportedly have had negative impact on their livelihood and health and resulted in environmental, economic, social, emotional, psychological, cultural and spiritual damage. It is alleged that the Lubicon Lake people suffer from serious health problems related to resource exploitation activities including cancers, tuberculosis, epidemic-levels of asthma, reproduction problems which resulted in stillbirths and skin rashes among Lubicon children.

The submission also alleges that the Governments of Canada and Alberta have not yet found ways to resolve the long-standing land claim of the Lubicon Lake Nation concerning the Lubicon territory and have refused to meet with the Lubicon Nation and its Chief Bernard Ominayak to discuss this matter. The submission asserts that both Governments plan to negotiate with Billy Joe Laboucan whom the Governments recognise as the duly elected Chief and Council (under the Indian Act) of the Lubicon Lake Band rather than with Chief Ominayak. It is claimed that the Lubicon Lake Nation does not consider Billy Joe Laboucan and his Council, as their real representatives.

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. With regard to allegations of violations of the rights of indigenous women in the village of Lote Ocho in Guatemala, the Committee recalls its recommendations made in paragraph 17 of its concluding observations of 2007 that requested "the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada" and to "explore ways to hold transnational corporations registered in Canada accountable" (CERD/C/CAN/CO/18). The Committee

reiterated these recommendations in paragraph 14 of its concluding observations of 2012, requesting that “the State party take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable” (CERD/C/CAN/CO/19-20).

Concerning the situation of the Lubikon Lake Nation, the Committee recalls its recommendations in paragraph 20 of its concluding observations of 2012, to: “(a) implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands, as set forth in international standards and the State party’s legislation; (b) 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 and concerns as outlined above by 31 October 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Canada provide information on:

- (a) Efforts made to adopt legislative or administrative measures to hold accountable transnational corporations registered in Canada whose activities violate or negatively affect human rights, including the rights of indigenous people and local communities;
- (b) Steps taken to ensure the participation of all Lubikon Lake Nations and their elected representatives in decision-making processes that concern them;
- (c) Plans, if any, to negotiate with the Lubikon Lake Nation (MuskotewSakahikan Enowuk) with regard to their land claim referred to above;
- (d) Measures to implement in good faith the right to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands.

6. Guatemala, EW/UA, 27 May 2016

I write to inform you that in the course of its 89th session, the Committee on the Elimination of Racial Discrimination has considered, under its early warning and urgent action procedure, informing alleging excessive use of force and attempts of forced evictions of indigenous women in the village of Lote Ocho in Guatemala by soldiers, police officers and mining security personnel of the Canadian company Hudbay Mineral Inc.

The information alleges that in 2007 soldiers, police officers and mining security officials swarmed into Ms. Margarita Caal Caal’s house located in the village of Lote Ocho in eastern Guatemala, in order to forcibly evict her from her land. It is reported that the soldiers, police officers and mining security personnel also raped her and dragged her from her home which they subsequently set ablaze. Ten other women from the same village were reportedly raped in similar circumstances. It is claimed that those who committed these facts were employees of the Canadian company Hudbay Mineral Inc which is based in Toronto. The information suggests that Ms. Margarita Caal Caal, along with the ten other women, filed a negligence claim against Hudbay Mineral Inc before Canadian courts due to their lack of trust in legal remedies offered in Guatemala.

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention in the State party. The Committee reminds the State party that it has already raised concerns over attacks and excessive use of force against indigenous peoples in paragraph 9 of its concluding observations of 2009.

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 and concerns as outlined above by 31 October 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Guatemala provide information on:

- a) measures taken to investigate allegations above-mentioned, to prosecute and to punish those responsible and provide reparations to Ms. Margarita Caal Caal and the ten other women; b) measures taken to prevent forced evictions of indigenous peoples from their lands and to implement in good faith the right to free, prior and informed consent of indigenous peoples whenever their rights may be

affected by projects carried out on their lands; c) measures to hold foreign corporations accountable for violations of the rights of indigenous peoples and local communities in Guatemala.

7. Canada, EW/UA, 3 October 2016

I write to inform you that in the course of its 90th session, the Committee on the Elimination of Racial Discrimination has considered, under its early warning and urgent action procedure, the allegations of threat of extinguishment of indigenous land rights of the Secwepemc Nation and the St'at'imc Nation in British Columbia, through the British Columbia Treaty Commission (BCTC) and the Canadian Comprehensive Claims Policy. These allegations have been brought to the Committee's attention by non-governmental organisations.

Regarding the Secwepemc Nation, the Committee was informed of the following. In pursuance of Federal policies and the Federal and Provincial British Columbia Treaty Commission process, the State party has entered into negotiations with four (Canim Lake, Soda Creek, Canoe Creek/Dog Creek, Williams Lake) out of the total of Secwepemc indigenous bands concerned. It is alleged that these negotiations have the aim of extinguishing the land rights of the Secwepemc Nation. It is claimed that such an agreement would negatively affect the collective rights of the Secwepemc Nation over these lands. This is due to the fact that, according to the information received, the land title over the Secwepemc territories has always been collectively possessed by the entire Secwepemc Nation.

It is further alleged that the Governments of Canada and British Columbia, in dealing with only these four bands, are not negotiating with a representative group of the Secwepemc Nation which, as claimed above, is the holder of title over these lands.

The Committee has been informed that a vote concerning the negotiations over the land title took place on 11 February 2016 but involved only these four groups. It is claimed that representatives of the other bands of the Secwepemc Nation were excluded from that vote. In addition, it is alleged that the Government did not consult all these bands or allow them to participate in the information meetings nor did the Governments make the agreement available to them for review or comments.

Concerning the situation of the St'at'imc Nation, the Committee has been made aware of the following. The submission alleges that the land related to the Secwepemc Nation negotiations before the BCTC, referred to above, overlap with the territory of the St'at'imc Nation. However, it is claimed that the St'at'imc Nation has neither been involved in the process nor been consulted in relation to these negotiations. It is claimed that this situation threatens the integrity of the collective ownership by the St'at'imc Nation over these lands.

It is further claimed that another process - the Tsilhqot's Accord process - also affects the St'at'imc territory. Allegedly, the Accord is between the Tsilhqot'in and the provincial government of British Columbia and relates to a significant portion of a land (10,130 square kilometres) belonging to the St'at'imc Nation. It is alleged that this Accord has been negotiated without the consent or involvement of the St'at'imc Nation.

Finally, according to the information before the Committee, the Government of British Columbia has recently introduced legislation (the "Water Act") under which it claims ownership over all the water of the Province. The information before the Committee alleges this legislation would affect their land rights in the Province.

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention and contradict provisions of paragraph 5 of the Committee General Recommendation No. 23 (1997) on the rights of indigenous peoples. The Committee recalls its recommendations made in paragraph 20 of its concluding observations of 2012 that requested "the State party 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 and concerns as outlined above by 14 November 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Canada provide information on:

- (a) Efforts made to ensure that representatives of all Secwepemc bands as well as representatives of the authorities of the Secwepemc Nation are involved or at least are consulted about negotiations that may affect the collective land rights and territory of the Secwepemc Nation, including those negotiations referred to above;
- (b) Measures to implement in good faith the right to free, prior and informed consent of the Secwepemc Nation and the St'at'imc Nation;
- (c) Steps taken to seek in good faith agreements with Secwepemc and St'at'imc peoples with regard to their lands and resources claims;
- (d) Provide more information on the Water Act adopted by the Government of British Columbia and its relationship with water on un-surrendered indigenous land.

8. Indonesia, UA/EW, 3 October 2016

I write to inform you that in the course of its 90th session, the Committee on the Elimination of Racial Discrimination has considered, under its early warning and urgent action procedure, allegations of excessive use of force, arrests, killings and torture of persons belonging to the Papuan indigenous people in West Papua, Indonesia, and allegations of discrimination against this people, that have been brought to its attention by a non-governmental organisation.

According to information received, persons belonging to the Papuan indigenous people in West Papua have, for some years, been facing repression by security forces of the State party during Papuan flag-raising ceremonies and demonstrations.

Reportedly, between April 2013 and December 2014, security forces killed 22 persons during demonstrations and a number of persons have also been killed or injured since January 2016. It is alleged that, in May 2014, more than 470 persons belonging to the Papuan indigenous people were arrested in cities of West Papua during demonstrations against extraction and plantation activities. Such arrests have reportedly increased since the beginning of 2016 amounting to 4000 between April and June 2016 and have included human rights activists and journalists.

Such acts have reportedly never been investigated and those responsible have gone unpunished. The submission claims that repression of persons belonging to the Papuan indigenous people is the result of a misinterpretation and lack of a correct implementation of the Special Autonomy Law by local and national authorities of Indonesia. The submission also claims that actions by security forces constitute violations of the rights of freedom of assembly and association.

Additionally, it is reported that, for decades, the State party has implemented a policy consisting of favouring the migration of non-indigenous persons from other parts of Indonesia to West Papua, which leads to the decline in representation of the population of Papuans in comparison to the general population in their territory.

Further, the submission alleges that Papuan indigenous people in West Papua face the poorest educational standards in the country resulting in very low rates of literacy, as low as 20 per cent in remote villages.

In light of information above, the Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. The Committee reiterates the concern expressed and recommendations made in paragraph 22 of its concluding observations (CERD/C/IND/CO/3, para. 22) of 15 August 2007.

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 and concerns as outlined above by 14 November 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Indonesia provide information on: a) its response to the allegations described above; b) the status of implementation of the Special Autonomy Law in West Papua ; c) measures taken to ensure the effective protection of indigenous people in West Papua from arbitrary arrests and detentions as well as deprivation of life; d) measures taken to ensure that indigenous people from West Papua effectively enjoy their rights to freedom of assembly and association including persons with dissenting opinions; e) measures taken to investigate allegations of excessive use of force by security forces including including killings; f) steps taken to improve access to education of Papuan children in West Papua in particular those living in very remote areas.

The Committee urges that the State party to submit its fourth to sixth combined periodic reports which are overdue since 25 July 2010.

9. Tanzania, UA/EW, 3 October 2016

I write to inform you that in the course of its 90th session, the Committee on the Elimination of Racial Discrimination has considered, under its early warning and urgent action procedure, allegations of arrests and intimidation as well as threat of forced evictions, of persons belonging to the community of the Maasai indigenous people (“Maasai community”) in Ngorongoro district, Arusha region, that have been brought to its attention by a non-governmental organisation. The Committee would like to remind the State party that in its previous sessions it has previously addressed allegations of forced evictions, arrests, intimidation and ill-treatment of the pastoralist Maasai from the same district, in its letters of 13 March 2009 and 11 March 2011 and 01 March 2013, to which the State party has not replied, so far.

According to information received, your Government has been in a long-standing dispute with the Maasai indigenous pastoralists over the use and ownership of their traditional lands. Such a dispute was generated by the overlapping of Maasai traditional lands by foreign companies to whom the State party had granted lands, and on several occasions has reportedly resulted in arrests, intimidation and violence against persons belonging to the Maasai community opposed to such decisions. It is alleged that the current situation which has been brought to the attention of the Committee is related to the existing or proposed grants of land/hunting rights by your Government to the Ortello Business Corporation (“OBC”), a luxury game-hunting company.

According to information received, between 14 and 22 July 2016, Government security forces arrested and detained for a duration up to 12 days, 19 individuals in the Ngorongoro district, Arusha region, including elected officials, teachers and a lawyer. The information indicates that the majority of them belong to the Maasai community. Reportedly, they were denied access to legal representation, family visits and medical assistance during detention. It is also alleged that three of those detained have been ill-treated in custody.

Arrests allegedly took place under the National Security Act and some of those arrested have been charged and are subject to prosecution. It is also alleged that several of the individuals concerned are reportedly in hiding.

Finally, it is claimed that the dispute between the Government and the Maasai community may lead to the forced eviction of thousands of Maasai and that these reported events, which, it is claimed, are principally aimed to prevent opposition to expropriation of Maasai from parts of their lands, in favour of “OBC”, have led to a significant escalation in violence in the area.

In light of information above, the Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. In this regard, the Committee recalls its recommendations made in paragraph 14 and 15 of its previous concluding observations (CERD/C/TZA/CO/16) adopted in 2005 relating to the expropriation of ancestral lands belonging to certain ethnic groups as well as paragraph 5 of the Committee General Recommendation No. 23 (1997) on the rights of indigenous peoples.

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 and concerns as outlined above by 14 November 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Tanzania to provide information on: a) allegations described above; b) charges against Maasai, the relevant provisions of the legislation under which they were charged as well as on the current status of the proceedings; c) measures taken to ensure the effective participation of Maasai of Ngorongoro district, Arusha region in decisions affecting them; d) measures taken to investigate allegations of excessive use of force by the security forces including during arrests and detentions as well as measures to prevent intimidation and harassment of Maasai. In addition, the Committee requests that the State party urgently to halt any forced evictions ongoing or planned of Maasai in the Ngorongoro district, Arusha region and to seek a peaceful solution in this regard.

The Committee urges the State party to submit its combined seventeenth and eighteenth periodic reports, which are overdue since 26 November 2007.

10. Thailand, UA/EW, 3 October 2016

I write to inform you that in the course of its 90th session, the Committee on the Elimination of Racial Discrimination has further considered, under its early warning and urgent action procedure, the situation of the Karen indigenous people in the Kaeng Krachan National Park (“KKNP”), Thailand, brought to the Committee’s attention by a non-governmental organisation. The Committee would like to remind the State party that in its previous 80th session, it had addressed allegations of forced evictions of the Karen indigenous people from the same area in its letter of 9 March 2012. The Committee regrets that the State party has not replied, so far.

The Committee is informed about allegations of continuing and escalating violence against the Karen indigenous people living in the Kaeng Krachan National Park. It is alleged that for more than a decade, the Government of Thailand has been engaged in a policy aimed at forcibly evicting the Karen indigenous people from the KKNP, while threatening irreparable harm to their livelihood and cultural identity as well as enjoyment of their human rights.

Reportedly, in 2010, Karen indigenous people from settlements near Bang Kloi Bon and Pu Ra Kam were evicted from their lands while their houses, rice granaries and other possessions were destroyed. Such acts were allegedly repeated in May, June and July 2011 during which houses and rice stores were burnt as well as agricultural tools and other possessions. In addition, a number of Karen indigenous people were allegedly arrested and charged, and some others fled to seek refuge with their relatives outside the KKNP. However, Karen affected families reportedly chose to return to their area months later.

Such evictions were reportedly carried out in follow-up to the State party’s position that indigenous peoples’ traditional farming methods were incompatible with natural conservation objectives and that those evicted were irregular migrants. The submission claims that the State party has also argued that evictions were done pursuant to the Forestry Law which prohibits the occupation of forest lands, including by indigenous peoples, irrespective of whether the lands were traditionally occupied and used by them. These arguments are contradicted by the submitting organization which claims that those evicted are of Thai origin by birth and descent.

The urgency of the Committee’s letter relates also to allegations that the State party has incorporated ancestral lands of the Karen indigenous people in a site known as the Karen Krachan Forest Complex (“KKFC”) for nomination as a natural World Heritage Site under the World Heritage Convention of UNESCO. The Committee was informed that in view of the inscription of this site on the UNESCO’s list, Thailand has committed to make efforts to remove the Karen indigenous communities from the site. The list has reportedly been formally nominated for inscription and will be considered by the World Heritage Committee, in October 2016.

It is reported that the State party has ignored the 2007 Royal Thai Constitution which protects the right for persons to remain in national parks and forest areas they have occupied prior to demarcation or establishment as well as a Thai Cabinet resolution of 3 August 2010 on the restoration of the livelihoods of the Karen, which allows them to remain in their ancestral lands and to continue their traditional farming. It is claimed that despite the protection by the Cabinet resolution and the Constitution, the State party has failed to provide redress to the Karen indigenous people for forced evictions as well as for other alleged human rights violations.

According to information received, in February 2016, the Central Administrative Court considered a legal challenge relating to forced evictions that took place in 2011. In its judgement, the Court found that the Department of National Parks, Wildlife and Plant Conservation has the right to burn Karen properties. It is claimed that such a decision would negatively impact the livelihoods and the protection of the rights of the Karen indigenous people in KKNP. It is also claimed that the nomination of the KKFC site was done without any significant consultation and the free, prior and informed consent of the Karen communities is given. It is reported that only very little information was provided to the villagers about the project.

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. The Committee recalls the concerns expressed in its letter of 9 March 2012 as well as recommendations made in paragraph 16 of its concluding observations (CERD/C/THA/CO/1-3, para. 16) of August 2012, that requested “the State party to review the relevant forestry laws in order to ensure respect for ethnic groups’s way of life, livelihood and culture, and their right to free, prior and informed consent in decisions affecting them, while protecting the environment”.

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 and concerns as outlined above by 14 November 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Thailand provide information on:

- (a) Allegations described above;
- (b) Steps taken to cease threats, intimidations, harassment against the Karen indigenous, investigate allegations of excessive use of force and provide reparation to Karen for any loss;
- (c) Measures taken to ensure the free, prior and informed consent of the Karen indigenous people or genuine consultation in decisions affecting them;
- (d) Steps taken to reconsider the nomination of the KKFC site from the World Heritage's list until an agreement is found with the Karen people. In addition, the Committee requests that the State party urgently halt the eviction of the Karen indigenous people from the KKNP and 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.

11. Canada, UA/EW, 13 December 2016

I refer to your letter of 2 November 2016 and for the information provided in response to the Committee's letter of 27 May 2016 concerning allegations of violations of the rights of indigenous women in the village of Lote Ocho in Guatemala by the employees of a Canadian company Hudbay Mineral Inc., as well as the situation of the Lubikon Lake Nation and its land claims.

The Committee takes note of the information provided by the Government in response to the allegations set out in the Committee's letter.

The Committee encourages your Government to continue to ensure that: (a) all companies registered in the State party comply with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, in particular with regard to the rights of indigenous peoples; (b) members of the Lubikon Lake Nation and their representatives are able to participate in decision-making processes that concern them; and (c) the right to free, prior and informed consent of indigenous peoples is fully respected whenever their rights may be affected by projects carried out on their lands.

The Committee would like to inform your Government that the above-mentioned issues will be discussed in the context of the consideration of its combined 21st to 23rd periodic reports, already submitted by your Government in May 2016, and scheduled for review during the Committee's 93rd session (31 July 2017 – 25 August 2017).

12. Guatemala, EW/UA, 13 December 2016

I refer to your letter of 3 November 2016 and for the information provided in response to the Committee's letter of 27 May 2016 concerning allegations of violations of the rights of indigenous women in the village of Lote Ocho in Guatemala by the employees of a Canadian company Hudbay Mineral Inc., and the filing of a negligence claim against the company before Canadian courts by the victims due to their alleged lack of trust in the legal remedies offered in Guatemala.

The Committee would like to thank your Government for its replies, and takes note of the information provided therein, particularly with regard to the initiation of investigations regarding the above-mentioned allegations and the measures adopted to guarantee the rights of indigenous peoples and to hold foreign companies accountable for violations of the rights of indigenous peoples in Guatemala.

The Committee would be grateful to receive updated information on the case of Ms. Caal and ten other women (case no. MP001-2016-99403) before 3 April 2017.

The Committee also wishes to reiterate its recommendation to protect the rights of indigenous peoples, and take concrete measures to: (1) ensure the effective prosecution and punishment of individuals responsible; (2) ensure the provision of effective remedies to Ms. Margarita Caal Caal and ten other women; (3) prevent forced evictions of indigenous peoples from their land and ensure the effective implementation in practice of the right to free, prior and informed consent; (4) hold foreign companies accountable for violations of the rights of indigenous peoples and local communities in the State party.

The Committee wishes to remind the State party that its next combined 16th and 17th periodic report is due on 20 December 2017, and would like to request that the State party provide updated information in its report on the above-mentioned concerns.

13. Indonesia, EW/UA, 13 December 2016

I write to inform you that in the course of its 91st session, the Committee on the Elimination of Racial Discrimination has considered further the situation of potential human rights violations in the Indonesian provinces of Papua and West Papua under its early warning and urgent action procedures. In this regard, the Committee refers to its previous letter on the subject of 3 October 2016.

The Committee would like to thank your Government for its correspondence of 24 November 2016. The Committee takes note of information provided by your Government, in particular your clarification that freedoms of expression and assembly are guaranteed under the Indonesian Constitution, are applied without discrimination, and that the Special Autonomy Law facilitates self-government and self-administration for Papuans.

The Committee wishes to alert the Republic of Indonesia that additional allegations of arbitrary arrest and detention of protestors of West Papuan origin have been reported to it, as well as recent instances of forced disappearances and extrajudicial killings of West Papuan community leaders seeking an independent state.

If substantiated, the above allegations that have been brought to the Committee's attention would hinder the full enjoyment of rights under the Convention in the State party, in particular the rights enshrined in article 2(b), article 3, article 4(c) and article 5(b), (c) and (d) viii, ix.

In accordance with article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive another response outlining the current situation in Papua and West Papua and the policies and actions adopted by the security forces in the region. In particular, information detailing recent treatment of protestors, community leaders and human rights defenders would be welcomed before 3rd April 2017.

Finally, the Committee is encouraged to hear that the State party is in the process of finalizing its fourth to sixth combined periodic reports for review. It would also like to inform your Government that the above issues will be examined when the State party next comes before the Committee. The Committee looks forward to receiving the overdue reports from the Republic of Indonesia as soon as practicable.

II. HUMAN RIGHTS COMMITTEE

A. Concluding Observations

1. Cambodia, CCPR/C/KHM/CO/2, 27 April 2015

Rights of persons belonging to minorities

28. While acknowledging the existing legal framework, the Committee remains concerned that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights, including management of their communal lands and the allocation of the land for extractive industries and agribusiness. In this regard, concessions on the land they claim continue to be granted for private use. The Committee also notes with concern reports that indigenous peoples who do engage with the Government to protect their rights face significant practical obstacles.

The State party should establish an effective consultation mechanism and ensure meaningful consultation with indigenous peoples in decision-making in all areas having an impact on their rights.

2. Russian Federation, CCPR/C/RUS/CO/7, 28 April 2015

Rights of indigenous peoples

24. The Committee remains concerned (see CCPR/C/RUS/CO/6 and Corr.1, para. 28) about the fact that insufficient measures are being taken to respect and protect the rights of indigenous peoples and to ensure that members of such peoples are recognized as indigenous. It notes with concern that no “territory of traditional nature use” has been established to date under the 2001 Federal Law on Territories of Traditional Nature Use of Small Indigenous Peoples of the North, Siberia and the Far East, that indigenous peoples’ sacred areas are largely unprotected from desecration, contamination and destruction by extractive, development and related activities, that consultation with indigenous peoples on matters of interest to their communities is insufficiently enforced in practice and that access to effective remedies remains a challenge (arts. 2 and 27).

The State party should ensure the full implementation of the provisions of the Federal Law on Territories of Traditional Nature Use of Small Indigenous Peoples of the North, Siberia and the Far East and effective legal protection for indigenous peoples’ rights to their lands and natural resources, adopt measures to effectively protect their sacred areas and ensure that consultations are held with the indigenous communities that might be adversely affected by the State party’s development projects and extractive industries operations, with a view to obtaining their free, prior and informed consent for all proposed project activities. It should also ensure access to effective remedies for all members of indigenous groups for any violations of their rights.

3. Canada, CCPR/C/CAN/CO/6, 13 August 2015

Business and human rights

6. While appreciating information provided, the Committee is concerned about allegations of human rights abuses by Canadian companies operating abroad, in particular mining corporations, and about the inaccessibility to remedies by victims of such violations. The Committee regrets the absence of an effective independent mechanism with powers to investigate complaints alleging abuses by such corporations that adversely affect the enjoyment of the human rights of victims, and of a legal framework that would facilitate such complaints (art. 2).

The State party should (a) enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations under its jurisdiction, in particular mining corporations, respect human rights standards when operating abroad; (b) consider establishing an independent mechanism with powers to investigate human rights abuses by such corporations abroad; and (c) develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad.

Gender equality

7. The Committee is concerned about the persisting inequalities between women and men. In particular, the Committee is concerned about (a) the high level of the pay gap, which is more pronounced in some

provinces such as Alberta and Nova Scotia, and disproportionately affects low-income women, in particular minority and indigenous women; (b) the fact that the legislation relating to equal pay differs at the federal, provincial and territorial levels and for the public and private sectors, and does not exist in some provinces; (c) the underrepresentation of women in leadership positions in the public and private sectors; and (d) the failure to enforce or ensure employment equality in the private sector across the country. It further regrets that the State party has not yet adopted regulations to implement the Public Sector Equitable Compensation Act (art. 3).

The State party should strengthen its efforts to guarantee that men and women receive equal pay for work of equal value across its territory, with a special focus on minority and indigenous women. It should ensure that all provinces and territories adopt a legislative framework on equal pay, covering the public and private sectors, and take measures to implement the recommendations of the Pay Equity Task Force at all levels. The State party should promote better representation of women in leadership positions, both in the private and public sectors, and ensure effective remedies to women who are victims of gender-based discrimination.

Violence against women

8. The Committee is concerned about the continued high prevalence of domestic violence in the State party, in particular violence against women and girls, that mostly affects indigenous and minority women. The Committee is also concerned about reports of (a) the low number of cases reported to the police by victims; (b) the insufficiency of shelters, support services and other protective measures for victims that reportedly prevent them from leaving their violent partner; and (c) a failure to effectively investigate, prosecute, convict and punish perpetrators with appropriate penalties. The Committee is further concerned about the lack of statistical data on domestic violence, including on investigations, prosecutions, convictions, sanctions and reparation (arts. 3, 6 and 7).

The State party should enhance its efforts to firmly combat domestic violence, including violence against women in all forms, paying particular attention to minority and indigenous women. Specifically, the State party should (a) take measures to effectively enforce its criminal legislation at the federal, provincial and territorial levels; (b) provide complaint mechanisms to victims of domestic violence, protect them from any retaliation and provide them with support at the police level; (c) investigate all reported cases, prosecute and punish those responsible with appropriate penalties; (d) increase the number of shelters, support services and other protective measures; and (e) effectively implement policies and programmes adopted at all levels, and ensure an effective application of the Victims Bill of Rights Act.

Murdered and missing indigenous women and girls

9. The Committee is concerned that indigenous women and girls are disproportionately affected by life-threatening forms of violence, homicides and disappearances. Notably, the Committee is concerned about the State party's reported failure to provide adequate and effective responses to this issue across the territory of the State party. While noting that the Government of British Columbia has published a report on the Missing Women Commission of Inquiry and adopted legislation related to missing persons, and that the Government of the State party is implementing the Action Plan to Address Family Violence and Violent Crimes Against Aboriginal Women and Girls, the Committee is concerned about the lack of information on measures taken to investigate, prosecute and punish those responsible (arts. 3 and 6).

The State party should, as a matter of priority, (a) address the issue of murdered and missing indigenous women and girls by conducting a national inquiry, as called for by the Committee on the Elimination of Discrimination Against Women, in consultation with indigenous women's organizations and families of the victims; (b) review its legislation at the federal, provincial and territorial levels, and coordinate police responses across the country, with a view to preventing the occurrence of such murders and disappearances; (c) investigate, prosecute and punish the perpetrators and provide reparation to victims; and (d) address the root causes of violence against indigenous women and girls.

Excessive use of force during protests and police accountability

11. The Committee is concerned about reports of the excessive use of force by law enforcement officers during mass arrests in the context of protests at the federal and provincial levels, with particular reference to indigenous land-related protests, G-20 protests in 2010 as well as student protests in Quebec in 2012. The Committee is also concerned about reports that complaints are not always promptly investigated and that the

sanctions imposed are of a lenient nature. While noting efforts by the State party to establish oversight and accountability mechanisms to investigate serious incidents involving the police at the federal, provincial and territorial levels, the Committee is concerned about reports of the lack of effectiveness of such mechanisms. The Committee regrets the lack of statistical data on all complaints, investigations, prosecutions, convictions and sanctions imposed on police officers at all levels (art. 7).

The State party should strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated by strong independent oversight bodies with adequate resources at all levels, and that those responsible for such violations are prosecuted and punished with appropriate penalties.

Freedoms of expression, peaceful assembly and association

15. While noting explanations provided by the State party, the Committee is concerned about reports of increased repression of mass protests in the State party, such as those which occurred during the G-20 summit in Toronto in 2010, and in Quebec in 2012, and the disproportionate number of arrests of participants. The Committee is also concerned by the level of apprehension within a broad sector of civil society about the State party's current policies in the areas of political, social and human rights advocacy. The Committee is further concerned at the ambit of section 149.1 of the Income Tax Act relating to donations to non-governmental organizations registered as charities whose activities are considered as political activities when they relate to the promotion of human rights (arts.19, 21 and 22).

The State party should renew its traditional commitment to the promotion and protection of the exercise of freedom of assembly, association and expression. It should take all appropriate measures to avoid unnecessary obstacles and restrictions, legally or in practice, against the activities of civil society organizations. The State party should effectively protect the exercise of the freedom of peaceful assembly and avoid restrictions that are not proportionate. The State party should take measures to ensure that the application of section 149.1 of the Income Tax Act does not result in unnecessary restrictions on the activities of non-governmental organizations defending human rights. The State party should consider developing a well-structured dialogue with civil society and indigenous peoples, to restore confidence in the State party's commitment in this area.

Indigenous lands and titles

16. While noting explanations provided by the State party, the Committee is concerned about reports of the potential extinguishment of indigenous land rights and titles. It is concerned that land disputes between indigenous peoples and the State party which have gone on for years impose a heavy financial burden in litigation on the former. The Committee is also concerned about information that indigenous peoples are not always consulted, to ensure that they may exercise their right to free, prior and informed consent to projects and initiatives concerning them, including legislation, despite favourable rulings of the Supreme Court (arts. 2 and 27).

The State party should consult indigenous people to (a) seek their free, prior and informed consent whenever legislation and actions impact on their lands and rights; and (b) resolve land and resources disputes with indigenous peoples and find ways and means to establish their titles over their lands with respect to their treaty rights.

Indian Act

17. While noting the position of the State party, the Committee is concerned about the slow application of the 2011 Gender Equity in Indian Registration Act, which amends the Indian Act, to remove reported lasting discriminatory effects against indigenous women, in particular regarding the transmission of Indian status, preventing them and their descendants from enjoying all of the benefits related to such status (arts. 2, 3 and 27).

The State party should speed up the application of the 2011 Gender Equity in Indian Registration Act and remove all remaining discriminatory effects of the Indian Act that affect indigenous women and their descendants, so that they enjoy all rights on an equal footing with men.

Overrepresentation in criminal justice and access to justice for indigenous peoples

18. The Committee is concerned at the disproportionately high rate of incarceration of indigenous people, including women, in federal and provincial prisons across Canada. The Committee is also concerned that Aboriginal people continue to face obstacles in recourse to justice (arts. 2, 10 and 14).

The State party should ensure the effectiveness of measures taken to prevent the excessive use of incarceration of indigenous peoples and resort, wherever possible, to alternatives to detention. It should enhance its programmes enabling indigenous convicted offenders to serve their sentences in their communities. The State party should further strengthen its efforts to promote and facilitate access to justice at all levels by indigenous peoples.

Situation of indigenous peoples

19. While noting measures taken by the State party, the Committee remains concerned about (a) the risk of disappearance of indigenous languages; (b) some indigenous people lacking access to basic needs; (c) child welfare services which are not sufficiently funded; and (d) the fact that appropriate redress is not yet being provided to all students who attended the Indian Residential Schools (arts. 2 and 27).

The State party should, in consultation with indigenous people, (a) implement and reinforce its existing programmes and policies to supply basic needs to indigenous peoples; (b) reinforce its policies aimed at promoting the preservation of the languages of indigenous peoples; (c) provide family and childcare services on reserves with sufficient funding; and (d) fully implement the recommendations of the Truth and Reconciliation Commission with regard to the Indian Residential Schools.

4. France, CCPR/C/FRA/CO/5, 17 August 2015

Recognition of minorities and statistics

6. While welcoming the measures taken by the State party to highlight national cultural and linguistic diversity, the Committee regrets that the State party still does not recognize the existence of minorities in France. The Committee notes the position of the State party regarding the unconstitutional nature of the collection of data disaggregated by ethnic or racial origin and the national development of various tools based specifically on self-identification. However, it regrets the lack of statistics in the report that would permit it to fully appreciate the enjoyment of the rights enshrined in the Covenant by indigenous peoples and minorities (arts. 2, 26 and 27).

The State party should reconsider its position on the official recognition of ethnic, religious and linguistic minorities. It should continue considering the development of tools to allow it to assess and ensure the effective enjoyment by indigenous peoples and minorities of all human rights and fundamental freedoms. It should also make use of such data for planning and evaluation purposes.

Compensation for the victims of French nuclear tests

21. The Committee is concerned about the fact that, as at 1 March 2015, the Nuclear Test Victims Compensation Committee had dismissed 98.3 per cent of claims (arts. 2 and 6).

The State party should take all the necessary steps to ensure the effective recognition and compensation of all the victims of French nuclear tests, especially the local population.

5. Venezuela, CCPR/C/VEN/CO/4, 14 August 2015

3. The Committee welcomes the following legislative and institutional steps taken by the State party:
(a) The adoption of the Indigenous Peoples and Communities Act, in December 2005, and the establishment of the Ministry of People's Power for Indigenous Peoples, in December 2006....

Rights of indigenous peoples

21. The Committee takes note with satisfaction of the extensive legal framework developed in the State party in the area of indigenous peoples' rights, which includes the recognition of the right to be consulted. It finds it regrettable, however, that it has not received sufficient information about the implementation of the right to prior consultation in relation to the granting of exploration and resource development licences in their territories. While it takes note of the information provided by the State party which indicates that a significant

percentage of the applications for land demarcation have led to the award of collective land titles, the Committee observes that the demarcation process had proceeded very slowly. The Committee is also concerned at the information it has received which indicates that some indigenous peoples have been victims of acts of violence committed by State and non-State actors (arts. 1, 2, 6, 7 and 27).

The State party should take the necessary measures to:

- (a) Ensure that the necessary prior consultations are held with indigenous peoples to obtain their free, prior and informed consent before any measure is adopted or implemented that may substantively compromise their way of life and culture, in particular in relation to projects that may have an impact on their lands and territories and other resources, such as natural resource exploration and/or development projects. The State party should expedite the adoption of regulations on prior and informed consultation and ensure that indigenous peoples are actively involved in developing those regulations;
- (b) Expedite and complete the demarcation of indigenous lands as soon as possible;
- (c) Provide effective protection for indigenous peoples against all acts of violence and ensure that the perpetrators of such acts are brought to justice and duly punished and that victims obtain appropriate redress.

6. Suriname, CCPR/C/SUR/CO/3, 3 December 2015

Impunity for past human rights violations

21. The Committee is concerned that in April 2012 the National Assembly adopted an amendment to the 1992 Amnesty Act, extending the period covered by the amnesty to between April 1980 and August 1992. It also expresses concern over the State party's reliance on this amendment and the absence of the yet-to-be-established constitutional court in order to suspend, despite the Views set out by the Committee in *Baboeram-Adhin et al.*, the prosecution brought against the President, Desiré Bouterse, and 24 others accused of the extrajudicial executions of 15 political opponents in December 1982. Furthermore, the Moiwana massacre of 1986 and other grave human rights violations that occurred during the de facto military regime continue to go unpunished. Lastly, the Committee notes with concern the delegation's acknowledgement of the reluctance of some witnesses to testify in relation to the Moiwana case (arts. 6 and 7).

22. Recalling its previous recommendation (see CCPR/CO/80/SUR, para. 7), the Committee urges the State party to repeal the Amnesty Act. The State party should also comply forthwith with international human rights law requiring accountability for those responsible for serious human rights violations in respect of which States are required to bring perpetrators to justice, including by completing the pending criminal prosecutions. In this regard, the Committee draws attention to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in particular paragraph 18, in which the Committee states that States parties may not relieve perpetrators of acts such as torture, arbitrary or extrajudicial killings or enforced disappearance from their personal responsibility. The State party should also ensure the effective protection of witnesses and diligently enquire into all cases of suspected witness intimidation.

Rights of persons belonging to minorities

47. The Committee is concerned that indigenous and tribal peoples are not sufficiently consulted in the decision-making processes with respect to issues of interest to their communities. In this regard, concessions and licences on the land they claim continue to be granted for extractive use, including mining operations, and the execution of large-scale development projects, without prior consultation of indigenous communities (art. 27).

48. The State party should also take all measures necessary to ensure effective and meaningful consultation with indigenous and tribal peoples in decision-making in all areas having an impact on their rights.

7. Costa Rica, CCPR/C/CRI/CO/6, 22 April 2016

3. The Committee welcomes the following legislative and other measures taken by the State party:

(a) The amendment in August 2015 of article 1 of the Constitution to recognize the multi-ethnic and pluricultural character of the State party....

9. Despite the State party's efforts to combat discrimination, the Committee is concerned about the persistent structural discrimination against indigenous peoples and persons of African descent, which hinders their access to education, employment and housing. The Committee is also concerned at the continued stigmatization of migrants, asylum seekers and refugees, and discrimination against persons with disabilities. It is further concerned by the lack of a general legal framework on non-discrimination prohibiting discrimination on all the grounds enumerated in the Covenant (arts. 2 and 26).

10. The State party should step up its efforts to dispel stereotypes of and eliminate discrimination against indigenous peoples, persons of African descent, migrants, asylum seekers and refugees, and persons with disabilities by carrying out awareness-raising campaigns to promote tolerance and respect for diversity, among other actions. It should expedite the adoption of an act on the prevention and punishment of all forms of discrimination and should ensure that it contains a general prohibition of discrimination on all the grounds enumerated in the Covenant and includes provisions allowing for reparation through effective and appropriate legal remedies in cases of discrimination, racism or xenophobia.

15. Despite the measures adopted to promote gender equality, the Committee is concerned about the significant gender pay gap and the high rate of unemployment among women. It is further concerned that, despite the progress made through the implementation of a quota system, women — especially indigenous women and women of African descent — remain underrepresented in decision-making positions (art. 3).

16. The State party should continue its efforts to eliminate the gender pay gap. The Committee encourages the State party to adopt temporary special measures in order to continue increasing the participation of women in public affairs at all levels of government and in management roles in the private sector.

Rights of members of indigenous peoples

41. The Committee is concerned that the draft legislation on the autonomous development of indigenous peoples has not yet been passed into law and that no legal arrangements have been put in place to ensure that indigenous peoples are consulted in advance on decisions that could have an impact on the exercise of their rights. Despite the legal recognition of indigenous peoples' right to the lands and territories that they have traditionally possessed or occupied, the Committee is concerned by the limited protection afforded for the exercise of those rights in practice and by the fact that some indigenous communities have been attacked as the result of land conflicts (art. 27).

42. The State party should:

- (a) Expedite the adoption of the draft legislation on the autonomous development of indigenous peoples;
- (b) Ensure that indigenous peoples are effectively consulted in order to secure prior, informed and free consent before any measure is adopted or implemented that could have a substantial impact on their way of life and culture, in particular in relation to projects that could have an impact on their lands, territories or other resources, such as projects to explore for or exploit natural resources;
- (c) Guarantee in practice the right of indigenous peoples to the lands and territories that they have traditionally possessed or occupied, including through such legal recognition and protection as may be necessary;
- (d) Make the necessary legal means available so that indigenous peoples may recover inalienable lands previously granted to them under national legislation and provide appropriate protection, including with effective remedies, to indigenous peoples who have been the victim of attacks.

8. Namibia, CCPR/C/NAM/CO/2, 22 April 2016

9. While noting the measures taken to eliminate discrimination, the Committee is concerned that protection against discrimination is insufficient. It is particularly concerned about:

(a) The prevalence of de facto racial discrimination and discrimination against indigenous peoples, as well as the significant number of laws remaining from the apartheid era that discriminate on the basis of race, such as the rules on intestate succession according to the Native Administration Proclamation 15 of 1928....

10. The State party should conduct extensive education and awareness-raising campaigns involving and targeting traditional leaders and the general public, both children and adults, to eliminate all forms of discrimination. It should:

(a) Repeal all laws that discriminate on the basis of race and finalize and adopt legislation on intestate succession so as to apply the same rules to all persons without discrimination....

Rights of minorities

43. The Committee notes with concern that all traditional indigenous lands remain under State ownership while traditional authorities may only administer communal lands according to the Communal Land Reform Act, and that indigenous groups are insufficiently consulted regarding the extraction of natural resources on their traditional lands (arts. 2 and 26).

44. The State party should ensure that indigenous peoples have titles over lands and territories that they traditionally occupied or resources they owned. It should seek the free and informed consent of indigenous communities and give primary consideration to their opinions and decisions prior to granting licences to extractive industries.

9. New Zealand, CCPR/C/NZL/CO/6, 22 April 2016

3. The Committee welcomes the following legislative and institutional measures taken by the State party: ...

(e) The adoption of the Māori Disability Action Plan for Disability Support Services (Whāia Te Ao Mārama) 2012-2017; ...

(i) The adoption of the Māori Education Strategy, Ka Hikitia: Accelerating Success 2013-2017.

17. The Committee remains concerned about the persistent inequalities between women and men, in particular: (a) the significant wage gap between women and men, which disproportionately affects low-income women, especially Māori and Pasifika women, as well as women with disabilities; (b) the unequal representation of women in high-level private and public sector managerial positions; and (c) the overrepresentation of women in minimum wage jobs. The Committee notes with concern that the principle of equal pay for work of equal value is not fully respected and applied in either the public or private sectors, and that the institutional framework to monitor discrimination in remuneration and to seek redress is inadequate (arts. 2, 3 and 26).

18. The Committee recalls its general comment No. 28 (2000) on the equality of rights between men and women and recommends that the State party:

(a) Fully incorporate the principle of equality between women and men in all its national policies;

(b) Develop programmes for the implementation of Sustainable Development Goal 5 to achieve gender equality and empower all women and girls, with particular focus on Māori and Pasifika women and girls, as well as women and girls with disabilities....

21. While welcoming the adoption and implementation by the State party of welfare, employment and education programmes with a particular focus on Māori and Pasifika, as well as support programmes for migrants, the Committee remains concerned about the persistent inequalities that disproportionately affect Māori and Pasifika, in particular Māori and Pasifika women and young people, and persons with disabilities in the area of employment and vocational training (art. 26).

22. The State party should: (a) Address the high unemployment rates among Māori and Pasifika, in particular Māori and Pasifika women and young people, among persons with disabilities and among migrants,

through the adoption and effective implementation of comprehensive employment and vocational training strategies, and report on the progress made in its next periodic report;

(b) Ensure that cases of discrimination on any grounds in relation to employment are thoroughly investigated and that victims are provided with adequate remedies.

23. The Committee notes the information provided regarding the outcomes of the investigations relating to the so-called Operation Eight (anti-terrorism raids carried out on 14 October 2007), as well as the efforts made to incorporate some of the recommendations from the Independent Police Conduct Authority in the police operational planning and operational guidelines. It also notes statements by State officials suggesting an “unconscious bias” in police operations towards Māori and is concerned about allegations of racial profiling involving Māori and persons of African descent (arts. 2, 7, 14, 26 and 27).

24. The State party should undertake a comprehensive review of law enforcement operational policies in order to ensure their conformity with human rights principles, including the prohibition of discrimination, and to evaluate their impact on indigenous peoples. The State party should also provide training to law enforcement officials in order to sensitize them to the need to conduct themselves in a way that does not lead, even unintentionally, to acts of racial profiling.

25. The Committee notes the efforts made by the State party to address the issue of the overrepresentation of Māori and Pasifika in the criminal justice system, with particular focus on young people, including through the initiative “Turning of the Tide: A Whānau Ora Crime and Crash Prevention Strategy” and the Youth Crime Action Plan. However, the Committee remains concerned about the disproportionately high rates of incarceration and overrepresentation of Māori and Pasifika, particularly women and young people, at all levels of the criminal justice process (arts. 2, 14, 24 and 26).

26. Recalling its previous concluding observations (CCPR/C/NZL/CO/5, para. 12), the Committee urges the State party to:

(a) Review its law enforcement policies with a view to reducing the incarceration rates and the overrepresentation of members of the Māori and Pasifika communities, particularly women and young people, at all levels of the criminal justice system, as well as reconviction and reimprisonment rates; (b) Eliminate direct and indirect discrimination against Māori and Pasifika in the administration of justice, including through human rights training programmes for law enforcement officials, the judiciary and penitentiary personnel.

29. While welcoming the establishment in 2014 of the Ministerial Group on Family Violence and Sexual Violence, and the implementation of community-based anti-domestic violence campaigns, the Committee remains concerned about the high prevalence of domestic violence, in particular violence against women and girls, which includes sexual violence, and especially against Māori and Pasifika women and girls, as well as women and girls with disabilities. The Committee is also concerned about the low rates of reporting and prosecution of perpetrators of sexual violence and about the absence of information on victims’ rehabilitation and redress programmes. While the Committee notes the Family Court reforms introduced by the State party in 2014, it is concerned about reported instances of women being forced to attend family dispute resolution courses with their abusers (arts. 3 and 7).

30. The State party should strengthen efforts to combat domestic and all forms of gender-based violence, including sexual violence, particularly in relation to Māori and Pasifika women and girls, as well as women and girls with disabilities. In particular, the State party should ensure that:

(a) Its criminal legislation concerning domestic and gender-based violence, including sexual violence, is enforced effectively across its territory;

(b) Programmes to combat domestic and gender-based violence, including sexual violence, are incorporated into the National Plan of Action for Human Rights;

(c) Effective monitoring and evaluation processes with clearly defined indicators and systematic data collection are put in place to assess the extent of the problem of domestic and gender-based violence and inform future legislative and policy initiatives;

- (d) Programmes of victims' rehabilitation and redress are developed and implemented across its territory, involving the provision of specialized medical, psychosocial and legal assistance;
 - (e) The existing family dispute settlement framework is implemented effectively and monitored, particularly for the protection of those experiencing domestic violence, especially women and children.
- Child abuse

31. While welcoming the State party's efforts to address child abuse, which disproportionately affects vulnerable children, the Committee is concerned about the significant number of children who suffer physical and psychological abuse and neglect, and regrets the absence of information regarding programmes of rehabilitation, reintegration and redress for child victims, in particular Māori and Pasifika child victims. The Committee is also concerned about the filing of the Roast Busters case (arts. 7 and 24).

32. The State party should:

- (a) Strengthen its efforts to combat child abuse in all settings, including through the development and implementation of multi-stakeholder, child-friendly early detection and reporting mechanisms and through the effective investigation of cases and the accountability of perpetrators;
- (b) Provide detailed information, in its next periodic report, on the outcomes of the Children's Action Plan and the review of the Child, Youth and Family agency, as well as on the measures taken in order to increase the efficiency and quality of the child and youth protection and rehabilitation services that are provided;
- (c) Ensure that all appropriate measures are taken, including conducting awareness-raising programmes in schools, to prevent the recurrence of events such as those that took place in the Roast Busters case.

Marine and Coastal Area (Takutai Moana) Act 2011

43. The Committee is concerned about the fact that the replacement of the Foreshore and Seabed Act 2004 by the Marine and Coastal Area (Takutai Moana) Act 2011 has not adequately addressed the discriminatory effects on Māori claims to their customary land and their right to cultural development (art. 27).

44. The State party should revise the Marine and Coastal Area (Takutai Moana) Act 2011 with a view to ensuring respect of the customary rights of Māori on their land and resources, and their cultural development.

Treaty of Waitangi and the Waitangi Tribunal

45. The Committee is concerned about the fact that, since the adoption by the Waitangi Tribunal of decision WAI 262 in 2011, the State party has not provided the relevant human rights bodies with any information regarding policies and implementation timetables. The Committee notes the State party's insufficient engagement with indigenous communities prior to the signing in February 2016 of the Trans-Pacific Partnership Agreement, which includes provisions that may have a negative effect on the rights of indigenous peoples, in particular with regard to their free, prior and informed consent in the implementation of the Agreement, and to an effective remedy (arts. 2, 26 and 27).

46. The State party should:

- (a) Strengthen the role of the Treaty of Waitangi in the existing constitutional arrangements;
- (b) Guarantee the informed participation of indigenous communities in all relevant national and international consultation processes, including those directly affecting them;
- (c) Implement technical capacity programmes for indigenous communities aiming at their effective participation in all relevant consultation and decision-making processes.

Government representation of Māori and Pasifika

47. The Committee notes with concern the persistently low representation of Māori and Pasifika in government positions at all levels. The Committee regrets that Auckland Supercity Council has not implemented the 2009 recommendation from the Royal Commission on Auckland Governance to establish Māori seats (art. 26).

48. The State party should take all appropriate measures to enhance Māori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements.

50. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 30 (domestic and gender-based violence), 32 (child abuse) and 44 (Marine and Coastal Area (Takutai Moana) Act 2011) above.

10. Rwanda, CCPR/C/RWA/CO/4, 2 May 2016

Rights of indigenous peoples

47. While noting the State party's policy to recognize some vulnerable populations, such as the Batwa, under the category of "historically marginalized groups", the Committee is concerned that this classification is insufficient to ensure that such groups are recognized as indigenous and benefit from the protection of their right to enjoy their culture in community. The Committee remains concerned (CCPR/C/RWA/CO/3, para. 22) at the continuing discrimination of Batwa in all areas and their limited participation in public affairs (arts. 26 and 27).

48. The State party should take the necessary steps to guarantee the recognition of minorities and indigenous peoples and ensure the effective legal protection of indigenous peoples' rights to their ancestral lands and natural resources. It should also ensure access to effective remedies for members of indigenous groups for any violations of their rights. The State party should strengthen its programmes to promote equal opportunity and access to services for the Batwa community and increase their participation in decision-making processes and decisions that affect them.

11. South Africa, CCPR/C/ZAF/CO/1, 27 April 2016

Land claims

44. While welcoming the reopening of the land claims process and the development of a policy and legislation on exceptions to the 19 June 1913 cut-off date to accommodate the descendants of the Khoi-San communities, the Committee is concerned about delays in the processing of claims before the Commission on Restitution of Land Rights pursuant to the Restitution of Land Rights Act 22 of 1994, and the inability of Khoi-San communities dispossessed prior to 1913 to benefit from the land restitution process (art. 27).

45. The State party should step up its efforts to ensure the processing of land restitution claims lodged under the Restitution of Land Rights Act 22 of 1994, and the Restitution of Land Rights Amendment Act 15 of 2014. In addition, it should consider legislative measures to ensure that dispossession of the lands of indigenous peoples prior to 1913 is adequately addressed.

Indigenous peoples

46. While welcoming the introduction of the Traditional and Khoi-San Leadership Bill into Parliament in September 2015, the Committee notes concerns raised by traditional and indigenous communities, including with regard to some of the recognition criteria. It is concerned that some of the Khoi-San languages are on the verge of extinction. In addition, the Committee is concerned that existing subsistence fishing quotas of indigenous groups have been removed on a temporary basis without warning, leaving families with insufficient means of livelihood (arts. 2 and 25-27).

47. In consultation with indigenous and traditional communities, the State party should revise the Traditional and Khoi-San Leadership Bill with a view to taking their concerns into consideration. It should step up its efforts to promote and preserve Khoi and San indigenous languages. The State party should ensure that small-scale fishing communities are not discriminated against in their access to traditional means of subsistence.

12. Sweden, CCPR/C/SWE/CO/7, 28 April 2016

Rights of indigenous people

38. The Committee welcomes the commitment of the State party to further advancing the interests of the Sami people and to realizing their right to self-determination, and acknowledges the new changes in the constitutional and legal framework in this regard, including amendments to the Swedish Constitution (the Instrument of Government) that entered into force on 1 January 2011 wherein Sami have been explicitly recognized as a people. However, it remains concerned about: (a) the slow progress in concluding negotiations for the adoption of the Nordic Sami Convention; (b) the limited resources allocated to the Sami Parliament; (c) the scope of the duty to consult with representatives of the Sami people in connection with extractive and development projects, including those regulated under, for example, the amended Minerals Act; (d) the difficulties faced by Sami in securing rights over lands and resources, including the high burden of proof requirements on Sami claimants to demonstrate land ownership and the inability of Sami villages to obtain legal aid under the Legal Aid Act, despite the fact that they are the only legal entities empowered to act as litigants in land disputes in respect of Sami lands and grazing rights (arts. 1, 2, 14, 26 and 27).

39. The State party should take measures:

- (a) To contribute efficiently to the adoption without undue delay of the Nordic Sami Convention;
- (b) To ensure that the Sami Parliament is provided with adequate resources to enable it to fulfil its mandate effectively;
- (c) To 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 guaranteeing meaningful consultation with the affected indigenous communities aimed at attempting to obtain their free, prior and informed consent;
- (d) In line with the Committee's previous recommendation (see CCPR/C/SWE/CO/6, para. 21), to grant adequate legal aid to Sami villages in court disputes concerning land and grazing rights and provide for a suitable burden of proof in cases regarding Sami land and grazing rights. Furthermore, the Committee encourages the State party to initiate, as indicated, the preparatory work towards the ratification of International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

13. Argentina, CCPR/C/ARG/CO/5, 10 August 2016

The rights of indigenous peoples

37. Despite the national and provincial initiatives which have been undertaken to regularize the status of indigenous lands, including Act No. 26.160 of 2006, under which a state of emergency was declared in respect of the possession and ownership of lands occupied by indigenous communities, the Committee finds it regrettable that indigenous lands have not yet been legally recognized and protected. The Committee reiterates its concern, as expressed in its preceding concluding observations (CCPR/C/ARG/CO/4, para. 25), about the fact that indigenous groups continue to be the target of violence and forced evictions in a number of provinces (arts. 2, 6, 7 and 27).

38. The State party should, in consultation with the indigenous peoples concerned, step up its efforts to legally recognize and demarcate the territories over which indigenous peoples have rights. The State party should also provide effective protection for indigenous peoples from any and all acts of violence and see to it that the parties responsible for those acts are brought to justice and duly punished and that the victims are provided with appropriate redress.

14. Denmark, CCPR/C/DNK/CO/6, 15 August 2016

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

- (a) The entry into force of the Act on Greenland Self-Government, in 2009; ... (e) The establishment of the Human Rights Council of Greenland, in 2013; ... (j) The adoption by the Parliament of Greenland of the National Strategy and Action Plan against Violence 2014-2017, in 2013....

Gender equality

15. While noting measures taken by the State party to improve gender equality, the Committee remains concerned at the underrepresentation of women in political and public life, particularly in locally elected and executive bodies, including in Greenland and in the Faroe Islands. The Committee is also concerned that, despite the adoption of new rules governing gender representation on the company boards of the largest limited liability companies and State-owned companies, the representation of women in management and on boards remains low (arts. 2, 3 and 26).

16. The State party should step up its efforts to promote the equal representation of women and men in public and political life at all levels, particularly in locally elected and executive bodies in Greenland and in the Faroe Islands. It should ensure gender equality on the boards of the largest limited liability companies and State-owned companies.

17. The Committee is concerned about the persistence of a gender wage gap in the State party, which mostly affects women with an immigration background. The Committee is also concerned about obstacles faced by women in accessing full-time employment, which negatively results in lowering their wages, including in Greenland and in the Faroe Islands. The Committee regrets the lack of information on concrete measures to overcome the gender wage gap and their results (arts. 2, 3 and 26).

18. The State party should continue its efforts to promote women's equal access to full-time employment in all parts of its territory and to eliminate the gender wage gap and address differences in pay between men and women for work of equal value. It should pay particular attention to the situation of women with an immigration background.

15. Ecuador, CCPR/C/ECU/CO/6, 11 August 2016

3. The Committee welcomes the following legislative and institutional measures taken by the State party: ... (f) Adoption of the Organic Act on Intercultural Education in 2011; ... (h) Adoption of the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion in 2009.

Rights of indigenous peoples

35. The Committee takes note of decision No. 001-10-SEP-CC of the Constitutional Court and Executive Decree No. 1247 but is concerned at reports that some oil concessions have been granted in indigenous territories without prior consultation with the communities affected. The Committee is also concerned at the delay in the adoption of the bill on consultation with the communes, communities, peoples and nationalities of Ecuador. While it takes note of Interministerial Agreement No. 120 setting out the code of conduct to be observed by public and private companies located adjacent to untouchable areas that engage in oil activities in the Amazon Region of Ecuador, it is also concerned at claims that the Tagaeri and Taromenane indigenous peoples, living in voluntary isolation, are in a vulnerable situation, owing, among other reasons, to the exploitation of natural resources in the territories that they inhabit (art. 27).

36. The State party should:

- (a) Take the necessary steps to ensure that proper consultations are held with indigenous communes, communities, peoples and nationalities with a view to obtaining their free, prior and informed consent concerning any measure that might have a substantial impact on their way of life and their culture;
- (b) Expedite the adoption of the bill on consultation with the communes, communities, peoples and nationalities of Ecuador and ensure that indigenous communes, communities, peoples and nationalities are properly consulted during that process;
- (c) Increase its efforts to protect the lives and livelihoods of indigenous peoples living in isolation and, in particular, ensure that extractive or any other activities that may place them in a more vulnerable situation are not conducted.

Indigenous courts

37. The Committee is concerned at the lack of a specific legal and institutional framework governing the division of responsibilities between indigenous courts and ordinary courts (arts. 14 and 27).

38. The State party should take the necessary measures to adopt a specific legal and institutional framework governing the division of responsibilities between indigenous courts and ordinary courts and to guarantee respect for the rights and interests of indigenous communities, peoples and nationalities, ensuring that all members of such communities fully enjoy their rights under the Covenant.

16. Colombia, CCPR/C/COL/CO/7, 17 November 2016

Internal armed conflict

8. Although the Committee notes that peace negotiations with the Revolutionary Armed Forces of Colombia — People's Army (FARC-EP) have led to a considerable reduction in the impact of the armed conflict on the civilian population, it is concerned by reports that violations of Covenant rights, including the arbitrary deprivation of life, enforced disappearances and torture, continued to be committed during the period under review. The Committee finds it regrettable that it has not received sufficient information on the steps taken in response to the early warnings issued by the Inter-Agency Early Warning Committee during the reporting period or on their effectiveness in preventing serious human rights violations (arts. 2, 6, 7, 9 and 12).

9. The State party should continue and intensify its efforts to prevent violations of Covenant rights and to give effect to the rights of victims of the armed conflict to truth, justice and full reparation. It should, in particular, ensure that:

...

(c) Effective protection and care is afforded to the most vulnerable persons and communities, in particular women, children, older adults, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, Afro-Colombians and indigenous peoples;

(d) All victims receive full reparation, including the restitution of their land.

Trafficking in persons

26. While welcoming the various steps taken by the State party to combat trafficking in persons and to punish the responsible parties, the Committee takes note with concern of reports that human trafficking, including internal trafficking, persists, particularly to the detriment of vulnerable persons such as children, Afro-Colombians and indigenous peoples (art. 8).

27. The State party should continue and step up its efforts to prevent and combat trafficking in persons, including internal trafficking; to punish the responsible parties; to identify the victims; and to provide them with full reparation and appropriate protection and assistance.

Use and recruitment of children by illegal armed groups

40. The Committee takes note of the efforts made by the State party to prevent children from being used or recruited by illegal armed groups and to separate those who have been recruited from those groups and offer them assistance and protection. It is concerned, however, at reports of the continued use and recruitment of children by illegal armed groups, including, in particular, the use and recruitment of indigenous and Afro-Colombian children, and by illegal armed groups that formed in the wake of the demobilization of paramilitary organizations. The Committee takes note of the State party's statement that, in accordance with the laws in force, security forces do not engage in intelligence activities or military civic acts that involve children. It is concerned, however, by reports of cases in which members of the security forces allegedly involved children in such activities during the reporting period (art. 24).

41. The State party should continue and step up its efforts to prevent the use and recruitment of children by illegal armed groups; to ensure that, in accordance with the jurisprudence of the Constitutional Court, all children who have been used or recruited by such groups are treated as victims, regardless of which armed group they have been separated from; to ensure that all children separated from such groups receive protection and proper care with a view to their physical and psychological recovery and to the restoration of their rights; and to ensure that the responsible parties stand trial and are punished. The State party should also adopt effective measures to ensure that, in actual practice, children are not involved in intelligence work or in military civic activities.

Rights of Afro-Colombian and indigenous persons

42. The Committee is concerned by reports that Afro-Colombian and indigenous persons continue to be discriminated against despite the steps taken by the State party to combat discrimination. It is also concerned by reports regarding the issuance of permits for natural resource development projects on the territories of indigenous peoples that, in some cases, have had an adverse impact on their way of life. In particular, it is concerned by reports that the Wayúu peoples in La Guajira Department do not have sufficient access to drinking water. While taking note of the introduction of guidelines for conducting prior consultations with ethnic communities present in the area of influence of a project, worksite or activity (Presidential Directive No. 10 of 2013), the Committee is concerned about the delay in the passage of a law that would require that consultations be held with ethnic communities with a view to obtaining their free and informed consent prior to the adoption and application of any measure that may have a substantial impact on their way of life and culture. In connection with the preparation of such a bill, the Committee notes that the Ministry of the Interior has arranged with members of relevant national offices to hold the first formal meetings at which a road map will be developed for consultations regarding that bill. The Committee takes notes of the examples of prior consultations provided by the State party, but finds it regrettable that it has not received sufficient information on the action taken to give effect to the right to prior consultation in relation to the application of Decrees Nos. 4633 and 4635 of 2011. It is also concerned by the fact that not all the plans that have been developed for the preservation of the 34 indigenous peoples at risk of cultural or physical extinction or disintegration are as yet being implemented (arts. 2 and 27).

43. The State party should:

- (a) Continue and step up its efforts to prevent and combat discrimination against Afro-Colombian and indigenous persons, to ensure that those who engage in such discrimination are held accountable for their acts and to ensure the full enjoyment by Afro-Colombian and indigenous persons of their rights, including, in particular, their rights over the lands, territories and natural resources that they use or occupy;
- (b) Ensure that consultations are actually held with the relevant ethnic communities with a view to obtaining their free and informed consent prior to the adoption and application of any measure that may have a substantial impact on their way of life and culture, and ensure that Afro-Colombian and indigenous communities are consulted in a timely manner within the framework established by Act No. 1448 of 2011 and Decrees Nos. 4633 and 4635 of 2011;
- (c) Expedite the passage of a law under which consultations must be held with the relevant ethnic communities with a view to obtaining their free and informed consent prior to the adoption and application of any measure that may have a substantial impact on their way of life and culture, ensure that this law is fully in keeping with the Covenant and other relevant international standards and ensure that ethnic communities play an active part in its formulation;
- (d) Step up its efforts to ensure the timely and effective implementation of the plans that have been developed for the preservation of the 34 indigenous peoples that have been identified as being at risk of cultural or physical extinction or disintegration.

III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Concluding Observations

1. Paraguay, E/C.12/PRY/CO/4, 20 March 2015

Right to dispose freely of natural wealth and resources

6. The Committee is concerned that the State party still does not have a legal mechanism for ensuring that prior, free and informed consent is obtained from indigenous peoples in relation to decisions that may affect the exercise of their economic, social and cultural rights. The Committee also notes with concern that a significant number of indigenous peoples either still lack land or have not obtained legal recognition for their land and that, even when their lands have been registered, they may still be victims of forced eviction. In addition, the Committee is concerned about the fact that the State party has not yet legally recognized the right of indigenous peoples to dispose freely of their natural wealth and resources or put in place an effective mechanism to enable them to claim their ancestral lands (art. 1).

In the light of its previous recommendation (E/C.12/PRY/CO/3, para. 23 (b)), the Committee urges the State party to:

- (a) Take the legislative and administrative measures needed to ensure that free, prior and informed consent is obtained from indigenous peoples in relation to decisions that may directly affect the exercise of their economic, social and cultural rights;
- (b) Adopt, without delay, the measures needed, including legal recognition and protection, to ensure that indigenous peoples are able to exercise their right to dispose freely of their lands, territories and natural resources;
- (c) Take all necessary measures to prevent members of indigenous peoples from being forcibly displaced from the lands and territories they occupy;
- (d) Take the measures needed to put in place a legal mechanism to enable indigenous peoples to claim lands.

Non-discrimination

13. The Committee is concerned that the anti-discrimination bill which was under discussion in the Senate has not been adopted. It is also concerned that the State party has not adopted effective measures to combat the persistent discrimination suffered by members of indigenous peoples, persons of African descent, persons with disabilities and lesbian, gay, bisexual and transgender persons, in particular with regard to ensuring the effective exercise of their economic, social and cultural rights (art. 2, para. 2).

The Committee recommends that the State party expedite the adoption of anti-discrimination legislation that will ensure adequate protection against discrimination in accordance with article 2, paragraph 2, of the Covenant, bearing in mind the Committee's general comment No. 20 (2009) on non-discrimination and economic, social and cultural rights....

Equality between men and women

14. The Committee is concerned about the persistent inequality between men and women, particularly in access to education, employment, health services and social security. The Committee notes with concern that women living in rural areas and indigenous women continue to suffer multiple and intersectional discrimination, which is reflected in the high levels of poverty in which they live (art. 3).

In the light of its general comment No. 16 (2005) on the equal rights of men and women to the enjoyment of economic, social and cultural rights (art. 3 of the Covenant), the Committee recommends that the State party:

- (a) Take the necessary legislative and other measures to eliminate persistent inequality between men and women and to promote full access to education, employment, health services, social security and access to land;
- (b) Take measures to eliminate the multiple and intersectional discrimination faced by women living in rural areas and indigenous women, including by incorporating the principle of gender equality in resource allocation and in poverty reduction policies.

Forced labour

19. The Committee notes with concern reports that many workers, especially indigenous workers, are victims of forced labour on farms and ranches in the Paraguayan Chaco (art. 7).

The Committee urges the State party to adopt immediate and effective measures to eradicate forced labour and ensure that victims receive the appropriate protection and that offenders are duly prosecuted and punished in accordance with the severity of the offence.

Poverty

24. The Committee is concerned about the persistently high rates of poverty and, especially, extreme poverty in the State party, which especially affect indigenous peoples and persons living in rural areas. The Committee is also concerned that agrarian reform policies have not been adequately implemented, which has an impact on the persistent inequality in income and wealth in the State party, particularly among persons living in rural areas (art. 11).

In the light of its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001), the Committee recommends that the State party:

- (a) Intensify its efforts to combat poverty and, especially, extreme poverty, ensure that existing social programmes in this domain are implemented using a human rights-based approach, are allocated sufficient resources for implementation and pay due attention to the disparities and gaps between urban and rural areas;
- (b) Adopt effective measures to fight inequality, taking into account the needs of the most underprivileged and marginalized population groups, in particular indigenous peoples and persons living in rural areas;
- (c) Take the steps needed to ensure the effective, transparent and participatory implementation of agrarian reform, which, according to the State party's Constitution, is one of the key elements in achieving rural well-being.

Right to education

30. The Committee remains concerned that, despite the considerable progress made in extending education coverage, disparities persist between urban and rural schools in terms of accessibility, quality and infrastructure, which particularly affect indigenous children, children living in remote areas and children with disabilities. The Committee is also concerned that many rural schools do not have adequate, separate toilet facilities for each sex, a situation which could have a deterrent effect on school attendance among girls and teenagers (art. 13).

In the light of its general comment No. 13 (1999) on the right to education (art. 13 of the Covenant), the Committee recommends that the State party take the necessary steps to ensure that the education system is available and accessible for all children, including children with disabilities, by promoting inclusive education. It further recommends that the State party improve the quality and infrastructure of schools, especially in rural areas, and ensure that all schools in rural areas have adequate water and sanitation infrastructures, including, in particular, separate toilet facilities for each sex.

Use of indigenous languages

31. The Committee notes that, notwithstanding the efforts made, the measures adopted to promote the use of the Guaraní language have been limited and that its use is not encouraged in a comprehensive enough manner, particularly in the education system. The Committee is concerned about the lack of sufficient measures to promote the preservation and use of other indigenous languages (art. 15).

The Committee recommends that the State party take the measures needed to effectively foster the use of Guaraní as an official language. The Committee also recommends that the State party adopt the measures needed to promote the preservation and use of other indigenous languages.

2. Chile, E/C.12/CHL/CO/4, 7 July 2015

Rights of indigenous peoples

8. The Committee remains concerned by the lack of recognition in the Constitution of the rights of indigenous peoples and the absence of a legal mechanism guaranteeing that the free and informed prior consent of indigenous peoples is obtained with regard to decisions that may affect the exercise of their economic, social and cultural rights. Despite the efforts made by the State party with regard to the

demarcation of indigenous lands, the Committee is concerned at the limited protection of the right of indigenous peoples to dispose freely of their wealth and natural resources and of their ancestral lands (art. 1).

The Committee urges the State party to:

- (a) Comply with the commitment that it made during the interactive dialogue to guarantee recognition of the rights of indigenous peoples under the new Constitution;
- (b) Take the necessary legislative and administrative measures to ensure that the free and informed prior consent of indigenous peoples is obtained with regard to decisions that may directly affect the exercise of their economic, social and cultural rights;
- (c) Increase its efforts to guarantee the right of indigenous peoples to dispose freely of their lands, territories and natural resources, by such means as providing legal recognition and the necessary legal protection.

Economic, social and cultural rights and enterprises

11. While the Committee welcomes the information provided on the creation of a national plan on enterprises and human rights, it is concerned that the State party still has no legal framework to ensure full respect for economic, social and cultural rights on the part of enterprises that operate within the State party and enterprises subject to its jurisdiction that operate abroad. In particular, the Committee is concerned that indigenous peoples are still being affected by the operations of enterprises that are engaged in the exploitation of natural resources within their territories (art. 2, para. 1).

In the light of its statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/2012/22-E/C.12/2011/3, annex VI, section A), the Committee recommends that the State party should:

- (a) Establish a clear legal framework for enterprises, including pension fund administrators that operate in the State party in order to ensure that their activities do not negatively affect the exercise of economic, social and cultural rights;
- (b) Adopt appropriate legislative and administrative measures to ensure the legal responsibility of enterprises and their subsidiaries based in or managed from the territory of the State party, with regard to violations of economic, social and cultural rights in the course of their foreign operations;
- (c) Draw up clear regulations and guidelines to assess the potential social and environmental impact of projects intended to exploit natural resources, particularly within indigenous territories; and
- (d) Ensure that licensing agreements with private companies provide for adequate compensation of the communities affected, in particular the members of indigenous peoples.

12. The Committee takes note of the information provided by the delegation on the amendment of Anti-Discrimination Act No. 20.609. It is, nonetheless, concerned at the persistent discrimination against indigenous peoples, lesbian, gay, bisexual and transgender persons, migrants, asylum seekers and refugees, particularly in the areas of employment and education, but also as regards access to health services (art. 2, para. 2).

The Committee recommends that the State party should undertake a comprehensive revision of Act No. 20.609 with a view to ensuring effective protection against discrimination. In particular, it recommends that the State party should:

- (a) Explicitly include all the prohibited grounds of discrimination set out in article 2, paragraph 2, of the Covenant, taking into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights;
- (b) Define direct and indirect discrimination in accordance with the obligations incumbent on the State party under the Covenant;
- (c) Include provisions for obtaining access to redress in cases of discrimination through judicial, administrative and other procedures and adopt effective and appropriate remedies for victims of discrimination;
- (d) Adopt the necessary measures to prevent and combat persistent discrimination against indigenous peoples, lesbian, gay, bisexual or transgender persons, migrants, asylum seekers, refugees and any disadvantaged or marginalized persons or groups, including awareness-raising campaigns, with a view to ensuring the full exercise of the rights recognized under the Covenant, particularly access to employment, social security, health care and education.

Poverty and inequality

24. Despite significant economic growth in the State party and the various measures adopted to combat poverty, including though the introduction of cash transfer programmes, the Committee is concerned that such measures have not been sufficiently effective in reducing the inequality gap and that the levels of poverty and extreme poverty continue to affect the most disadvantaged and marginalized groups, particularly indigenous peoples (art. 11).

In the light of its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (2001), the Committee recommends that the State party should:

- (a) Adopt a comprehensive plan to combat poverty and extreme poverty that establishes specific targets and effective coordination mechanisms between the various sectors and ministries and that aims to significantly reduce the inequality gap, taking into account the needs of the most disadvantaged and marginalized social sectors in both rural and urban areas and of indigenous peoples in particular;
- (b) Ensure that social programmes to combat poverty, especially extreme poverty, are implemented using a human rights-based approach, that they are allocated sufficient resources for implementation and that they pay due attention to existing disparities and gaps between different social groups.

Health system

28. The Committee is concerned that, despite the reforms adopted in order to improve the health system, access to basic health services remains limited, particularly for disadvantaged and marginalized groups on low incomes (art. 12).

The Committee recommends that the State party should allocate sufficient resources to the health sector and continue its efforts to ensure the accessibility, availability, affordability and quality of health care, paying special attention to the needs of disadvantaged and marginalized groups, especially those on low incomes, and those of indigenous peoples, migrants, asylum seekers and refugees. The Committee draws the attention of the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.

Cultural rights

31. The Committee notes with concern that, notwithstanding the efforts made, the measures adopted to respect cultural diversity and foster the use of indigenous languages are still limited and that both the culture and use of indigenous languages are not encouraged in a sufficiently comprehensive manner, particularly in the area of education (art. 15).

The Committee recommends that the State party should:

- (a) Take the necessary measures to strengthen the protection of cultural rights and respect for cultural diversity, including more effective implementation of the bilingual intercultural education system;
- (b) Raise awareness of the cultural heritage of indigenous peoples;
- (c) Create favourable conditions for indigenous peoples to preserve, develop, express and disseminate their identity, history, culture, languages, traditions and customs.

3. Thailand, E/C.12/THA/CO/1-2, 19 June 2015

Rights of indigenous peoples

9. The Committee expresses concern at the lack of recognition of indigenous peoples by the State party (art. 1.2).

In light of the on-going constitutional reform, the Committee invites the State party to reconsider its position and give legal and political recognition to its indigenous peoples based on self-identification. The Committee recommends that the State party in particular guarantee the right of indigenous peoples to own, use, control and develop the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The Committee also encourages the State party to consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples.

Land and natural resources

10. The Committee is concerned at:

- (a) The denial of the traditional rights of ethnic minorities to their ancestral lands and natural resources and the concentration of land ownership in the hands of a very small proportion of the population;
- (b) Information received that the implementation of its forest conservation policy, in particular NCPO Orders No. 64/2557 and 66/2557 of 2014, has resulted in the destruction of crops and forced evictions; and
- (c) The adverse effects of economic activities connected with the exploitation of natural resources, including large-scale projects such as the Map Ta Phut Industrial Estate, on the enjoyment of economic, social and cultural rights by people living in the areas concerned and the lack of participatory mechanisms and consultations, as well as limited access to information for affected individuals and communities (arts. 1.2, 2, 11, 12 and 15).

The Committee recommends that the State party take all necessary steps, including revising its legal and policy framework, to:

- (a) Effectively remove all obstacles to enjoyment of traditional individual and communal rights by ethnic minorities in their ancestral lands and take effective measures to guarantee land tenure rights without discrimination so as to ensure access to land and adequate housing for all;
- (b) Ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation, bearing in mind the Committee's general comments no. 4 (1991) on the right to adequate housing and no. 7 (1997) on forced evictions; and
- (c) Adopt a human-rights based approach in its development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent.

Transnational corporations and other business enterprises

12. The Committee is concerned at the lack of a regulatory framework to ensure that companies which are incorporated or have their main offices under the State party's jurisdiction fully respect economic, social and cultural rights when acting abroad (art. 2.1).

The Committee recommends that the State party establish a clear regulatory framework with a view to ensuring that companies incorporated or with their main offices under the State party's jurisdiction are legally accountable regarding violations of economic, social and cultural rights in their projects abroad, in particular in cross-border development projects. The State party should also take into account its obligations under the Covenant when negotiating international agreements. The Committee draws the attention of the State party to its statement on the obligations of State parties regarding the corporate sector and economic, social and cultural rights (E/2012/22-E/C.12/2011/3, annex VI, section A).

Stateless persons

14. The Committee notes the efforts of the State party to reduce statelessness, including amendments to the Nationality Act and the Civil Registration Act, establishing universal birth registration. However, it is concerned that a large number of persons remain stateless, particularly among ethnic groups, migrants, refugees and asylum-seekers, which consequently leads to a denial of their economic, social and cultural rights. The Committee is also concerned that a large number of births are not registered in practice and that gaps remain in the Nationality Act, including with regard to the right to nationality for children found abandoned (arts. 2, 9-10 and 12-14).

The Committee recommends that the State party continue strengthening its measures to facilitate the naturalization and integration of stateless persons, including by addressing remaining gaps in the Nationality Act, as well as to ensure the enjoyment of their economic, social and cultural rights. It also recommends that the State party consider acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

4. Uganda, E/C.12/UGA/CO/1, 8 July 2015

Land rights

12. The Committee is concerned that many persons remain without a formal ownership title over their house and land, and about the persistence of land disputes exacerbated by overlapping claims and rights over land. The Committee is also concerned at the delays in amending the 1998 Land Act, with a view to protecting

in particular the rights of access to and ownership of land by women, pastoralists and customary landowners, including communities. The Committee is further concerned about the inadequate implementation of the Land Policy (art. 1).

The Committee recommends that the State party harmonize its legal framework governing land rights and that all land-related laws, notably the Land Act and the Forest Act, also be amended in the light of the 2013 Land Policy, which provides additional protection to customary landowners and to indigenous peoples' right to land. The State party should further take measures to implement the Policy effectively, including through allocation of the necessary resources. The Committee refers in this regard to the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food security, adopted in 2012 by the Committee on World Food Security of the Food and Agriculture Organization of the United Nations (FAO).

Indigenous peoples

13. The Committee is concerned that many indigenous peoples, including the Benet, Batwa and Pastoralist communities, are denied access to their ancestral lands and are prevented from preserving their traditional way of living. The Committee is also concerned about the inadequate definition of indigenous peoples in the State party's Constitution coupled with a complete absence of information on the actual enjoyment of Covenant rights by indigenous peoples (art. 1).

The Committee recommends that the State party recognize indigenous peoples' rights to their ancestral lands and natural resources. The Committee urges the State party to engage in consultations with indigenous peoples to enable them to give their free, prior and informed consent regarding development activities that have an impact on access to their lands. It also recommends that the State party consider accession to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). Furthermore, the Committee recommends that the State party include recognition of indigenous peoples in the Constitution in line with the United Nations Declaration on the Rights of Indigenous Peoples, and strengthen efforts to consult indigenous peoples and ensure the effective enjoyment of their economic, social and cultural rights.

Poverty

28. While appreciating that poverty has declined in recent years, the Committee notes with concern the high incidence of poverty in rural areas, northern Uganda and the Karamoja subregion, and among persons with disabilities, indigenous peoples and older persons. The Committee is also concerned about the inadequate implementation of poverty-reduction policies (art. 11).

Recalling its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001), the Committee recommends that the State party step up its efforts to combat poverty and improve the standard of living of all Ugandans. It should pursue and strengthen measures to alleviate poverty in regions that are more vulnerable to poverty, paying particular attention to persons with disabilities, indigenous peoples and older persons. Moreover, the State party is encouraged to ensure that all policies aimed at poverty reduction, including the National Development Plan, are adequately resourced and effectively implemented with a human rights-based approach and in collaboration with social partners.

Cultural rights

37. The Committee is concerned about the absence of a separate budget for culture in the State party and the insufficient allocation of resources to local bodies to promote cultural activities. It is also concerned about the limited scope for the exercise of cultural rights by indigenous peoples and ethnic minorities. It is particularly concerned about the information that the Batwa culture is at risk of extinction (art. 15).

The Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life. The Committee encourages the State party to consider allocating adequate resources to culture, including to local bodies in order to promote cultural activities and ensure protection of traditional knowledge and skills, in particular for women. It also recommends that the State party pay particular attention to the promotion and preservation of cultural rights of indigenous peoples and ethnic minorities, including the Batwa culture.

5. Venezuela, E/C.12/VEN/CO/3, 7 July 2015

4. The Committee welcomes the adoption of: ... (d) The Indigenous Languages Act, in May 2008....

Rights of indigenous peoples

9. While the Committee notes with satisfaction that the right of indigenous peoples to be consulted is recognized in the State party's legal system, it is concerned by reports received that consultations with indigenous peoples are not held regularly and with full guarantees, in particular when granting concessions for the exploration and development of natural resources (art. 1, para. 2).

The Committee recommends that the State party:

- (a) Take the necessary steps to ensure that free, prior and informed consent is obtained from indigenous peoples in relation to decisions that may affect the exercise of their economic, social and cultural rights, in particular in connection with the granting of concessions for the exploration and development of mining resources and hydrocarbons;
- (b) Ensure that indigenous peoples' decisions are fully respected by all stakeholders, both governmental and private;
- (c) Adopt the measures needed to complete the demarcation and titling of the ancestral lands and territories of indigenous peoples in order to ensure that they are able to exercise their 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.

Domestic violence

23. The Committee is concerned about the low number of investigations and convictions in cases of violence against women and the absence of a national strategy for the prevention of domestic and gender-based violence (art. 10).

The Committee recommends that the State party: ... d) Extend the protection for victims of domestic and gender-based violence, inter alia, by establishing a sufficient number of shelters nationwide, including for individuals belonging to indigenous peoples.

6. Guyana, E/C.12/GUY/CO/2-4, 28 October 2015

5. The Committee also welcomes the adoption by the State party of: ... (d) The Amerindian Act, 2006.

Domestic application of the Covenant

8. The Committee notes that the rights guaranteed by the Covenant have not yet been applied or invoked in the jurisprudence of the State party. It is concerned that article 154 (A) (6) of the Constitution provides that the State party may divest itself or otherwise limit the extent of its obligations under the Covenant. The Committee is also concerned that article 154 (A) (2) of the Constitution may be interpreted as limiting the applicability of the Covenant within the domestic legal order.

9. The Committee recommends that the State party take all appropriate measures to ensure the direct applicability of the Covenant provisions in its domestic legal order and enhance training for judges, lawyers and public officials on the Covenant. It also recommends that the State party consider reviewing article 154 (A) (2) and (6) of the Constitution. The Committee draws the State party's attention to its general comment No. 9 (1998) on the domestic application of the Covenant.

Legal aid

10. The Committee is concerned that there are insufficient free legal aid services and that this may prevent disadvantaged and marginalized individuals and groups, particularly Amerindian people, from claiming their rights and obtaining appropriate remedies in case their economic, social and cultural rights are at risk and/or violated.

11. The Committee recommends that the State party take the measures necessary to strengthen the existing free legal aid system and to raise public awareness about the system, particularly among people living in hinterland and rural areas.

Land and natural resources

14. While welcoming the adoption of the Amerindian Act, 2006, the Committee is concerned at the limitations of the Act in recognizing and protecting the rights of indigenous peoples, namely Amerindians. It is particularly concerned at:

- (a) The lack of recognition and protection of indigenous peoples' customary systems of land tenure or customary laws pertaining to land and resource ownership and the lack of recognition of collective territories that are held jointly by several communities;
- (b) The absence of clear criteria based on which Amerindian land title areas are determined;
- (c) The limitation of indigenous communities with land titles to manage and control resources within their territories;
- (d) The lack of protection of the land rights of indigenous peoples who still lack a legal land title or are in the process of obtaining one;
- (e) The broad range of exceptions that allow mining and logging activities by external investors without the free, prior and informed consent of the affected indigenous peoples;
- (f) The absence of effective legal remedies by which indigenous peoples may seek and obtain restitution of their lands that are held by third parties (art. 1).

15. The Committee recommends that the State party revise the Amerindian Act 2006 and other relevant laws with a view to ensuring, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, that the Amerindian people's rights to their lands, territories and resources are fully recognized and protected and that their free, prior and informed consent is obtained in respect of the adoption of any legislation, policy and/or project affecting their lands or territories and other resources. It also recommends that the State party consider ratifying the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

16. The Committee is concerned at the problems faced by Amerindian people in obtaining their land titles, including delays in the process despite the statutory time frame, and the lack of inspections by relevant authorities on illegal mining and logging in the hinterland areas. It is also concerned at some recent court rulings that support mining activities without obtaining the free, prior and informed consent of the affected communities (art. 1).

17. The Committee recommends that the State party take appropriate measures:

- (a) To make the title granting process easily accessible for the Amerindian communities and more time efficient;
- (b) To strengthen the inspections of mining and logging activities in hinterland areas, including by improving the human and financial capacities of the inspection bodies;
- (c) To ensure that the interpretation and implementation of the Amerindian Act 2006 and other relevant laws take into account the United Nations Declaration on the Rights of Indigenous Peoples.

Unemployment

28. The Committee regrets that the State party did not provide sufficient information, including disaggregated statistical data, on the employment situation. It is concerned that unemployment rates are disproportionately high among youth, women, persons with disabilities, Amerindians and persons living in the hinterland areas. It is also concerned that the measures, including various vocational training programmes, taken by the State party to address the high unemployment of women and youth have not been effective and that there exists a large mismatch between the skills in demand and those in supply (art. 6).

29. The Committee recommends that the State party take all necessary measures to collect disaggregated statistical data to enable assessment of the employment and labour market situations and to review and implement effective employment policies. It also recommends that the State party develop targeted measures, including quota systems and incentives to employers, with a time frame in order to increase employment opportunities for these groups.

Poverty

42. The Committee is concerned at the large percentage of people living in extreme poverty (18.6 per cent) and the disproportionately high poverty rates among people living in the hinterland areas, mainly Amerindian people (73.5 per cent), people living in rural areas, young people and households headed by women (art. 11).

43. The Committee recommends that the State party intensify its efforts to eradicate poverty, including through a comprehensive analysis of the needs of the most disadvantaged and marginalized individuals and groups and the adoption of concrete and targeted measures.

Right to health

50. The Committee is concerned at the limited availability of health-care services, particularly mental health care, and the low quality of health-care services, owing to the lack of trained and qualified health-care professionals in the State party. It is also concerned at:

(a) The disparity in health-care services between urban and rural areas and the lack of availability of health-care services in the hinterland areas;

(b) The still high mortality level of infants and children under 5 years of age, despite the decrease in recent years;

(c) The high and increasing level of maternal mortality;

(d) The epidemic of malaria, tuberculosis and HIV/AIDS, particularly among the Amerindian population;

(e) The limited access to sexual and reproductive health-care services, particularly among Amerindian women and women with disabilities, and the lack of information on sexual and reproductive health, including information on contraceptive methods (art. 12).

51. The Committee recommends that the State party intensify its efforts to improve the availability, accessibility and quality of health-care services, including in the mental health sector. It also recommends that the State party take all necessary measures:

(a) To address the regional disparity in accessing health-care services and to ensure that all health-care posts (or health-care huts) in the hinterland and rural areas are equipped with trained and qualified health-care professionals and essential medicines;

(b) To reduce infant and under-five mortality;

(c) To reduce maternal mortality, including through enhancing prenatal and postnatal care, taking into account the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22 and Corr.1-2);

(d) To combat malaria, tuberculosis and HIV/AIDS and to provide adequate and timely treatment to those affected by those epidemics, with particular focus on the existing gap in the provision of relevant services to Amerindians;

(e) To remove obstacles to access to sexual and reproductive health-care services, including by raising the awareness of health-care professionals on the special needs of indigenous women and women with disabilities, and to enhance information and education on sexual and reproductive health, inter alia, by including them in school curricula in accordance with the evolving capacities of children and adolescents, as well as in informal educational institutions.

Right to education

52. The Committee is concerned at the decreasing enrolment rates and the high dropout rate, particularly of boys, in primary education, and at the low quality of education owing to the shortage of trained and qualified teachers, particularly in the hinterland and rural areas. It is also concerned that children in the hinterland have limited access to school owing to the insufficient infrastructure (arts. 13 and 14).

53. The Committee recommends that the State party intensify its efforts to counter the decreasing enrolment rate and the high dropout rates in primary education. It also recommends that the State party increase the number of trained and qualified teachers, including by training and certifying international volunteers and university students who may be available for primary education, as an interim measure. The Committee further recommends that the State party collect, keep and publish data on education. In that regard, the Committee draws the State party's attention to its general comment No. 13 (1999) on the right to education.

Indigenous languages

The Committee is concerned that some of the indigenous languages, including Warrau and Arawak, are at risk of extinction and that there is insufficient integration of indigenous cultures in school curricula (art. 15).

Access to the Internet

54. The Committee is concerned at the limited access to the Internet and other information and communication technologies, particularly in the hinterland and rural areas (art. 15).

55. The Committee recommends that the State party continue working to expand Internet access, particularly in the hinterland and rural areas. The Committee also recommends that the State party extend assistance to the most disadvantaged and marginalized individuals and groups so as to enable them to access the Internet.

7. Burundi, E/C.12/BDI/CO/1, 16 October 2015

Non-discrimination

15. The Committee is concerned that there is no comprehensive anti-discrimination law applying to all the areas covered by the Covenant. It is also concerned by the lack of legislative and other measures to eliminate discrimination against the Batwa, persons with albinism and persons with disabilities, in particular with regard to ensuring the effective exercise of their economic, social and cultural rights (art. 2, para. 2).

16. The Committee recommends that the State party:

- (a) Enact a comprehensive anti-discrimination law in line with article 2, paragraph 2, of the Covenant and general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights with a view to prohibiting direct and indirect discrimination on any grounds in all the areas covered by the Covenant;
- (b) Guarantee effective remedies for victims of discrimination, including the possibility of redress;
- (c) Prevent and effectively combat —through such means as awareness campaigns and affirmative action —the ongoing discrimination against the Batwa, persons with albinism and persons with disabilities as well as all other disadvantaged or marginalized individuals and groups in order to guarantee their unrestricted exercise of all the rights recognized in the Covenant.

Forced labour

29. The Committee notes with concern the information provided on the continued existence of forced labour in the State party. The Batwa, in particular, continue to be subjected to the customary practice of *ubugererwa* (servitude) even though it has been formally abolished.

30. The Committee calls upon the State party to take specific steps, without delay, to eliminate forced labour, including by way of public information campaigns and by offering stronger protection to victims and bringing those responsible for such practices to justice.

Poverty

43. The Committee is concerned that, despite the launching of strategic frameworks for poverty reduction, much of the population does not enjoy an adequate standard of living. Poverty is highest among the country's most disadvantaged and marginalized groups, which include women, the Batwa and internally displaced persons (art. 11).

44. Bearing in mind its statement on poverty and the Covenant (2001), the Committee recommends that the State party intensify its efforts to combat poverty, especially extreme poverty, by ensuring that targeted social programmes are implemented with a human rights-based approach and are endowed with the necessary resources, giving due attention to the needs of the most disadvantaged and marginalized individuals, families and social groups.

Access to land and security of land tenure

45. The Committee notes that poverty and social inequality in the State party have been exacerbated by unequal access to land and insecurity of land tenure. The Committee is particularly concerned by reports that many Batwa families have been subjected to or are at risk of forced eviction (art. 11).

46. The Committee recommends that the State party:

- (a) Launch, as promptly as possible, a reform of the land tenure system aimed at ensuring rational land use and eliminating existing discriminatory practices, especially with regard to women, the Batwa and internally displaced persons;
- (b) Strengthen guarantees for the independent and impartial operation of the National Land and Property Commission, the Special Court for Land and Property and the Communal Land-Use Office in order to

ensure equitable access to land and adequate security of land rights, in particular for women, the Batwa and internally displaced persons;

(c) Implement effective measures against forced eviction, in line with international human rights standards, and ensure that victims of forced eviction have effective remedies, including restitution of their property and adequate compensation.

Access to health care

51. The Committee is concerned that, despite the State party's efforts to improve access to health services through such means as the medical assistance card, disadvantaged or marginalized individuals and groups, in particular the Batwa and internally displaced persons, continue to encounter obstacles in accessing health services. The Committee is similarly concerned by the quality and availability of health-care services, especially in remote rural areas (art. 12).

52. The Committee recommends that the State party allocate sufficient resources to the health sector and continue its efforts to guarantee the accessibility, availability and quality of health services, in particular in remote rural areas. It further recommends that the State party upgrade its primary health care infrastructure and ensure that hospitals have the necessary medical personnel and essential supplies and drugs.

Education

57. The Committee notes with satisfaction the increase in primary school enrolment, which was the result mainly of the State party's decision to make education available free of charge. The Committee is concerned, however, by:

- (a) The reports that there continue to be indirect costs associated with school attendance, such as payments that parents are required to make which limit access to education, in particular for Batwa children;
- (b) The continued unequal access to education for internally displaced children, children with disabilities and children with albinism;
- (c) The number of children enrolled in primary education who do not finish their schooling;
- (d) The high dropout rate in secondary education, in particular among girls (art. 13);
- (e) The poor quality of instruction owing to the shortage of qualified teachers and the lack of teaching materials and infrastructure.

58. The Committee recommends that the State party take steps to ensure that primary education is indeed provided free of any charge, that it take the necessary steps to ensure access of all children to the education system by encouraging inclusive education for children with disabilities, and that it address as a priority the high dropout rates in primary and secondary education, in particular among girls. It also recommends that the State party improve school quality and infrastructure, in particular in rural areas, and that it ensure that all rural schools have adequate water supply and sanitation, and in particular separate washrooms for boys and girls.

Cultural rights of the Batwa

59. The Committee notes with concern the lack of measures to promote cultural diversity and to encourage the dissemination of Batwa culture and traditions (art. 15).

60. The Committee recommends that the State party take the necessary steps to promote awareness of the cultural heritage of the Batwa and to create favourable conditions for the Batwa to protect, develop, express and disseminate their history, culture, traditions and customs.

8. Morocco, E/C.12/MAR/CO/4, 22 October 2015

Self-determination and natural resources

5. While taking note of the Moroccan Extended Autonomy Initiative, the Committee reiterates its concern about the failure to find a solution to the issue of the right to self-determination of the Non-Self-Governing Territory of Western Sahara. Likewise, the Committee remains concerned about the precarious situation, upon their return, of the Sahraouis refugees displaced by the conflict in Western Sahara, particularly women and children. It is also concerned that the Sahraouis' right to participate in the use and exploitation of natural resources is still not respected (arts. 1 and 25).

6. The Committee recommends that the State party:

(a) Strengthen its efforts, under the auspices of the United Nations, to find a solution to the issue of the right to self-determination for Western Sahara, as established in article 1 of the Covenant, which recognizes the right of all peoples to freely determine their political status and freely pursue their economic, social and cultural development. The Committee recalls that States parties to the Covenant are obligated to promote the realization of the right of self-determination in Non-Self-Governing Territories and to respect that right, in conformity with the provisions of the Charter of the United Nations;

(b) Take measures to ensure that the rights of Sahraouis refugees are respected upon their return. It further recommends that the State party guarantee respect for the principle of the prior, free and informed consent of the Sahraouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources.

The Berm

7. While acknowledging the security concerns invoked by the State party, the Committee is deeply concerned that the Berm, which is fortified by anti-personnel mines and was built by the State party to separate the Moroccan-controlled part of Western Sahara from the rest of the territory, is preventing the Sahraouis from fully enjoying their rights under the Covenant.

8. The Committee recommends that the State party take appropriate steps to enable the Sahraouis to access their land and natural resources and rejoin their families. It also urges the State party to expedite its mine clearance programme along the Berm. The Committee asks the State party to provide, in its next periodic report, detailed information on the enjoyment, by the Sahraouis, of all the rights set out in the Covenant.

Discrimination

13. The Committee remains concerned about: ... (c) The de facto discrimination against Amazighs, especially in terms of access to education and employment (art. 2).

14. The Committee recommends that the State party: ... (c) Take steps to ensure that Amazighs enjoy fully the rights set out in the Covenant, if necessary by adopting special measures....

Poverty

41. While it recognizes the progress made in reducing poverty, the Committee remains concerned about the fact that poverty continues to affect women, children, the Amazighs, the Sahraouis, older persons, persons with disabilities and persons living in rural areas in particular. The Committee is also concerned that resources are neither properly shared nor fairly distributed (art. 11).

42. The Committee recommends that the State party increase its efforts to reduce poverty, in particular by adopting a human rights-based poverty reduction strategy that specifically targets the needs of disadvantaged and marginalized individuals and groups, allocating sufficient financial and other resources to their implementation and ensuring that these resources are fairly distributed among those affected by poverty. In this regard, the Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001).

Cultural rights

49. The Committee takes note of the fact that the Amazigh language has been constitutionally recognized as an official language but finds it regrettable that the draft organic law to implement that recognition has not been adopted to date and that the Amazigh language is not taught at every level of education. The Committee remains concerned about the practical difficulties that the Amazigh community sometimes encounters in registering Amazigh first names and about the fact that very few programmes in Amazigh are shown on public television, despite the efforts of the State party. The Committee also expresses its concern at the fact that the Saharo-Hassani language and culture are not sufficiently supported. Lastly, it notes that considerable efforts are still required to ensure access to culture and science for all (art. 15).

50. The Committee recommends that the State party adopt the draft organic law on the recognition of the Amazigh language as one of the official State languages as soon as possible and redouble its efforts to provide primary, secondary and university education in Amazigh, increase the use of Amazigh on television and lay down definite regulations on the question of Amazigh first names. The Committee further recommends that the State party take measures to guarantee Amazighs and Sahraouis full and unrestricted enjoyment of their

right to take part in cultural life. It also recommends additional measures to protect cultural diversity and permit Amazighs and Sahraouis to preserve, develop, express and disseminate their identity, history, culture, language, traditions and customs. Lastly, the Committee encourages the State party to continue to facilitate access to culture and science for all, including access to the Internet, particularly for persons with disabilities and the poorest sectors of the population. In this regard, the Committee invites the State party to refer to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

9. Kenya, E/C.12/KEN/CO/2-5, 6 April 2016

The Endorois

15. The Committee is concerned that the implementation of the decision of the African Commission on Human and People's Rights (276/2003) relating to the Endorois has been long delayed, despite acceptance of the decision of the Commission. While noting the establishment of the Task Force on the implementation of the decision of the African Commission on Human and Peoples' Rights contained in communication No.276/2003, the Committee regrets that the Endorois are not represented on the Task Force and they have not been sufficiently consulted in the work of the Task Force (art. 1(2)).

16. The Committee recommends that the State party implement, without further delay, the decision of the African Commission on Human and People's Rights (276/2003) and ensure that the Endorois are adequately represented and consulted at all stages of the implementation process. It also recommends that the State party set up a mechanism that will facilitate and monitor the implementation, with active participation of the Endorois. It further recommends that the State party ratify ILO Convention (No. 169) on Indigenous and Tribal Peoples.

Forced evictions

47. The Committee reiterates its concerns that pastoralist communities and persons living in informal settlements are under constant threat of eviction due to the lack of legal security of tenure and that forced evictions continue without prior notice and provision of adequate alternative housing or compensation. It is also concerned that the State party has not yet enacted a legislative framework to recognize and protect communities' right to land and to explicitly prohibit forced evictions and define the circumstances and safeguards subject to which evictions may be carried out, despite the decisions of its own domestic courts (art. 11).

48. The Committee recommends that the State party take concrete steps to guarantee security of tenure for all, including residents of informal settlements. It also recommends that the State party prioritize the enactment of the Community Land Bill and the Evictions and Resettlement Bill. The Committee further recommends that the State party implement judicial orders that provide remedies to victims of forced evictions as a matter of priority and adopt a national-level moratorium on mass evictions until adequate legal and procedural safeguards are in place. The Committee draws the attention of the State party to its general comment No. 7 (1997) on the right to adequate housing and the Basic Principles and Guidelines on Development-Based Evictions and Displacement (A/HRC/4/18 (2007)).

10. Namibia, E/C.12/NAM/CO/1, 23 March 2016

Human rights impact assessment

13. While noting the publication in 2012 of the notice No. 29 listing the activities subject to environmental clearance, the Committee expresses concern at the absence of legislation requiring a human rights impact assessment for activities such as waste management, mining and quarrying activities, land use and development activities, among others. (art. 2(1))

14. The Committee recommends that the State party enact legislation requiring a priori and a posteriori assessment of the impact of activities similar to those enumerated in the 2012 notice No. 29, including on the right to work, the right to health, the right to an adequate standard of living and cultural rights of the affected individuals and groups, before the issuance of clearance certificates.

Rights of indigenous peoples

15. While noting that the State party has expressed its intention to ratify ILO's Indigenous and Tribal Peoples Convention No. 169, the Committee is concerned that the State party's legislation does not recognize communities that have self-identified as indigenous peoples. The Committee is also concerned that indigenous peoples' traditional use and occupation of land are not recognised and protected. (arts. 1(2) and 15)

16. The Committee recommends that the State party:

- (a) adopt a law recognizing indigenous peoples on the basis of self-identification and protecting their rights, including the right to ownership of the lands which they traditionally occupy or use as sources of livelihood and the respect of their free, prior and informed consent in decision-making processes affecting their rights and interests;
- (b) ensure the respect of this principle in development projects, such the construction of a dam in the Baynes Mountains;
- (c) implement the recommendations formulated by the Special Rapporteur on the rights of indigenous peoples in Namibia, following his visit in 2012 (A/HRC/24/41/Add.1);
- (d) expedite the ratification of ILO Indigenous and Tribal Peoples Convention No. 169.

San communities

17. The Committee notes with concern that the San communities remain disadvantaged in the enjoyment of economic, social and cultural rights, in spite of the implementation of the San development project since 2005. (art. 2(2))

18. The Committee recommends that the State party act upon the findings of the reassessment of the Status of the San in Namibia, especially as regards the design and implementation of an integrated strategy, specific policies on disadvantaged communities, and the allocation of the necessary resources. The Committee recommends that the San communities be consulted and involved in the formulation of programmes and implementation of projects benefiting them. The Committee also recommends that the State party monitor the impact of measures taken on the enjoyment of the Covenant rights by the San communities.

Land rights

47. Without prejudice to the overall objective of the land reforms and the 'willing seller - willing buyer' approach, the Committee is concerned that the land reform programme of the State party has not addressed poverty and that security of tenure remains an enduring challenge as a large number of individual and communal land owners are without title. The Committee is also concerned that many resettled farmers have not able to restore livelihoods and earn an adequate standard of living, even when support has been provided. Moreover, the Committee is concerned that the Communal Land Reform Act has had little effect on women's access to land.

48. The Committee recommends that the State party take account of the following in the implementation of the resolutions adopted by the Special Cabinet Committee on Land and Related Matters:

- (a) Streamline land registration procedures and render them affordable and accessible, including in rural and remote areas, and proactively reach out to register communal lands;
- (b) Work with indigenous peoples on titling of their traditional lands and securing their rights to these lands, to the extent compatible with the rights of others;
- (c) Increase the resources allocated to the acquisition of land for resettlement;
- (d) Engage in meaningful consultation processes with concerned individuals and groups prior and during the resettlement;
- (e) Assist resettled farmers beyond the provision of infrastructure such as fencing and land servicing, in restoring their livelihoods and lifting them out of poverty, and monitor the situation of resettled farmers;
- (f) Ensure, in the case of indigenous peoples, that the resettled groups lead and design the process and be provided with support during the rebuilding of their communities;
- (g) Ensure that the Communal Land Reform Act is implemented so that widows can remain on communal land allocated to their deceased husbands; and
- (h) The Land Bill 2010 be enacted in order to enhance the protection of communal lands; and

- (i) Urgently address the excessive prices of land, including in urban areas.

Cultural rights

73. While noting's plan to introduce teaching in home tongue, the Committee regrets the lack of information on other measures taken to promote the cultural rights of the groups contributing to the State party's cultural diversity, especially in light of reports of discriminatory attitudes towards children from certain groups. (art. 15)

74. The Committee recommends that the State party (a) promote the culture of the various groups that make up its population, including through the teaching of their histories and culture in school, (b) promote the preservation of the traditional way of life of the various ethnic and language groups, (c) combat prejudice and eliminate discrimination, and (d) provide, not only teaching in home tongue, but also curricula and school environment that are culturally appropriate. The Committee refers the State party to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

11. Canada, E/C.12/CAN/CO/6, 23 March 2016

4. The Committee notes with appreciation the measures taken by the State party to enhance the promotion and protection of economic, social and cultural rights, including:

- (a) The repeal of section 67 of the Canadian Human Rights Act in 2008, thus enabling people to file complaints to the Canadian Human Rights Commission regarding discrimination resulting from the application of the Indian Act;
- ...
- (c) The State party's decision in 2015 to establish a national inquiry into murders and disappearances of indigenous women and girls;
- (d) The State party's commitment to implement the UN Declaration on the Rights of Indigenous Peoples (2007)....

Domestic application of the Covenant

5. The Committee is concerned that, despite certain promising developments and the Government's commitment to review its litigation strategies, economic, social and cultural rights remain generally non-justiciable in domestic courts. The Committee is also concerned at the limited availability of legal remedies for victims in the event of Covenant rights' violation, which may disproportionately impact disadvantaged and marginalized groups and individuals, including homeless persons, indigenous peoples and persons with disabilities.

6. The Committee recommends that the State party take the necessary legislative measures to give full effect to the Covenant rights in its legal order, and ensure that victims have access to effective remedies. The Committee recommends that the State party implement its commitment to review its litigation strategies in order to foster the justiciability of the economic, social and cultural rights. The State party should engage civil society and organizations of indigenous peoples in this revision with a view to broadening the interpretation of the Canadian Charter of Rights and Freedoms, notably sections 7, 12 and 15, to include economic social and cultural rights, and thus ensure the justiciability of Covenant rights. The Committee also recommends that the State party improve human rights training programmes in order to ensure better knowledge, awareness and application of the Covenant, in particular among the judiciary, law enforcement and public officials. The Committee refers to its general comments No. 3 (1990) on the nature of States parties' obligations, and No. 9 (1998) on the domestic application of the Covenant.

Free, prior and informed consent of indigenous peoples

13. The Committee is concerned that the right to free, prior and informed consent of indigenous peoples to any change to their lands and territories is not adequately incorporated in domestic legislation and not consistently applied by the State party. The Committee, acknowledging the State party's statement that this issue will be revised by the new Government, remains concerned about the lack of formal mechanisms and

processes that enable meaningful consultation with indigenous peoples, particularly in the context of the operation of extractive industries.

14. The Committee recommends that the State party fully recognize the right to free, prior and informed consent of indigenous peoples in its laws and policies and apply it in practice. In particular, it recommends that the State party establish effective mechanisms that enable meaningful participation of indigenous peoples in decision-making in relation to development projects being carried out on, or near, their lands or territories. The Committee also recommends that the State party effectively engage indigenous peoples in the formulation of legislation that affects them.

Business and economic, social and cultural rights

15. The Committee is concerned that the conduct of corporations registered or domiciled in the State party and operating abroad are, on occasions, negatively impacting on the enjoyment of Covenant rights by local populations. The Committee is also concerned about the limited access to judicial remedies before courts in the State party by victims and that existing non-judicial remedial mechanisms, such as the Office of the Extractive Sector CSR Counsellor have not always been effective. The Committee is further concerned about the lack of impact assessments explicitly taking into account human rights prior to the negotiation of international trade and investments agreements.

16. The Committee recommends that the State party strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in their activities abroad, including by requiring these corporations to conduct human rights impact assessments prior to making investment decisions. It also recommends that the State party introduce effective mechanisms to investigate complaints filed against these corporations, and adopt the necessary legislative measures so as to facilitate access to justice before domestic courts by victims of these corporations' conduct. The Committee further recommends that the State party ensure that trade and investment agreements negotiated by Canada recognize the primacy of Canada's international human rights obligations over investors' interests, so that the introduction of investor-State dispute settlement procedures shall not create obstacles to the full realization of Covenant rights.

Indigenous peoples

19. The Committee is concerned, in spite of the pledge made by the State party to address the situation of indigenous peoples, about the persisting socio-economic disparities between indigenous and non-indigenous peoples, and by disparities in relation to poverty prevalence and access to basic rights, including housing, education and health-care services. The Committee is also concerned about the decrease in the already insufficient funding allocated to indigenous peoples living both on and off reserves, a situation which is further exacerbated by the jurisdictional disputes between federal and provincial governments on funding to indigenous peoples (art 2, para 2).

20. The Committee recommends that the State party, in consultation with indigenous peoples:

- (a) Implement and strengthen its existing programmes and policies to improve the enjoyment of Covenant rights by indigenous peoples;
- (b) Increase federal and provincial funding to indigenous peoples commensurate to their needs, and work out solutions to ensure coordinated and accountable implementation of indigenous peoples' rights by all jurisdictions;
- (c) Implement the recommendations put forward by the Special Rapporteur on the Rights of Indigenous Peoples following his mission to Canada (2013);
- (d) Promote and apply the principles enshrined in the UN Declaration on the Rights of Indigenous Peoples;
- (e) Consider ratifying the ILO Indigenous and Tribal Peoples Convention (1989) (no. 169).

Equality between women and men

21. The Committee is concerned at the discrimination against women in the State party in many areas of economic, social and cultural rights. ... The Committee is further concerned about the remaining gender-based discriminatory provisions in the Indian Act concerning Indian status classification (art. 3).

22. The Committee recommends that the State party develop and implement a comprehensive national gender equality policy to address the structural factors leading to gender inequality, in close cooperation with

provinces and territories as well as in consultation with civil society organizations. The Committee also recommends that the State party: ... (b) Repeal the remaining discriminatory provisions in the Indian Act....

Unemployment

23. The Committee is concerned that certain disadvantaged and marginalized groups and individuals continue to be disproportionately affected by unemployment, including persons with disabilities, African-Canadians, youth, recent immigrants, minorities, and indigenous peoples (art. 6).

24. The Committee recommends that the State party step up its efforts to address unemployment faced by disadvantaged and marginalized groups and individuals. The Committee recommends that the State party strengthen the enforcement and monitoring of the Employment Equity Act and take all appropriate measures to strengthen and expand its coverage. The Committee further recommends that the State party take measures to ensure the adoption of employment equity legislative and policy measures in all jurisdictions, in collaboration with provinces and territories.

Violence against women

33. The Committee is concerned about the persistence of violence against women in the State party which is particularly prevalent among indigenous women and girls, and further exacerbated by the economic insecurity of women. The Committee is also concerned that in some cases owing to the inadequacy, and insufficient number, of shelters combined with women's inability to afford housing and the inadequate social assistance, women victims of violence are unable to escape violent situations (arts. 10 and 11).

34. The Committee recommends that the State party address violence against women and girls in a holistic manner. Inter alia, the State party is encouraged to study the link between poverty, ethnic origin and vulnerability to violence, and take effective measures aimed at preventing and eradicating violence against women and girls. The Committee also recommends that the State party step up its efforts to protect victims of violence, including by ensuring the availability of sufficient number of adequate shelters for victims of violence as well as long-term housing solutions, and adequate social assistance.

Children in foster care

35. The Committee is concerned at the higher likelihood that indigenous children be placed in child care institutions, which is further exacerbated by the inadequate funding to child welfare services to indigenous peoples living on reserves. The Committee is also concerned that African-Canadian children are overrepresented in child care institutions (art. 10).

36. The Committee recommends that the State party:

- (a) Review and reinforce its funding to family and child welfare services for indigenous peoples living on reserves, and fully comply with the decision of the Canadian Human Rights Tribunal (January 2016) concerning the provision of family child welfare services to First Nations children and families living on reserves;
- (b) Implement the recommendations of the Truth and Reconciliation Commission (2015) with regard to the Indian Residential Schools;
- (c) Take effective measures to address the root causes of overrepresentation of African-Canadian children in care institutions.

Poverty

37. Considering the advanced level of development of the State Party, the Committee is concerned about the significant number of people living in poverty. It is further concerned that indigenous peoples, persons with disabilities, single mothers, as well as minority groups continue to experience higher rates of poverty and at the limited effectiveness of measures taken to address this (art. 11).

38. The Committee recommends that the State party take all necessary measures to combat poverty more effectively while paying particular attention to groups and individuals that are more vulnerable to poverty. The Committee recommends that the State party in collaboration with provinces, territories, and indigenous peoples and consultation with civil society organizations, implement a human-rights based national anti-

poverty strategy, which includes measureable goals and timelines as well as independent monitoring mechanisms. The Committee further recommends that the State party ensure that provinces and territories' anti-poverty policies are human-rights based and aligned with the national Strategy.

Adequate standard of living

43. The Committee is concerned that indigenous peoples, notably the Inuit and First Nations, encounter poor housing conditions, including overcrowding, that among others generate health challenges for the concerned communities. The Committee is also concerned at the restricted access to safe drinking water and to sanitation by the First Nations as well as the lack of water regulations for the First Nations living on reserves (art. 11).

44. The Committee urges the State party to intensify its efforts to address indigenous peoples' housing crisis, in consultations with indigenous governments and organizations. The Committee also urges the State party to live up to its commitment to ensure access to safe drinking water and to sanitation for the First Nations while ensuring their active participation in water planning and management. In doing so, the State party should bear in mind not only indigenous peoples' economic right to water but also the cultural significance of water to indigenous peoples.

Right to food

47. The Committee welcomes the information provided by the delegation on the development of a national food policy. The Committee however remains concerned at the rates of food insecurity in the State party and the increased reliance on food banks, particularly in Northern Canada, and about the deficiencies of the Nutrition North Food programme (art. 11).

48. The Committee recommends that the State party take effective measures to address the recommendations put forward in the report of the Special Rapporteur on the Right to Food (2012). The Committee recommends that the State party ensure the Food Policy is human-rights based and is developed in close collaboration with provinces, territories and indigenous peoples as well as in consultations with civil society organizations. The Committee recommends that the State party pay particular attention to address food insecurity in Northern Canada, and take effective measures to protect access to traditional food. To this end, the State party is encouraged to review the Nutrition North Canada programme with due attention to the necessary transparency and accountability provisions, and extend the programme's coverage so as to reach those most affected by food insecurity.

Right to health

49. The Committee is concerned that undocumented immigrants in the State party are denied access to healthcare. The Committee is also concerned that drug users face barriers in access to health care services due to stigma and the punitive approach of the 2007 National Anti-Drug Strategy, which has had negative consequences on health of drug users and discriminatory effects on disadvantaged and marginalized groups and individuals, such as African-Canadians, indigenous peoples and women (art. 12).

50. The Committee recommends that the State party ensure access to the Interim Federal Health Program without discrimination based on immigration status, in line with the Human Rights Committee's recommendation of 2015 (CCPR/C/CAN/CO/6, para 12). The Committee also recommends that the State party ensure that its National Drug Law and the National Anti-Drug Strategy incorporate a public-health approach and be harm-reduction based, and take effective measures to facilitate access to appropriate health care, psychological support services and rehabilitation for drug users.

Climate change and environmental protection

53. The Committee is concerned that climate change is negatively affecting the enjoyment of Covenant rights by indigenous peoples. The Committee is also concerned that regulations governing environmental protection have been weakened in recent years, notably by the enactment of the Budget Bill C-38 (2012) and in the context of extractive industries (art. 12).

54. The Committee recommends that the State party address the impact of climate change on indigenous peoples more effectively while fully engaging indigenous peoples in related policy and programme design and implementation. The Committee also recommends that the State party ensure that the use of non-conventional fossil energies is preceded by consultation with affected communities as well impact assessment processes. It also recommends that the State party pursue alternative and renewable energy production. The Committee recommends that the State party further strengthen its legislation and regulations, in accordance with its international human rights obligations, and ensure that environmental impact assessments are regularly carried out in the context of extractive industry activities.

Right to education

55. The Committee is concerned by the continuous lower educational and academic achievements by indigenous and African-Canadian children. The Committee is particularly concerned by the latter's high drop-out rates at all school levels. The Committee is also concerned about reported barriers for children whose parents have no legal status in accessing schooling (arts. 13).

56. The Committee recommends that the State party reinforce its efforts to address the long-standing issues faced by indigenous and African-Canadian children in accessing and completing primary and secondary school. In doing so, the Committee recommends that the State party develop interventions, in consultation with the affected communities, aimed at combating school drop-out, including by putting an end to the unnecessary expelling and suspending measures of pupils. The Committee further recommends the State party ensure access to free compulsory schooling for all children, without discrimination.

Post-secondary education

57. The Committee is concerned at the increasing tuition fees in post-secondary education combined with decreasing governmental funding, which disproportionately impacts students and families with low income as well as indigenous peoples (art 13).

58. The Committee recommends that the State party take steps to increase the budget allocated to publicly funded post-secondary education system, with a view to facilitating access to higher education to everyone regardless of their socio-economic or ethnic background.

Cultural rights

59. The Committee is concerned that many indigenous languages are endangered, despite some measures taken. It is also concerned about the inadequate funding and promotion of African art and culture, that adds to the structural discrimination faced by this group in the enjoyment of economic, social and cultural rights in the State party (art. 15).

60. The Committee recommends that the State party step up the efforts needed to promote the preservation and use of indigenous languages, including by ensuring that provinces and territories teach and use indigenous language at schools, where appropriate. The Committee recommends that the State party promote, and increase the funding to, the art and culture of African Canadians, and to this end, use the International Decade for People of African Descent, proclaimed by General Assembly, as a vehicle to promote and protect the human rights of this group.

12. France, E/C.12/FRA/CO/4, 13 July 2016

Corporate social responsibility

12. The Committee takes note with regret of the delay in the adoption of the bill on corporate due diligence throughout the supply chain, particularly inasmuch as Act No. 2014-773 of 7 July 2014 on development policy and international solidarity does not impose any binding obligation upon business enterprises in that regard (art. 2 (1)).

13. The Committee urges the State party to take measures to prevent business enterprises domiciled in its territory or under its jurisdiction from committing human rights violations abroad. In that connection, the Committee encourages the State party to expedite the adoption of a law which would impose a binding obligation on such enterprises to fulfil their duty of care with respect to human rights and would guarantee

victims of human rights violations resulting from activities of these enterprises abroad with access to redress in the courts of the State party.

Recognition of minorities

14. While noting that the State party is of the view that the recognition of minority groups or collective rights is incompatible with its Constitution, the Committee reaffirms that the principle that all persons are equal before the law and the prohibition of discrimination are not always sufficient to ensure that members of minority groups are able to exercise their economic, social and cultural rights. Moreover, the Committee considers that the proper recognition of ethnic and cultural minorities does not undermine cohesiveness or national unity but, on the contrary, reinforces them (art. 2 (2)).

15. The Committee recommends that the State party consider revisiting its position regarding minority groups and officially recognize the need to protect the cultural rights of all minority groups. The Committee therefore reiterates the recommendation which it made in that connection in its preceding concluding observations (E/C.12/FRA/CO/3).

The right to education in overseas departments and regions and overseas communities

53. The Committee takes note with concern of the difficulties encountered in exercising the right to education in overseas departments and regions and overseas communities. In particular, the Committee observes that the long distances that indigenous children in French Guiana must travel to school limits their access to education or prompts them to drop out of school. The Committee is also concerned by the fact that many children have never attended school and by the high dropout rate in Mayotte. In addition, the Committee is concerned by the fact that little effort has been made to adapt the content of school curricula to overseas cultural environments.

54. The Committee requests the State party to adopt a rights-based approach to the promotion of education in overseas departments and regions and overseas communities and to place priority on the availability, accessibility, quality and adaptability of school instruction. It urges the State party, inter alia, to:

- (a) Establish a detailed package of measures for achieving the full realization of the principle of compulsory primary education that is free of charge for all, especially in Mayotte;
- (b) Remove barriers to access to education and expand the availability of schooling in reasonably accessible locations by providing transportation for schoolchildren and by developing support facilities and accommodations for children who leave their village in order to continue their studies;
- (c) Include the effort to discourage students from dropping out of school as one of the priorities in the education module of the Mayotte 2025 strategy paper;
- (d) Reinforce the teaching of regional languages and instruction in those languages in the overseas departments and regions and overseas communities;
- (e) Develop teaching approaches that are suited to the needs of students within their own social and cultural environment and to the needs of local communities.

55. The Committee invites the State party to refer to its general comment No. 13 (1999) on the right to education.

Cultural and linguistic rights

56. While mindful of the adoption of policies for the promotion of regional languages and the amendment in 2008 of article 75 (1) of the Constitution, which now states that “regional languages form part of the heritage of France”, the Committee finds it regrettable that the State party considers that those policies and the constitutional amendment do not constitute the recognition of a right or freedom for regional or linguistic groups or the indigenous peoples of overseas territories (art. 15).

57. The Committee recommends that the State party recognize and promote the right of members of regional or minority linguistic groups and, in overseas departments and regions and overseas communities, of indigenous peoples to use their own language as one aspect of their right to take part in cultural life, not only in private, but also in public, in areas where regional languages are traditionally spoken. The Committee wishes to draw the State party’s attention to paragraphs 32 and 33 of its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

13. Honduras, E/C.12/HND/CO/2, 11 July 2016

Protection of human rights defenders

9. The Committee welcomes the State party's acknowledgement of the role played by human rights defenders and takes note of the passing into law of the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials. It is concerned, however, that some of that law's provisions do not guarantee effective protection for human rights defenders and that the resources allocated are not sufficient to ensure the law's effective implementation. The Committee is alarmed by the defamation of, threats made against and, especially, the murder of human rights defenders, including those who defend economic, social and cultural rights, and leaders of indigenous and Afro-Honduran groups; it is especially alarmed by the recent murders of Berta Cáceres and René Martínez.

10. The Committee recommends that the State party:

- (a) Investigate all complaints and attacks on the life or physical integrity of human rights defenders thoroughly and effectively, including those who defend economic, social and cultural rights, to which end the Committee recommends that it take specific action such as establishing a special prosecutor's unit within the Public Prosecution Service to investigate such crimes, allocating appropriate human, financial and technical resources for this purpose. The Committee also recommends the State party investigate the recent murders of Berta Cáceres and René Martínez, duly punish those found responsible and widely disseminate the results of the investigations;
- (b) Take effective and prompt action to prevent any and all acts of violence against human rights defenders and provide effective protection of their life and personal integrity;
- (c) Ensure that the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials is effectively implemented, including by allocating appropriate human, financial and technical resources for this purpose;
- (d) Investigate any and all acts of harassment, bullying or defamation of human rights defenders in connection with the performance of their functions and organize information campaigns to raise awareness about 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 of intimidation, threats or reprisals of any kind.

Rights of indigenous peoples

11. The Committee welcomes the information provided on the drafting of the framework legislation on prior, free and informed consultation, but it is concerned by reports that indigenous peoples were not properly involved in that drafting process. It is also concerned by reports of failure to respect indigenous peoples' right of prior consultation with a view to obtaining their free, prior and informed consent in respect of decision-making processes that could have an impact on them and that often their views are not taken into account when concessions are granted for the exploitation of natural resources or other development projects. Notwithstanding the State party's efforts in demarcating indigenous lands, the Committee notes with concern that there is limited protection of indigenous peoples' right to dispose freely of their lands and natural wealth and resources (art. 1 (2)).

12. The Committee recommends that the State party:

- (a) Launch a broad-based process of consultation with indigenous peoples to involve them in a participatory way in the preparation of the draft framework law on prior and informed consultation;
- (b) Ensure that the aforementioned legislation is in compliance with best international standards, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO) and the United Nations Declaration on the Rights of Indigenous Peoples;
- (c) Ensure that indigenous peoples are regularly consulted with a view to obtaining their free, prior and informed consent in respect of decision-making processes that may affect their ability to exercise their economic, social and cultural rights, and ensure that their views are respected;
- (d) Take additional measures to safeguard the right of indigenous peoples to dispose freely of their lands, territory and natural resources, including through legal recognition and protection as necessary.

Discrimination

21. The Committee is concerned that the State party does not yet have a comprehensive anti-discrimination framework reflecting all the criteria stipulated in the Covenant. It is further concerned by the lack of comprehensive and effective measures for fighting discrimination against indigenous peoples,

Hondurans of African descent and persons living with HIV/AIDS and discrimination on grounds of sexual orientation or gender identity (art. 2).

22. The Committee recommends that the State party expedite the adoption of comprehensive anti-discrimination legislation that ensures adequate protection against discrimination consistent with article 2 of the Covenant, bearing in mind as well the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, and that in particular it should:

- (a) Explicitly include all the prohibited grounds for discrimination listed in article 2 of the Covenant and in the Committee's general comment No. 20 (2009);
- (b) Eliminate from its domestic legal order any provision that might be discriminatory on grounds of sexual orientation or gender identity or impede the full enjoyment of economic, social and cultural rights by lesbian, gay, bisexual or transgender persons;
- (c) Define direct and indirect discrimination in a manner that is consistent with its obligations under the Covenant;
- (d) Prohibit discrimination in both the public and the private spheres;
- (e) Implement effective legal and administrative arrangements to provide protection against discrimination, including by establishing provisions that allow for reparation in cases of discrimination;
- (f) Take all steps necessary to prevent and combat ongoing discrimination against all disadvantaged or marginalized persons or groups, including through awareness campaigns, so that those persons and groups may fully exercise their Covenant rights.

Poverty

39. The Committee is concerned by the continuing high rates of poverty and extreme poverty in the State party, especially among indigenous peoples, Hondurans of African descent and persons living in rural areas. It is also concerned by the continued inequality in income and wealth in the State party (art. 11).

40. Bearing in mind its 2001 statement on poverty and the International Covenant on Economic, Social and Cultural Rights, the Committee recommends that the State party:

- (a) Step up its efforts to fight poverty, especially extreme poverty, by adopting a national action plan for poverty reduction that includes a human rights perspective, pays due attention to the differences and gaps that exist between urban and rural areas and is sufficiently resourced;
- (b) Adopt effective measures to address inequality, bearing in mind the needs of the most disadvantaged and marginalized sectors of society, in particular low-income groups, indigenous peoples, Hondurans of African descent and persons living in rural areas.

Right to food

43. The Committee notes with concern that, notwithstanding the efforts made by the State party, rates of undernutrition, particularly among indigenous peoples, and of child malnutrition continue to be very high (art. 10).

44. The Committee recommends that the State party redouble its efforts to safeguard the right to adequate food and strengthen its initiatives to provide an effective response to the situation of food insecurity and child malnutrition, particularly in rural areas, by establishing clear objectives with precise timelines and appropriate mechanisms to evaluate the progress of such initiatives. The Committee encourages the State party to take these steps in collaboration with civil society and campesino organizations. 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, adopted by the Food and Agriculture Organization of the United Nations (FAO).

Exploitation of natural resources

45. The Committee notes with concern the information received about the negative impact generated by some firms' natural-resource exploitation projects, which are causing 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, in particular of indigenous and Afro-Honduran peoples (arts. 1, 11 and 12).

46. 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 of indigenous or Afro-Honduran peoples;

- (b) Ensure that communities, including of indigenous or Afro-Honduran peoples, affected by the exploitation of natural resources in their territory are consulted, receive compensation for damages or losses incurred and receive a share of the profits from said activities.

59. The Committee requests the State party to disseminate the present concluding observations broadly among all sectors of Honduran society, in particular among indigenous peoples and Hondurans of African descent, public officials, judicial authorities, legislators, lawyers and civil society organizations, and to inform the Committee, in its next periodic report, on the measures taken to implement the recommendations made herein. The Committee also encourages the State party to include civil society organizations in the national-level discussions to be held prior to the submission of the next report.

14. Sweden, E/C.12/SWE/CO/6, 14 July 2016

3. The Committee welcomes the legislative, institutional and policy measures taken to promote economic, social and cultural rights in the State party, including: (a) The amendment to the constitutional law (Instrument of Government) which established that the Sami constitute “a people”, in 2011....

Sami land rights

13. The Committee is concerned that the Sami people still encounter obstacles to the full enjoyment of their indigenous rights that include access to their ancestral lands and maintenance of their traditional ways of living. This situation is exacerbated by the increase in extractive and development projects being carried out on or near to Sami lands (arts. 1 and 2).

14. The Committee recommends that the State party redouble its efforts to resolve the remaining disputes related to Sami lands. In particular, the Committee recommends that the State party:

- (a) Ensure that all Sami, including non-reindeer-herding Sami, enjoy equal access to water and land, and, to that end, that it introduce the necessary legislative changes to avoid unnecessary distinctions among the Sami people in such access;
- (b) Reconsider its position on the burden of proof in court cases concerning Sami land rights with a view to assisting Sami in providing the necessary evidence and thus strengthening their ability to claim their rights effectively, and undertake to further facilitate Sami access to legal aid;
- (c) Ensure, in law and in practice, that the necessary efforts are made to obtain the free, prior and informed consent of all Sami people on decisions that affect them, and provide legal assistance in that regard;
- (d) Review relevant legislation, policies and practices that regulate activities that may have an impact on the rights and interests of the Sami people, including development projects and the operations of extractive industries, and in particular the Minerals Act, the Minerals Strategy and the Environmental Code;
- (e) Expedite the negotiations leading to the adoption of the Nordic Sami Convention, and in case of further delays adopt the necessary legal solutions at the domestic level;
- (f) Consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Sami Parliament

15. The Committee, while welcoming the State party’s efforts to increase resources allocated to the Sami Parliament, remains concerned about the Sami Parliament’s limited powers, especially on issues related to land rights.

16. The Committee recommends that the State party continue increasing the resources allocated to the Sami Parliament, which are necessary in order for it to discharge its role effectively. The Committee also recommends that the State party follow up on the decision voted by the Sami Parliament in 2014 on establishing a truth commission on the treatment of the Sami people throughout the history of Sweden.

Minority and indigenous languages

45. The Committee is concerned about the limited educational opportunities available to indigenous children and children belonging to minorities to achieve proficiency in their mother tongue. The Committee is also concerned at the shortage of teachers of indigenous and minority languages (arts. 13 and 14).

46. The Committee recommends that the State party take immediate steps to provide indigenous children and children belonging to minorities with educational opportunities that allow them to develop their mother

tongue skills. The Committee also recommends that the State party broaden the access to bilingual education in areas populated by indigenous peoples and minority groups, and that it increase the availability of Sami and minority language teachers, including by substantially increasing the resources for training teachers in national minority languages.

15. Costa Rica, E/C.12/CRI/CO/5, 21 October 2016

Rights of indigenous peoples

8. The Committee is concerned about the failure to consistently respect the right of indigenous peoples to prior consultation with a view to obtaining their free, prior and informed consent in respect of decision-making processes that may affect their ability to exercise their rights, in particular their economic, social and cultural rights. The Committee is also concerned that the bill on the autonomous development of the indigenous peoples has not yet been passed into law and that, although the State has recognized indigenous territories, in practice many of those territories are occupied by non-indigenous persons, a situation which has given rise to serious conflicts (art. 1).

9. The Committee recommends that the State party:

- (a) Ensure that indigenous peoples are regularly consulted with a view to obtaining their free, prior and informed consent in respect of decision-making processes that may affect their ability to exercise their economic, social and cultural rights;
- (b) Expedite discussions in the Legislative Assembly on the bill on the autonomous development of the indigenous peoples and set a specific time frame for the speedy enactment of the bill;
- (c) Ensure and protect the right of indigenous peoples to own, use, develop and control the lands, territories and natural resources that they possess, including through such legal recognition and protection as may be necessary, and ensure that lands occupied by non-indigenous persons are returned to them.

18. While the Committee welcomes the adoption of the national policy and action plan for a society free from racism, racial discrimination and xenophobia, it remains concerned about continuing discrimination against certain marginalized and disadvantaged groups (art. 2).

19. The Committee recommends that the State party take the necessary measures to ensure the effective implementation of the national policy and action plan for a society free from racism, racial discrimination and xenophobia, including through the allocation of adequate human, technical and material resources. The Committee urges the State party to increase its efforts to prevent and combat continuing discrimination, in particular against members of indigenous peoples, persons of African descent, persons with HIV or AIDS, migrants, asylum seekers and refugees, including by carrying out awareness-raising campaigns with a view to ensuring the full exercise of the rights recognized under the Covenant, particularly access to employment, social security, health care and education.

Unemployment

25. The Committee is concerned that, despite the State party's efforts, unemployment and underemployment are high and disproportionately affect young persons, women, persons with disabilities, members of indigenous peoples, persons of African descent, migrants, asylum seekers and refugees (art. 6).

26. In the light of its previous recommendation (see E/C.12/CRI/CO/4, para. 39), the Committee urges the State party to intensify its efforts to bring down the high unemployment rates by, for instance, ensuring that the national employment and production strategy tackles the main causes of unemployment, includes a plan of action with specific targets and focuses on groups that are disproportionately at risk of unemployment. The Committee recommends that priority continue to be given to programmes for good quality technical and professional instruction and training that are adapted to the needs of the job market and take into consideration the needs of the most marginalized and disadvantaged persons and groups.

Poverty and inequality

39. The Committee is concerned that the measures taken to combat poverty have not been sufficiently effective in reducing the levels of poverty and extreme poverty in recent years or in tackling the rising levels of inequality that affect the most disadvantaged and marginalized groups (art. 11).

40. The Committee recommends that the State party:

- (a) Ensure that the National Poverty Reduction Strategy contains specific targets, is implemented using a human rights-based approach, is allocated sufficient resources for its implementation and pays due attention to existing disparities and gaps between different social groups;
- (b) Take effective steps to substantially reduce the inequality gap, taking into account the needs of the most disadvantaged and marginalized social sectors in both rural and urban areas and of indigenous peoples and persons of African descent in particular.

41. The Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (2001) (E/C.12/2001/10).

Cultural rights

62. The Committee notes with concern that the measures taken to respect the cultural diversity of indigenous peoples and Afro-descendant populations and to foster the use of indigenous languages are still limited. It is also concerned that both the culture of indigenous peoples and Afro-descendant populations and the use of indigenous languages are not encouraged sufficiently, particularly in the area of education (art. 15).

63. The Committee recommends that the State party:

- (a) Take the necessary measures to strengthen the protection of cultural rights and respect for cultural diversity, including more effective implementation of the bilingual intercultural education system;
- (b) Create favourable conditions for indigenous peoples and Afro-descendant populations to preserve, develop, express and disseminate their identity, history, culture, languages, traditions and customs.

16. Philippines, E/C.12/PHL/CO/5-6, 26 October 2016

Data collection

7. The Committee is concerned at the lack of reliable data, including in the national census, particularly relating to indigenous peoples, persons with disabilities, and people living in poverty.

8. The Committee recommends that the State party take all measures necessary to review and improve its data collection system, including its national census, with a view to collecting comprehensive, reliable and disaggregated data in order to enable the assessment of the level of enjoyment of Covenant rights, particularly by disadvantaged and marginalized individuals and groups, including indigenous peoples, persons with disabilities, and people living in poverty. Such data are required in order to track progress in the realisation of these rights and to design effective and targeted measures to increase their enjoyment.

Human rights defenders

11. The Committee is deeply concerned at the continuing cases of harassment, disappearance, threats of killing and killing of human rights defenders, despite the adoption in 2012 of Administrative Order No. 35 to address extra-judicial killings. It is also concerned at the low level of investigation, prosecution and convictions of such cases.

12. The Committee urges the State party to take all measures necessary to protect human rights defenders, including trade union activists, defenders of the urban poor, indigenous activists and peasant activists, from killing and all forms of violence. It also urges the State party to ensure a safe and favourable environment supportive of the work of these defenders to promote and protect economic, social and cultural rights. It also recommends that the State party step up its efforts to promptly and thoroughly investigate all reported cases of harassment, disappearance and killing of human rights defenders and bring the perpetrators to justice.

Indigenous peoples

13. While noting the efforts made by the State party to protect the rights of indigenous peoples, the Committee is concerned at:

- (a) The conflicts between the protection of the ancestral lands of indigenous peoples under sections 5 and 56 of the 1997 Indigenous Peoples' Rights Act (IPRA) and the 1995 Mining Act as well as the 1974 Forestry Reform Code of the Philippines, and the delay in adoption the National Land Use Bill;
- (b) The unsatisfactory implementation of the 1997 IPRA as regards the demarcation and registration of indigenous peoples' territories;

- (c) The limited mandate and capacity of the National Commission of Indigenous Peoples and the doubts that have been expressed concerning its ability to function as a truly independent body for the promotion and protection of the rights of indigenous cultural communities / indigenous peoples ;
 - (d) The failure of the State party to uphold the right to free, prior and informed consent of indigenous peoples for any change to the use of their lands and territories and to implement the mandatory representation of indigenous peoples in local decision-making bodies;
 - (e) The displacement of indigenous peoples, particularly those in Mindanao, owing to the armed conflict and inter-tribal conflicts as well as extractive and logging operations; and
 - (f) The limited access of indigenous peoples to healthcare, education and other basic services.
14. The Committee recommends that the State party:
- (a) Fully implement the 1997 Indigenous Peoples' Rights Act (IPRA) to ensure, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, that the indigenous peoples' rights to their lands, territories and resources are fully recognized and protected and that their free, prior and informed consent is obtained in respect of the adoption of any legislation, policy and/or project affecting their lands or territories and other resources;
 - (b) Prioritize the adoption of the National Land Use Bill and ratify the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169);
 - (c) Strengthen the mandate and the capacity of the National Commission of Indigenous Peoples and take all measures necessary to enhance its independence and effectiveness, with a view to restoring its credibility among indigenous peoples;
 - (d) Take the steps necessary to ensure the registration of indigenous lands, including through improving the collective land title claim process;
 - (e) Ensure that the free, prior and informed consent of the concerned indigenous peoples is obtained before granting licences to private companies; and that indigenous peoples are represented through their own chosen representatives on the local decision making bodies, such as local mining boards and local development units;
 - (f) Adopt the appropriate measures to mitigate the impact of the armed conflicts, including inter-tribal conflicts, and natural disaster on the indigenous peoples; and
 - (g) Take all measures necessary to ensure the full access of indigenous peoples to healthcare, education and other basic services.

Birth registration

35. While welcoming Proclamation No. 1106 of 2015, the Committee remains concerned at the low level of birth registration among indigenous children, Muslim children and children of overseas Filipino workers, which has a direct impact on their enjoyment of economic, social and cultural rights (art. 10).

36. The Committee recommends that the State party take all steps necessary to ensure that all children, including indigenous children, Muslim children and children of overseas Filipino workers, are registered, including through the implementation of the Proclamation and via diplomatic relations with countries of destination of overseas Filipino workers.

B. General Comments

1. General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 2 May 2016

5. The right to sexual and reproductive health entails a set of freedoms and entitlements. The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant.

6. Sexual health and reproductive health are distinct from, but closely linked, to each other. Sexual health, as defined by the World Health Organization (WHO), is "a state of physical, emotional, mental and social well-being in relation to sexuality". Reproductive health, as described in the Programme of Action of the International Conference on Population and Development, concerns the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive

health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour.

Intersectionality and multiple discrimination

30. Individuals belonging to particular groups may be disproportionately affected by intersectional discrimination in the context of sexual and reproductive health. As identified by the Committee,²⁶ groups such as, but not limited to, poor women, persons with disabilities, migrants, indigenous or other ethnic minorities, adolescents, lesbian, gay, bisexual, transgender and intersex persons, and people living with HIV/AIDS are more likely to experience multiple discrimination. Trafficked and sexually exploited women, girls and boys are subject to violence, coercion and discrimination in their everyday lives, with their sexual and reproductive health at great risk. Also, women and girls living in conflict situations are disproportionately exposed to a high risk of violation of their rights, including through systematic rape, sexual slavery, forced pregnancy and forced sterilization. Measures to guarantee non-discrimination and substantive equality should be cognizant of and seek to overcome the often exacerbated impact that intersectional discrimination has on the realization of the right to sexual and reproductive health.

31. Laws, policies and programmes, including temporary special measures, are required to prevent and eliminate discrimination, stigmatization and negative stereotyping that hinder access to sexual and reproductive health. Prisoners, refugees, stateless persons, asylum seekers and undocumented migrants, given their additional vulnerability by condition of their detention or legal status, are also groups with specific needs that require the State to take particular steps to ensure their access to sexual and reproductive information, goods and health care. States must ensure that individuals are not subject to harassment for exercising their right to sexual and reproductive health. Eliminating systemic discrimination will also frequently require devoting greater resources to traditionally neglected groups and ensuring that anti-discrimination laws and policies are implemented in practice by officials and others.

32. States parties should take measures to fully protect persons working in the sex industry against all forms of violence, coercion and discrimination. They should ensure that such persons have access to the full range of sexual and reproductive health-care services.

2. General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 27 April 2016

Article 7 (c): equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence

31. All workers have the right to equal opportunity for promotion through fair, merit-based and transparent processes that respect human rights. The applicable criteria of seniority and competence should also include an assessment of individual circumstances, as well as the different roles and experiences of men and women, in order to ensure equal opportunities for all. There should be no place for irrelevant criteria such as personal preference or family, political and social links. Similarly, workers must have the opportunity for promotion free from reprisals related to trade union or political activity. The reference to equal opportunity requires that hiring, promotion and termination not be discriminatory. This is highly relevant for women and other workers, such as workers with disabilities, workers from certain ethnic, national and other minorities, lesbian, gay, bisexual, transgender and intersex workers, older workers and indigenous workers.

32. Equality in promotion requires the analysis of direct and indirect obstacles to promotion, as well as the introduction of measures such as training and initiatives to reconcile work and family responsibilities, including affordable day-care services for children and dependent adults. In order to accelerate de facto equality, temporary special measures might be necessary.²⁷ They should be regularly reviewed and appropriate sanctions applied in the event of non-compliance.

33. In the public sector, States parties should introduce objective standards for hiring, promotion and termination that are aimed at achieving equality, particularly between men and women. Public sector promotions should be subject to impartial review. For the private sector, States parties should adopt relevant legislation, such as comprehensive non-discrimination legislation, to guarantee equal treatment in hiring, promotion and termination, and undertake surveys to monitor changes over time.

A. General obligations

50. States parties must comply with their core obligations and take deliberate, concrete and targeted steps towards the progressive realization of the right to just and favourable conditions of work, using maximum available resources.⁴³ In addition to legislation as an indispensable step, States should also ensure the provision of judicial and other effective remedies that include, but are not limited to, administrative, financial, educational and social measures.

56. The Committee underlines the importance of consultation in formulating, implementing, reviewing and monitoring laws and policies related to the right to just and favourable conditions of work, not only with traditional social partners such as workers and employers and their representative organizations, but also with other relevant organizations, such as those representing persons with disabilities, younger and older persons, women, workers in the informal economy, migrants and lesbian, gay, bisexual, transgender and intersex persons, as well as representatives of ethnic groups and indigenous communities.

57. Any person who has experienced a violation of the right to just and favourable conditions of work should have access to effective judicial or other appropriate remedies, including adequate reparation, restitution, compensation, satisfaction or guarantees of non-repetition. Access to remedy should not be denied on the grounds that the affected person is an irregular migrant. Not only courts, but also national human rights institutions, labour inspectorates and other relevant mechanisms, should have authority to address such violations. States should review and, if necessary, reform their legislation and codes of procedure to ensure access to remedies, as well as procedural fairness. Legal assistance for obtaining remedies should be available and it should be free for those who are unable to pay.

IV. COMMITTEE ON THE RIGHTS OF THE CHILD:

A. Concluding Observations

1. Colombia, CRC/C/COL/CO/4-5, 6 March 2015

Non-discrimination

19. While noting the measures taken to eliminate discrimination against children in marginalized or disadvantaged situations, the Committee is deeply concerned about:

(a) The structural discrimination against indigenous, Afro-Colombian and displaced children, children with disabilities, children living with HIV/AIDS, lesbian, gay, bisexual, transgender and intersex children, and children living in rural, remote and marginalized urban areas, particularly affecting their right to education and health and exposing them to violence. ...

Freedom of the child from all forms of violence

27. The Committee is deeply concerned at the high levels of violence that children are confronted with, and in particular about: ... (d) Reports that corporal punishment remains widespread and that it is not yet explicitly prohibited in all settings, including in the home. ...

28. 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 the recommendations of the 2006 United Nations study on violence against children (A/61/299), the Committee urges the State party to prioritize the elimination of all forms of violence against children, and in particular to: ... (e) Repeal article 262 of the Civil Code on the “right of correction”, and ensure that corporal punishment in all settings is explicitly prohibited, including for indigenous children, and raise awareness of positive, non-violent and participatory forms of child-rearing. ...

Sexual exploitation and abuse

...

30. The Committee urges the State party to: ... (c) Enforce the decision on mandatory reporting by medical staff of cases of sexual violence against children, proactively investigate all cases, including those affecting indigenous girls, prosecute the alleged perpetrators, apply appropriate sanctions, and adequately protect and rehabilitate the victims. ...

Harmful practices

...

32. The Committee draws the State party’s attention to general comment No. 18 on harmful practices (2014), which was issued jointly with the Committee on the Elimination of Discrimination against Women, and urges the State party to: ... (b) Register and investigate all cases of female genital mutilation in the Embera and other communities, explicitly criminalize it in the legislation and ensure that alleged offenders are prosecuted and adequately punished. The State party, in coordination with indigenous authorities, should also reinforce awareness-raising programmes, targeting both men and women, including officials at all levels and indigenous leaders, on the harmful effects of this practice.

Health and health services

39. While welcoming the progress made in reducing child mortality and malnutrition, the Committee is concerned that:

- (a) Health-related legislation and policies are poorly implemented;
- (b) Child and maternal mortality rates continue to be very high, particularly among rural, indigenous and Afro-Colombian populations;
- (c) Children not registered with a health-service provider are often refused health-care services;
- (d) Twenty per cent of the child population have not received all scheduled vaccinations;
- (e) Chronic malnutrition persists, in particular among indigenous and Afro-Colombian children. ...

40. The Committee draws the State party’s attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party: ...

(a) Ensure the availability and accessibility of health services for all children, in particular rural, indigenous

and Afro-Colombian children, by allocating adequate resources and monitoring the implementation of relevant policies. ...

Mental health

41. While noting the measures taken by the State party to address mental-health problems among children, the Committee is concerned that many children suffer from mental-health problems. It is also concerned about the increasing prevalence of suicide among children, in particular adolescents and indigenous children.

42. The Committee recommends that the State party strengthen the mental-health programmes for children and provide quality services, taking into consideration the culture of indigenous children, and: ... (c) Ensure that all professionals working with children are trained to identify and address mental-health problems, including suicidal tendencies, in particular in schools, alternative-care settings, displaced communities, indigenous communities and juvenile detention centres.

Education, including vocational training and guidance

51. While welcoming the progress made towards introducing free education at all levels in public schools and the statement made by the delegation that more resources will be invested in education, the Committee remains concerned about:

- (a) The low quality of education, insufficient and deficient infrastructure and lack of qualified teachers, resulting from an inadequate budget allocation;
- (b) The significant differences in education coverage, mostly affecting indigenous, Afro-Colombian, displaced and rural children, in particular girls;
- (c) The ineffective implementation of the policy on education for indigenous and Afro-Colombian children, while noting the adoption of Decree 1953 in October 2014 aiming at reinforcing the autonomy of indigenous peoples in the area of education. ...

52. In the light of its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party:

- (a) Increase its efforts to improve the quality of education and its availability and accessibility to displaced and rural children, particularly girls, by substantially increasing the education budget, providing quality training for teachers and ensuring that schools are built far away from environmental at-risk areas and from military targets;
- (b) Ensure the effective implementation of the policy on education for indigenous and Afro-Colombian children by allocating adequate resources and fully implementing Decree 1953 aiming at reinforcing the autonomy of indigenous peoples in the area of education. ...

Early childhood development

53. The Committee welcomes the adoption of the policy on early childhood and its related strategy. It is concerned, nevertheless, about the insufficient measures taken to ensure that all children throughout the territory benefit from the effective implementation of the strategy.

54. The Committee recommends that the State party strengthen coordination among relevant entities and allocate adequate human, technical and financial resources to the strategy on early childhood to ensure that all children benefit from its implementation, in particular children in rural and remote areas, children with disabilities, children living with HIV/AIDS, children in prison with their mothers, children of adolescent mothers, and displaced, indigenous and Afro-Colombian children.

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) 38, 39 and 40)

Displaced children

55. While noting the programmes to protect displaced children, the majority being Afro-Colombian or indigenous children, the Committee remains concerned that these efforts have been insufficient to adequately ensure the rights of displaced children, as ordered by the Constitutional Court. It is particularly concerned that the specific needs of displaced girls, who are greatly exposed to violence and discrimination, have not been satisfactorily addressed.

56. The Committee recommends that the State party:

- (a) Evaluate the “mobile units” strategy and similar initiatives and, based on lessons learned and in line with the Constitutional Court decisions, strengthen measures to protect displaced children and their

families from violence, and ensure their access to food, adequate housing, education, recreation, health, civil registration, justice and integrated mental health and psychosocial rehabilitation services. Resources should be increased and monitoring mechanisms and coordination among relevant bodies strengthened;

- (b) Adequately address the specific needs of displaced girls, and ensure their protection from child labour, school dropout and violence, including sexual violence and exploitation;
- (c) Strengthen its efforts to ensure the effective implementation of the Victims and Land Restitution Act in relation to displaced children, including by allocating adequate resources, ensuring access to justice and free legal aid and strengthening coordination among relevant institutions;
- (d) Further strengthen its cooperation with the Office of the United Nations High Commissioner for Refugees and fully adhere to the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

Children belonging to minority or indigenous groups

57. The Committee notes the measures taken by the State party to ensure the rights of indigenous and Afro-Colombian children. It nevertheless remains concerned that they continue to face discrimination and numerous challenges in accessing education, health care, civil registration services and justice. It also remains concerned that they are disproportionately affected by violence and the armed conflict and overrepresented among displaced children and children recruited by non-State armed groups.

58. In the light of its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:

- (a) Increase its efforts and take affirmative measures to ensure that indigenous and Afro-Colombian children, including displaced children, enjoy their rights in practice, in particular in the area of health, education and access to justice;
- (b) Strengthen its efforts to ensure that all Afro-Colombian and indigenous children are registered immediately after birth, and to facilitate cost-free registration of those who were not registered at birth;
- (c) Strengthen measures to protect indigenous and Afro-Colombian children and their families from violence, including sexual violence, and the impact of the armed conflict. Such measures should be developed in consultation with Afro-Colombian and indigenous leaders.

Follow up to the Committee's previous concluding observations and recommendations on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

63. The Committee notes the measures taken by the State party to implement the Optional Protocol, such as the criminalization of the sale of children. However, it is concerned about the low rate of implementation of the related laws, policies and programmes. It is particularly concerned about:

- (a) Sexual exploitation of children being widespread and increasing, in particular around extractive industries and military and national police bases;
- (b) The extensive impunity for the offences under the Optional Protocol, as a result of, among other things, challenges related to administrative and judicial procedures; and the lack of adequate protection for victims and witnesses.
- (c) The high number of organizations based in the State party that are involved in international networks of sexual exploitation, in particular child pornography;
- (d) The widespread trafficking of children, particularly girls, affecting displaced, Afro-Colombians and indigenous children, and the insufficient measures taken to identify and assist child victims;
- (e) The National Committee for the Prevention and Eradication of Commercial Sexual Exploitation of Children not functioning adequately.

64. The Committee recommends that the State party:

- (a) Enforce the legislation, by actively identifying, investigating and prosecuting offences under the Optional Protocol in a child-friendly manner, sanctioning the perpetrators and compensating the victims;
- (b) Conduct a study on the scope of the offences under the Optional Protocol that also addresses root causes and risk factors, including poverty, conflict, discrimination, violence—including gender-based violence—and the absence of parental care;
- (c) On the basis of lessons learned, review and update the National Action Plan for the Prevention and Eradication of Commercial Sexual Exploitation of Children and Adolescents and ensure that other areas

covered by the Optional Protocol, such as the sale of children, are also addressed in a policy and strategy, which should include a gender perspective and a monitoring mechanism;

- (d) Strengthen the National Committee for the Prevention and Eradication of Commercial Sexual Exploitation of Children, including by providing it with adequate resources to ensure that it can properly fulfil its responsibilities;
- (e) Strengthen prevention, protection, recovery and social reintegration programmes, allocate adequate resources and ensure that the programmes for child victims of sexual exploitation are in accordance with the outcome documents adopted at the world congresses against the commercial sexual exploitation of children;
- (f) Improve the training provided to professional groups dealing with child victims of crimes under the Optional Protocol and awareness-raising activities for the tourism industry, for children and parents, in particular in groups at risk, and for the public;
- (g) Strengthen international cooperation through human rights-based multilateral, regional and bilateral arrangements for identifying, investigating, prosecuting and punishing those responsible for offences under the Optional Protocol, which takes into consideration the best interests of the child.

Follow-up to the Committee's previous concluding observations and recommendations on the Optional Protocol on children in armed conflict

65. While noting the measures taken to protect children from the armed conflict, the Committee remains deeply concerned about the continuous violations of children rights, mostly affecting rural, indigenous and Afro-Colombian children and children from marginalized urban areas. It is particularly concerned about:

- (a) The continuous recruitment of children by non-State armed groups;
- (b) The heavy recruitment of children by the BACRIM and reports that some of these children are prosecuted by the State party as criminals and not treated as victims, and are therefore not included in the programme of the Colombian Family Welfare Institute for demobilized children;
- (c) Girls recruited being subjected to serious sexual violence in a repeated and systematic manner, including rape, sexual slavery and exploitation, forced pregnancy and abortion, and the passing on of sexually transmitted diseases;
- (d) Continuous installation of explosive artefacts by non-State armed groups and the reductions in the budget allocated to anti-personnel mines, unexploded ordnance and other improvised explosive artefacts programmes;
- (e) The numerous violations of children's rights allegedly committed by the police and armed forces, in particular sexual violence, and the continuing use of children for intelligence-gathering activities;
- (f) The very low number of prosecutions for offences under the Optional Protocol;
- (g) The insufficient coordination between institutions dealing with child victims of recruitment.

The Committee urges the State party to:

- (a) Evaluate and adjust the CONPES 3673 (2010) policy on the prevention of child recruitment and ensure adequate resources, strengthened institutions and coordination mechanisms, in particular in those regions most affected by the armed conflict;
- (b) Strengthen the information and early warning systems relating to children in armed conflict with a view to providing adequate, immediate and efficient institutional responses. Those responses should include the protection of children and their families, in cases of threats or risks and the possibility of transferring them to safe sites;
- (c) Undertake every effort to ensure the demobilization and effective reintegration of children recruited and/or used in hostilities;
- (d) Strengthen measures to ensure that child victims of the offences covered under the Optional Protocol are provided with immediate, culturally responsive and child-sensitive assistance for their physical and psychological recovery and social reintegration. The specific needs of formerly recruited girls or girls used in hostilities should be taken into consideration, in particular those who are victims of sexual violence;
- (e) Urgently and thoroughly investigate all offences under the Optional Protocol, including those related to sexual violence and those allegedly committed by the police and armed forces, prosecute the alleged perpetrators, adequately punish those convicted and compensate the child victims and their families. Appropriate legal assistance should be provided to the victims;

- (f) Enforce the existing institutional directives aimed at protecting children's rights, particularly the directives ordering the suspension of all civilian-military activities involving children, which should include those conducted by the police, and prohibiting the use of children for military intelligence gathering;
- (g) Allocate adequate resources to mine-risk education and care programmes for victims;
- (h) Evaluate the training provided to the police, armed forces and other professional groups dealing with child victims of the offences covered by the Optional Protocol, and on the basis of the lessons learned, increase the quality and quantity of the training, and ensure it is gender-sensitive;
- (i) As mandated by the Constitutional Court (C-781 of 2012), consider as victims all children recruited and/or used by the BACRIM and all children recruited and/or used in hostilities by other non-State armed group, and ensure that they are included in the Colombian Family Welfare Institute's programme for demobilized children and that they receive adequate reparation;
- (j) Continue ensuring that children's opinions, interests and needs are considered during the current peace process.

2. Honduras, CRC/C/HND/CO/4-5, 3 July 2015

Non-discrimination

25. The Committee welcomes the State party's measures to integrate the principle of non-discrimination in its legislation and in designing public policies and programmes. The Committee is nonetheless concerned about: ... (b) The impact of increased poverty and inequality among children, in particular indigenous children and children living in rural areas. ...

26. The Committee recommends that the State party: ... (b) Take the measures necessary to mitigate the impact of poverty and inequality on the situation of indigenous children and children living in rural areas. ...

Birth registration

33. The Committee welcomes the steps taken by the State party to increase birth registration, including the decriminalization of late registration, public awareness campaigns and the expansion of the National Registry Office, in particular in locations with predominantly indigenous or Afro-Honduran communities and in remote areas, but remains concerned about the still low levels of registration in border and indigenous areas.

34. The Committee calls on the State party to continue to take all measures necessary to ensure the registration of all children, including through technical assistance from UNICEF and the United Nations Development Programme.

Sexual exploitation and abuse

45. The Committee welcomes the establishment of the Inter-Institutional Commission to Combat Commercial and Sexual Exploitation and Trafficking in Persons and the creation of special units within the police and the Public Prosecution Service to investigate and prosecute such offences. However, the Committee remains concerned about: ... (d) The lack of preventive and protective measures targeting children at special risk, namely children in street situations, indigenous children and child domestic workers, in particular girls.

Family environment

51. The Committee welcomes the adoption of the Responsible Parenting Act, the Comprehensive Early Childhood Development Policy and the Social Protection Policy and the creation of the national system for the protection of children, with a focus on the special protection of children in a position of vulnerability. However, it is concerned that the implementation of those measures has been ineffective and, in particular, that the impact of social programmes in reducing poverty has been limited, notably in rural and indigenous areas. The Committee is also concerned that the availability of care services for children of working parents remains inadequate.

52. The Committee reiterates its recommendation (see CRC/C/HND/CO/3, para. 46) that the State party provide appropriate assistance to parents in the performance of their child-rearing responsibilities, in particular to meet the needs of children in single-parent families, including access to childcare services and facilities. The Committee recommends that the State party monitor and evaluate the impact of poverty alleviation measures on the welfare of children.

Children deprived of a family environment

53. The Committee welcomes the attention paid in the Social Protection Policy to children of parents who have been deprived of liberty and children deprived of a family environment. It remains concerned about the lack of detailed information on the situation of such children and the lack of independent supervision of their situation.

54. The Committee recommends that the State party take into account the Guidelines for the Alternative Care of Children and that it, in particular: ... (c) Review the locations where children, in particular those from indigenous or ethnic groups, are institutionalized, in order to prevent them from being uprooted from families and communities. ...

Standard of living

68. Despite all the measures taken by the State party, the Committee is deeply concerned about the increasing number of poor households and geographic disparities in access to water and sanitation, which primarily affect indigenous and Afro-Honduran children. It is also concerned about the high level of chronic malnutrition, which affects twice as many children in rural areas as children in urban areas.

69. The Committee recommends that the State party:

- (a) Strengthen the institutional capacities for the implementation, monitoring and evaluation of socioeconomic measures;
- (b) Increase the efficiency of actions to reduce poverty;
- (c) Intensify its efforts to reduce chronic malnutrition;
- (d) Improve access to water and sanitation in rural, indigenous and Afro-Honduran areas.

Education, including vocational training and guidance

70. The Committee welcomes the significant progress made by the State party to improve access to education. However, it is concerned about: ... (b) The high dropout rate, in particular in rural and indigenous areas. ...

71. In the light of its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party: ... (b) Reduce dropout rates, in particular in rural, remote and indigenous areas. ...

Indigenous and Afro-Honduran children

77. The Committee welcomes the creation of the Ministry for Indigenous and Afro-Honduran Peoples and the 2011 study on the status of indigenous and Afro-Honduran children. The Committee is nevertheless still concerned about:

- (a) The extremely high rate of poverty among indigenous children and children of African descent;
- (b) The enduring practice of child labour, including in its worst forms, among indigenous children and children of African descent;
- (c) The impact of laws and programmes promoting the exploitation of natural resources on the right of indigenous children and children of African descent and their families to ownership of the lands they inhabit;
- (d) The increased militarization and excessive use of force in the context of disputes over land and natural resources, especially in communities where indigenous peoples and peoples of African descent are settled, and the impact of evictions on children's welfare.

78. In the light of its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:

- (a) Expeditiously implement measures to decrease the poverty of indigenous children and children of African descent;
- (b) End the practice of child labour, in particular in its worst forms, among indigenous children and children of African descent;
- (c) Review and refrain from implementing laws and programmes promoting the exploitation of natural resources that negatively affect the realization of children's rights;
- (d) Monitor and review governmental actions in the context of disputes over land and natural resources, and investigate and prosecute cases of excessive use of force.

3. Mexico, CRC/C/MEX/CO/4-5, 3 July 2015

Non-discrimination

15. While taking note of the National Programme for Equality and Non-Discrimination (2014–2018), the Committee is concerned about the prevalence of discrimination against indigenous, Afro-Mexican and migrant children, children with disabilities, lesbian, gay, bisexual, transgender and intersex children, children in street situations and children living in poverty and in rural areas.

16. The Committee recommends that the State party:

(a) Adopt a road map that includes adequate resources, a timeline and measurable targets requiring authorities at the federal, state and local levels to take measures, including affirmative measures, to prevent and eliminate all forms of de facto discrimination against indigenous, Afro-Mexican and migrant children, children with disabilities, lesbian, gay, bisexual, transgender and intersex children, children in street situations and children living in poverty and in rural areas. ...

Birth registration

27. While welcoming the constitutional reform of 2014 recognizing the right to birth registration, the Committee is concerned that the number of indigenous, Afro-Mexican and migrant children and children living in remote areas who are registered at birth remains low.

28. The Committee recommends that the State party strengthen efforts to ensure universal birth registration, including by undertaking the necessary legal reforms and adopting the required procedures at the state and municipal levels. Registry offices or mobile units should be available in all maternity units, in the main points of transit or destination of migrants and in communities where children are born with traditional birth attendants.

Harmful practices

37. While noting that, in accordance with article 45 of the General Act on the Rights of Children and Adolescents, federal and state laws should set the minimum age for marriage at 18 years for both boys and girls and that the Federal Civil Code has already been modified accordingly, the Committee is concerned about the effective implementation of this provision at the state level. It is also concerned about the high prevalence of child marriage and about reported cases of forced marriage, especially involving girls belonging to indigenous communities.

38. In the light of 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 on harmful practices (2014), the Committee on the Rights of the Child recommends that the State party ensure the effective implementation of article 45 of the General Act on the Rights of Children and Adolescents by ensuring that the minimum age of marriage is set at 18 years of age for both girls and boys in the laws of all states. The State party should also undertake comprehensive awareness-raising programmes on the negative consequences of child marriage on girls, targeting in particular parents, teachers and indigenous leaders.

Children with disabilities

45. The Committee welcomes the National Development Plan 2013–2018, which includes the achievement of quality inclusive education as a goal. It also welcomes the measures taken by the State party, notably on early childhood development and the early detection of disabilities. However, the Committee is concerned about: ... (e) The lack of accessible schools, educational materials and trained teachers, which particularly affects children with disabilities belonging to indigenous communities and children living in rural and remote areas. ...

46. In the light of its general comment No. 9 (2006) on the rights of children with disabilities and in line with the recommendations of the Committee on the Rights of Persons with Disabilities (CRPD/C/MEX/CO/1), the Committee urges the State party to fully assume its primary responsibility to ensure the rights of all children with disabilities and apply a human rights-based approach to disability. The State party should:

(a) Ensure that all children with disabilities effectively enjoy their rights to health and rehabilitation services, attend school and are free from violence and exploitation. Specific measures should be adopted to address the particular challenges faced by indigenous children in these areas. ...

Health and health services

47. The Committee notes the measures taken by the State party to reduce child and maternal mortality. However, it is concerned that: ... (b) Child and maternal mortality rates among indigenous and rural populations remain higher than the average; (c) Child chronic malnutrition is persistent, especially among indigenous and rural children. ...

48. The Committee draws the State party's attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party:

(a) Ensure the availability and accessibility of quality health services for all children, in particular rural and indigenous children, including by allocating adequate resources;

...

(c) Evaluate the initiatives taken to reduce the number of children who are malnourished, overweight or obese and, on the basis of the results, draft a national strategy on nutrition that also includes measures to ensure food security, in particular in rural and indigenous areas. ...

Environmental health

51. The Committee is concerned that the State party has not taken sufficient measures to address air, water, soil and electromagnetic pollution, which have a grave impact on children and maternal health. The import and use of pesticides or chemicals banned or restricted for use in third countries, which particularly affect indigenous children in the State of Sonora, is also a reason of deep concern.

52. The Committee recommends that the State party:

(a) Assess the impact of air, water, soil and electromagnetic pollution on children and maternal health as a basis to design a well-resourced strategy at the federal, state and local levels, in consultation with all communities and especially indigenous peoples, to remedy the situation and drastically decrease the exposure to pollutants;

(b) Prohibit the import and use of any pesticides or chemicals the use of which has been banned or restricted in exporting countries;

(c) Further examine and adapt its legislative framework to ensure the legal accountability of business enterprises involved in activities having a negative impact on the environment, in the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights.

Standard of living

53. The Committee remains deeply concerned about the prevalence of child poverty, which affects more than half of the child population, a higher rate than affects the adult population. It is concerned that indigenous, Afro-Mexican, migrant and displaced children, children in single-parent households and children living in rural areas are particularly affected by poverty and extreme poverty.

54. The Committee recommends that the State party strengthen its efforts to eliminate child poverty by adopting a public policy developed in consultation with families, children and civil society organizations, including those from indigenous, Afro-Mexican, displaced, migrant and rural communities, and by allocating adequate resources for its implementation. Measures to promote early childhood development and further support families should be part of the policy.

Education, including vocational training and guidance

55. The Committee notes the educational reform undertaken in 2013 aimed at ensuring quality education from preschool to senior high school. ...

56. In the light of its general comment No. 1 (2001) on the aims of education, the Committee reiterates its recommendations (see CRC/C/MEX/CO/3, para. 57 (a-e)) and recommends that the State party:

(a) Increase its efforts to improve the quality of education and its availability and accessibility to girls, indigenous, Afro-Mexican and displaced children, children in rural areas, children living in poverty, children in street situations, national and international migrant children and children with disabilities, by substantially increasing the education budget and reviewing relevant policies;

(b) Strengthen its efforts to ensure education in Spanish and in indigenous languages for indigenous children and ensure the availability of trained teachers. ...

Children belonging to minority or indigenous groups

61. The Committee remains concerned that indigenous and Afro-Mexican children continue to face discrimination and violence, and remain the most affected by extreme poverty, malnutrition, maternal and child mortality, early marriages, adolescent pregnancies, environmental pollution and lack of access to quality education and civil registration services.

62. In the light of its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:

(a) Adopt comprehensive measures, including affirmative measures, in accordance with article 40 of the General Act on the Rights of Children and Adolescents, to ensure that indigenous and Afro-Mexican children enjoy all their rights in practice, in particular in the areas of health, education, nutrition and access to justice and civil registration services. Indigenous children and their families should be able to effectively participate in all decisions affecting them;

(b) Strengthen measures to protect indigenous and Afro-Mexican children from exploitation and violence, including in shelters for indigenous children attending school. Such measures should be developed in consultation with indigenous Afro-Mexican leaders;

(c) Collect disaggregated data on indigenous and Afro-Mexican children related to all areas covered by the Convention and its Optional Protocols.

Administration of juvenile justice

67. The Committee notes the project under discussion to reform the Constitution and establish a comprehensive juvenile justice system. ...

68. In the light of its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system fully into line with the Convention and other relevant standards. In particular, the Committee urges the State party to: ... (b) Ensure the provision of qualified and independent legal aid to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings. Indigenous and migrant children should be provided with interpretation and/or consular assistance as required. ...

Follow-up to the Committee's previous concluding observations and recommendations on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

69. The Committee welcomes the adoption in 2012 of the General Act for the Protection, Punishment and Eradication of Human Trafficking Offences and for Victim Protection and Assistance and the establishment in 2013 of a related Intersecretariat Commission. However, it is concerned that most of the concerns raised in its previous concluding observations have not been addressed. It is particularly concerned about: ... (c) The persistence of trafficking in children for the purposes of sexual exploitation and forced labour, particularly affecting migrant and indigenous children and girls, as well as the high prevalence of sexual exploitation of children, including child sex tourism, and the general impunity enjoyed by perpetrators of crimes covered by the Optional Protocol. ...

4. Bangladesh, CRC/C/BGD/CO/5, 30 October 2015

Non-discrimination

24. While noting the State party's efforts to combat discrimination, the Committee reiterates its previous concern that discrimination against certain groups of children, particularly girls, children with disabilities, children of ethnic and religious minorities, in particular Dalit and indigenous children, children living in rural areas, refugee and asylum-seeking children and children in street situations still exists in practice (see CRC/C/BGD/CO/4, para. 32).

25. The Committee reiterates its previous recommendation (ibid., para. 33) and urges the State party to adopt a comprehensive strategy to eliminate de facto discrimination against all groups of children in marginalized and disadvantaged situations and ensure the implementation of all legal provisions in full compliance with article 2 of the Convention.

Children belonging to minority or indigenous groups

72. The Committee is concerned that children from minority groups, in particular Dalit children and indigenous children face discrimination and violence and lack access to quality education, in particular to education in their mother tongue. The Committee is also concerned about the lack of recognition by the State party of indigenous identity of the Adivasi indigenous peoples.

73. In the light of its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:

- (a) Take all measures necessary to protect minority and indigenous children from discrimination and violence;
- (b) Establish a standardized system for the collection and analysis of data on minority and indigenous children related to all areas covered by the Convention and its Optional Protocols;
- (c) Adopt comprehensive measures, including affirmative measures to ensure that minority and indigenous children enjoy all their rights, in particular in the areas of health and education.

Sale, trafficking and abduction

78. The Committee notes with appreciation the enactment of the Prevention and Suppression of Human Trafficking Act and the inclusion of life skills-based education on adolescent reproductive health, including in relation to sexual abuse and exploitation, as part of the school curriculum from classes 6 to 10. However, it remains concerned about the prevalence of trafficking and exploitation of children in the State party.

79. The Committee recommends that the State party:

- (a) Establish a comprehensive and systematic data collection mechanism on the sale, trafficking and abduction of children, and ensure that the data are disaggregated by, inter alia, sex, age, national and ethnic origin, geographical region, rural or urban residence and indigenous or socioeconomic status, with particular attention paid to children living in the most vulnerable situations. ...

5. Brazil, CRC/C/BRA/CO/2-4, 30 October 2015

Allocation of resources

11. The Committee is concerned about the lack of dedicated mechanisms at the national and subnational levels to monitor resource allocation for children's rights. Furthermore, it is concerned about recent budget cuts, which among other things have affected the budgets for the social sectors and for human rights and have had a negative impact on the implementation of programmes for the protection of children's rights.

12. In the light of its day of general discussion in 2007 with the theme of "resources for the rights of the child — responsibility of States", the Committee recommends that the State party: ... (d) Define specific budgetary lines for indigenous children, and children living in marginalized urban areas, including favelas, and in rural areas in the north and northeast of the State party, as well as children with disabilities, who may require affirmative social measures, and ensure that those budgetary lines are protected in situations of economic crisis.

Data collection

13. The Committee is concerned about the insufficient data on children in street situations, children with disabilities and indigenous children, as well as the inadequate data on violence against children, including sexual violence and trafficking in children.

14. In the light of its general comment No. 5 (2003) on general measures of implementation, the Committee urges the State party to improve its data collection system. The data should cover all areas of the Convention and should be disaggregated by age, sex, disability, geographic location, ethnic origin and socioeconomic background, in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability. Furthermore, the Committee recommends that the data and indicators be shared among the ministries concerned and used for the formulation and evaluation of policies, programmes and projects for the implementation of the Convention.

Cooperation with civil society

19. The Committee welcomes the creation of the Protection Programme for Human Rights Defenders in 2004 and the launch of the Information System on Threatened Human Rights Defenders in 2014. However, the Committee is concerned that the Protection Programme for Human Rights Defenders is not operational in all states, that resources allocated to the programme are insufficient and that the lack of coordination with

State officials is hampering its mandate. Furthermore, the Committee is seriously concerned about the numerous cases of death threats, physical attacks, disappearances and killings carried out against journalists and children's rights and human rights defenders, particularly those working on issues concerning children's rights.

20. The Committee urges the State party to ensure that death threats, physical attacks, disappearances and killings carried out against journalists, human rights defenders and civil society activists are promptly and independently investigated, and that those responsible for such abuses are held accountable and subject to commensurate sanctions. The Committee further recommends that the State party:

(a) Expand the Protection Programme for Human Rights Defenders to all states to improve the protection of indigenous human rights defenders, and allocate adequate human, technical and financial resources to the programme. ...

Non-discrimination

23. The Committee is concerned about the structural discrimination against indigenous and Afro-Brazilian children, children with disabilities, lesbian, gay, bisexual, transsexual and intersex children, children in street situations, and children living in rural, remote, and marginalized urban areas, including favelas. ...

24. The Committee recommends that the State party:

(a) Strengthen its efforts to combat discrimination against and stigmatization and social exclusion of children living in poverty in marginalized urban areas, such as favelas, as well as children in street situations, and Afro-Brazilian and indigenous children and girls. ...

Birth registration

31. The Committee welcomes the measures taken to increase birth registration in general. However, the Committee remains particularly concerned at the persistence of low levels of birth registration among indigenous children.

32. The Committee calls on the State party to continue taking the necessary measures to ensure registration of all children and recommends that the State party:

(a) Further raise awareness about the benefits of birth registration and the availability of birth certificates for free, and improve the accessibility of registration services in the Amazon area, including by establishing additional mobile registration units;

(b) Ensure that registration issued by the National Indian Foundation (FUNAI) has the same legal effects with regard to obtaining social benefits and other documentation as birth registration issued by civil notaries.

Health and health services

53. The Committee takes note of the Health Information System. It also welcomes the Stork Network Programme and the More Doctors Programme, which are aimed at improving the reach and quality of health services. However, the Committee remains concerned about the lack of disaggregated data on health, as well as about the insufficient health services in rural and marginalized urban areas which disproportionately affect indigenous children, children in socioeconomically disadvantaged situations and Afro-Brazilian children.

54. The Committee draws the State party's attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party increase investment in existing programmes aimed at improving the reach and quality of health services with a view to ensuring access to quality health services for indigenous children, Afro-Brazilian children, children living in rural areas and children living in marginalized urban areas.

55. The Committee welcomes the decrease in child mortality in line with Millennium Development Goal 4 and takes note of the measures taken to address infant and child mortality as well as malnutrition among indigenous children. However, the Committee is concerned that indigenous children, particularly Guaraní children, continue to have inadequate access to medical services and sanitation, in overcrowded settlements, and continue to be subjected to contaminated water and food.

56. The Committee urges the State party to:

(a) Provide the Special Secretariat for Indigenous Health (SESAI) with adequate human, technical and financial resources to guarantee access to quality health services for all indigenous women and children, including those living in informal settlements;

- (b) Strengthen its efforts to ensure that family health support units (NASF) are accessible to indigenous children;
- (c) Allocate adequate human, technical and financial resources to the Nutritional Supervision System (SISVAN) in order to ensure that children affected by malnutrition receive adequate food and safe drinking water.

Environmental health

65. With reference to paragraph 22 above, the Committee is concerned about the negative effects of polluted air, water and soil, and of food contamination, on children's health. It is particularly concerned about:

- (a) The excessive use of agrochemicals, the detrimental effect of this on children's health, and incidents of crop dusters spraying pesticides and/or other toxic chemicals close to villages and schools, which has led to the poisoning of children;

- (b) The contamination of water resources, inter alia in the area between the Tapajós and Xingu rivers in the state of Pará, caused by mining activities and industrial projects, which is particularly affecting the health of indigenous children;

- (c) The decreased availability of drinking water, the deterioration in its quality and the increase in the incidence of water-related disease outbreaks such as malaria, caused by the construction of the Belo Monte dam and similar projects, which particularly affects indigenous children's health.

66. The Committee recommends that the State party:

- (a) Ensure that existing laws and regulations concerning the use of agrochemicals are strictly enforced, particularly with regard to the use of crop dusters in proximity to villages and schools, expedite the evaluation of agrochemicals by allocating the necessary human, technical and financial resources to the National Health Surveillance Agency and expeditiously ban agrochemicals that have been widely banned in other countries;

- (b) Improve water supply infrastructure and guarantee access to safe drinking water, particularly for communities living adjacent to contaminated water canals used for the irrigation of farms;

- (c) Expeditiously end illegal mining activities, particularly in the Tapajós-Xingu area, and design and implement measures to mitigate the negative effects of these activities and those related to the construction of the Belo Monte dam on the rights of indigenous children and their families;

- (d) Undertake awareness-raising programmes for communities living in affected areas to minimize the risks of being exposed to contaminated water and food, and for users of such agrochemicals;

- (e) Conduct a comprehensive assessment of the effects of polluted air, water and soil on children's health and use it as a basis for developing and implementing a strategy to remedy the situation, and monitor the levels of air, water and soil pollutants and of pesticide residues in the food chain.

Standard of living

69. While welcoming the success of the Brasil sem Miséria and Bolsa Família programmes in poverty reduction, the Committee is concerned that the proportion of children living in poverty remains high, particularly in the north and north-east of the State party. It is particularly concerned about the high number of indigenous children affected by poverty, and the high vulnerability of Afro-Brazilian children as well as children living in marginalized urban areas, including favelas, and in rural areas, to poverty. The Committee also notes with concern the lack of access to adequate housing, safe drinking water and sanitation, for children living in these areas.

70. The Committee urges the State party to further strengthen its efforts to reduce poverty among children in vulnerable situations, including indigenous children and children living in rural areas. It also recommends that the State party take into consideration recommendations made by the Special Rapporteur on the human right to safe drinking water and sanitation (see A/HRC/27/55/Add.1) and increase investment in water supply and sanitation infrastructure in marginalized urban areas, including favelas, and in rural areas. In doing so, the State party should:

- (a) Consider amending its Constitution to include the right to water and sanitation;

- (b) Establish a mandatory fair affordability standard for water and sanitation services and regulate subsidy policy by law, with clear criteria and responsibilities for granting subsidies to low-income individuals.

Education, including vocational training and guidance

73. The Committee welcomes Constitutional Amendment No. 59 of 2009 making education compulsory for children between 4 and 17 years of age. However, the Committee is concerned about:

(a) The disparities in the access to and quality of education between urban and rural or remote areas, with the latter having significantly lower enrolment rates, particularly at the secondary level, as well as lower completion and literacy rates among Afro-Brazilian and indigenous children. ...

74. In the light of its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party:

(a) Invest in improving the school infrastructure, including the access to water and sanitation, particularly in rural and remote areas; set up new schools in those areas; allocate adequate human, technical and financial resources to those schools; and provide quality training for teachers, with a view to guaranteeing accessibility and quality of education for indigenous children and children living in rural and remote areas. ...

Children belonging to minority or indigenous groups

79. The Committee is deeply concerned about the structural discrimination against children belonging to indigenous groups, including as regards their access to education, health and an adequate standard of living. It is particularly concerned about:

(a) The high levels of violence against indigenous children and communities, including murder and sexual and physical violence, perpetrated by, among others, local ranchers and illegal loggers, and the lack of protection from these attacks and widespread impunity for these crimes;

(b) Indigenous communities' forced eviction from their land as a result of land grabbing by ranchers, the development of extractive industries, illegal logging or other industrial projects, which severely undermines indigenous children's right to an adequate standard of living, health and a healthy environment;

(c) The high rate of suicide among indigenous children, particularly Guaraní children;

(d) The delay in the demarcation of indigenous peoples' lands, notwithstanding the constitutional rights to property and self-determination, as well as the enactment of legislation to facilitate the demarcation of land, which has negatively impacted indigenous children;

(e) Pending legislation, among other measures, that is aimed at subjecting indigenous territories to mining, industrial projects, and the construction of dams and military bases.

80. In light of its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to:

(a) Take immediate measures to guarantee the safety of indigenous children and their families, including by providing special units of protection personnel especially trained in the specificities of the respective indigenous communities, in order to prevent killings and raids by local ranchers or illegal loggers;

(b) Promptly investigate all cases of killings of and violent attacks against indigenous children and their families and bring the perpetrators to justice;

(c) Immediately cease forced evictions of indigenous communities from their lands, and guarantee their right to free, prior and informed consent and consultation as established in the Constitution;

(d) Expeditiously complete the demarcation and allocation of indigenous land in accordance with the Constitution and existing laws, as previously recommended by the Committee on Economic, Social and Cultural Rights (see E/C.12/BRA/CO/2, para. 9);

(e) Ensure that, in addition to the consultations mentioned above, industrial projects and the development of extractive industries are subject to independent and comprehensive environmental and human rights impact assessments that pay particular attention to the rights of indigenous children and their families.

Sale, trafficking and abduction

85. The Committee takes note of the Second National Plan to Combat Human Trafficking and the PAIR MERCOSUL initiative with Argentina, Paraguay and Uruguay for combatting human trafficking. However, it is deeply concerned about the trafficking in children, particularly girls, for the purposes of sexual exploitation and forced labour. It is particularly concerned about the high vulnerability of indigenous children to trafficking for the purposes of domestic labour, slave labour and sexual exploitation. It is also concerned about the lack of specialized shelters for victims of child sex trafficking.

86. In line with the recommendation of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (see A/HRC/15/20/Add.4, para. 118), the Committee recommends that the State party amend its Penal Code with a view to criminalizing all forms of trafficking, including for the purpose of economic exploitation. The Committee also recommends that the State party: ... (d) Launch awareness-raising and prevention campaigns targeting, in particular, indigenous children. ...

6. Chile, CRC/C/CHL/CO/4-5, 30 October 2015

3. The Committee welcomes the ratification of or accession to the following instruments: ... (c) The International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 (No. 169), in September 2009. ...

Non-discrimination

24. The Committee welcomes the legislative and policy measures taken by the State party to address discrimination. However, it is concerned that girls continue to be subjected to gender-based discrimination, owing to the persistence of adverse and traditional attitudes and norms. It is also concerned about persistent discriminatory attitudes and practices against indigenous children, children with disabilities and immigrant children. The Committee is further concerned about continuing negative attitudes against and discrimination faced by lesbian, gay, bisexual, transgender and intersex children.

25. The Committee recommends that the State party:

(a) Strengthen policy and programme measures to combat the multiple forms of discrimination against girls, indigenous children and children with disabilities, and target the stereotypes on which those discriminatory attitudes are based. ...

Right to Identity

34. The Committee is concerned about limitations on the right to identity of indigenous children as part of their cultural identity. ...

35. The Committee recommends that the State party take the necessary legislative, policy and administrative measures to:

(a) Respect the right to identity of indigenous children in accordance with their culture. ...

Standard of living

65. The Committee welcomes the willingness of the State party to expand the Chile Grows With You (Chile Crece Contigo) system until age 9, but is concerned that the system does not include all children up to age 18. The Committee is also concerned about the disparities in the standard of living between rural and urban areas and the number of children living in poverty, in particular indigenous children, despite the overall economic growth registered in the State party. The Committee is further concerned about the differences in access to sanitation between rural and urban areas.

66. The Committee encourages the State party to progressively include all children up to the age of 18 years in the Chile Grows With You system. The Committee recalls its previous recommendation (CRC/C/CHL/CO/3, para. 60) and recommends that the State party prioritize measures to reduce inequality between urban and rural areas, in particular areas with a large indigenous population, effectively reduce the disparities in the standard of living between rich and poor and expedite measures to ensure that all children living in rural areas have access to sanitation. The Committee further recommends that the State party continue to seek the technical assistance of UNICEF in this regard.

Children belonging to minority or indigenous groups

79. The Committee remains deeply concerned with the enduring situation of inequality, discrimination and violence against indigenous children, in particular Mapuche children.

80. Taking into account its general comment No. 11 (2009) on indigenous children and their rights under the Convention and recalling its previous recommendation (CRC/C/CHL/CO/3, para. 74), the Committee urges the State party to:

(a) Recognize indigenous people and their rights in the new Constitution;

(b) Integrate an intercultural approach in policies and standards relating to children;

(c) Step up its efforts to ensure that all indigenous children have access to health, education and basic social services, without discrimination;

(d) Take immediate steps to stop all violence by the police against indigenous children and their families, including in the context of development activities;

(e) Ensure full compliance with article 1 (2) of the Anti-terrorism Act No. 20519, which prohibits its application to acts carried out by children;

(f) Promptly investigate and prosecute all cases of violence against indigenous children perpetrated by police officers.

7. Kenya, CRC/C/KEN/CO/3-5, 21 March 2016

Non-discrimination

21. The Committee expresses concern at the fact that discrimination against certain groups of children still exists in policy as well as in practice, particularly in respect of girls, children with disabilities, children with HIV/AIDS, refugee children, indigenous children, Nubian children, children in street situations and children from disadvantaged or marginalized families.

22. The Committee urges the State party to:

(a) Revise all its legislation and policies in order to bring them into full compliance with article 2 of the Convention, and ensure full implementation of all legal provisions and policies;

(b) Intensify efforts to eliminate discrimination, particularly patriarchal attitudes and gender stereotypes, and ensure that a wide range of stakeholders, including girls and all sectors of society, are involved in such efforts so as to facilitate social and cultural change and to create an environment that promotes equality.

Birth registration and nationality

29. The Committee welcomes the adoption of the Citizenship and Immigration Act (2011) which provides for Kenyan nationality for all children born in the State party and recognizes the equal right of women and men to transmit Kenyan nationality to their children, as well as the substantial increase in the number of birth registrations. Nevertheless, the Committee is concerned that:

(a) Free and universal birth registration has not been achieved;

(b) The proportion of births registered has been stagnating in recent years, with substantially lower rates of birth registration in rural and remote areas;

(c) Some groups of children, such as refugee children, children of Nubian descent, Makonde children, indigenous Somali children in Kenya, children with mothers in custody and intersex children, face difficulty in obtaining birth registration. ...

Children belonging to indigenous groups

67. The Committee is concerned about evictions of indigenous peoples from their lands under the pretext of national development and resource conservation, which have resulted in serious violations of the rights of indigenous children, aggravated by poverty, insecurity and conflict among indigenous communities.

68. With reference to the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to:

(a) Enact law to operationalize article 63 of the Constitution (2010) which recognizes community land, including ancestral lands and lands traditionally occupied by hunter-gatherer communities;

(b) Prevent evictions and displacement of indigenous peoples, including pastoralists, hunter-gatherers and forest people, and provide redress to those evicted or displaced from their lands;

(c) Put in place measures for early detection and timely interventions in cases of conflict in areas occupied by indigenous peoples, through peaceful dispute resolution measures and addressing the root causes of these conflicts;

(d) Consult and cooperate in good faith with the indigenous peoples concerned, including indigenous children, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, and provide effective remedies in cases of violation of their rights;

(e) Consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and formally endorse the United Nations Declaration on the Rights of Indigenous Peoples.

8. Peru, CRC/C/PER/CO/4-5, 2 March 2016

Allocation of resources

13. The Committee welcomes that the State party increased its budgetary resources to implement children's rights and developed a tool for the classification and monitoring of public investment in children. It

is, however, concerned about: ... (b) The lack of information on budgetary resources for children in vulnerable and marginalized situations, including indigenous children. ...

14. In the light of its day of general discussion in 2007 on resources for the rights of the child and the responsibility of States, the Committee recommends that the State party: ... (b) Define budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social measures, including indigenous children. ...

Independent monitoring

17. While welcoming the creation of the Office of the Deputy Ombudsperson for Children and Adolescents, the Committee is concerned about budget reductions that may negatively affect its capacity to offer decentralized services.

18. The Committee recommends that the State party provide adequate financial, technical and human resources to ensure that the Office of the Deputy Ombudsperson for Children and Adolescents continues to be able to carry out its mandate effectively, including in rural and remote areas and indigenous communities.

Dissemination and awareness-raising

19. While welcoming the efforts of the State party to raise awareness of the provisions of the Convention, the Committee is concerned that general awareness of the existence and importance of the Convention remains limited among children, parents, professional groups and the public at large.

20. The Committee recommends that the State party continue to strengthen its efforts to widely disseminate the Convention among children, parents and the public at large and ensure systematic and ongoing awareness-raising programmes, including campaigns, on children's rights, targeting in particular children, families and professionals working with and/or for children, in particular in rural and remote areas and indigenous communities.

Children's rights and the business sector

23. The Committee expresses concern at the impact of mining and hydroelectric projects on the living conditions of children and their families in the regions concerned, such as the La Oroya, Cerro de Pasco and Cajamarca areas, and with respect to the health hazards and environmental degradation, in particular the contamination of drinking water, arising from such projects. It is also concerned that environmental impact assessments are not always carried out prior to granting licences to companies. The Committee is further concerned at information received that Law No. 29785 on the right of indigenous or original peoples to prior consultation does not apply to all self-identified groups of indigenous peoples affected by such projects and that some projects relating to the mining sector are excluded from the consultation process.

24. In the light of its general comments No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:

(a) Ensure effective implementation by companies, especially those involved in mining and hydroelectric projects, of international and national environment and health standards, and effective monitoring of the implementation of those standards; appropriately sanction violators and provide remedies for victims when violations occur; and ensure that appropriate international certification is sought;

(b) Require all companies to undertake assessments, consultations, and full public disclosure of the environmental, health-related and human rights impacts of their business activities and their plans to address such impacts;

(c) Ensure that all affected groups of indigenous peoples are involved in relevant consultation processes and that their views, including the views of indigenous children, are duly taken into account;

(d) Be guided by the United Nations "Protect, Respect and Remedy" Framework, accepted unanimously in 2008 by the Human Rights Council, while implementing these recommendations.

Non-discrimination

27. While noting the measures taken by the State party to address discrimination against children in marginalized or disadvantaged situations, such as the establishment of the National Commission against Discrimination and the platform against discrimination, the Committee is deeply concerned about: ... (b) The prevalence of structural discrimination against certain groups of children, including indigenous children, Afro-Peruvian children, children living in rural and remote areas, children living in poverty, lesbian, gay, bisexual,

transgender and intersex children and children with disabilities, in particular regarding their access to education and other basic services, such as health care. ...

Birth registration

33. While welcoming the information provided during the dialogue that the overwhelming majority of children have a national identity document, the Committee is concerned that some children continue to face difficulties in gaining access to birth registration and identity documents.

34. The Committee recommends that the State party continue to strengthen its efforts to ensure universal birth registration and access to identity documents for all children born in the State party, with particular attention to indigenous children, children living in rural and remote areas, such as the isolated border communities of the Amazonian region, and children living in poverty.

Right to privacy and access to information

37. The Committee is concerned that:

(a) Media persist in propagating negative stereotypes of children, in particular adolescents and indigenous and Afro-Peruvian children;

(b) Access to information for children in minority languages is limited;

(c) Measures taken to ensure access to, and address the risks for children posed by, digital media and information and communications technology are insufficient.

38. In the light of its days of general discussion on the child and the media, held in 1996, and on digital media and children's rights, held in 2014, the Committee recommends that the State party:

(a) Address the negative portrayal of children, including indigenous and Afro-Peruvian children, in the media;

(b) Ensure that children have access to information in minority languages. ...

Harmful practices

43. While taking note of efforts made to prevent child marriage in the Napo communities, the Committee is concerned about the high prevalence of child marriage in the State party, in particular in indigenous and rural areas.

44. The Committee recommends that the State party ensure that the minimum age of marriage, set at 18 for both girls and boys, is enforced effectively. The State party should also undertake comprehensive awareness-raising programmes on the negative consequences of child marriage on girls, targeting in particular parents, teachers and community leaders, in the light of 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 on harmful practices (2014).

Health and health services

53. The Committee welcomes the significant progress made by the State party in reducing child mortality and chronic malnutrition, but is concerned at disparities in progress between urban and rural areas and regarding indigenous children and children living in poverty. The Committee is also concerned that:

(a) Access to and the quality of health-care facilities remain insufficient, in particular in rural and remote areas and indigenous communities. ...

54. The Committee draws the State party's attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party:

(a) Continue to strengthen its efforts to address child mortality and malnutrition, focusing primarily on children living in poverty, children living in rural and remote areas and indigenous children. In this context, the State party should consider the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age (A/HRC/27/31);

(b) Ensure equal access to quality health services by all children, including children living in rural and remote areas. ...

Adolescent health

55. The Committee is concerned at:

(a) The high rate of teenage pregnancies, in particular among children in vulnerable and marginalized situations, including children living in poverty, children with low levels of education and indigenous children.

...

HIV/AIDS

57. While noting the measures taken by the State party to prevent and address HIV/AIDSs, the Committee is concerned at reports that only about 50 per cent of children infected with HIV receive antiretroviral treatment. It is also concerned at the increasing rate of infections among indigenous children and the limited provision of appropriate health-care services for HIV-infected pregnant women.

58. In the light of its general comment No. 3 (2003) on HIV/AIDS and the rights of the child, the Committee recommends that the State party improve access to and coverage of antiretroviral therapy for HIV-infected children. The State party should also provide targeted services and information on HIV prevention for indigenous children. Further, it should ensure adequate health-care services and treatment for HIV-infected pregnant women and follow-up treatment for HIV/AIDS-infected mothers and their infants with a view to preventing mother-to-child transmission and guaranteeing early diagnosis and initiation of treatment.

Standard of living

59. The Committee remains concerned that, despite improvements, child poverty is widespread and access to drinking water and sanitation for children is limited, in particular in rural areas and among indigenous children.

60. The Committee recommends that the State party continue to intensify its efforts to eliminate poverty and extreme poverty and expand access to drinking water and sanitation, with a particular focus on rural areas and indigenous communities.

Education, including vocational training and guidance

61. The Committee notes the significant efforts made to increase budget allocations for, and access to, education, including early childhood education, and to strengthen intercultural bilingual education. However, it is concerned about:

(a) Disparities in budget allocations between schools and between regions;

(b) Lower enrolment and completion rates, persistent difficulties in accessing quality and bilingual education and high illiteracy rates among children living in rural areas, indigenous children and Afro-Peruvian children.

...

62. In the light of its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party:

...

(e) Strengthen measures to address school dropout and increase the completion of secondary education, with a particular focus on children living in rural areas, indigenous and Afro-Peruvian children, pregnant girls and teenage mothers;

(f) Improve the quality of education in rural areas and among indigenous and Afro-Peruvian communities with a view to eliminating illiteracy, and ensure the effective implementation of its programmes on intercultural bilingual education.

9. Gabon, CRC/C/GAB/CO/2, 8 July 2016

Non-discrimination

22. The Committee is seriously concerned about the continuing de facto discrimination in access to basic services, such as health, education and social services, against children from poor communities, children from pygmy communities, orphans, children in street situations, children with HIV/AIDS, children with disabilities, child victims of trafficking and asylum-seeking and refugee children. The Committee is also concerned about discrimination against lesbian, gay, bisexual, transgender and intersex children.

23. The Committee recommends that the State party prioritize investment in education, health and social services, taking into account the rights of children in vulnerable situations, including those living in remote and indigenous areas, and pay particular attention to guaranteeing effective access to health, education and social services to children from poor communities, children from indigenous pygmy communities, orphans,

children in street situations, children infected with HIV/AIDS, children with disabilities, child victims of trafficking and asylum-seeking and refugee children. ...

Birth registration

26. The Committee welcomes the 2011 decree establishing free birth registration, the adoption of the national birth registration guidelines and the 2013 national cross-sectoral plan to achieve universal birth registration. However, it remains concerned about the insufficient implementation of the decree and the continuing direct and indirect costs associated with birth registration. The Committee is also concerned about the high number of children still without access to birth certificates, in particular children in remote areas, pygmy children and children in vulnerable situations, such as children in street situations, child victims of trafficking and child refugees, and that this is partly due to the poor enforcement of the measures adopted.

27. The Committee recommends that the State party:

(a) Ensure that birth registration is indeed free by promptly eliminating the continuing associated direct and indirect costs at all levels of administration;

(b) Take all measures necessary to promptly provide all children with a free birth certificate, in particular children in remote areas, indigenous children, children in street situations, child victims of trafficking and child refugees. ...

Health and health services

46. The Committee welcomes the adoption of national health policies and the notable decrease in child and maternal mortality rates. Nonetheless, the Committee draws the State party's attention to the Committee's general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, and recommends that the State party: ... (d) Carry out without delay the rehabilitation and construction of health facilities and the implementation of the interventions planned in the National Health Development Plan, prioritizing rural and indigenous areas. ...

Children belonging to minority or indigenous groups

60. While noting the adoption by the State party of the plan for indigenous people in 2005 and the development in 2007 of an integrated programme to provide birth certificates, access to health, education and social services to pygmies, the Committee is concerned about the failure of the State party to implement the 2007 programme, despite the fact that pygmy children are in a most vulnerable situation due to the inaccessibility of hospitals, schools and social services and overall discrimination.

61. The Committee, taking into account its general comment No. 11 (2009) on indigenous children and their rights under the Convention, recommends that the State party:

(a) Adopt a law for the protection of indigenous people based on the United Nations Declaration on Rights of Indigenous Peoples;

(b) Promptly take measures to effectively implement community projects providing birth certificates to all pygmy children and ensuring access to health, education and social services;

(c) Conduct education and awareness-raising programmes to stop all forms of discrimination against pygmy children.

10. Nepal, CRC/C/NPL/CO/3-5, 8 July 2016

3. The Committee welcomes the ratification of or accession to the following instruments: ... (c) International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), in 2007.

Education, including vocational training and guidance

58. The Committee welcomes the constitutional provisions on free and compulsory basic education and free secondary education. However, the Committee is concerned about: ... (e) The low enrolment rate and high dropout rate of indigenous children. ...

59. In the light of its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party: ... (f) Implement targeted programmes, along with earmarked funding, for increasing the rate of school enrolment and secondary school completion rates for indigenous children. ...

Children belonging to minority or indigenous groups

64. The Committee welcomes the creation of the National Dalit Commission and the National Foundation for Development of Indigenous Nationalities. It is, however, concerned about:

- (a) Reports of discrimination against children and indigenous people, particularly with regard to access to water during rescue and relief efforts after the 2015 earthquake;
- (b) Denial of indigenous peoples' free, prior and informed consent with regard to resettlement and reconstruction decisions affecting them and their children after the 2015 earthquake.

65. The Committee recommends that the State party:

- (a) Remove barriers in accessing water supply, paying particular attention to traditionally excluded groups, such as the Madhesi, Dalit and Janajati;
- (b) Consult and cooperate in good faith with the indigenous peoples concerned, including indigenous children, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, and provide effective remedies in cases of violation of their rights, also in the context of rehabilitation efforts after the 2015 earthquake.

66. The Committee notes with satisfaction that the new Constitution recognizes the right of indigenous children to education in their mother tongues. However, it is concerned about:

- (a) The lack of legal clarity on the responsibility for implementing this right and the de facto suppression of the right of indigenous children to information and access to media in their native language;
- (b) Dalit children, children belonging to minorities and Tibetan children frequently suffering from hindrances to accessing education, health and social services; insufficient quality and cultural appropriateness of health care accessible to indigenous children and their mothers, including after the 2015 earthquake; and the resulting disproportionately high mortality rate of indigenous and Dalit children in comparison with other children in the State party;
- (c) The lack of learning materials in the native languages of indigenous children, and their low school enrolment rates;
- (d) Widespread reports of violence, through bullying and/or by teachers, against indigenous children in schools;
- (e) The 2015 earthquake exacerbating the vulnerability of orphans, children of indigenous groups, religious minorities, the Dalit community and migrant workers to human trafficking.

67. With reference to the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to strengthen its efforts to ensure that all children, irrespective of whether they belong to a caste, minority or indigenous group, enjoy the entire range of rights enshrined in the Convention. The Committee recommends that the State party:

- (a) Enact legislation and reporting procedures to ensure the effective implementation of the constitutional right of indigenous children to have meaningful access to information and media in their native language;
- (b) Provide culturally and linguistically adapted awareness-raising campaigns and targeted support measures in Dalit, minority and Tibetan communities to ensure meaningful access to education, health and social services;
- (c) Ensure the provision of educational syllabi in the native language of indigenous children;
- (d) Establish accessible measures for reporting violence in schools and ensuring adequate safeguards and commensurate sanctions against such violence;
- (e) Establish special units in the State party's social services sections to ensure that the needs of orphans, indigenous children and religious or other minorities are addressed and, in so doing, ensure that these units are provided with adequate human, technical and financial resources and that they pay particular attention to the risk of human trafficking.

11. New Zealand, CRC/C/NZL/CO/5, 21 October 2016

4. The Committee reminds the State party of the indivisibility and interdependence of all rights under the Convention and emphasizes the importance of all recommendations contained in the present concluding observations. The Committee would like to draw the State party's attention to the following recommendations that require the adoption of urgent measures: violence, abuse and neglect (para. 23); children deprived of a family environment (para. 28); standard of living (para. 36); children belonging to minority or indigenous groups (para. 42); child labour (para. 44); and juvenile justice (para. 45).

Data collection

10. In the light of its general comment No. 5 (2003) on general measures of implementation, the Committee recommends that the State party:

(a) Develop a comprehensive mechanism for data collection and an information system on all areas of the Convention. The data should be disaggregated by age, sex, disability, geographic location, ethnic origin, nationality and socioeconomic background, to facilitate analysis on the situation of all children, and particularly Maori and Pasifika children, children in care, children with disabilities, children living in poverty, refugee, asylum-seeking and migrant children and children in other situations of vulnerability. ...

Non-discrimination

15. The Committee recalls its previous recommendation (CRC/C/NZL/CO/3-4, para. 25) and recommends that the State party ensure full protection against discrimination on any ground, including by:

(a) Taking urgent measures to address disparities in access to education, health services and a minimum standard of living by Maori and Pasifika children and their families;

(b) Strengthening its measures to combat negative attitudes among the public and other preventive activities against discrimination and, if necessary, taking affirmative action for the benefit of children in vulnerable situations, such as Maori and Pasifika children, children belonging to ethnic minorities, refugee children, migrant children, children with disabilities, lesbian, bisexual, gay, transgender and intersex children and children living with persons from those groups;

(c) Taking all measures necessary to ensure that all cases of discrimination against children are addressed effectively, including with disciplinary, administrative or — if necessary — penal sanctions.

Best interests of the child

16. In the light of its general comment No. 14 (2013) on the right of the child to have her or his best interests taken as a primary consideration, the Committee recommends that the State party amend the Family Dispute Resolution Act 2013 to include an explicit requirement to comply with that obligation. It also recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions, in particular with regard to family law, social security legislation, children in care (particularly Maori children), sentencing of parents and in the refugee determination process. The State party is encouraged to develop procedures and criteria to provide guidance to all relevant professionals for determining the best interests of the child in every area and for giving it due weight as a primary consideration.

Right to life, survival and development

17. The Committee recommends that the State party adopt all the measures necessary to protect children from non-accidental injuries and to prevent, identify and address the root causes of youth suicide, with special attention to Maori children.

Right to identity

19. While appreciating the State party's efforts to preserve Maori identity, including through language and television programmes, the Committee is concerned that those efforts remain insufficient and recommends that the State party:

(a) Intensify efforts to promote and foster Maori language, culture and history in education and increase enrolment in Maori language classes;

(b) Ensure that Maori children adopted by non-Maori parents have access to information about their cultural identity;

(c) Ensure that all government agencies developing legislation and policies affecting children take into account the collective dimension of Maori cultural identity and the importance of their extended family (whanau) for Maori children's identity.

Violence, abuse and neglect

22. While welcoming the State party's multiple efforts to address child abuse and neglect, the Committee remains seriously concerned about: ... (c) The continuing prevalence of physical and psychological abuse and neglect, especially among Maori and Pasifika children and children with disabilities, and the lack of a comprehensive strategy against abuse and neglect to encompass all children in all settings. ...

23. In the light of its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, and taking note of target 16.2 of the Sustainable Development Goals on ending abuse, exploitation, trafficking and all forms of violence against and torture of children, and recalling its previous recommendation (CRC/C/NZL/CO/3-4, para. 35), the Committee urges the State party:

...

(c) To develop a comprehensive strategy to combat abuse and neglect encompassing all children in all settings, with particular attention to Maori and Pasifika children and children with disabilities;

(g) To further strengthen awareness-raising and education programmes, including campaigns, to prevent and combat child abuse, with the involvement of children, with particular attention to Maori and Pasifika children and children with disabilities.

Family environment

26. The Committee recalls its previous recommendation (CRC/C/NZL/CO/3-4, para. 32) and recommends that the State party intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities with timely responses at the local level, including services to parents who need counselling in child-rearing, services for the treatment of alcohol or drug-related problems and, in the case of Maori and Pasifika populations, culturally appropriate services to enable them to fulfil their parental role.

27. The Committee welcomes the reports of the Children's Commissioner on the State of Care 2015 and 2016 and of the Modernizing Child, Youth and Family Expert Panel, and the State party's commitment to respond to their recommendations. The Committee is however seriously concerned about:

(a) Deficiencies in the State party's care system, including lack of consideration for the best interests of the child and for the views of the child — regarding decisions directly affecting her or him; and lack of clarity regarding a child-centred approach leading to inconsistent practices towards children, in particular Maori children and children with disabilities;

(b) Enduring inadequate cultural capability of the State care system, despite recent efforts, which has a disproportionate impact on Maori families and children, who make up over half of the children in State care.

...

28. Drawing the State party's attention to the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex), the Committee urges the State party:

(a) When reforming the care system, to ensure that the best interests of the child are taken into account as a primary consideration in every case and that the child is heard in all matters affecting her or him; ensure a common understanding of a child-centred approach across the care system; and regularly monitor the implementation of the reform and its impact on children's outcomes, with particular attention to Maori children and children with disabilities;

(b) To strengthen its efforts to improve the cultural capability of care and protection system and its engagement with Maori communities, the whanau (extended family), hapū (sub-tribal groupings) and iwi (tribal groups), including by implementing the recommendations of the Children's Commissioner's 2015 report entitled "State of Care", with a view to addressing the overrepresentation of Maori children in State care. ...

Children with disabilities

30. While welcoming the measures undertaken by the State party, including the Child Disability Allowance, Wraparound Intensive Individualized Support and the Family Whānau Sign Language Facilitator service, in the light of its general comment No. 9 (2006) on the rights of children with disabilities, the Committee recommends that the State party: ... (b) Strengthen its efforts to combat the marginalization and discrimination of children with disabilities in their access to health, education, care and protection services, with particular attention to Maori children with disabilities, children with disabilities living in poverty and children with multiple disabilities, and undertake awareness-raising campaigns aimed at government officials, the public and families to combat the stigmatization of and prejudice against children with disabilities and promote a positive image of these children. ...

Health and health services

31. Recalling its previous recommendation (CRC/C/NZL/CO/3-4, para. 38), and in the light of 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 3.2 of the Sustainable Development Goals to end preventable deaths of newborns and children under 5 years of age, the Committee recommends that the State party:

(a) Promptly take the necessary measures to ensure adequate access to health services to all children, including age-appropriate mental health services, with particular attention to Maori and Pasifika children. ...

Breastfeeding

33. The Committee recommends that the State party increase the number of infants up to 6 months of age that are exclusively breastfed, with a particular focus on raising the awareness of the Maori population, particularly mothers, about the benefits of exclusive breastfeeding.

Impact of climate change on the rights of the child

34. The Committee is concerned about the harmful impact of climate change on children's health, especially for Maori and Pasifika children and children living in low-income settings. The Committee draws attention to target 13.5 of the Sustainable Development Goals on promoting mechanisms for raising capacity for effective climate change-related planning and management and recommends that the State party:

(a) Ensure that the special vulnerabilities and needs of children, and their views, are taken into account in developing policies or programmes addressing the issues of climate change and disaster risk management, with special attention to groups of children most likely to be affected by climate change, including Maori and Pasifika children and children living in low-income settings;

(b) Routinely undertake health impact assessments, with particular attention to children, to inform legislation and policies related to climate change.

Standard of living

35. While welcoming the public debate and attention given to the prevalence of child poverty in the State party, including through the appointment of an Expert Advisory Group on Solutions to Child Poverty, the Committee is deeply concerned about the enduring high prevalence of poverty among children, and the effect of deprivation on children's right to an adequate standard of living and access to adequate housing, with its negative impact on health, survival and development and education. It is particularly concerned about the continuing disparities faced by Maori and Pasifika children with regard to the enjoyment of these rights. It is further concerned about the impact of recent welfare and benefit sanctions reforms on children living in benefit-dependent households.

36. The Committee draws attention to target 1.3 of the Sustainable Development Goals, on implementing nationally appropriate social protection systems and measures for all, and target 11.1, to ensure access to adequate, safe and affordable housing for all, and urges the State party:

(a) To introduce a systemic approach to addressing child poverty, in particular Maori and Pasifika children, including establishing a national definition of poverty. ...

Education, including vocational training and guidance

37. Taking note of target 4.a of the Sustainable Development Goals on building and upgrading education facilities that are child, disability and gender sensitive and providing safe, non-violent, inclusive and effective learning environments for all, and recalling its previous recommendation (CRC/C/NZL/CO/3-4, para. 46), the Committee recommends that the State party: ... (d) Take measures to end the overrepresentation of children with disabilities, Maori and Pasifika children in disciplinary processes, including by providing adequate social and psychosocial support to children and only use the disciplinary measure of permanent or temporary exclusion as a means of last resort.

Early childhood development

38. Taking note of target 4.2 of the Sustainable Development Goals on ensuring that all girls and boys have access to quality early childhood development, care and pre-primary education, the Committee recommends that the State party:

(a) Take the measures necessary to ensure that children from low socioeconomic backgrounds, Maori and Pasifika children have effective access to early childhood care and education;

(b) Further invest in the availability and quality of early childhood care and education ensuring that, at a minimum, is free for children from low socioeconomic backgrounds, and that care personnel is adequately trained, including on Maori and Pasifika cultures.

Children belonging to minority or indigenous groups

41. While welcoming the efforts undertaken by the State party to implement culturally appropriate programmes such as the Whanau Ora, the Committee remains seriously concerned about the structural and systematic disadvantages Maori and Pasifika children face in the State party.

42. With reference to the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to develop a comprehensive, cross-sectorial strategy for the full enjoyment of the rights of Maori and Pasifika children, in close cooperation with them and their communities.

Administration of juvenile justice

45. Regretting that the State party has not progressed in the area of juvenile justice, recalling its previous recommendations (CRC/C/NZL/CO/3-4, para. 56 and CRC/C/15/Add.216, para. 50) and in the light of its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party: ... (e) To strengthen its efforts to address the overrepresentation of Maori and Pasifika children and young people in the juvenile justice system, including by improving the police's cultural capability and by investigating allegations of racial biases.

12. South Africa, CRC/C/ZAF/CO/2, 27 October 2016

Non-discrimination

23. The Committee is concerned at the discrimination faced by girls, children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum-seeking and refugee children, children in street situations, lesbian, gay, bisexual, transgender and intersex children and children with albinism in accessing basic services and child protection services, and at their heightened exposure to violence, abuse and harassment. The Committee is also concerned at the serious divide in access to basic services and an adequate standard of living in the country on the basis of race, geography and economic status, with a disproportionate disadvantage for children living in rural areas and in urban informal settlements.

24. The Committee recommends that the State party:

(a) Place strong focus on the eradication of structural inequality and discrimination in all legislative, policy and programmatic measures to advance the rights of the child, paying particular attention to children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum-seeking and refugee children, children in street situations, lesbian, gay, bisexual, transgender and intersex children and children with albinism, and to the accumulative impact of multiple discrimination. ...

Freedom of the child from all forms of violence

33. The Committee is concerned at the very high prevalence of violence against children, which includes corporal punishment, gender-based violence and harmful practices.

34. With reference to its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and taking note of target 16.2 of the Sustainable Development Goals on ending abuse, exploitation, trafficking and all forms of violence against and torture of children, the Committee urges the State party to develop, adopt and implement effectively a comprehensive national strategy to prevent and address all forms of violence against children and to protect and support child victims of violence. In developing such a strategy, the State party should: ... (d) Pay due attention to groups of children at heightened risk of exposure to violence, including children living in rural areas and urban informal settlements, refugee, asylum-seeking, migrant and stateless children, children in street situations, children belonging to sexual minorities, children with disabilities, indigenous children and children with albinism.

Indigenous children

65. The Committee is concerned that indigenous children, including children belonging to Khoisan peoples, face marginalization and discrimination. In particular, the Committee is concerned at:

(a) The lack of legal recognition of indigenous peoples and their rights in the State party, including Khoisan peoples;

(b) Negative impacts on indigenous children of the historical dispossession of traditional land, which is resulting in, among others, food insecurity, lack of access to water, and extreme poverty;

(c) Inability of indigenous children to fully enjoy the right to use their own languages, including in education.

66. With reference to the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention and in line with the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party:

(a) Consider legally recognizing the rights of indigenous peoples, including Khoisan peoples, with full recognition of the rights of indigenous children;

(b) Develop a national action plan to respect, protect and promote the rights of indigenous children and to eliminate their food insecurity, poverty and vulnerabilities to violence and exploitation, with their full and effective participation;

(c) Prevent evictions and the displacement of indigenous peoples, including pastoralists, hunter-gatherers and forest people, and provide redress to those evicted or displaced from their lands;

(d) Take effective measures to promote indigenous languages, including through the provision of bilingual education to indigenous children in their own indigenous languages as well as in the official languages of the State party;

(e) Consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization (ILO).

13. Suriname, CRC/C/SUR/CO/3-4, 9 November 2016

Non-discrimination

14. The Committee recommends that the State party ensure that all children in the State party enjoy equal rights under the Convention, both in law and practice, without discrimination and intensify efforts to ensure the effective elimination of any form of discrimination against children from Amerindian and Maroon communities, children of Haitian migrants, children with HIV/AIDS, LGBTI children, and other groups of children in marginalized situation through, among other things, awareness-raising campaigns and education, especially at the community level and in schools.

Respect for the views of the child

16. While noting the adoption of the bill on hearing children in judicial proceedings in 2008, the Committee, in the light of its general comment No. 12 (2009) on the right of the child to be heard, recommends that the State party: ... (e) Promote inclusive participation in the Youth Parliament by ensuring that eligible children from Amerindian and Maroon communities, children in situations of poverty, children with disabilities and LGBTI children are able to fully participate, as well as provide the Youth Parliament with adequate resources.

Abuse and neglect

19. Noting the increased number of children subject to abuse and neglect, the Committee recommends, in the light of its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and taking note of target 16.2 of the Sustainable Development Goals on ending abuse, exploitation, trafficking and all forms of violence and torture of children, that the State party:

(a) Further strengthen awareness-raising and education programmes, including campaigns, with the involvement of children in order to formulate a comprehensive strategy for preventing and combatting child abuse in all settings, in particular among Amerindian and Maroon communities. ...

Health and health services

28. In the light of 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 3.1, 3.2, and 3.3 of the Sustainable Development Goals, the Committee recommends that the State party:

...

(c) Strengthen implementation of the National Strategic Plan on HIV/AIDS, the Prevention of Mother to Child Transmission programme, and the Ministry of Health special prevention programmes for children and youth

(ages 10 to 19), including availability of rapid testing in the interior areas of the State party and ensure access to antiretroviral treatment; ...

(f) Ensure access to improved water sources and sanitation facilities, especially for people living in the interior areas, including by expanding the WASH programme throughout the interior areas to Amerindian and Maroon communities, in cooperation with UNICEF.

Adolescent health

31. In the light of its general comment No. 4 (2003) on adolescent health and taking note of target 3.5 and 3.7 of the Sustainable Development Goals, the Committee urges the State party to: ... (d) Undertake awareness-raising and education programmes, including campaigns, about sexual and reproductive health issues to all segments of society, in particular, poor households in the interior areas, especially Amerindian and Maroon communities....

Impact of climate change on the rights of the child

32. The Committee recommends that the State party develop strategies, including for awareness-raising, to reduce the vulnerabilities and risks for children resulting from climate change, in particular in situations of poverty, including Amerindian and Maroon communities. It also recommends that the State party mainstream child specific and child sensitive risk and vulnerability reduction strategies into its national plan on climate change and disaster preparedness and emergency management, and strengthen its social safety nets and social protection framework so as to more effectively mitigate the multiple social, economic and environmental impacts of climate change.

Standard of living

33. The Committee draws attention to target 1.3 of the Sustainable Development Goals on implementing nationally appropriate social protection systems and measures for all, and recommends that the State party:

...

(b) Implement the Conditional Cash Transfer (CCT) system and strengthen all social protection programmes to continue to improve outcomes for children as well as poverty reduction strategies to address the multidimensional nature of the issue with a view towards establishing a coherent framework identifying priority action against the exclusion of children, in particular those from single-headed households, Amerindian and Maroon communities, with specific and measurable objectives, clear indicators, deadlines and sufficient economic and financial support; and

(c) To partner with UNICEF and other development partners to promote a comprehensive and coherent strategy to guarantee children a minimum level of access to basic services and financial security, especially in the interior areas, and create a nationally defined social protection floor, as part of the Social Protection Floor initiative of the United Nations.

Education, including vocational training and guidance

34. The Committee commends the State party for the high net enrolment rate for primary education, and welcomes numerous initiatives to improve education quality and programmes, including the launching of the Program for More Effective Schools in Suriname (PROGRESS). The Committee, however, is seriously concerned about:

(a) The relatively low educational achievements of children in the State party, in particular children from economically disadvantaged communities, low primary school completion rates, and low retention rates at the secondary level, in particular in the interior areas of the State party;

(b) Lack of schools in some of the remote districts, and the insufficient number of professionally trained teaching staff at all levels, inadequate teacher training and materials, and poor infrastructure;

(c) Insufficient access to education by children from low-income families, especially in the interior areas, the low age of compulsory school age; barriers to access education, including fees for school materials and gaps with respect to early childhood education,

(d) The high number of students who drop out of school, in particular girls in the interior areas and boys nationally, and the high number of repeat-students;

(e) Lack of a formal government policy on pregnant girls in schools, insufficient support for the reintegration of school-aged mothers into the education system, and persistent stigmatization of pregnant teens and teen mothers within schools; and

(f) Quality of care and issues related to safety and hygienic requirements, educational backgrounds of staff and background checks for staff working in registered day care facilities, including public kindergartens, semi-public kindergartens, nurseries and preschool centers.

35. In the light of its general comment No. 1 (2001) on the aims of education and taking note of targets 4.1, 4.2, 4.5 and 4.a of the Sustainable Development Goals, the Committee urges the State party to:

(a) Continue efforts aimed at improving access to education regardless of the ability to pay fees for school materials at both the primary and secondary levels and improve quality of education by ensuring adequate and timely funding, adequate facilities, learning materials and education tools that take into consideration the national and local context, with particular emphasis on the interior areas, and through increasing safe transportation and the use of information and communication technologies;

(b) Increase the number of qualified teachers, and step-up quality training for teachers, including kindergarten and primary school teachers, by expanding the capacity of the Centre for Continuing Education in Suriname, in line with the child friendly schools initiative and the UNADF Action Plan (2012-2016) in cooperation with UNICEF;

(c) Adopt and implement legislation and policy on early childhood education, allocate sufficient financial resources for the development and expansion of early childhood education, in particular in interior areas, based on a comprehensive and holistic policy of early childhood care, as well as approve the Early Childhood Development Standards;

(d) Adopt and implement the Basic Education Act which would extend compulsory education from ages 4 through 16, and strengthen child-friendly approaches to education, including the “I Believe In You” approach and “PROGRESS” program and implement recommendations in the report of the Preparing Education Innovation Task Force for strengthening the education system;

(e) Strengthen efforts to reduce the premature dropout rate, including addressing the reasons behind the non-completion of schooling, and develop and promote quality vocational training to enhance the skills of children, especially those who drop out of school, in particular boys, and girls who have become pregnant;

(f) Implement the Framework Act to ensure the registration of day care centres and that such centres meet set health, safety and educational requirements.

Children belonging to minority and indigenous groups

36. The Committee recommends that the State party continue to improve access to health, education and other services in the interior areas of the State party for Amerindian and Maroon children, including by approving the draft Law on Language Education and the Language Council, ensuring access to free primary education, building more public school facilities, expanding preschool education, improving training for teachers and administrators, and expanding the Child-Friendly School project. The Committee also recommends that the State party ensure access by these communities to quality health care and to clean water and sanitation by expanding the Water and Sanitation Facilities Project, as well as ensure that Amerindian and Maroon communities are protected from illegal and uncontrolled logging and mining which has a negative environmental impact on these communities by adopting and enforcing legislation on sustainable land management in consultation with local communities, as well as corporate social responsibility.

Economic exploitation, including child labour

37. The Committee is seriously concerned about the persistence of child labour in the State party in the agricultural, fishing, timber and mining sectors, as well as domestic work, and, in particular boys from the Maroon communities in the interior areas who are disproportionately represented in the worst forms of child labour.

38. The Committee urges that the State party:

(a) Adopt and implement the draft National Action Plan on Combatting Child Labour and provide the necessary resources for its implementation;

(b) Harmonize the minimum age of 14 for work with the proposed age of 16 for compulsory education;

(c) Take measures to prevent children from being economically exploited by ensuring that the relevant provisions of the Labour Code, Penal Code and other relevant legislation related to child labour are enforced, including with respect to the minimum age for hazardous work, which is set at 18 years of age, and adopt policies to address child labour in both the formal and informal sectors, ensuring compliance with article 32 of the Convention and relevant ILO standards;

- (d) Strengthen labour inspectorates and monitoring mechanisms, in the formal and informal sectors, and make data on the number of inspections and violations publically available;
- (e) Continue to raise awareness on the negative consequences of child labour through public educational programmes, including campaigns organized in cooperation with opinion leaders, families and the media;
- (f) Consider ratifying the ILO Convention No. 138 on Minimum Age and seek technical assistance from the International Programme on the Elimination of Child Labour of the ILO; and
- (g) Continue cooperation with the ILO with a view towards establishing programs to move children out of the worst forms of child labor and strengthen vocational programs for drop-outs and older children to serve as alternatives to underage labour.

Sale, trafficking and abduction

39. The Committee welcomes the adoption of the National Strategy to Combat Human Trafficking (2014-2018) and regional initiatives to address commercial sexual exploitation of children in tourism, and the Human Trafficking Awareness Programs and the Anti-Trafficking Hotline. The Committee is however seriously concerned that:

(a) The State party is a source, transit and destination country for children subjected to sex trafficking, in particular girls from Amerindian and Maroon communities in regions where mining and forestry operations are taking place....

40. The Committee urges the State party to:

(a) Adopt and implement the necessary legislative and policy measures to effectively combat child trafficking for purposes of sexual exploitation, including through the development of a comprehensive anti-trafficking strategy and plan of action;

(b) Increase staff and resources of the Trafficking in Persons Unit of the Police as well as training to step-up enforcement, and ensure that all law enforcement officers receive adequate training in human trafficking and have the resources to carry out investigations, particularly in the interior areas of the State party;

(c) Establish a monitoring mechanism for the investigation and redress of such abuses, with a view to improving accountability, transparency and the prevention of violations to the Convention, as well as ensure the effective prosecution and punishment of those who exploit children for purposes of prostitution, forced labour or pornography. ...

B. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

1. Laos, CRC/C/OPSC/LAO/CO/1, 3 July 2015

Data

7. The Committee is concerned about the lack of disaggregated data on children who are vulnerable to being sold and to being used for prostitution and pornography, such as children from ethnic minorities, particularly Mon-Khmer and Tibeto-Burman, migrant and refugee children, children living in institutions, transgender boys, children working in exploitative conditions, children from rural areas and children living in poverty. The Committee is also concerned about the lack of a comprehensive data collection system covering all offences under the Optional Protocol, which would enable the State party to identify the extent to which children are being sold or used for prostitution and pornography, and the specific forms of those crimes.

8. The Committee recommends that the State party develop and implement a comprehensive, coordinated and effective system of data collection, analysis, monitoring and impact assessment on all areas covered by the Optional Protocol. The data should be disaggregated by, *inter alia*, sex, age, nationality and ethnic origin, region and socioeconomic status, and particular attention should be given to children who are at risk of becoming victims of crimes under the Optional Protocol. Data should also be collected on the profile of perpetrators and the number of prosecutions and convictions, disaggregated by the nature of the offence.

Prevention of the sale of children, child prostitution and child pornography (art. 9 (1) and (2))

Measures adopted to prevent offences prohibited under the Optional Protocol

21. The Committee notes that the State party has made some efforts to prevent sexual exploitation of and trafficking in children, including through awareness-raising campaigns in communities about the risk of child

trafficking and sexual exploitation. However, the Committee is seriously concerned that the State party is primarily a country of origin for human trafficking, with the primary destination being Thailand, that an overwhelming majority of victims of sexual exploitation are girls aged between 10 and 18 years and that most of them are forced into child prostitution. The Committee is particularly concerned that:

- (a) The current policies and programmes are inadequate to address the underlying root causes of the sale of children, child prostitution and child pornography, such as discrimination against children belonging to ethnic minorities, poverty, a high rate of school dropouts, lack of access to free education, children living in street situations and unsafe labour migration, particularly to Thailand;
- (b) The construction of hydropower dams and the operations of large-scale extractive industries are leading to the displacement of communities, particularly children from ethnic minorities, and consequently exposing them to abuse, sexual exploitation and trafficking;
- (c) Despite the increasing birth registration, around 67 per cent of registered children do not possess birth certificates and birth registration among Hmong-Mien households is particularly low, leaving them vulnerable to the offences under the Optional Protocol. ...

22. The Committee urges the State party to adopt a comprehensive approach to addressing the root causes of offences under the Optional Protocol and target families and children in the most vulnerable situations, including members of the Mon-Khmer and Tibeto-Burman ethnic groups. In particular, the Committee recommends that the State party strengthen its poverty reduction strategies and supportive social protection measures for families in disadvantaged and marginalized situations, including child-centred early intervention programmes, to support parents in better performing their care and protection responsibilities towards children. It further urges the State party to:

- (a) Prevent and/or end the displacement of indigenous children owing to the construction of hydropower dams and the operations of large-scale extractive industries, and mitigate the risk of children being exposed to the offences under the Optional Protocol and enable access to effective judicial and non-judicial mechanisms to provide remedy for them and their families when their rights have been violated;
- (b) Expand the State party's existing legal requirement to conduct impact assessments that explicitly address children's rights and include the differential impact on certain categories of children, such as indigenous children, using the framework of the Optional Protocol and relevant concluding observations and general comments issued by the Committee;
- (c) Continue and strengthen its measures to ensure that all children, including children from Hmong-Mien households, are registered at birth. ...

Child sex tourism

27. The Committee is seriously concerned that many children are being sexually exploited by foreign paedophiles in the State party. The Committee is particularly concerned about:

- (a) The lack of specific national legislation that explicitly prohibits child sex tourism and the lack of capacity in the Government to effectively address this issue;
- (b) The weak legal framework and insufficient coordination between the State party and international agencies working to identify and prosecute child pornographers and paedophiles and the fact that the State party remains among the main destination countries for child sex tourism;
- (c) The insufficient awareness-raising about child sexual exploitation in travel and tourism, and inadequate regulation of and engagement with the private sector, especially the travel, hotel and tourism industry, to prevent and combat child sex tourism.

28. The Committee recommends that the State party take all measures necessary to identify children who are especially vulnerable of becoming victims of the crimes covered by the Optional Protocol, such as children from ethnic communities, children living in rural areas and children affected by poverty, and link these measures to existing child protection programmes and poverty reduction strategies. ...

2. Peru, CRC/C/OPSC/PER/CO/1, 7 March 2016

Measures adopted to prevent offences prohibited under the Protocol

19. The Committee notes that the State party has introduced measures to prevent sexual exploitation and trafficking of children, including the establishment of the Multisectoral Permanent Working Group against Trafficking in Persons. It is, however, concerned that measures to prevent the offences covered by the Optional Protocol are insufficient, as evidenced, inter alia, by the widespread sexual exploitation of girls, in

particular in mining areas, the increasing prevalence of child prostitution and the existence of a large number of organized networks for trafficking in organs. In particular, it is concerned that:

- (a) Efforts to properly identify and eliminate the root causes and risks of offences under the Protocol, including poverty, the prevalence of discriminatory practices and attitudes, and violence, are limited;
- (b) There are no mechanisms in place to identify and monitor children who are at particular risk of becoming victims of offences under the Optional Protocol, such as children in street situations, indigenous children, unaccompanied asylum-seeking, refugee and migrant children, and children from rural and/or remote areas.

C. General Comments

1. General comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016

Introduction

1. The Convention on the Rights of the Child defines a child as every human being below the age of 18 years unless under the law applicable to the child majority is attained earlier, and emphasizes that States should respect and ensure the rights embodied in the Convention to each child within their jurisdiction without discrimination of any kind. While the Convention recognizes the rights of all persons under 18 years, the implementation of rights should take account of children's development and their evolving capacities. Approaches adopted to ensure the realization of the rights of adolescents differ significantly from those adopted for younger children.

2. Adolescence is a life stage characterized by growing opportunities, capacities, aspirations, energy and creativity, but also significant vulnerability. Adolescents are agents of change and a key asset and resource with the potential to contribute positively to their families, communities and countries. Globally, adolescents engage positively in many spheres, including health and education campaigns, family support, peer education, community development initiatives, participatory budgeting and creative arts, and make contributions towards peace, human rights, environmental sustainability and climate justice. Many adolescents are at the cutting edge of the digital and social media environments, which form an increasingly central role in their education, culture and social networks, and hold potential in terms of political engagement and monitoring accountability.

Adolescents requiring particular attention

...

Minority and indigenous adolescents

35. The inadequate attention paid to and the insufficient respect shown for the cultures, values and world vision of adolescents from minority and indigenous groups can lead to discrimination, social exclusion, marginalization and non-inclusion in public spaces. This increases the vulnerability of minority and indigenous adolescents to poverty, social injustice, mental health issues, including disproportionately high suicide rates, poor educational outcomes and high levels of detention within the criminal justice system.

36. The Committee urges States parties to introduce measures to support adolescents from minority and indigenous communities so that they can enjoy their cultural identities and build on the strengths of their cultures to become active contributors to family and community life, paying particular attention to the rights of adolescent girls. In so doing, States should address the comprehensive recommendations contained in the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

Education, leisure and cultural activities

Education

...

70. The Committee notes with concern the numbers of adolescents in marginalized situations who are not given the opportunity to make the transition to secondary education, such as adolescents living in poverty; lesbian, gay, bisexual, transgender and intersex adolescents; adolescents belonging to minorities; adolescents with psychosocial, sensory or physical disabilities; adolescents who are migrating; adolescents in situations of armed conflict or natural disasters; and adolescents in street situations or working. Proactive measures are necessary to end discrimination of marginalized groups in gaining access to education, including by

establishing cash transfer programmes, respecting minority and indigenous cultures and children from all religious communities, promoting inclusive education for children with disabilities, combating bullying and discriminatory attitudes within the education system and providing education in refugee camps.

V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

A. Concluding Observations

1. Denmark, CEDAW/C/DNK/CO/8, 11 March 2015

15. The Committee welcomes the existing, albeit rather limited, temporary special measures and the progress made in increasing the participation of women in the parliament and on management boards of companies and autonomous public enterprises. The Committee remains concerned, however, about the underrepresentation of women in academic institutions and in the private sector, especially at decision-making levels and, in particular, in technical areas, owing to the continuing existence of stereotypes concerning the roles of men and women in the family and society. The Committee is also concerned about the limited use of temporary special measures in Greenland and the Faroe Islands, as well as with regard to migrant women.

16. In accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 on the subject, the Committee recommends that the State party evaluate the impact of existing temporary special measures, in particular in Greenland and the Faroe Islands, as well as with regard to migrant women, including through the collection and analysis of genderdisaggregated data, and take new measures to accelerate the achievement of substantive gender equality in all areas under the Convention in which women continue to be disadvantaged or underrepresented, and also to combat stereotypes concerning the traditional roles of men and women in the family and society.

23. The Committee acknowledges the adoption of the parliamentary bill on the promotion of gender balance on the boards of private and public companies in 2012. The Committee welcomes the results achieved in increasing the participation of women in the parliament of Denmark, but remains concerned at the low representation of women in the parliaments of Greenland and the Faroe Islands. Furthermore, the Committee is concerned about the underrepresentation of women in municipal councils and executive bodies.

24. The Committee calls upon the State party to take measures, including temporary special measures such as statutory quotas or incentives for political parties to include an equal number of women and men in their electoral lists, especially at the municipal level and in Greenland and the Faroe Islands, to accelerate the equal representation of women in political and public life. In doing so, the State party should pay particular attention to the representation of women in legislative and executive bodies at the municipal level and in Greenland and the Faroe Islands, including in decision-making positions. The Committee also urges the State party to closely monitor the implementation of the parliamentary bill on the promotion of gender balance on the boards of private and public companies, adopted in 2012.

2. Ecuador, CEDAW/C/ECU/CO/8-9, 11 March 2015

Legislation on discrimination against women

10. The Committee acknowledges the adoption of the Comprehensive Organic Criminal Code, which states that femicide (art. 146) and discrimination on the basis of sex, gender identity, sexual orientation and other grounds (art. 176) constitute criminal conduct. It also welcomes the State party's comprehensive legislative and policy framework for the elimination of discrimination against women. The Committee is concerned, however, about the following:

(a) Challenges to the effective implementation of such a framework, in particular at the local level and in remote areas, and the slow progress in bringing about the changes in institutions necessary to enforce legislation and public policies;

(b) De facto and intersectional discrimination faced by indigenous, Afro-Ecuadorian and Montubio women, women with disabilities, migrant women, women asylum seekers and refugee women, and the limited information disaggregated by sex, ethnicity and social condition on the impact of legislation and policies on the situation of women.

11. The Committee recommends that the State party:

(a) Accelerate 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 accord priority to the allocation of human and financial resources in rural and remote areas;

(b) In line with article 2 of the Convention and the Committee's general recommendation No. 28 on the core obligations of States parties under that article, adopt specific targets, lines of action and indicators aimed at tackling multiple forms of discrimination against women, and consider the specific needs and cultural contexts of women belonging to disadvantaged groups in an adequate manner;

(c) Establish mechanisms to collect information on and assess the status and progress in the realization of the human rights of women belonging to disadvantaged and marginalized groups, in the framework of national and sectoral legislation and policies relating to various provisions of the Convention.

Access to justice and legal complaint mechanisms

12. The Committee takes note of the information provided by the State party's delegation during the dialogue concerning the implementation of an agreement among branches of the Government to facilitate access to justice in rural areas. Nonetheless, the Committee observes with concern that specialized judicial units to enforce legal provisions relating to violence against women do not cover all areas of the State party. The Committee also notes with concern that various factors limit women's access to justice, in particular a lack of gender-sensitive procedures, the stigmatization of women who bring their cases to court and the limited training of police officers. It notes the barriers faced by indigenous women in gaining access to both the regular and the traditional justice systems and the absence of information on redress and reparations available to them.

13. The Committee calls upon the State party:

(a) To allocate the human, financial and technical resources necessary for the establishment and functioning of specialized judicial units on violence against women in all cantons and, in particular, in rural and remote areas, and adopt guidelines to ensure that the agreement between branches of the Government on the provision of justice in cases of violence against women is implemented promptly;

(b) To monitor the implementation of the protocols for conducting prosecutions in cases of violence against women (resolution No. 154-2014 of the Council of the Judiciary), facilitate women's access to justice by raising the awareness of women and men in order to eliminate the stigmatization faced by women who claim their rights, and provide systematic training to judges, prosecutors, police officers and other law enforcement officers on the strict application of legislation prohibiting discrimination and violence against women;

(c) To adopt measures to harmonize the competencies of the regular and traditional justice systems to deal with complaints from women belonging to ethnic groups, ensuring that women have access to remedies through appropriate provision of interpreters, legal aid, if necessary free of charge, and adequate reparations in accordance with their culture and traditions.

Temporary special measures

16. The Committee welcomes the constitutional and legislative provisions adopted by the State party to accelerate equality between women and men in the areas of political and economic participation. It is concerned, however, at the limited implementation of those provisions at the local level. It notes with concern the absence of information on the adoption of temporary special measures aimed at reducing discrimination against indigenous, Afro-Ecuadorian and Montubio women, migrant women and women with disabilities.

17. The Committee recommends that the State party:

(a) Ensure that the public authorities apply temporary special measures at the local level effectively and that they monitor and evaluate the impact and results of those measures in areas where women remain underrepresented;

(b) Distinguish in its policies and programmes between general social and economic policies that benefit women and temporary special measures under article 4 (1) of the Convention that are necessary to accelerate the achievement of substantive equality of women and men, as clarified by the Committee in its general recommendation No. 25 on the subject, and implement those measures with specific targets and time frames to accelerate the achievement of substantive gender equality for such disadvantaged groups of women as indigenous, Afro-Ecuadorian and Montubio women, migrant women and women with disabilities in such fields as political participation, education, employment and health.

Participation in public and political life

24. The Committee commends the State party for adopting gender parity and alternating women and men candidates on multiperson electoral lists. It observes with concern, however, that the representation of women

in single-person positions and on local political bodies remains limited, in particular as regards indigenous and Afro-Ecuadorian women.

25. The Committee recommends that the State party:

- (a) Adopt measures to increase the participation of women in single-person positions and on political bodies, in particular at the local level;
- (b) Implement temporary special measures to increase the participation of indigenous and Afro-Ecuadorian women in public life, including by establishing statutory quotas and providing specific training on how to conduct public affairs.

Education

28. The Committee notes that the enrolment of girls in education has increased in the State party, in particular at the primary level. It is concerned, however, about:

- (a) Limited access to education for indigenous and Afro-Ecuadorian women and the poor quality of education at all levels in rural areas, which limits rural women's access to higher education;
- (b) Limited opportunities for indigenous women and girls to gain access to their own educational institutions, as well as the regular education system, owing to long distances between schools and indigenous communities and public speeches downplaying the importance and relevance of education for indigenous communities.

29. The Committee calls upon the State party:

- (a) To strengthen the quality of education in rural areas, provide free school transport for women and girls in rural and remote areas and promote access by rural women to education by facilitating their enrolment in secondary schools and tertiary educational institutions;
- (b) To ensure adequate opportunities for indigenous women and girls to receive instruction in their own languages in indigenous educational institutions by providing sufficient allocations from the budget and by ensuring that girls who have received their education in an indigenous educational institution have access to non-indigenous institutions at all levels of education.

Health

32. The Committee notes the numerous efforts made by the State party to improve the health situation of its population. It is concerned, however, about: ... (e) Barriers faced by indigenous, Afro-Ecuadorian and Montubio women in gaining access to health services that meet their needs and respect their health approaches, including the practice of "vertical births" followed by indigenous women.

33. The Committee recommends that the State party: ... (f) Adopt the bill on intercultural practice for assisted births under the National Health System with the aim of recognizing intercultural care during delivery.

Indigenous, Afro-Ecuadorian and Montubio women

38. The Committee notes with concern the absence of information on measures taken by the State party to ensure the protection of indigenous, Afro-Ecuadorian and Montubio women in the context of large-scale projects for the exploitation of natural resources. In particular, it is concerned that women belonging to such groups are often not involved and that their free, prior and informed consent is not always sought in relevant decision-making processes, the impact of such projects on their living conditions notwithstanding.

39. The Committee calls upon the State party to 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. The State party should also provide adequate alternative housing and livelihoods to the women concerned and ensure that public and private companies that execute projects for the exploitation of natural resources compensate adequately women living in territories and areas affected by such projects.

3. Gabon, CEDAW/C/GAB/CO/6 , 11 March 2015

Disadvantaged groups of women

42. The Committee is concerned about the numerous cases of sexual violence against indigenous women perpetrated by members of the Bantu community; the persistence of the practice of enslaving indigenous people, including women and girls; the discrimination against indigenous women and men as regards access

to health care, education and birth registration; and the obstacles faced by indigenous people to living in their ancestral lands.

43. The Committee urges the State party to put an end to sexual violence against indigenous women and the practice of enslaving indigenous people, including by prosecuting and punishing perpetrators, and ensure that indigenous people, including women, have non-discriminatory access to education, health care and birth registration and unobstructed access to their ancestral lands.

4. Bolivia, CEDAW/C/BOL/CO/5-6, 28 July 2015

Access to justice and remedies

10. The Committee welcomes the efforts made by the State party to offer comprehensive services of plurinational justice, but is concerned about:

(a) The persisting structural barriers in the “rural indigenous jurisdiction” and in the formal justice system that prevent women from gaining access to justice and obtaining redress, such as an insufficient number of courts across the territory, limited information regarding rights and judicial procedures available in the main indigenous languages and the limited coverage of legal aid schemes, given that only 45 per cent of municipalities have established comprehensive municipal legal services....

National machinery for the advancement of women

12. The Committee, reiterating the concern that it expressed in its concluding comments of 2008 (CEDAW/C/BOL/CO/4), wishes to call special attention to the following: ... (c) The lack of adequate mechanisms to enable more women’s organizations to participate in the implementation of policies and strategies in the areas covered by the Convention.

13. The Committee recommends that the State party: ... (c) Ensure the broader participation of women’s organizations, including organizations of indigenous and Afro-Bolivian women, and women with disabilities in the implementation of the National Plan for Equality of Opportunities.

Temporary special measures

14. The Committee notes that the State party’s constitutional and legal framework provides for the implementation of temporary special measures, but notes with concern that the State party has adopted such measures only in the fields of political participation and the incorporation of women into the armed forces. It is also concerned about the lack of statistical information on the results achieved through the implementation of quotas for indigenous and Afro-Bolivian women in tertiary education.

15. In line with its general recommendation No. 25 on temporary special measures, the Committee recommends that the State party: ... (c) Assess the impact of temporary special measures in granting access to tertiary education to indigenous and Afro-Bolivian women.

Stereotypes and discriminatory practices

16. The Committee commends the State party for its recognition of indigenous jurisdiction that does not contradict women’s human rights and for its awareness of the patriarchal roots of discrimination against women. It is concerned, however, about the persistence of discriminatory stereotypes about the roles and responsibilities of women and men in the family and in the larger society that perpetuate discrimination against women in areas such as education, health and employment, as well as violence against women. The Committee is also concerned about gender stereotypes in the mass media, and sexist portrayals of women in particular.

17. The Committee recommends that the State party move:

(a) To develop a comprehensive strategy targeting women, men, girls and boys in order to overcome patriarchal and gender-based stereotypical attitudes about the roles and responsibilities of women and men in family and society, and strengthen awareness-raising campaigns at the community level;

(b) To ensure, through a substantial intercultural dialogue, that the rights of indigenous women are respected in all decision-making processes regarding harmful customary laws and practices affecting women. ...

Participation in political and public life

22. The Committee commends the State party for its progressive laws regarding women’s political participation and protection from gender-based political violence, as well as for the progress achieved in

increasing women's representation in the Plurinational Legislative Assembly to 53.1 per cent of deputies and 47.2 per cent of senators. The Committee is concerned, however, about the underrepresentation of women, especially indigenous women, in high-level decision-making positions in the Government, in particular at the departmental and municipal levels. It is also concerned about the low representation of women in the judiciary and the foreign service of the State party. The Committee is further concerned about the lack of prosecutions and convictions regarding complaints of gender-based political violence and harassment.

23. The Committee calls upon the State party:

- (a) To adopt temporary special measures, including statutory quotas, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25, to promote the equal participation of women, especially indigenous women, in national, departmental and municipal governments, the judiciary and the international representation of the Plurinational State of Bolivia, especially in high-level decision-making positions, and to monitor the progress achieved;
- (b) To establish a programme aimed at combating the prevailing stereotypes of women in politics, raising awareness of the importance of the free and equal participation of women, in particular indigenous women, in political life;
- (c) To develop targeted training and mentoring programmes on leadership and negotiation skills for current and potential women candidates and women holding public office;
- (d) To prosecute and adequately punish perpetrators in cases of gender-based political violence.

Education

24. While the Committee recognizes the high level of investment in education by the State party, it notes with concern the absence of data disaggregated by age, ethnicity and social status on the access of girls to education, in particular girls' enrolment, completion and dropout rates at all levels of education. Those data would permit a substantive and ongoing assessment of equality and non-discrimination in the sphere of education. It is also concerned about the fact that the courses offered at indigenous universities do not adequately cover multiculturalism and diversity. It is further concerned about the 30 per cent dropout rate owing to teenage pregnancy and the absence of education in sexual and reproductive health and rights within the education system. The Committee notes the measures taken by the State party to address sexual violence against girls in the education system.

25. The Committee recommends that the State party: ... (c) Ensure that indigenous women have access to education in compliance with the criteria enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295)....

Health

28. The Committee welcomes the measures taken by the State party to enhance the provision of health services for women, including through the provision of ancestral medicine, but is concerned about:

- (a) The persistently high rates of maternal mortality and the limited access to health infrastructures for pregnant women, in particular for indigenous women and in rural areas;
- (b) The lack of comprehensive education on sexual and reproductive health and rights and family planning services, and limited access to modern contraceptives, including emergency contraception;
- (c) The high rate of teenage pregnancy, which can lead to increased maternal mortality;
- (d) The criminalization of abortion, the restrictive conditions under which abortion is available and the lack of implementation of the rule issued by the Constitutional Court in 2014 abolishing the requirement of judicial authorization for abortion in cases of rape.

29. The Committee recommends that the State party:

- (a) Strengthen measures to reduce the maternal mortality rate and ensure the provision of essential obstetric care for pregnant women, in particular in rural and remote areas and among indigenous women and women of African descent;
- (b) Introduce age-appropriate school education on sexual and reproductive health and rights and ensure affordable access to services and information on sexual and reproductive rights for adolescent girls and boys, conduct awareness-raising campaigns about modern contraceptive methods in indigenous languages and increase access to safe and affordable contraceptives throughout the State party;
- (c) Amend relevant legal provisions to decriminalize abortion and ensure that it is legally available in cases of threats to the life or health of the pregnant woman, rape, incest and serious impairment of the foetus, in

addition to ensuring the appropriate implementation of the Constitutional Court ruling abolishing the requirement of judicial authorization for access to abortion in cases of rape or incest.

Economic empowerment of women

30. The Committee commends the State party for its economic growth, redistribution of wealth and eradication of extreme poverty, but is concerned about the persistence of poverty in female-headed households and the absence of information on the concrete impact of social programmes on the lives of women. It is also concerned about the lack of measures to ensure that indigenous and rural women can participate in the benefits of the implementation of development projects within their territories.

31. The Committee recommends that the State party continue to strengthen its programmes to combat poverty. It also recommends that the State party establish credit and finance schemes available to women, paying special attention to women in rural areas, indigenous and Afro-Bolivian women, women with disabilities and older women.

Indigenous and Afro-Bolivian women

34. The Committee notes with concern that indigenous and Afro-Bolivian women lack appropriate means to express their free, prior and informed consent in the approval of large-scale projects for the exploitation of natural resources. The Committee is also concerned about the multiple impacts of such projects on women's living conditions. Further concern exists about the situation of Guarani women who depend on working in agriculture and livestock and do not receive compensation or remuneration.

35. The Committee recommends that the State party:

(a) Implement adequate consultation processes to seek the free, prior and informed consent of indigenous and Afro-Bolivian women in decision-making processes that authorize large-scale projects for the exploitation of natural resources in their ancestral territories;

(b) Take measures to ensure that companies executing projects for the exploitation of natural resources adequately compensate women living in territories and areas affected by such projects;

(c) Take measures to prohibit and discourage all forms of slave labour affecting Guarani women.

Marriage and family relations

38. The Committee welcomes Act No. 603, adopted in 2014 to promulgate the new Family and Family Procedure Code, which brings into line its family law with the Convention, recognizing different types of families. The Committee is concerned, however, about the challenges in its implementation, including the 18-year minimum age of marriage for women and men, the lack of information about awareness-raising and dissemination campaigns among women, especially in indigenous languages, regarding the principle of equality between women and men in marriage and family relations and in cases of their dissolution. There is further concern about the lack of information on customary laws and practices in the area of inheritance and measures to ensure that customary law upholds women's access to inheritance, including inheritance of land, as well as on measures taken to ensure recognition of unremunerated domestic work within the distribution of marital property.

39. The Committee recommends that the State party:

(a) Effectively enforce its legislation contained in the Family and Family Procedure Code, including on marriages of girls under 18 years of age, through sanctions in cases of breach of its provisions and address separation and dissolution of marriage as well as de facto unions in line with the Committee's general recommendation No. 29 on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution);

(b) Carry out awareness-raising and education programmes directed at both women and men, including in indigenous languages, in cooperation with civil society, on the content of the new provisions of the Family and Family Procedure Code, and ensure that judicial and administrative authorities are aware of the new provisions and apply them effectively;

(c) Ensure that customary law in the area of inheritance complies with the principle of equality between women and men;

(d) Take all measures necessary to ensure that unremunerated domestic work is adequately taken into consideration within the legal regulation of distribution of marital property.

5. Russia, CEDAW/C/RUS/CO/8, 20 November 2015

Disadvantaged groups of women

39. The Committee is concerned about the situation of indigenous women and girls, in particular the restrictions that indigenous women face with regard to their access to traditional lands and livelihoods, food, water and health, as well as at their limited representation in local, regional and federal decision-making bodies and the lack of disaggregated data on their situation.

40. The Committee recommends that the State party:

(a) Ensure that indigenous women are represented in decision-making bodies at the local, regional and federal levels, and adopt measures to ensure the full and effective participation of indigenous women in all decision-making processes that may affect their rights;

(b) Guarantee that indigenous women have full and unrestricted access to their traditional lands and the resources on which they depend for food, water, health and to maintain and develop their distinct cultures and identities as peoples;

(c) Regularly collect disaggregated data on indigenous women and girls, using specific health and social indicators.

6. Japan, CEDAW/C/JPN/CO/7-8, 10 March 2016

Discriminatory laws and lack of legal protection

12. The Committee regrets that its previous recommendations regarding existing discriminatory provisions have not been addressed. The Committee is particularly concerned: ... (e) That there is no comprehensive anti-discrimination law that covers intersectional discrimination against women belonging to various minority groups who are frequently subjected to harassment, stigmatization and violence.

13. The Committee reiterates its previous recommendations (CEDAW/C/JPN/CO/5 and CEDAW/C/JPN/CO/6) and urges the State party to undertake the following without delay: ... (c) Enact comprehensive anti-discrimination legislation that prohibits multiple/intersectional forms of discrimination against women belonging to various minority groups, and protect them from harassment and violence, in line with general recommendation No. 28 (2010) on the core obligations of States parties under article 2.

Temporary special measures

18. The Committee notes the State party's efforts to introduce numerical targets under the third and fourth basic plans on gender equality in order to accelerate de facto equality between men and women. The Committee is, however, concerned at the lack of statutory temporary special measures, including quotas, to address the underrepresentation of women, including ethnic and other minority women, in decision-making positions in the public and private sectors, as well as in political life, especially in the parliament. The Committee is particularly concerned that rather than statutory quotas, the State party continues to use less effective voluntary initiatives and other incentives such as higher evaluations for companies during the bidding process for public procurement.

19. The Committee reiterates its previous recommendation (CEDAW/C/JPN/CO/6, para. 28) and calls upon the State party to consider using temporary special measures, such as statutory quotas, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, as a necessary strategy to accelerate the achievement of the substantive equality of women and men, in particular to enhance the rights of ethnic and other minority and indigenous women, and women with disabilities, in all areas of the Convention.

Stereotypes and harmful practices

20. The Committee remains concerned at the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society. The Committee is particularly concerned: ... (d) That sexist speech continues to be directed against women, ethnic and other minority women such as Ainu, Buraku and Zainichi Korean women and migrant women.

21. The Committee reiterates its previous recommendation (CEDAW/C/JPN/CO/6, para. 30) and urges the State party: ... (e) Through an independent expert body, to regularly monitor and assess the impact of measures taken to eliminate discriminatory gender stereotypes and prejudices against Ainu, Buraku, Zainichi Korean women and migrant women.

Participation in political and public life

30. The Committee notes the State party's efforts to promote the participation of women in political and public life by adopting the third and fourth basic plans on gender equality, which sets numerical targets and a specific goal to achieve 30 per cent representation of women in political, public and private life by 2020. The Committee, however, remains concerned at: ... (c) The underrepresentation of women with disabilities, ethnic and other minority women, such as Ainu, Buraku and Zainichi Korean women, in decision-making positions.

31. The Committee reiterates its previous recommendation (CEDAW/C/JPN/CO/6, para. 42) and calls upon the State party: ... (c) To take specific measures, including temporary special measures, to promote the representation of women with disabilities, and ethnic and other minority women, such as Ainu, Buraku and Zainichi Korean women, in decision-making positions.

Education

32. The Committee commends the State party for prioritizing equal access for women and girls to all levels of education and the increase in girls' participation in primary and secondary education. The Committee is, however, concerned at: ... (e) Reports of low literacy levels among ethnic and other minority communities, in particular, older women from the Ainu and Buraku ethnic communities....

33. The Committee recommends that the State party: ... (d) Remove all obstacles to access to education for women and girls with disabilities, migrant women and ethnic and other minority women such as Ainu, Buraku and Zainichi Korean women; and provide information in the next periodic report on their access to education and to scholarships;

Employment

34. The Committee welcomes the adoption of the Act on the Promotion of Women's Participation and Advancement in the Workplace in 2015, which seeks to empower women in employment, including non-regular workers, ethnic and other minorities. However, the Committee remains concerned at: ... (e) The persistence of multiple/intersectional forms of discrimination in the employment sector with regard to indigenous women, minority and other women (Buraku, Korean, Okinawa), women with disabilities and migrant women workers....

35. The Committee urges the State party: ... (e) To undertake a survey of the employment sector and produce gender statistics, in particular with regard to indigenous and minority women as well as women with disabilities and migrant women workers....

Disadvantaged groups of women

46. The Committee is concerned at reports that indigenous and ethnic minorities, such as Ainu, Buraku and Zainichi Korean women, and women with disabilities, lesbian, bisexual and transgender women and migrant women, continue to experience multiple and intersecting forms of discrimination. The Committee is particularly concerned that these women continue to have limited access to health, education and employment.

47. The Committee calls upon the State party to vigorously pursue efforts aimed at eliminating multiple and intersecting forms of discrimination experienced by indigenous and ethnic minority women, such as Ainu, Buraku and Zainichi Korean women, and women with disabilities, lesbian, bisexual and transgender women and migrant women, which affect their access to health, education and employment and their participation in public life, as well as their experiences with health and education services and at the workplace.

7. Sweden, CEDAW/C/SWE/CO/8-9, 10 March 2016

Visibility of the Convention, the Optional Protocol thereto and the Committee's general recommendations

12. The Committee notes the State party's efforts to disseminate the Convention, including by awarding grants for relevant projects to international and non-governmental organizations. It 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 is further concerned at the continued lack of references to the Convention in court decisions in the State party.

13. The Committee recommends that the State party: ... (b) Enhance efforts to raise awareness among women about their rights under the Convention and corresponding remedies, targeting in particular women belonging to disadvantaged groups, including the Sami, the Roma, migrants, asylum seekers, refugees and those with disabilities. ...

Access to justice

16. The Committee welcomes the allocation of increased resources to the Equality Ombudsman and to local anti-discrimination offices. It also welcomes the fact that the State party is carrying out an inquiry to analyse access to justice in discrimination cases and propose corrective action, if necessary, including with regard to the work and mandate of the Equality Ombudsman. Nevertheless, the Committee is concerned at the complexity of the legal proceedings foreseen under the Discrimination Act, which may hamper access to justice for women victims of rights violations, in particular for victims belonging to disadvantaged groups.

17. In line with general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party, based on the findings of the inquiry reviewing its work on discrimination, take all necessary measures to remove barriers for women victims of discrimination and enable them to effectively use the Discrimination Act to claim their rights, including by allocating adequate human, technical and financial resources. The State party should pay particular attention to the needs of disadvantaged groups of women, such as Sami women, Roma women, migrant women, women living in remote areas, asylum-seeking and refugee women and women with disabilities. The Committee further recommends that the State party ensure that the Equality Ombudsman is provided with adequate resources to effectively fulfil its broad mandate.

Participation in political and public life

30. The Committee commends the State party on the consistently high rate of representation of women in political and public life and welcomes the work on gender mainstreaming of the Sami parliament. It also notes with appreciation the State party's adoption of a feminist foreign policy in 2015. The Committee is concerned, however, at the slight decrease in the percentage of women in the parliament during the past two elections and the insufficient representation of disadvantaged groups of women, including young women and women belonging to minority groups, in particular those of Roma, Sami and foreign origin, in decision-making positions.

31. The Committee recommends that the State party continue to take targeted measures to maintain its achievements in ensuring a high rate of representation of women in political and public life, including in the parliament, at the national, provincial and municipal levels. The Committee recommends that, in doing so, the State party pay particular attention to underrepresented groups of women.

Education

32. The Committee commends the State party on the generally high quality of education provided and welcomes the range of measures taken to ensure that gender equality permeates all levels of education. ... Moreover, the Committee is concerned that a high number of girls suffer from discrimination and sexual harassment in schools and that, despite progress achieved, migrant girls, girls belonging to minority groups, in particular the Roma and Sami, continue to face difficulties in gaining access to education.

33. The Committee recommends that the State party: ... (d) Continue to combat discrimination against disadvantaged groups of women and girls in accessing education, and ensure effective monitoring and evaluation of the impact of such efforts, to support taking remedial action.

8. Tanzania, CEDAW/C/TZA/CO/7-8, 9 March 2016

Rural women

40. The Committee notes the efforts of the State party to reduce rural poverty by carrying out development and microcredit projects and improving the delivery of basic social services to remote communities. The Committee is, however, concerned at the disadvantaged position of women in rural and remote areas, who form the majority of women in the State party. It is particularly concerned about: ... (c) Obstacles faced by some tribal women, including Masai women, in gaining access to productive, social and human assets, in particular in protecting their ancestral lands from being sold or leased, as well as in participating in and benefiting from rural development initiatives.

41. The Committee calls upon the State party: ... (c) To preserve tribal ancestral land, protect it from being sold or leased and award appropriate compensation to those whose access has been impeded....

9. France, CEDAW/C/FRA/CO/7-8, 25 July 2016

Rural women

40. The Committee notes the production of territorial and sex-related data and the holistic concept of rurality, which encompasses diversity in agricultural training programmes, women's entrepreneurship, agro-tourism and increased professional activities for women in rural areas. The Committee is concerned about the need for long-term measures in those fields. It is also concerned about the lack of measures to address rural women's vulnerability, including for older women in the overseas territories owing to land acquisition by multinational mining companies, often resulting in forced evictions, displacement of women and lack of adequate compensation.

41. The Committee recommends that the State party:

(a) Pursue, develop and implement its comprehensive rural policies with a gender perspective, according them the long-term resources necessary to ensure the effective social protection and empowerment of rural women;

(b) Address the adverse effects of land acquisition and long-term leases on rural women in the overseas territories and ensure that women are involved in the negotiations of land-lease agreements and that their livelihoods are not negatively affected by such agreements.

Marriage and family relations

48. The Committee is concerned that a number of customary laws or practices in force in some non-metropolitan territories contain discriminatory provisions with regard to marriage and family relations that are incompatible with the Convention.

49. The Committee recommends that the State party support efforts by customary authorities and indigenous women's organizations to ensure a rapid review of the discriminatory provisions relating to marriage and family relations, including marriage contracts, the dissolution of marriage, the custody of children and inheritance, to bring them into conformity with the Convention.

10. Philippines, CEDAW/C/PHL/CO/7-8, 26 July 2016

Access to justice

14. The Committee notes with concern: ... (b) That discriminatory gender stereotypes, stigmatization and the lack of adequate support systems all pose barriers to justice and to effective remedies for women, in particular those facing multiple forms of discrimination, such as women in poverty, women with disabilities, indigenous and Muslim women, women living in geographically inaccessible areas, and lesbian, bisexual and transgender women. ...

16. With reference to its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party: ... (b) Take measures, including the development of capacity-building programmes for justice system personnel, in order to strengthen gender responsiveness and gender sensitivity and ensure that the various religious, customary and indigenous justice systems harmonize their norms, procedures and practices with the Convention. ...

Gender-based violence against women

25. The Committee notes the legislation in place in the State party and the comprehensive policy framework and inter-agency mechanisms to combat gender-based violence against women, but is concerned about: ... (e) Intensified gender-based violence against women, including by members of the armed forces, such as killings and sexual violence and abuse in conflict-affected areas and in areas of large-scale development projects. ...

26. The Committee recommends that the State party: ... (d) Prevent, investigate and punish all forms of gender-based violence, in particular sexual violence perpetrated by State and non-State actors, apply a zero-tolerance policy to combat impunity and provide necessary support to women and girls who are at risk or victims of such violence, including during times of armed conflict, in line with the Committee's general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations. ...

Participation in political and public life

31. The Committee welcomes the increased representation of women in the Government, the public service and the judiciary, including at the decision-making level. The Committee also commends the State party on its adoption of the national action plan on women and peace and security, which is aimed at implementing Security Council resolutions 1325 (2000) and 1820 (2008), and the active participation of women in peace and transitional justice processes. The Committee remains concerned, however, about the underrepresentation of women from vulnerable groups, such as indigenous and Muslim women, in all areas of political and public life, and about the lack of information on the adoption of a political party development act, which could mandate parties to apply quotas in the selection of candidates.

32. The Committee recommends that the State party continue its efforts to achieve equal representation of women and men in political and public life. It recommends, in particular, that the State party: ...

(b) Ensure diversity in the representation of women in legislative, administrative and judicial bodies, including Muslim women, indigenous women and women with disabilities;

(c) Adopt regional and local action plans in the Autonomous Region in Muslim Mindanao to implement the national action plan on women and peace and security, and ensure the full participation of Muslim and indigenous women in political and public life at all levels in the Region.

Disadvantaged groups of women

45. The Committee is concerned:

(a) That Muslim women, indigenous women, women with disabilities, women migrant workers working and returning from abroad, internally displaced persons and lesbian, bisexual and transgender women face a heightened risk of violence, exploitation and abuse, as well as discrimination in political and public life, marriage and family relations, employment, education, access to justice and health care;

(b) That Muslim, indigenous and other women living in rural areas are subjected to forced evictions and relocations as a result of large development projects and extractive industries;

(c) That the provisions of the draft Bangsamoro basic law may undermine the rights of indigenous peoples to ancestral lands and domains;

(d) That there have been alleged cases of extrajudicial killings of, and gender-based violence against, women human rights defenders from indigenous communities.

46. The Committee recommends that the State party:

(a) Take measures to ensure equal rights, opportunities and protection for women facing multiple and intersecting forms of discrimination, taking into consideration the specific risks and particular needs of different groups and ensuring the full and meaningful participation of women representing such groups;

(b) Ensure that the policies, projects and practices relating to development and land governance, including those that may entail relocation, are fully in line with relevant international standards, including the basic principles and guidelines on development-based evictions and displacement (see A/HRC/4/18, annex I), and that victims of forced eviction and relocation are provided with effective remedies, including compensation, in a timely manner;

(c) Fully consult Muslim (Bangsamoro) and non-Muslim indigenous communities in order to identify and implement innovative solutions to land management that ensure women's rights in line with the rights of non-Muslim indigenous peoples enshrined in the Indigenous Peoples' Rights Act of 1997 (Republic Act No. 8371) and the United Nations Declaration on the Rights of Indigenous Peoples, as well as with those of Bangsamoro communities;

(d) Investigate and prosecute all acts of violence against indigenous women human rights defenders, provide effective remedies to the victims and prevent the recurrence of such acts;

(e) Ensure the protection of internally displaced women from violence and their effective access to social services and economic development.

Natural disasters and climate change

47. The Committee welcomes the fact that the legal and policy framework relevant to natural disasters and climate change mainstreams gender-sensitive responses across government agencies. It is concerned, however, that this framework has not been effectively translated into practice.

48. The Committee recommends that the State party:

(a) Consistently prioritize the protection of women's rights, in particular protection from gender-based violence, in situation analyses, needs assessments and interventions relating to disaster risk reduction,

preparedness and response to natural disasters, as well as in the mitigation of the negative impacts of climate change;

(b) Ensure the full and meaningful participation of women, including those who face multiple and intersecting forms of discrimination, in designing, implementing and monitoring relevant legal and policy frameworks;

(c) Regularly assess the effectiveness of relevant legal and policy frameworks in protecting women's rights with clear baselines and measurable indicators, and provide information on the achievements made in the next periodic report.

11. Argentina, CEDAW/C/ARG/CO/7, 18 November 2016

Visibility of the Convention, Optional Protocol and the Committee's general recommendations

8. The Committee observes that the Convention takes precedence over national legislation in the State party and can be directly applied by the domestic courts and authorities. However, the Committee remains concerned about the lack of court cases and administrative proceedings, in particular at provincial and municipal levels, where provisions of the Convention were directly invoked and/or applied. It is further concerned 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 the public authorities.

9. The Committee recommends that the State party: ...

(c) Enhance women's awareness of their rights and the means to enforce them, targeting specific groups of women such as indigenous and Afro-descendant women, women living in rural and remote areas, women with disabilities and older women.

Access to justice and legal complaint mechanisms

12. The Committee commends the State party for the establishment of the Attorneys for Victims of Gender Violence Unit at the Ministry of Justice of Justice and Human Rights (Law No. 27.210 of November 2015) and welcomes the establishment of Access to Justice Centres (CAJ), which provide free legal counselling and the creation of specialized units (ATAJOS) at the Public Legal Aid Service, covering complaints and alternative dispute resolution mechanisms. Nonetheless, the Committee is concerned about the institutional, procedural, and practical barriers faced by women in gaining access to justice, such as: ...

(c) Limited access to legal aid and to interpreters of indigenous languages, and long distances to courts in rural and remote areas....

13. The Committee, in line with its General Recommendation No. 33 (2015) on women's access to justice, recommends that the State party: ...

(d) Ensure that information on legal remedies is available to women victims of gender-based violence, including in indigenous languages and in formats accessible for women with disabilities; ...

(f) Ensure that the new unit of attorneys for victims of gender violence, the access to justice centres and the specialized units at the Public Legal Aid Service (ATAJOS) provide free legal aid to all women without sufficient means across the territory of the State party, and provide interpretation services to indigenous women....

Temporary Special Measures

16. The Committee observes that the State party recognises quotas for women's representation in Parliament and Trade Unions as a form of temporary special measures, established in 1991 and 2002 respectively. It also notes the different bills regarding parity in the participation of women and men in the three branches of government. However, it notes with concern the limited implementation of quotas, as reflected by women's low representation in provincial and municipal legislatures. The Committee is also concerned about the absence of temporary special measures to accelerate the achievement of substantive equality of women and men in other areas covered by the Convention such as education and employment.

17. The Committee recommends that the State party:

(a) Adopt and implement temporary special measures, in line with article 4, paragraph 1, of the Convention and its General Recommendation No. 25 (2004) on temporary special measures, at federal, provincial and municipal levels, with specific targets and timeframes to accelerate substantive equality of women and men in all areas where women continue to be disadvantaged or underrepresented, including for indigenous and Afro-descendant women....

Education

28. The Committee commends the State party on the high literacy rate of 98% for women and men above 15 years of age. It also takes note of the measures in the framework of the “Progresar” and “Conectar Igualdad” programmes. However, the Committee notes with concern: ...

(c) The low enrolment and resulting high illiteracy rates among indigenous women and girls, due to competing household and caretaking obligations, recruitment as workers in hotels or as sexual workers, and priority being given to the schooling of boys.

29. The Committee recommends that the State party: ...

(d) Adopt and implement targeted measures, including temporary special measures in line with article 4, paragraph 1 of the Convention and General Recommendation No. 25 (2004) to accelerate equal access to all levels of education by indigenous girls and women, and enhance the school infrastructure in rural and remote areas to facilitate their access to education.

Indigenous women

40. The Committee notes with concern that indigenous women face intersecting forms of discrimination in the State party, based on their ethnic origin and social status, as well as racial hate, violence, poverty and marginalisation. It is particularly concerned about:

(a) The lack of recognition and protection of land tenure and ownership by indigenous women, forced evictions from indigenous traditional lands in regions such as Gran Chaco, and indigenous women’s exclusion from decision-making processes concerning land use;

(b) Indigenous women’s limited access to water, including drinking water and sanitation due to lack of infrastructure, in particular in isolated indigenous communities such as the Wichi in Miraflores (Gran Chaco region);

(c) The negative impact on the health of indigenous women and girls, who are engaged as agricultural workers, of the use of pesticides, fertilizers, and agro-chemicals; and

(d) The absence of effective consultation and benefit sharing mechanisms to ensure the free, prior and informed consent of indigenous women to development projects on their territories.

41. The Committee recommends that the State party:

(a) Adopt measures to formally recognize indigenous women’s land tenure and ownership, and promote dialogue at the community level aimed at eliminating discriminatory norms and customs that limit indigenous women’s land ownership rights;

(b) Prevent forced evictions of indigenous women by strengthening legal and procedural safeguards, and ensure their meaningful participation in decision-making processes regarding the use of traditional indigenous lands;

(c) Ensure that indigenous women have adequate access to safe and affordable water for personal and domestic uses, as well as for irrigation;

(d) Review the current negligent handling of complaints about harmful pesticides, fertilizers and agro-chemicals use filed by indigenous women before the Ministry of Health, and ensure that such cases are solved in a timely and appropriate manner, in line with the Committee’s General recommendation No. 34 (2015) on the rights of rural women; and

(e) Set up a mandatory and effective consultation and benefit sharing mechanism to seek the free, prior and informed consent of indigenous women regarding the use of their natural resources and lands.

12. Bangladesh, CEDAW/C/BGD/CO/8, 18 November 2016

Gender-based violence against women

18. The Committee notes that the State party has adopted Domestic Violence Prevention and Protection Rules and the National Action Plan to Prevent Violence against Women and Children in 2013. However, it notes with concern that: ... (e) Gender-based violence, including rape, against indigenous women in Chittagong Hills Tract related to land grabbing is continuously reported. ...

19. The Committee reiterates its previous recommendation that the State party give priority attention to combating violence against women and girls, in accordance with its General Recommendation No 19 (1992). It recommends that the State party: ... (d) Effectively investigate all reports of gender-based violence against indigenous women connected with land grabbing and take measures to bring those responsible to justice. ...

Disadvantaged groups of women

40. The Committee is concerned that disadvantaged groups of women and girls, including Dalit women, women with disabilities, elderly women, Rohingya refugee women and women of ethnic minorities face multiple intersecting forms of discrimination due to their gender, health, indigenous identity, caste and socio-economic status. The Committee is in particular concerned about:

(a) The sexual and gender based violence against ethnic minority women for land grabbing purposes and the militarization of indigenous areas, particularly in the Chittagong Hill Tracts. ...

41. The Committee reiterates its previous recommendation and urges the State party to: ... (b) Promptly investigate and prosecute cases of gender-based violence targeting ethnic minority women and girls, including militarization of indigenous areas, and ensure that those convicted are punished with appropriate sanctions. ...

13. Burundi, CEDAW/C/BDI/CO/5-6, 18 November 2016

Temporary special measures

22. The Committee notes the adoption of the Guide to Gender Mainstreaming in the National Programme for Public Administration Reform by the State party. However, it regrets the lack of information on its specific measures to accelerate the achievement of substantive equality of women and men.

23. In line with article 4, paragraph 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 further temporary special measures with specific targets and incentives, outreach and support programmes, legal sanctions, special budget allocations, and other proactive results-oriented measures, to accelerate the achievement of substantive equality of women and men, particularly in the fields of education, rural development and health, and with special attention to women with disabilities and Batwa women.

Gender based violence against women

24. The Committee welcomes the recent promulgation of the Law N° 1/13 of 22 September 2016 on combatting sexual and gender based violence as well as the revision of the Criminal Code in 2009 to include severe sanctions for violence against women. The Committee is concerned that: ... (c) Women who are older, belonging to the Batwa, internally displaced, refugees, with albinism or/and with disabilities are at an increased risk of violence committed with impunity in the absence of specific measures of protection. ...

Participation in political and public life

30. The Committee welcomes the Constitutional quota of 30% representation of women in Government, Parliament, and in the Senate (arts. 129, 164 and 180) and the resulting increase in the participation of women in political life. However, it notes that the representation of women at the provincial and district level (collines) is very low and there is no comprehensive strategy to address the obstacles faced by women to participate in decision-making, which include prevailing patriarchal political culture based on gender stereotypes and the limited skills, education and lack of economic independence of women in the State party.

31. In line with its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party pursue sustained policies aimed at the promotion of women's full and equal participation in decision-making at the national and local levels and: ... (c) Establish a disaggregated data collection system on the participation of women representing different ethnicities as well as Batwa women in public life and decision-making positions in all sectors and at all levels.

Education

34. The Committee welcomes the measures in place to increase the enrolment and retention of girls in school, including the adoption of a policy on the reintegration of girls into school after pregnancy, the establishment of school meal programmes, and training of school teachers and students on combatting violence against women. However, the Committee is concerned that: ... (b) Access to education is extremely limited for girls who are internally displaced, refugees, Batwa, those with albinism and those with disabilities, particularly due to discrimination and inability to pay fees. ...

35. The Committee, in line with Sustainable Development Goal 4, target 4.5 to eliminate gender disparities in education, recommends that the State party: ... (d) Implement targeted measures to ensure access to education for Batwa girls, girls with disabilities and internally displaced girls. ...

Disadvantaged groups of women

46. The Committee is concerned:

- (a) About the absence of a strategic plan to promote the socio-economic rights of disadvantaged groups of women in the State party, including women with disabilities, Batwa women and women with albinism, and the absence of social protection specifically addressing their needs;
- (b) That widows, single mothers, and older women in the State party, are victims of discrimination; and
- (c) That the physical and societal barriers, including severe stigmatization and discrimination, faced by these women under all areas of the Convention, reinforce their situation of exclusion, extreme poverty and vulnerability to gender-based violence and sexual exploitation.

47. The Committee recommends that the State party:

- (a) Enact a comprehensive law on the social protection of persons with disabilities, Batwa and persons with albinism and establish a mechanism to monitor its enforcement, ensuring that perpetrators of discrimination and gender-based violence against them are adequately punished and that victims are adequately compensated;
- (b) Carry out a census to establish the number of persons with disabilities, Batwa and persons with albinism in the State party, disaggregated by sex, age and region. ...

14. Canada, CEDAW/C/CAN/CO/8-9, 18 November 2016

Positive aspects

4. The Committee welcomes the progress achieved since its consideration in 2008 of the State party's seventh periodic report (CEDAW/C/CAN/7) in undertaking legislative reforms, in particular the adoption of the following legislation: ... (e) The Gender Equity in Indian Registration Act, in 2011.

5. The Committee welcomes the State party's efforts to improve its institutional and policy framework aimed at accelerating the elimination of discrimination against women and promoting gender equality, including the adoption or establishment of: ... (b) The Action Plan to Address Family Violence and Violent Crimes against Aboriginal Women and Girls, in 2014; ... (d) The Federal Framework for Aboriginal Economic Development, in 2009.

Visibility of the Convention, the Optional Protocol thereto and the Committee's general recommendations

8. The Committee remains concerned 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 is further concerned that the Convention may not be directly invoked before the domestic courts.

9. The Committee recommends that the State party: ... (b) Enhance efforts to raise awareness among women about their rights under the Convention and corresponding remedies, targeting in particular women belonging to disadvantaged groups, including Aboriginal, Afro-Canadian, migrant, asylum seeking, refugee and disabled women. ...

Legislative framework

12. The Committee notes the various constitutional, legislative, statutory, administrative and policy provisions promoting gender equality and defining sex as a prohibited ground of discrimination. It further notes that a new Bill amending the Indian Act is currently being developed. However, the Committee remains concerned about continued discrimination against indigenous women, in particular regarding the transmission of Indian status, preventing them and their descendants from enjoying all the benefits related to such status.

13. The Committee recommends that the State party remove all remaining discriminatory provisions of the Indian Act that affect indigenous women and their descendants, and ensure that aboriginal women enjoy the same rights as men to transmit status to their children and grandchildren.

Access to justice

14. The Committee welcomes the repeal of section 67 of the Canadian Human Rights Act, in 2008, as well as the restoration of the Court Challenges Program, in 2017. The Committee is, however, concerned that:

- (a) Financial support for civil legal aid programmes has considerably diminished in the past 20 years and has become increasingly restricted, affecting particularly women who are the primary users of civil legal aid;

(b) Income tests for eligibility limit civil legal aid to women living well below the poverty line, consequently denying low-income women access to legal representation and services;

(c) Information is lacking on whether the newly reinstated Court Challenges Program, which provided funding for equality test cases, will be expanded to cover claims under section 7 of Canada's Charter of Rights and Freedoms to include economic and social equality issues related to poverty, whether it will fund equality rights challenges to provincial, territorial, and federal laws, and whether it will preserve its community-based structure.

15. In line with its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party:

(a) Increase funding for civil legal aid, and specifically earmark funds for civil law legal aid in the Canada Social Transfer in order to ensure that women have access to adequate legal aid in all jurisdictions, in particular women victims of violence, indigenous women and women with disabilities;

(b) Review criteria applied in income tests for eligibility to ensure access to civil legal aid, especially in the area of family law, to all women without sufficient means;

(c) Expand the mandate of the Court Challenges Program to include cases in provincial and territorial jurisdiction, as well as those under section 7 of Canada's Charter of Rights and Freedoms, and retain the Program's community-based structure.

Views under the Optional Protocol

16. The Committee notes with concern that its views concerning communication No. 19/2008, adopted under article 7 (3) of the Optional Protocol at its fifty-first session, in February 2012, have not been fully implemented and that the State party has not provided up to date information on action taken in the light of those views and recommendations.

17. The Committee urges the State party:

(a) To fully implement the Committee's views concerning communication No. 19/2008 regarding reparation and compensation for the author of the communication and inform the Committee without delay of all measures taken and planned as a consequence of its recommendations;

(b) To recruit and train more aboriginal women to provide legal aid to women from their communities, including in domestic violence cases and on property rights, and to review its legal aid scheme to ensure that aboriginal women who are victims of domestic violence have effective access to justice.

Extraterritorial State obligation

18. The Committee is concerned about:

(a) The negative impact of the conduct of transnational companies, in particular mining corporations, registered or domiciled in the State party and operating abroad on the enjoyment of the rights enshrined in the Convention by local women and girls;

(b) The inadequate legal framework to hold all companies and corporations from the State party accountable for abuses of women's human rights committed abroad;

(c) The limited access to judicial remedies by women victims, and the absence of an effective independent mechanism with powers to investigate complaints alleging abuses by such corporations;

(d) The lack of impact assessments explicitly taking into account women's human rights prior to the negotiation of international trade and investment agreements.

19. The Committee recommends that the State party:

(a) Strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in relation to their activities abroad, including by requiring those corporations to conduct human rights and gender impact assessments prior to making investment decisions;

(b) Introduce effective mechanisms to investigate complaints filed against those corporations, including by establishing an Extractive Sector Ombudsperson, with the mandate to, inter alia, receive complaints and conduct independent investigations;

(c) Adopt measures to facilitate women victims of human rights violations access to justice and ensure that judicial and administrative mechanisms put in place take into account a gender perspective;

(d) Ensure that trade and investment agreements negotiated by the State party recognize the primacy of its international human rights obligations over investors' interests, so that the introduction of investor-State dispute settlement procedures shall not create obstacles to full compliance with the Convention.

National machinery for the advancement of women and gender mainstreaming

20. The Committee welcomes the creation, within the newly appointed Federal Government, of a full-fledged Minister of Status of Women. The Committee is, nevertheless, concerned about: ...

(b) The absence of a comprehensive national gender equality strategy, policy and action plan that address the structural factors causing persistent gender inequalities;

(c) The fact that the indigenous women organizations are not included in the national nation-to-nation relationship on equal footing with other indigenous people's organizations. ...

21. The Committee recommends that the State party: ...

(b) Develop a comprehensive national gender strategy, policy and action plan that addresses the structural factors causing persistent inequalities, including intersecting forms of discrimination, against women and girls, with a special focus on disadvantaged groups of women and girls, including First Nations, Inuit, Métis, Afro-Canadian, disabled, migrant, refugee, asylum-seeking, single parent, lesbian, bisexual, transsexual and intersex women and girls;

(c) Make sure that indigenous women organisations are included in the national nation-to-nation relationship in all issues of relevance for women. ...

Gender-based violence against women

24. The Committee notes with appreciation that the Ministry of Status of Women is currently working with other Ministries to develop a federal strategy against gender-based violence. It also notes a number of federal criminal laws, complemented by provincial and territorial civil laws and policies, addressing gender-based violence against women, including against aboriginal women and girls. However, the Committee is concerned about:

(a) The continued high prevalence of gender-based violence against women in the State party, particularly against indigenous women and girls. ...

25. Recalling its general recommendation No. 19 (1992) on violence against women, the Committee recommends that the State party:

(a) Enhance its efforts to firmly combat all forms of gender-based violence against women, including domestic and sexual violence, paying particular attention to minority and indigenous women;

(b) Increase reporting by women of incidents of violence, including domestic violence, to law enforcement bodies by de-stigmatizing victims, provide capacity-building programmes and cultural training regarding aboriginal women for judges, prosecutors, police officers and other law enforcement officials on the strict application of criminal law provisions on violence against women and raise awareness among the general public of the criminal nature of such acts. ...

Murdered and missing indigenous women and girls

26. The Committee commends the State party's decision in 2015 to establish a National Inquiry into Missing and Murdered Indigenous Women and Girls, which was one of the main recommendations of the Committee's inquiry conducted in 2013 (CEDAW/C/OP.8/CAN/1). However, it is concerned about:

(a) The absence of any action plan or coordinated mechanism to oversee the implementation of the outstanding 37 recommendations issued by the Committee in 2015 (CEDAW/C/OP.8/CAN/1, paras. 216-220);

(b) The insufficient measures taken to ensure that all cases of missing and murdered indigenous women are duly investigated and prosecuted;

(c) The Terms of Reference of the national inquiry, which do not clearly require the application of a human rights based approach as called upon by the Canadian Human Rights Commission and which does not include any explicit mandate to review policing policies and practices and the criminal justice system, and does not provide any mechanism for the independent review of alleged cases of inadequate or partial police investigations;

(d) The lack of an explicit assurance of adequate support and protection provided to witnesses, and the lack of sufficient cooperation with indigenous women's organizations in the process of establishing the inquiry.

27. The Committee recommends that the State party fully implement, without delay, all recommendations issued by the Committee in the 2015 report on its Canada inquiry (CEDAW/C/OP.8/CAN/1, paras. 216-220), and:

(a) Develop an coordinated plan for the overseeing of the implementation of the outstanding 37 recommendations issued by the Committee in its report (CEDAW/C/OP.8/CAN/1, paras. 216-220), and by

working in cooperation, as appropriate, with the Commission of the national inquiry, as well as indigenous women and their organizations, women's human rights organizations, and provincial and territorial governments;

(b) Ensure that all cases of missing and murdered indigenous women are duly investigated and prosecuted;

(c) Complement the Terms of Reference of the national inquiry to:

(i) Ensure the use of a human rights based approach ;

(ii) Ensure that the mandate of the inquiry clearly covers the investigation of the role of the Royal Canadian Mounted Police, Provincial police, Municipal police, and public complaints commissions across federal, provincial, and municipal jurisdictions;

(iii) Establish a mechanism for the independent review of cases where there are allegations of inadequate or partial police investigations;

(d) Ensure adequate support and protection to witnesses and strengthen the inclusive partnership with indigenous women's organizations and national and international human rights institutions and bodies during the conducting of the inquiry and in its implementation process.

Root causes of violence and discrimination against indigenous women

28. The Committee is concerned about the fact that indigenous women continue to suffer from multiple forms of discrimination, particularly as regards their access to employment, housing, education and health care and continue to live in poverty in the State party, as reflected by high poverty rates, poor health, inadequate housing, lack of access to safe water, low school-completion rates. It further notes with concern the low participation of indigenous women in the labour market, in particular in senior or decision-making positions, their disproportionately high unemployment rates and their lower pay compared with men and non-indigenous women. The Committee notes the State party's commitment to fully implement the United Nations Declaration on the Rights of Indigenous Peoples (2007). However, it remains concerned about the lack of a coherent plan or strategy to improve the socioeconomic conditions of indigenous communities, in particular indigenous women to combat the root cause of their vulnerability to violence as well as the lack of measures to break the circle of distrust between the authorities and indigenous communities, as was established by the Committee's inquiry (CEDAW/C/OP.8/CAN/1, paras. 218-219).

29. The Committee recommends that the State party, in consultation with indigenous peoples:

(a) Develop a specific and integrated plan for addressing the particular socioeconomic conditions affecting aboriginal women, both on and off reserves, including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence, and take effective and proactive measures, including awareness-raising campaigns, to sensitize aboriginal communities about women's human rights and to combat patriarchal attitudes and gender stereotypes;

(b) Implement the recommendations made by the Special Rapporteur on the rights of indigenous peoples following his mission to Canada in 2013 (see A/HRC/27/52/Add.2);

(c) Promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples;

(d) Ratify ILO Convention No. 169 (1989) on indigenous and tribal peoples.

Trafficking and exploitation of prostitution

32. The Committee welcomes the adoption of the National Action Plan to Combat Human Trafficking (2012-2016), the allocation of 25 million CAD to support projects addressing human trafficking at the federal and provincial/territorial levels, and the Supreme Court's Bedford judgment which led to the adoption of the Protection of Communities and Exploited Persons Act. It is, however, concerned about: ...

(d) The lack of systematically organized rehabilitation and reintegration measures, including access to counselling, medical treatment, psychological support and redress, including compensation, for victims of trafficking, in particular for indigenous and migrant women, who are not automatically entitled to temporary residence permits unless they cooperate with the police and judicial authorities;

(e) Reports that indigenous women and girls in foster care and in child welfare system are particularly vulnerable to sex trafficking; ...

(g) The potentially increased risk to the security and health of women in prostitution, particularly indigenous women, brought about by the criminalization of prostitution under certain circumstances as provided for in the new legislation.

33. The Committee recommends that the State party:

- (a) Investigate, prosecute and adequately punish all cases of trafficking in persons, especially women and girls;
- (b) Strengthen measures to identify and provide support to women at risk of trafficking, in particular unaccompanied children;
- (c) Improve access to data on victims of trafficking, disaggregated by sex and age;
- (d) Expediently assess the impact of the National Action Plan to Combat Human Trafficking (2012-2016) and adopt a new plan for the period 2017-2020;
- (e) Provide victims of trafficking with adequate access to health care and counselling and strengthen human, technical and financial resources to social work centres and targeted training for social workers dealing with victims of trafficking;
- (f) Ensure that all victims of trafficking, irrespective of their ethnic, national or social background, obtain effective protection and redress, including rehabilitation and compensation;
- (g) Address the root causes of trafficking and exploitation of women and girls in prostitution by adopting and implementing adequately resourced programmes and other appropriate measures to create educational and employment opportunities for women, particularly among the indigenous community, who are at risk of being trafficked or entering into or who are already engaged in prostitution and wish to leave it. ...

Participation in political and public life

34. The Committee commends the State party on the appointment of a Cabinet of Ministers with gender parity. It also notes with appreciation the high number of women judges on the Canadian Supreme Court and other levels of the judiciary at the federal, provincial and territorial levels. However, it remains concerned about: ... (b) The structural obstacles to the realization of women's political rights and engagement in public life.

35. The Committee recommends that the State party:

- (a) Strengthen its efforts to increase the number of women in elected decision-making bodies at the federal, provincial and territorial levels as well as in appointed positions at the local level, and to achieve equal representation of women in political and public life, including through the adoption of temporary special measures, such as quotas, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures;
- (b) Adopt proactive measures, including temporary special measures, to address the structural obstacles to the realization of women's political rights and engagement in public life;
- (c) Intensify awareness-raising campaigns for politicians, journalists, teachers and the general public, to enhance the understanding that the full, equal, free and democratic participation of women on an equal basis with men in political and public life is a requirement for the full implementation of women's human rights;
- (d) Continue developing and providing targeted training and mentoring programmes on leadership and negotiation skills for potential women candidates and potential female leaders in the public sector, including those who are underrepresented, such as migrant, Aboriginal and Afro-Canadian women, as well as women belonging to other minorities and women with disabilities.

Education

36. The Committee welcomes the measures taken to ensure that gender equality permeates all levels of education and to overcome gender-stereotyped educational and vocational choices. However, the Committee notes with concern:

- (a) The continuous lower educational and academic achievements of indigenous and Afro-Canadian women and girls and their high dropout rates at all levels of education;
- (b) The significant barriers, including lack of grants and fragmented funding of educational programmes, which prevent disadvantaged and marginalized women and girls, in particular indigenous, Afro-Canadian women and those with children in need of childcare, and other women in remote and rural areas, from accessing post-secondary education;
- (c) That women are still concentrated in traditionally female-dominated fields of study and career paths and are underrepresented in vocational training and in certain fields of higher education, such as mathematics, information technology and science;
- (d) The lack of a comprehensive set of national guidelines or standards for education on sexual and reproductive health and rights curriculum, which resulted in severe discrepancies among provinces/territories in terms of curricula;

(e) The high number of girls who suffer from discrimination and sexual harassment in schools and the disproportionate number of migrant, refugee, asylum seeking and indigenous girls, as well as girls with disabilities, who continue to face difficulties in gaining access to high-quality education.

37. The Committee recommends that the State party:

(a) Increase grants and remove the funding cap on the Post-Secondary Student Support Program to ensure that indigenous women and girls have access to funding for post-secondary education;

(b) Strengthen its strategies to address discriminatory stereotypes and structural barriers that may deter girls from progressing beyond secondary education and enrolling in traditionally male-dominated fields of study, such as mathematics, information technology and science;

(c) Establish national guidelines or standards to harmonize sex education curricula among provinces and territories and allow the Federal Government to hold them accountable for implementing such guidelines or standards;

(d) Ensure that a zero-tolerance policy on violence and harassment that includes counselling services, awareness-raising efforts and effective reporting mechanisms, is effectively implemented in all schools;

(e) Continue to combat discrimination against disadvantaged groups of women and girls in access to high-quality education, including by adopting temporary special measures, and ensure the effective monitoring and evaluation of the impact of such measures, to inform remedial action.

Employment

38. The Committee is concerned about the slow progress made in the field of employment and more specifically about: ... (e) The limited access by indigenous, Afro-Canadian, migrant, refugee and asylum-seeking women, as well as women with disabilities, to the labour market. ...

39. The Committee recommends that the State party: ... (e) Take into account the needs of disadvantaged groups of women, especially indigenous, Afro-Canadian, migrant, refugee and asylum-seeking women, as well as women with disabilities, and consider the use of targeted measures, including temporary special measures, to create further employment opportunities for women belonging to such groups. ...

Economic empowerment of women

46. The Committee notes the development of a National Poverty Reduction Strategy and a National Housing Strategy by the State party. However, it is concerned that women continue to experience significant levels of poverty, homelessness and hunger in the State party, especially First Nations women, Afro-Canadian women, Inuit and metis women, women of immigrant origin, women with disabilities, elderly women, and single mothers. It is also concerned at the lack of affordable quality childcare, the current severe housing shortage, in particular in aboriginal communities, and the high costs of rent and the impact thereof on women, especially low-income women with families.

47. The Committee recommends that the State party:

(a) Ensure that the National Poverty Reduction Strategy and the National Housing Strategy protect the rights of all women, with a focus on the most disadvantaged and vulnerable groups, by integrating a human rights and gender-based approach;

(b) Actively engage First Nations women in water systems management and regulation on reserves in order to assist populations that are at risk from poor water and sanitation conditions;

(c) Increase the amounts of transfer payments to provinces and territories, earmark sufficient funds specifically for social assistance, and make transfer payments to provinces and territories conditional on setting their social assistance rates at levels that are sufficient to ensure an adequate standard of living, and prevent discriminatory effects of inadequate incomes for women;

(d) Intensify its efforts to provide sufficient numbers of affordable childcare facilities and affordable and adequate housing options, including in aboriginal communities, with priority being given to low-income women.

Disadvantaged groups of women

Women in detention

48. The Committee is concerned about:

(a) The high and rising incarceration rates of Aboriginal women and African Canadian women in federal and provincial prisons across Canada. ...

49. The Committee recommends that the State party:

(a) The State party address the issue of disproportionate incarceration of aboriginal and Afro-Canadian women, including by increasing the use of alternative measures for those who commit non-violent offences.

...

Marriage and family relations

50. The Committee welcomes the adoption of the Family Homes on Reserves and Matrimonial Interests or Rights Act. However, it is concerned that the Act does not apply to the First Nations reserves that have enacted their own First Nations matrimonial real property laws under the Act or the First Nations Land Management Act.

51. The Committee recommends that the State party adopt guidelines or minimum standards which should be incorporated by First Nations to ensure women's matrimonial property rights.

15. Honduras, CEDAW/C/HND/CO/7-8, 18 November 2016

Temporary special measures

18. The Committee is 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 substantive equality of women and men, in accordance with article 4, paragraph 1, of the Convention. It is further concerned at the absence of temporary special measures in areas other than electoral quotas, particularly to address intersecting forms of discrimination against women from indigenous or Afro-Honduran communities, rural areas or women with disabilities.

19. Recalling its General Recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party take concrete measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to accelerate substantive equality of women with men, particularly regarding women from indigenous or Afro-Honduran communities, rural women or women with disabilities, including in political life and in the areas of health, education, vocational training and employment.

Stereotypes and harmful practices

20. The Committee is concerned by the ineffectiveness of measures to eliminate patriarchal attitudes and entrenched discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and society which impede the implementation of the Convention and are a root cause of violence against women. The Committee is further concerned that these measures do not address intersecting forms of discrimination against women. It is equally concerned that the reliance on funding from international donors for awareness-raising campaigns, education and training programmes, may adversely impact the sustainability of these initiatives.

21. The Committee recommends that the State party adopt coordinated and adequately-funded measures to eliminate patriarchal attitudes and discriminatory stereotypes on the roles and responsibilities of women and men in society and in the family. It also recommends that the State party address intersecting forms of discrimination against women, based on their age, ethnic or indigenous origin, socioeconomic or other status, rural or urban location, or being LGBTI.

Trafficking and exploitation of prostitution

24. The Committee welcomes the creation of the Interagency Commission against Commercial Sexual Exploitation and Trafficking in Persons. However, it remains concerned at the high incidence of trafficking in persons, particularly women and girls, for purposes of sexual exploitation. It notes with concern that women and girls from rural areas and indigenous and Afro-Honduran communities are at high risk of becoming victims of trafficking for sexual exploitation or forced labour, owing to the poverty and increasing income inequality. ...

Women human rights defenders

28. The Committee is concerned about:

a. The increasingly repressive measures as well as attacks, sexual violence, harassment, intimidation, reprisals, and defamation campaigns against woman human rights defenders, particularly in contexts of land

development projects, advocacy for environmental protection, and the defense of the human rights of women from indigenous and Afro-Honduran communities;

b. The lack of effective protection of women human rights defenders and impunity enjoyed by perpetrators, in the absence of effective investigations, prosecutions and convictions for crimes against women human rights defenders;

c. The deaths of human rights defenders, particularly Margarita Murillo in 2014 and Berta Cáceres in 2016, despite the repeated denunciations of the situation of risk and harassment they faced and protective measures issued by the Inter-American Commission of Human Rights; and,

d. The criminalization of social protest and restrictions to the right to peaceful assembly of women human rights defenders.

29. The Committee recommends that the State party:

a. Adopt and apply, without delay, effective measures for the protection of women human rights defenders to enable them to freely undertake their important work, without fear or threat of violence or harassment;

b. Apply the Law on Protection for Human Rights Defenders, Journalists, Social Communicators and Justice Workers and develop a protocol with a gender perspective for investigating, prosecuting and punishing attacks and other forms of abuse committed against women human rights defenders;

c. Effectively investigate, prosecute and adequately punish all cases of violence against women human rights defenders, including in cases of violence against women defending the right to land or other natural resources; and,

d. De-criminalize social protest and peaceful assembly and put an end to the prosecution of women human rights defenders for their activities in exercise of their human rights.

Nationality

30. The Committee commends the State party for its nationality law and its efforts to register births. However, the Committee is concerned about the persisting barriers to birth registration, particularly in rural areas and among indigenous and Afro-Honduran communities. ...

31. The Committee recommends that the State party ensure that all births are registered in the State party, including in rural areas and indigenous and Afro-Honduran communities. ...

Education

32. The Committee welcomes efforts to improve the access of girls and women to inter-cultural bilingual education. The Committee is concerned, however, about the insufficient measures taken to ensure access to education for all girls and to improve the quality of education. It is equally concerned that illiteracy rates and secondary school drop-out rates for girls in rural and remote areas and among indigenous and Afro-Honduran communities remain disproportionately high compared to the rest of the population, often due to poverty, early pregnancy and marriage, and child labour. ...

33. The Committee recommends that the State party:

a. Ensure that girls in rural and remote areas and from indigenous and Afro-Honduran communities have equal access to quality education at both the primary and secondary levels. ...

Economic and social benefits and economic empowerment of women

40. The Committee notes the various plans and programmes adopted to promote social development. However, the Committee is concerned about the high level of inequality in Honduran society which is an impediment to the realization of women's human rights. It regrets the lack of information about the impact that the diverse social protection programmes have on the life of women, as most information was disaggregated to the "family" level, as well as about measures to ensure access to these programmes by the most marginalized groups of women, including indigenous and Afro-Honduran women. It is concerned that the piecemeal approach to social development and protection and poverty reduction programmes has not been effective for the sustainable economic empowerment of women.

41. The Committee recommends that the State party decentralize and ensure access to social protection programmes and other programmes aiming at the economic empowerment of women who need them most, particularly in rural and remote areas and among indigenous and Afro-Honduran communities. It further recommends a more systematic and rights-based approach to social protection and poverty reduction programmes and that the State party set up a system for the adequate collection of disaggregated data and gender analysis on the impact of social protection programmes on women's enjoyment of their human rights.

Rural women

42. The Committee notes efforts for the optional joint registration of land. The Committee is concerned, however, about the persistent discrimination against rural women, particularly indigenous women and women of African descent and about:

- a. The numerous barriers in their access to land and protection of their natural resources, including due to the lack of consultations with rural women about large scale development projects, tourism projects, agro-industry and hydro-electric projects carried out by foreign investors and private enterprises as well as the adverse impact of climate change on women, including intense drought, lost crops and scarcity of water and food;
- b. The negative impact on women's control over land and natural resources because of business and development projects which result in internal displacement of women and girls, forced eviction, labour exploitation, serious health consequences, sexual abuse and violence and trafficking;
- c. Intimidation of rural women, including peasant and community leaders, participating in peaceful protest to protect their land and criminalization of their activities; and,
- d. Reports of cases where resources, including emergency food and social support programmes, have been subject to corruption and tied to political ends instead of targeted recipients.

43. Recalling article 14 of the Convention and the Committee's General Recommendation No.34 (2016) on the rights on rural women, the Committee recommends that the State party:

- a. Comply with ILO Convention No. 169 on Indigenous and Tribal Peoples, seeking the free and informed consent obtained through consultations with indigenous peoples and ensuring they benefit from extractive activities and development projects on their land and include women as active participants in the formulation and implementation of national policies and action plan on climate change, disaster response and risk reduction; Broaden and facilitate rural women's access to land ownership, including through the mandatory registration of land under the joint names of the married couple and setting targets for joint titles, and include an explicit gender perspective in national policies, programmes and initiatives fostering agricultural activities, particular for indigenous and Afro-Honduran women;
- b. Adopt measures to protect the rights of the rural women, including by holding businesses accountable for practices that negatively affect the health, well-being and security of women workers and allocate adequate resources for the National Agrarian Institute to ensure compliance with the protocol established for evictions ordered by the competent courts so they are carried out without excessive use of force or violence and are subject to strict procedural safeguards;
- c. Establish a legal framework to ensure that large-scale development projects, agro-industry and other business projects do not further undermine rural women's rights to land ownership and livelihoods and ensure that development projects are implemented only after gender impact assessments involving rural women have been undertaken; and,
- d. Strengthen mechanisms, including effective audits, for the adequate identification of women in situations of emergency who are entitled to food and social support programmes.

B. General Comments

1. General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015⁴⁰

Introduction and scope

1. The right to access to justice for women is essential to the realization of all the rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. It is a fundamental element of the rule of law and good governance, together with the independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms. The right to access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good quality, the provision of remedies for victims and the accountability of justice systems. For the purposes of the present general recommendation, all references to "women" should be understood to include women and girls, unless otherwise specifically noted.

⁴⁰ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

5. The scope of the right to access to justice also includes plural justice systems. The term “plural justice systems” refers to the coexistence within a State party of State laws, regulations, procedures and decisions on the one hand, and religious, customary, indigenous or community laws and practices on the other. Therefore, plural justice systems include multiple sources of law, whether formal or informal, whether State, non-State or mixed, that women may encounter when seeking to exercise their right to access to justice. Religious, customary, indigenous and community justice systems — referred to as traditional justice systems in the present general recommendation — may be formally recognized by the State, operate with the acquiescence of the State, with or without any explicit status, or function outside of the State’s regulatory framework.

8. Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. In addition, discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership and identity as a lesbian, bisexual or transgender woman or intersex person. These intersecting factors make it more difficult for women from those groups to gain access to justice.

Family law

45. Inequality in the family underlies all other aspects of discrimination against women and is often justified in the name of ideology, tradition and culture. The Committee has repeatedly emphasized that family laws and the mechanisms of their application must comply with the principle of equality enshrined in articles 2, 15 and 16 of the Convention.¹³

46. The Committee recommends that States parties: ... (c) In settings in which there is no unified family code and in which there exist multiple family law systems, such as civil, indigenous, religious and customary law systems, ensure that personal status laws provide for individual choice as to the applicable family law at any stage of the relationship. State courts should review the decisions taken by all other bodies in that regard.

Alternative dispute resolution processes

57. Many jurisdictions have adopted mandatory or optional systems for mediation, conciliation, arbitration and collaborative resolutions of disputes, as well as for facilitation and interest-based negotiations. This applies, in particular, in the areas of family law, domestic violence, juvenile justice and labour law. Alternative dispute resolution processes are sometimes referred to as informal justice, which are linked to, but function outside of, formal court litigation processes. Informal alternative dispute resolution processes also include non-formal indigenous courts and chieftancy-based alternative dispute resolution, where chiefs and other community leaders resolve interpersonal disputes, including divorce, child custody and land disputes. While such processes may provide greater flexibility and reduce costs and delays for women seeking justice, they may also lead to further violations of their rights and impunity for perpetrators because they often operate on the basis of patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies.

Plural justice systems

61. The Committee notes that State laws, regulations, procedures and decisions can sometimes coexist, within a given State party, with religious, customary, indigenous or community laws and practices. This results in the existence of plural justice systems. There are, therefore, multiple sources of law that may be formally recognized as part of the national legal order or operate without an explicit legal basis. States parties have obligations under articles 2, 5 (a) and 15 of the Convention and under other international human rights instruments to ensure that women’s rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems.

63. The Committee has observed a range of models through which practices embedded in plural justice systems can be harmonized with the Convention in order to minimize conflicts of laws and guarantee that women have access to justice. They include the adoption of legislation that clearly defines the relationship between existing plural justice systems, the creation of State review mechanisms and the formal recognition and codification of religious, customary, indigenous, community and other systems. Joint efforts by States

parties and non-State actors will be necessary to examine ways in which plural justice systems can work together to reinforce protection for women's rights.

64. The Committee recommends that, in cooperation with non-State actors, States parties:

- (a) Take immediate steps, including capacity-building and training programmes on the Convention and women's rights, for justice system personnel, to ensure that religious, customary, indigenous and community justice systems harmonize their norms, procedures and practices with the human rights standards enshrined in the Convention and other international human rights instruments;
- (b) Enact legislation to regulate the relationships between the mechanisms within plural justice systems in order to reduce the potential for conflict;
- (c) Provide safeguards against violations of women's human rights by enabling review by State courts or administrative bodies of the activities of all components of plural justice systems, with special attention to village courts and traditional courts;
- (d) Ensure that women have a real and informed choice concerning the applicable law and the judicial forum within which they would prefer their claims to be heard;
- (e) Ensure the availability of legal aid services for women to enable them to claim their rights within the various plural justice systems by engaging qualified local support staff to provide that assistance;
- (f) Ensure the equal participation of women at all levels in the bodies established to monitor, evaluate and report on the operations of plural justice systems;
- (g) Foster constructive dialogue and formalize links between plural justice systems, including through the adoption of procedures for sharing information among them.

2. General recommendation No. 34 on the rights of rural women, CEDAW/C/GC/34, 7 March 2016⁴¹

Application of articles 1 and 2

10. Discrimination against rural women cannot be fully understood without taking into account the macroeconomic roots of gender inequality. States often fail to acknowledge the role of rural women and girls in unpaid work, their contribution to the gross domestic product and, therefore, to sustainable development. Bilateral and multilateral agreements on trade, tax and other economic and fiscal policies can have a significant negative impact on the lives of rural women. Environmental issues, including climate change and natural disasters, often provoked by the unsustainable use of natural resources, as well as poor waste management practices, also have detrimental impacts on the well-being of rural women. Gender-neutral policies, reforms and laws may uphold and strengthen existing inequalities related to all of the above.

11. States parties should ensure that macroeconomic policies, including trade, fiscal and investment policies, as well bilateral and multilateral agreements, are responsive to the needs of rural women and strengthen the productive and investing capacities of small-scale women producers. They should address the negative and differential impacts of economic policies, including agricultural and general trade liberalization, privatization and the commodification of land, water and natural resources, on the lives of rural women and the fulfilment of their rights. Similarly, development partners should also ensure that their development assistance policies focus on the specific needs of rural women.

12. States parties should address specific threats posed to rural women by climate change, natural disasters, land and soil degradation, water pollution, droughts, floods, desertification, pesticides and agrochemicals, extractive industries, monocultures, biopiracy and the loss of biodiversity, in particular agrobiodiversity. They should alleviate and mitigate those threats and ensure that rural women enjoy a safe, clean and healthy environment. They should effectively address the impact of such risks on rural women in the planning and implementation of all policies concerning the environment, climate change, disaster risk reduction, preparedness and management and ensure the full participation of rural women in designing, planning and implementing such policies. States parties should also ensure the protection and security of rural women and girls in all phases of disasters and other crises, ranging from early warning to relief, recovery, rehabilitation and reconstruction.

13. States parties should regulate the activities of domestic non-State actors within their jurisdiction, including when they operate extraterritorially. General recommendation No. 28 (2010) on the core obligations of States parties under article 2 reaffirms the requirement under article 2 (e) to eliminate discrimination by any

⁴¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/34&Lang=en

public or private actor, which extends to acts of national corporations operating extraterritorially. States parties should uphold extraterritorial obligations with respect to rural women by, inter alia: not interfering, directly or indirectly, with the enjoyment of their rights; taking regulatory measures to prevent any actor under their jurisdiction, including private individuals, companies and public entities, from infringing or abusing the rights of rural women outside their territory; and ensuring that international cooperation and development assistance, whether bilateral or multilateral, advance the rights of rural women outside their territory. Appropriate and effective remedies should be available to affected rural women when a State party has violated its extraterritorial obligations.

14. In line with general recommendation No. 28, States parties should recognize that rural women are not a homogenous group and often face intersecting discrimination. Many indigenous and Afro-descendent women live in rural settings and experience discrimination based on their ethnicity, language and traditional way of life. Rural women who belong to other ethnic minorities or to religious minorities, as well as female heads of household, may also experience higher rates of poverty and other forms of social exclusion. Women working in rural areas, including peasants, pastoralists, migrants, fisherfolk and landless women, also suffer disproportionately from intersecting forms of discrimination. As recognized in general recommendation No. 18 (1991) on disabled women, while women with disabilities face unique challenges in all areas of life, this is particularly the case of those living in rural areas. Discrimination may be compounded in rural areas by a lack of appropriate access to, inter alia, water, sanitation, electricity, health care, child and older person care, and inclusive and culturally appropriate education. As recognized in general recommendation No. 27 (2010) on older women and protection of their human rights, older women and widows may also suffer stigmatization and isolation in rural areas, which expose them to greater risks of ill-treatment. In addition, rural women, including heads of household, living in conflict-affected areas face security concerns and further obstacles in enjoying their rights.

15. States parties should eliminate all forms of discrimination against disadvantaged and marginalized groups of rural women. For example, States parties should ensure that disadvantaged and marginalized groups of rural women, including those belonging to indigenous, Afro-descendent, ethnic and religious minorities, heads of household, peasants, pastoralists, fisherfolk, landless women, migrants and conflict-affected rural women, are protected from intersecting forms of discrimination and have access to education, employment, water and sanitation and health care, among others. States parties should develop policies and programmes ensuring the equal enjoyment of rights by rural women with disabilities, including by ensuring the accessibility of infrastructures and services. States parties should similarly ensure that older rural women have access to social services and adequate social protection, as well as economic resources and the empowerment to live life with dignity, including through access to financial services and social security.

Article 14, paragraph 1, read alongside articles 3, 4, paragraph 1, 5, paragraph (a), 6, 9, 15 and 16

26. Article 6 on the suppression of the traffic in women and of the exploitation of prostitution has special relevance for rural women and girls, including indigenous women and girls, who face specific risks because they live in remote areas. The economic hardships of rural life, alongside the lack of information on trafficking and how traffickers operate, can make them especially vulnerable, in particular in conflict-affected regions.

27. States parties should address the root causes of the traffic in women by economically empowering rural women and raising awareness in rural areas of the risks of being lured by traffickers and the ways in which traffickers operate. States parties should ensure that anti-trafficking legislation addresses the social and economic challenges faced by rural women and girls and provide gender-responsive training on prevention measures, protection and assistance for victims to the judiciary, the police, border guards, other law enforcement officials and social workers, especially in rural areas and indigenous communities.

Land and natural resources (art. 14, para. 2 (g), read alongside art. 13)

55. Rural women often have only limited rights over land and natural resources. In many regions, they suffer from discrimination in relation to land rights, including with respect to communal lands, which are controlled largely by men.

1. Land and natural resources

56. The Committee considers rural women's rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights. Barriers that prevent them from enjoying these rights often

include discriminatory laws, the lack of harmonization of laws and their ineffective implementation at the national and local levels, and discriminatory cultural attitudes and practices.

57. States parties should take all measures, including temporary special measures, necessary to achieve the substantive equality of rural women in relation to land and natural resources, and design and implement a comprehensive strategy to address discriminatory stereotypes, attitudes and practices that impede their rights to land and natural resources.

58. States parties should pay special attention to customary systems, which often govern land management, administration and transfer, in particular in rural areas, and ensure that they do not discriminate against rural women. They should raise awareness about rural women's rights to land, water and other natural resources among traditional, religious and customary leaders, lawmakers, the judiciary, lawyers, law enforcement authorities, land administrators, the media and other relevant actors.

59. States parties should ensure that legislation guarantees rural women's rights to land, water and other natural resources on an equal basis with men, irrespective of their civil and marital status or of a male guardian or guarantor, and that they have full legal capacity. They should ensure that indigenous women in rural areas have equal access with indigenous men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession. In addition, States parties should:

- (a) Promote rural women's access to and meaningful participation in agricultural cooperatives, in which women may be members or the sole members;
- (b) Enhance rural women's role in fisheries and aquaculture, as well as their knowledge of the sustainable use of fishery resources, and promote their access to forests and sustainable forest resources, including safe access to fuelwood and non-wood forest resources;
- (c) Strengthen customary and statutory institutions and mechanisms for defending or protecting women's rights to land, water and other natural resources, including community paralegal services.

8. Land and agrarian reform, land acquisition and resettlement

77. Land and agrarian reform often exclude rural women and are not implemented in a gender-responsive manner. Land reform policies sometimes have a male bias, such as registering land only in men's names, making compensation payments mostly in their name or compensating for land use restrictions (resulting in the loss of land, the loss of use and the loss of land value) based only on men's activities.

78. States parties should give priority to rural women's equal rights to land when undertaking land and agrarian reforms and consider it a specific and central objective of land reform. They should:

- (a) Ensure that land and agrarian reform programmes integrate gender-specific goals, targets and measures, and advance both formal and substantive equality, for example through joint titling, and require the wife's consent for the sale or mortgage of jointly owned land or for engaging in financial transactions linked to the land;
- (b) Recognize and include rural women's equal rights to land in any land distribution, registration and titling or certification schemes;
- (c) Formally recognize and review indigenous women's laws, traditions, customs and land tenure systems, with the aim of eliminating discriminatory provisions;
- (d) Develop and implement measures, including temporary special measures, to enable rural women to benefit from the public distribution, lease or use of land, water bodies, fisheries and forests, and from agrarian reform policies, rural investments and the management of natural resources in rural areas. Landless rural women should be given priority in the allocation of public lands, fisheries and forests.

Rural women in developed countries

88. Rural women in developed and developing countries often face similar challenges in terms of poverty and exclusion and may have similar needs in terms of accessible services, social protection and economic empowerment. As in many developing countries, rural economies in developed countries tend to favour men, and rural development policies in developed countries may also at times pay scant attention to women's needs and rights. Rural women in developed countries (and in developing countries) continue to need targeted policies and programmes that promote and guarantee the enjoyment of their rights. Many of the recommendations made in the preceding sections will be relevant to the situation of rural women living in developed countries. Nonetheless, there are unique issues that merit special attention.

89. ... In addition, while rural communities in developed countries may often be well connected to social services and have access to transportation infrastructure, water, sanitation, technology, education and health-care systems, among others, the situation is not equal across all rural communities. In many places, such access is noticeably lacking, and women living within those rural communities experience not only the deprivation of such rights but also an increased burden of care work as a result. This holds particularly true in peripheral or remote rural communities, including indigenous ones, which are isolated and tend to have higher levels of poverty.

92. States parties should improve the living situation of rural women, in particular indigenous ones, who reside in peripheral regions, which tend to be poorer, more isolated and less connected to social services. They should accord priority to the development of those rural communities, engaging local women in the design and implementation of rural development plans.

Dissemination and reporting

97. The Committee encourages States parties to translate the present general recommendation into national and local languages, including indigenous and minority languages, and to disseminate it widely to all branches of government, civil society, the media, academic institutions and women's organizations, including rural women's organizations. The Committee recommends that, when preparing their periodic reports, especially as regards article 14, States parties consult rural women's groups, including women farmers' organizations, producer collectives and rural cooperatives.

VI. COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

A. Concluding Observations

1. Colombia, CAT/C/COL/CO/5, 29 May 2015

Sexual violence in the context of the armed conflict

14. The Committee recognizes the efforts made by the State party to combat sexual violence perpetrated by armed groups — including the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP) and the Ejército de Liberación Nacional (ELN) — and by members of security forces in the context of the armed conflict. Nonetheless, the Committee remains concerned about the high levels of sexual violence in the country, much of which is directed at women and girls, many of whom are internally displaced. The Committee is also concerned by the fact that victims of sexual violence face formidable obstacles in their efforts to seek justice, and this is particularly true in the case of indigenous women and Colombian women of African descent. The Committee is, in addition, concerned by the stigmatization associated with this type of violence (arts. 2 and 16).

The State party should redouble its efforts to ensure that victims of sexual violence receive redress and should adopt specific measures that will put an end to the culture of silence and stigma that surrounds this type of violence. In this regard, the Committee draws the State party's attention to paragraph 33 of its general comment No. 3 (2012).

Human rights defenders and other representatives of civil society who are at risk

26. The Committee condemns the killings of numerous human rights defenders, trade unionists and journalists during the reporting period. It is concerned by reports of attacks, death threats and other forms of intimidation directed at community leaders; teachers; indigenous and Afro-Colombian leaders; lesbian, gay, bisexual and transsexual activists; representatives of displaced persons; and activists involved in land restitution processes. While taking note of the measures adopted by the State party to prevent these types of attacks and protect the life and ensure the physical safety of human rights defenders and other representatives of civil society, the Committee finds it regrettable that most of the investigations into such acts that have been opened have not produced any results. The Committee is also concerned by reports of public statements made by senior government officials and military leaders in which they have accused human rights defenders of collusion with armed groups, thereby putting them in harm's way. Finally, the Committee welcomes the conviction of senior officials for abuses committed by the Colombian intelligence service, including, in particular, illegal spying on human rights defenders, journalists, politicians and judges (arts. 2, 12, 13 and 16).

In the light of its preceding final conclusions (CAT/C/COL/CO/4, para. 23), the Committee urges the State party to:

- (a) Ensure that journalists, trade unionists, human rights defenders and other representatives of civil society are shielded from acts of intimidation and violence to which they may be exposed because of their activities;
- (b) Ensure that all incidents involving threats or aggression directed at journalists, human rights defenders, trade unionists, community leaders and other representatives of civil society are promptly investigated in an impartial manner.

2. Congo, CAT/C/COG/CO/1, 28 May 2015

5. The Committee welcomes the legislative steps taken by the State party to give effect to the Convention, including: ... (d) The adoption in 2011 of Act No. 5-2011 on the promotion and protection of the rights of indigenous peoples.

6. The Committee notes with appreciation that the State party has extended an invitation to special procedures mandate holders of the Human Rights Council and it welcomes the visits by the Special Rapporteur on the rights of indigenous peoples in 2010 and by the Working Group on Enforced or Involuntary Disappearances in 2011.

3. New Zealand, CAT/C/NZL/CO/6, 2 June 2015

Violence against women

11. While welcoming the measures adopted by the State party to prevent and combat violence against women (see paras. 5 and 6 (d) above), the Committee notes with concern reports on the persistence of violence against women and, particularly, its disproportionate occurrence against Maori women. The Committee is particularly concerned at information received that, while 90 per cent of cases of sexual violence remain unreported, statistics also show that the number of applications for safety orders have decreased since 2010, even though the number of family violence investigations have increased over the same period. Moreover, the Committee is concerned at the lack of proper funding for specialist sexual violence support services that reflect the diversity in the States party's communities (arts. 2, 12-14 and 16).

In the light of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the State party should redouble its efforts to prevent and combat all forms of violence against women throughout its territory by, *inter alia*: ... (d) Increasing its efforts to combat violence against indigenous women....

Indigenous people in the criminal justice system

14. While noting with satisfaction the efforts and subsequent measures taken by the State party to address the situation of indigenous people, including the prevention strategy entitled "Turning of the Tide" and the Creating Lasting Change Strategy 2011–2015, the Committee remains concerned at information received that indigenous people continue to be disproportionately affected by incarceration. The Committee is also concerned at information received that, while making up 15 per cent of the State party's population, Maori comprise 45 per cent of arrested individuals and over 50 per cent of prison inmates, and, moreover, that more than 60 per cent of female inmates are Maori (arts. 2, 11 and 16).

The State party should increase its efforts to address the overrepresentation of indigenous people in prisons and to reduce recidivism, in particular its underlying causes, by fully implementing the "Turning of the Tide" prevention strategy through the overall judicial system and by intensifying and strengthening community-based approaches with the involvement of all stakeholders and the increased participation of Maori civil society organizations.

Excessive use of seclusion in mental health facilities

15. While welcoming the adoption of the Mental Health and Addiction Service Development Plan 2012–2017, the aim of which is to eliminate the practice of secluding persons affected by mental health and addiction issues in the State party, and the commitment of the Ministry of Social Development to finish processing all historic abuse claims submitted to it by the end of 2020, the Committee is concerned at information received on the persistent seclusion of persons in mental health facilities for the purposes of punishing, disciplining and protecting, as well as for health-related reasons. The Committee notes that a significant number of victims have been secluded for more than 48 hours and that Maori are more likely to be secluded. The Committee is concerned at information that the State party continues to include, in new psychiatric facilities, cells specifically designed for solitary confinement. The Committee is also concerned that, according to information received from non-governmental sources, 60–70 per cent of people in detention have either a learning disability or a mental illness. The Committee notes that the State party failed to investigate or hold any individual accountable for the nearly 200 allegations of torture and ill-treatment against minors at Lake Alice Hospital. The Committee also notes the lack of relevant statistical information (arts. 11, 14 and 16).

The State party should:

- (a) Use solitary confinement and seclusion as measures of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review;
- (b) Prohibit the solitary confinement and seclusion of juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers, in prison and in all health-care institutions, both public and private;
- (c) Conduct prompt, impartial and thorough investigations into all allegations of ill-treatment in prisons and health-care institutions, both public and private; prosecute persons suspected of ill-treatment and, if

they are found guilty, ensure that they are punished according to the gravity of their acts; and provide effective remedies and redress to the victims;

(d) Compile and regularly publish comprehensive and disaggregated data on solitary confinement and seclusion.

4. Honduras, CAT/C/HND/CO/2, 26 August 2016

Human rights defenders and other representatives of civil society who are at risk

43. The Committee condemns the numerous deadly attacks carried out against human rights defenders, journalists and environmental activists since the consideration of the initial report in 2009. In this regard, the Committee finds it regrettable that the delegation of the State party has not provided any further information about the investigations that point to the involvement of a serving army officer in the murder of Berta Cáceres and that it has not commented on news reports indicating that her name was on a blacklist held by an elite army unit. The Committee is also concerned by reports of threats, assaults and other acts of intimidation against human rights defenders and civil society representatives, as well as the apparent impunity enjoyed by the perpetrators of those acts. While noting the recent adoption of the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials, the Committee expresses its concern about the lack of information on specific measures taken in response to the 38 requests for protection filed with the Directorate-General of the National System for the Protection of Human Rights Defenders as at June 2016. Lastly, the Committee also expresses its concern about reports of public statements made by high-ranking State officials discrediting the work of human rights defenders and journalists, thereby putting them at risk of physical harm (arts. 2, 12, 13 and 16).

44. The Committee urges the State party to:

- (a) Provide detailed information on the prosecution of those responsible for the death of Berta Cáceres;
- (b) Ensure that journalists, human rights defenders and other representatives of civil society are protected from acts of intimidation and violence to which they may be exposed because of their activities;
- (c) Ensure that all incidents involving threats or attacks directed at journalists, human rights defenders and members of civil society organizations are promptly and impartially investigated.

5. Ecuador, CAT/C/ECU/CO/7, 11 January 2017

Indigenous justice

19. The Committee is concerned that, in spite of the indications made in its previous concluding observations (see CAT/C/ECU/CO/4-6, para. 20), the bill on coordination and cooperation between the indigenous and ordinary justice systems is still awaiting adoption by the National Assembly (art. 2).

20. The Committee encourages the State party to take the legislative measures needed to establish mechanisms of coordination and cooperation between the indigenous and ordinary justice systems, as prescribed by article 171 in fine of the Constitution of Ecuador, in order to guarantee fundamental rights and freedoms, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

VII. COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

A. Concluding Observations

1. Brazil, CRPD/C/BRA/CO/1, 29 September 2015

Equality and non-discrimination (art. 5)

12. The Committee is concerned at the lack of measures to address discrimination against indigenous people and people of African descent with disabilities. In particular, it is concerned about the isolation of indigenous communities, which places persons with disabilities in extreme exclusion conditions.

13. The Committee recommends that the State party implement legislation, intersectoral policies and programmes to address the multiple forms of discrimination against indigenous people and people of African descent with disabilities, in particular to prevent the exclusion of persons with disabilities who live in isolated indigenous communities or remote areas.

Awareness-raising (art. 8)

20. The Committee is concerned at the lack of strategies specifically to promote the contents of the Convention and the human rights model of disability to the general public, public officials and private actors.

21. The Committee recommends that the State party, in cooperation with organizations of persons with disabilities, undertake public awareness campaigns to reinforce the positive image of persons with disabilities as holders of all of the human rights enshrined in the Convention. It also recommends that it provide training on the rights recognized in the Convention to all public authorities, and public and private professionals working with persons with disabilities. It further recommends that it provide information on the Convention to persons with disabilities living in special settings, indigenous persons with disabilities and their families.

Adequate standard of living and social protection (art. 28)

50. The Committee is concerned that many persons with disabilities are living in poverty and have no access to resources for an adequate standard of living; it is particularly concerned about persons with disabilities living in isolated indigenous communities, rural and remote areas who are exposed to exclusion and extreme poverty conditions.

51. The Committee recommends that the State party review the qualification requirements for social protection to ensure access for persons with disabilities who are living in poverty and to enable them to cover expenses related to impairment, giving particular attention to those living in isolated indigenous communities, rural and remote areas.

Statistics and data collection (art. 31)

56. The Committee is concerned that the State party does not systematically collect disaggregated data across all sectors according to sex, age, disability, indigenous peoples and geographic location.

57. The Committee recommends that the State party systematically facilitate the collection, analysis and dissemination of disaggregated data across all sectors, including health, education, employment, political participation, access to justice, social protection and violence by disability and according to other categories listed above, and amend the census questions, in close cooperation with organizations of persons with disabilities, to accurately reflect the population.

2. Chile, CRPD/C/CHL/CO/1, 13 April 2016

Habilitation and rehabilitation (art. 26)

55. The Committee is concerned about the limited coverage of the State party's activities in the area of rehabilitation. It is also concerned that public funds are allocated to private tax-exempt organizations that provide physical rehabilitation services to children with disabilities and that the services offered by such organizations are not universal.

56. The Committee recommends that the State party prioritize the allocation of adequate resources to support the provision of rehabilitation services at the community level for the benefit of all persons with disabilities, from childhood to adulthood, and for the purpose of social and community inclusion. The

Committee encourages the State party, when implementing these measures, to consult organizations of persons with disabilities, especially those that represent women, children, indigenous persons and individuals living in rural or remote areas.

Statistics and data collection (art. 31)

63. The Committee notes that the last National Disability Survey, conducted in 2015, did not cover persons with disabilities living in institutions, deprived of their liberty or in street situations or indigenous persons with disabilities. It further notes the lack of mechanisms to register cases of discrimination or violence against persons with disabilities.

64. The Committee recommends that the State party collect and update data and statistics on persons with disabilities using a rights-based model. The data should be disaggregated by age, sex, type of impairment, ethnicity and geographical location and include the type of residence or institution and cases of discrimination or violence against those persons. These processes should be undertaken in consultation with organizations of persons with disabilities. The Committee also recommends that the State party bear in mind the linkages between article 31 of the Convention and Sustainable Development Goal 17, especially target 17.18.

3. Colombia, CRPD/C/COL/CO/1, 30 September 2016

General principles and obligations (arts. 1-4)

10. The Committee is concerned about the lack of processes for the extensive and accessible consultation of organizations of persons with disabilities in adopting policies and other matters affecting them, and about the fact that their views are not reflected in the decisions adopted. It is concerned that the National Disability System does not provide the necessary resources to promote the effective participation of organizations of persons with disabilities and that the accreditation procedures for such participation are complicated and expensive, especially in rural and remote areas. It is also concerned that not all the seats designated for civil society representatives on the National Council for Persons with Disabilities have been filled.

11. The Committee recommends that the State party:

(a) Establish and strengthen mechanisms for extensive and democratic consultation of organizations of persons with disabilities, including those that represent women and children and older persons with disabilities, and indigenous and Afro-Colombian persons with disabilities, when adopting policies and other matters that concern them, take into account the results of such consultations and reflect them in the decisions adopted. ...

Specific rights (arts. 5-30)

Women with disabilities (art. 6)

16. The Committee is concerned about the limited measures taken to mainstream the disability perspective in the policies adopted by the High-level Presidential Advisory Office for Equality for Women and the national policy on women contained in CONPES social policy paper No. 161, and about the absence of the disability perspective in the policies and legislation designed to combat discrimination and gender-based violence.

17. The Committee recommends that the State party: ... (b) Incorporate the disability perspective in all the policies and strategies aimed at combating gender-based violence and take account of intersectional discrimination resulting from membership in Afro-Colombian, Raizal and indigenous communities, or from living in rural or remote areas. ...

Children with disabilities (art. 7)

18. The Committee is concerned about the limited information available on the situation of children with disabilities, mainly those who have been institutionalized or who are living in poverty or in rural or remote areas, and about the steps taken to protect their rights and facilitate their remaining with or return to their families or foster families. It is also concerned about the lack of a ban on corporal punishment of children with disabilities.

19. The Committee urges the State party to more systematically gather data on children with disabilities and to take steps to prevent their abandonment, abuse and institutionalization. It encourages the State party to adopt a plan on the deinstitutionalization of children with disabilities, including those who are institutionalized on the basis of protection measures ordered by the Colombian Family Welfare Institute, and to provide

community-based services and support to families, especially households headed by single mothers, in order to ensure the right of children with disabilities to grow up in a family environment and the right to have a family life. The Committee recommends that the State party repeal the provision in the Civil Code that authorizes adult childminders to correct and discipline children moderately and that it ban corporal punishment in any environment, including within the family and within indigenous and remote communities.

Health (art. 25)

56. The Committee is concerned at: ... (c) The prejudice and negative attitudes of health-care service providers, both generally and in services specializing by type of disability;

(d) Inadequate or non-existent coverage in rural areas and very remote locations.

57. The Committee recommends that the State party:

(a) Ensure the observance of the right of free and informed consent of persons with disabilities regarding health care, including sexual and reproductive health, services related to HIV/AIDS, and psychiatric services and interventions, through the use of protocols;

(b) Train health personnel on the rights and dignity of persons with disabilities, including the right to free and informed consent;

(c) Take steps to ensure the accessibility of all health-care services, in terms of both information and communications, and physical facilities, equipment and furniture;

(d) Provide the financial and human resources necessary to extend health care to all persons with disabilities, in particular those who are victims of armed conflict, women, children or older persons with disabilities; Afro-Colombian, Raizal or indigenous persons; living in rural and remote areas; or lesbian, gay, bisexual, transgender or intersex. ...

Adequate standard of living and social protection (art. 28)

62. The Committee notes that the majority of persons with disabilities in situations of poverty and extreme poverty, particularly those who are women, children or older persons, Afro-Colombian, Raizal or indigenous, or living in rural or remote areas, do not receive assistance or benefit from social protection programmes on the basis of disability that address their disability and related additional costs, despite being at greater risk of poverty, exclusion and violations of their rights. It is also concerned about the absence of a disability perspective in the policy on free or social housing, particularly the limited access of persons with disabilities in these programmes and their lack of accessibility.

63. The Committee recommends that the State party:

(a) Incorporate a disability perspective on a priority basis in poverty reduction and social inclusion strategies;

(b) Eliminate the interdiction requirements to benefit from social protection measures and strengthen programmes of social protection and assistance, with a gender, ethnicity and age perspective, to cover the additional costs incurred as a result of disability in acquiring goods and services and, in particular, that it provide for the revision of the interpretations made in relevant rulings of the Constitutional Court and the practices of retirement and pension funds in order to guarantee the inclusiveness of such programmes;

(c) Give priority to persons with disabilities, particularly women and persons belonging to ethnic or racial minorities and victims of armed conflict, by including accessibility as part of social housing policy;

(d) Be guided by article 28 of the Convention in pursuing target 10.2 of the Sustainable Development Goals.

4. Guatemala, CRPD/C/GTM/CO/1, 30 September 2016

General principles and obligations (arts. 1-4)

13. The Committee notes with concern that persons with disabilities, especially women, children and indigenous peoples, are subject to serious forms of discrimination. The Committee is also concerned by the fact that the National Disability Policy is not being effectively implemented by all of the ministries and public institutions concerned. It is also concerned by the lack of consultation with organizations of persons with disabilities to ensure the allocation of the necessary resources and the introduction of an implementation schedule and monitoring and evaluation mechanisms.

14. The Committee recommends that the State party ensure the effective implementation of its National Disability Policy by all ministries and public institutions concerned, allocate the necessary resources and establish an implementation schedule and a monitoring mechanism, in consultation with organizations of

persons with disabilities. The Committee also recommends that the State party mainstream disability and allocate the necessary resources to the National Development Plan, K'atun nuestra Guatemala 2032, ensuring that persons with disabilities participate in the urban and rural development councils that are responsible for monitoring its implementation. In addition, the Committee recommends that a national policy be drawn up on the elimination of all forms of discrimination against persons with disabilities, in accordance with the Convention.

Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

15. The Committee is concerned that persons with disabilities, especially persons with intellectual and psychosocial disabilities, women, children and indigenous peoples, are regularly subjected to multiple forms of discrimination and that their human rights are limited or restricted by the law. It is also concerned that the legislation of the State party does not recognize multiple, intersectional discrimination or the denial of reasonable accommodation as aggravated forms of discrimination against persons with disabilities.

16. The Committee recommends that the State party review all of its legislation and policies on equality and non-discrimination with a view to ensuring the full enjoyment by persons with disabilities of all human rights on an equal basis with others and that it recognize multiple, intersectional discrimination and the denial of reasonable accommodation as aggravated forms of discrimination against persons with disabilities in its legislation and policies.

Women with disabilities (art. 6)

19. The Committee is concerned by the lack of attention paid by the State party to preventing and combating the intersectional discrimination that is frequently suffered by women and girls with disabilities.

20. The Committee recommends that the State party, in consultation with organizations of women with disabilities and taking into account the Committee's general comment No. 3 (2016) on women and girls with disabilities, ensure the inclusion of women and girls with disabilities in all policies and programmes on gender equality and discrimination and take remedial measures and affirmative action to eliminate discrimination against them and to empower them, making sure to include those living in rural areas or indigenous communities. The Committee also recommends systematically compiling data and statistics on the situation of women and girls with disabilities and establishing indicators that can be used to assess the impact of the measures taken to counter discrimination against them. ...

Children with disabilities (art. 7)

23. The Committee is concerned at the high rate of maltreatment, abuse, corporal punishment, abandonment and institutionalization of children with disabilities; at the prevalence of the welfare and charity-based approach to their care; and at the limited scope of specific measures taken on their behalf in rural areas and indigenous communities.

24. The Committee recommends that the State party:

- (a) Amend article 13 of the Act on the comprehensive protection of children and adolescents and article 253 of the Civil Code, as recommended by the Committee on the Rights of the Child (see CRC/C/GTM/CO/3-4, para. 54);
- (b) Take all necessary measures to implement an effective system for detecting the maltreatment of children with disabilities in family, educational, health-care and institutional settings, and entrust the Office of the Advocate for Children and Adolescents with addressing the issue of children with disabilities who are subjected to abuse and maltreatment;
- (c) Establish the legal basis and financial support necessary to ensure that all children with disabilities are able to live in a family setting and to exercise their right to inclusive local services for children;
- (d) Ensure that children with disabilities are taken into account in laws, policies and measures regarding children, on an equal basis with other children and based on the principle of inclusion in the community;
- (e) Put in place safeguards to protect the right of children with disabilities to be consulted on all matters of concern to them and ensure that they receive assistance that is accessible and appropriate to their disability and age;
- (f) Prohibit and eliminate corporal punishment of children.

Awareness-raising (art. 8)

25. The Committee is deeply concerned by the fact that persons with disabilities, especially women, children and indigenous peoples, are victims of customs, superstitions and practices that seriously violate their dignity, safety and other fundamental rights. It also notes that the State party's efforts to combat biased views and negative stereotypes of persons with disabilities are insufficient and that campaigns such as the Telethon, which is a recipient of public funding, reinforce a charity-based approach that runs counter to the Convention.

26. The Committee recommends that the State party combat stereotyping of and discrimination against persons with disabilities, launch public media campaigns to promote their human rights in which they are directly involved, and ensure that public funding is not used for purposes that violate the Convention. The Committee also recommends that the State party provide training for public officials at all levels and for professionals who work with persons with disabilities on the rights recognized in the Convention and that it distribute the Convention and the resources available for its implementation widely among persons with disabilities and their families, especially in rural areas and indigenous communities.

Access to justice (art. 13)

35. The Committee is concerned about the limited access to justice enjoyed by persons with disabilities, particularly those living in rural areas and indigenous communities, the various barriers to accessibility and the lack of procedural accommodations provided for them. It is also concerned that justice officials are not sufficiently familiar with the Convention and therefore do not act in accordance with it.

36. The Committee recommends that the State party adopt all necessary measures to combat the discrimination faced by persons with disabilities with respect to access to justice, ensure that the legal system is fully accessible and provide comprehensive reasonable and procedural accommodations. The Committee also recommends that the State party step up its efforts to provide training on the Convention for justice officials, especially in rural areas and remote communities. The Committee recommends that the State party be guided by article 13 of the Convention in its implementation of target 16.3 of the Sustainable Development Goals.

Freedom of expression and opinion, and access to information (art. 21)

55. The Committee is concerned that persons with disabilities are limited in their communication and access to information due to the lack of accessible formats and technologies appropriate to different kinds of disabilities. It is also concerned that indigenous persons with disabilities are not provided with any such support for communication and access to information in their native languages.

56. The Committee recommends that the State party adopt the necessary measures to ensure the implementation of its legislation on access to information and communication in order to facilitate the access of all persons with disabilities to accessible formats and technologies appropriate to different kinds of disabilities. The latter should also be available in the native languages of the country's indigenous communities. The Committee further recommends promoting the official recognition of Guatemalan Sign Language and of Braille as the official reading and writing code for blind and deaf-blind persons.

Education (art. 24)

59. The Committee is particularly concerned by the low rate of school attendance of children with disabilities, especially in rural areas and indigenous communities. It also notes that special education remains virtually the only option available to them, owing to the persistence of negative attitudes towards their inclusion in the national education system and the existence of barriers of all kinds.

60. The Committee recommends that the State party, in line with the Committee's general comment No. 4 (2016) on the right to inclusive education:

- (a) Establish, through its laws and policies, a free, high-quality, inclusive education system at all levels and guarantee the provision of reasonable accommodation for students who require it, with adequate funding and appropriate training for regular teachers;
- (b) Adopt measures to ensure that all children with disabilities receive an education, especially those with intellectual or psychosocial disabilities, deaf-blind children and those from indigenous communities;
- (c) Urgently implement measures to improve the accessibility of schools and all teaching materials, including the provision of textbooks in Braille and sign language interpreters, and ensure that such materials are used from the start of education;

(d) Be guided by article 24 of the Convention in its implementation of targets 4.5 and 4.8 of the Sustainable Development Goals.

Health (art. 25)

61. The Committee is concerned by the inadequacy of the health system and the barriers to health service access faced by persons with disabilities, especially in rural areas and indigenous communities. It is also concerned by the fact that the Federico Mora National Mental Health Hospital is the only mental health care solution provided by the State party. It is further concerned by the restrictions and the stereotypes that persist among health professionals with regard to access to sexual and reproductive health services for women with disabilities.

62. The Committee recommends that the State party:

(a) Ensure the appropriate provision of community health services for persons with disabilities throughout the country, on the basis of free and informed consent, and ensure that the pharmacological treatments needed on account of disability are provided as part of the support system, at a low cost or free of charge;

(b) Develop community mental health services, adopting a human rights approach;

(c) Ensure that women with disabilities are provided with safe and accessible sexual and reproductive health services in both urban and rural areas;

(d) Provide training for all health system personnel on the rights of persons with disabilities in terms of health service access;

(e) Take into account article 25 of the Convention in the implementation of targets 3.7 and 3.8 of the Sustainable Development Goals.

Work and employment (art. 27)

63. The Committee is concerned that the majority of persons with disabilities are not in formal employment and do not have real and effective means of obtaining the reasonable accommodation that they require in the workplace. It is also concerned by the lack of monitoring of compliance with employment quotas in the public sector and the lack of affirmative action to accelerate the achievement of de facto equality for persons with disabilities who face the greatest difficulties in accessing the labour market, such as women and indigenous peoples, especially in rural communities.

64. The Committee recommends that the State party promote Bill No. 4796 on the inclusion of persons with disabilities in the world of work, together with an appropriate mechanism to monitor its implementation, and ensure the provision of reasonable accommodation as required by workers with disabilities and the implementation of affirmative action to support the groups that face the greatest difficulties in accessing the labour market. It also recommends that the State party set up a mechanism for monitoring compliance with employment quotas, with penalties for non-compliance. The Committee further recommends that the State party be guided by article 27 of the Convention in its implementation of target 8.5 of the Sustainable Development Goals.

Adequate standard of living and social protection (art. 28)

65. The Committee is deeply concerned about the exclusion, lack of access to drinking water, sanitation and decent housing, and overall conditions of poverty experienced by indigenous persons with disabilities. It is also concerned that disability is not properly taken into account in the State party's policies on indigenous peoples.

66. The Committee recommends that the State party:

(a) Redouble its efforts to mainstream disability in its programmes and policies on indigenous peoples, adopting a rural and community-based approach, and ensure that the needs and views of indigenous persons with disabilities are duly taken into consideration;

(b) Establish and implement a system for regular monitoring of the situation of indigenous persons with disabilities;

(c) Take special measures to eliminate the particular disadvantages faced by indigenous women, children and older persons with disabilities who have been abandoned or live in extreme poverty;

(d) Be guided by article 28 of the Convention in its implementation of targets 1.3 and 1.4 of the Sustainable Development Goals.

Participation in political and public life (art. 29)

67. The Committee is concerned by the fact that some persons with disabilities, especially those deprived of their legal capacity, those living in mental health facilities and those belonging to indigenous communities, are unable to vote and that voting procedures are not accessible. It is also concerned that ballot papers in Braille are not currently available in polling stations where they are needed and that the right to vote by secret ballot is not guaranteed.

68. The Committee recommends that the State party take the necessary measures to ensure that all persons with disabilities are able to exercise their right to vote and to stand for election on an equal basis with others, including through the provision of accessible facilities and means of communication, in both urban and rural areas. The Committee also recommends providing a sufficient number of ballot papers in Braille in all polling stations, in order to guarantee the right to vote by secret ballot.

5. Bolivia, CRPD/C/BOL/CO/1, 4 November 2016

General principles and obligations (arts. 1-4)

7. The Committee is concerned that the criteria used in certifying disability continue to reflect the medical model and take no account of the barriers facing persons with disabilities or of the human rights-based model. It is also concerned that the procedure for obtaining a certificate of disability is complicated and expensive for the majority of persons with disabilities, especially those living in rural areas and indigenous communities, with the result that disability is vastly underreported.

8. The Committee recommends that the State party amend the criteria for certification of disability to reflect the social, human rights-based model of disability, and that it make the procedure accessible, simple and free of charge for all persons with disabilities.

Specific rights (arts. 5-30)

Liberty of movement and nationality (art. 18)

47. The Committee is concerned that universal registration of all persons with disabilities is not guaranteed and that newborns with disabilities are less likely to receive identity documents, which impedes their access to basic services. It is also concerned that not enough information is provided to families in this regard.

48. The Committee urges the State party to guarantee all persons with disabilities the right to be registered, and to train the staff of official institutions to register all persons with disabilities, particularly in indigenous communities and in remote and rural areas.

Education (art. 24)

55. The Committee is concerned at the low school enrolment and high dropout rates of persons with disabilities, and at the fact that most of those who are enrolled are in special, segregated schools.

56. The Committee urges the State party to:

- (a) Adopt, implement and oversee policies on inclusive, quality education throughout its territory;
- (b) Promote the enrolment of all persons with disabilities, especially women and children, members of indigenous communities and those living in remote and rural areas. ...

Adequate standard of living and social protection (art. 28)

63. The Committee is concerned at the fact that over 80 per cent of persons with disabilities live in poverty or extreme poverty and that very few receive the solidarity allowance. The Committee is also concerned that financial support is insufficient to guarantee an adequate standard of living for persons with disabilities and to cover additional disability-related costs.

64. The Committee recommends that the State party take steps to guarantee an adequate standard of living for persons with disabilities and their families, especially those living in poverty, who are unemployed or who do not have a fixed income, in particular those in rural and remote areas, those who belong to indigenous communities, women and older persons, and to cover the added cost of living caused by disability by, inter alia, reviewing social security measures, such as the solidarity allowance, with a view to extending the coverage to all persons with disabilities. The Committee further recommends that the State party be guided by article 28 of the Convention in its efforts to achieve targets 1.3 and 1.4 of the Sustainable Development Goals.

VIII. COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

A. Concluding Observations

1. Honduras, CMW/C/HND/CO/1, 3 October 2016

General measures of implementation (arts. 73 and 84)

Legislation and application

10. The Committee notes the initiatives taken by the State party to strengthen the position and ensure the full development of migrants and members of their families and welcomes the signing of an agreement with the United Nations High Commissioner for Refugees (UNHCR) to promote the adoption of a new migration law. However, the Committee is concerned by: ... (b) The adoption of the Act on the Protection of Honduran Migrants and Members of Their Families in 2013 without prior or adequate consultation with representatives of the main organizations and institutions with a stake in migration issues, and the failure of the Act to incorporate provisions specifically relating to women or other particular groups, such as ... indigenous peoples....

Human rights of all migrant workers and members of their families (arts. 8-35)

...

Remuneration, working conditions and freedom of movement

42. The Committee takes note of the labour inspections conducted by the Labour Inspectorate of the Ministry of Labour and Social Security to ensure compliance with the labour rights of Hondurans and foreign nationals. However, it is concerned at the lack of mechanisms to oversee the working conditions of migrant workers, including seasonal workers in the State party, especially those of Nicaraguan origin and members of Guatemalan indigenous peoples, and at the lack of information on their working conditions and the efforts made to protect their rights. ...

43. The Committee recommends that the State party safeguard, in law and in practice, the labour rights of all migrant workers in its territory, especially seasonal workers from neighbouring countries, in accordance with articles 25 to 27 of the Convention, including through measures that take into account their ethnic origin. The Committee also recommends that the State party systematically produce quantitative and qualitative data on migrant workers in its territory. ...

Causes of migration and prevention of irregular migration

52. The Committee takes note of the measures adopted by the State party to address the causes of migration. The Committee is nonetheless concerned by the high rates of poverty, unemployment, informal employment and inequality, as well as by the high rates of murder and various forms of violence (social, gender-based, domestic, institutional), land conflicts and discrimination against persons of African descent, indigenous peoples and lesbian, gay, bisexual, transgender and intersex persons. Family reunification and the demand for labour in countries of destination, especially in the informal sector, are also causes of migration. The Committee is also concerned at the lack of a comprehensive policy designed to address these causes and the limited visibility they have had in the regional agenda on migration matters.

53. The Committee recommends that the State party develop a comprehensive, inter-agency and rights-based policy to address all the structural causes of migration, including, inter alia:

- (a) Rights-based, short- and long-term goals and progress indicators, disaggregated by age, sex, ethnic origin and other social characteristics;
- (b) Mechanisms for transparency and accountability;
- (c) Participation of civil society and specialized international agencies;
- (d) Cooperation and coordination initiatives at the local, national and regional levels.

IX. HUMAN RIGHTS COUNCIL: SELECTED RESOLUTIONS

1. Expert Mechanism, A/HRC/33/L.25, 26 September 2016 (footnotes omitted)

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming its support for the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in its resolution 61/295 of 13 September 2007,

Recalling all Commission on Human Rights and Human Rights Council resolutions on human rights and indigenous peoples, in particular Council resolution 6/36 of 14 December 2007, in which the Council decided to establish the Expert Mechanism on the Rights of Indigenous Peoples,

Reaffirming General Assembly resolution 69/2 of 22 September 2014, in which the Assembly adopted the outcome document of the high-level plenary meeting of the Assembly known as the World Conference on Indigenous Peoples, and taking note of the report of the Secretary-General on the progress made in the implementation of the outcome document,

Bearing in mind Human Rights Council resolution 30/11 of 1 October 2015, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to convene an expert workshop to review the mandate of the Expert Mechanism, and welcoming the productive discussions held at workshop on 4 and 5 April 2016, as reflected in the report of the Office of the High Commissioner, [A/HRC/32/26].

Mindful of the work being undertaken on indigenous issues by other bodies in the United Nations system and regional human rights systems,

1. *Decides to amend* the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, which shall provide the Human Rights Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples, and assist Member States upon request, to achieve the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples;

2. *Decides* that the Expert Mechanism shall:

(a) Prepare an annual study on the status on the rights of indigenous peoples worldwide in the achievement of the ends of the Declaration, focusing on one or more interrelated articles of the Declaration, decided by the Expert Mechanism, taking into consideration suggestions received from Member States and indigenous peoples, including challenges, good practices and recommendations;

(b) Identify, disseminate and promote good practices and lessons learned regarding the efforts to achieve the ends of the Declaration, including through reports to the Human Rights Council on this matter;

(c) Upon request, assist Member States and/or indigenous peoples in identifying the need for and providing technical advice regarding the development of domestic legislation and policies relating to the rights of indigenous peoples, as relevant, which may include establishing contacts with other United Nations agencies, funds and programmes;

(d) Provide Member States, upon their request, with assistance and advice for the implementation of recommendations made at the universal periodic review and by treaty bodies, special procedures or other relevant mechanisms;

(e) Upon the request of Member States, indigenous peoples and/or the private sector, engage and assist them by facilitating dialogue, when agreeable to all parties, in order to achieve the ends of the Declaration;

3. *Also decides* that the Expert Mechanism shall report at least once a year to the Human Rights Council on its work, and keep the Council fully informed of developments on the rights of indigenous peoples;

4. *Further decides* that the Expert Mechanism shall consist of seven independent experts, one from each of the seven indigenous sociocultural regions, the selection of which shall be carried out in accordance with the procedure and criteria for nominating, selecting and appointing mandate holders established by the Human Rights Council in paragraphs 39 to 53 of the annex to its resolution 5/1 of 18 June 2007;

5. *Decides* to introduce staggered terms for the membership of the Expert Mechanism, considering the need to secure continuity in its functioning;
6. *Strongly recommends* that, in the selection and appointment process, the Human Rights Council give due regard to the recognized competence and experience in the rights of indigenous peoples, experts of indigenous origin, and gender balance;
7. *Decides* that the members of the Expert Mechanism shall serve for a three-year term, and may be reappointed for one additional term;
8. *Also decides* that, within its mandate, the Expert Mechanism shall determine its own methods of work, although the Expert Mechanism may not adopt resolutions or decisions;
9. *Further decides* that, within its mandate, the Expert Mechanism may seek and receive information from all relevant sources as necessary to fulfil its mandate;
10. *Decides* that, within its mandate, the Expert Mechanism shall coordinate its work and further strengthen its participation, engagement and cooperation, as appropriate, with the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples, the United Nations Voluntary Fund for Indigenous Peoples, and other United Nations bodies and processes;
11. *Encourages* the Expert Mechanism to enhance its engagement with national human rights institutions, which should be in accordance with the mandates of each national human rights institution;
12. *Decides* that the Expert Mechanism shall meet annually for up to five days, and that the sessions may be a combination of open and private meetings, as deemed necessary;
13. *Also decides* that the annual meeting of the Expert Mechanism shall be open to the participation, as observers, of States, United Nations mechanisms, bodies and specialized agencies, funds and programmes, intergovernmental organizations, regional organizations and mechanisms in the field of human rights, national human rights institutions and other relevant national bodies, academics and experts on indigenous issues, and non-governmental organizations in consultative status with the Economic and Social Council; the meeting shall also be accessible to indigenous persons with disabilities and open to indigenous peoples' organizations and non-governmental organizations whose aims and purposes are in conformity with the spirit, purposes and principles of the Charter of the United Nations, based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, through an open and transparent accreditation procedure in accordance with the rules of procedure of the Human Rights Council, which will provide for timely information on participation and consultation with the States concerned;
14. *Further decides* that the Expert Mechanism may also hold intersessional meetings and activities for five days a year, and invites it to use information and communication technologies to advance its work;
15. *Decides*, in order for the Expert Mechanism to enhance cooperation and avoid duplicating the work of the Special Rapporteur on the rights of indigenous people and the Permanent Forum, that it shall participate in the activities of the Permanent Forum, and invite the Special Rapporteur and a member of the Permanent Forum to attend and contribute to its annual meeting;
16. *Invites* the special procedures of the Human Rights Council to explore concrete ways to coordinate their work with the Expert Mechanism with regard to the rights of indigenous peoples;
17. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide all human, technical and financial assistance necessary for the Expert Mechanism to fulfil its mandate fully and effectively.

2. Human rights and indigenous peoples, A/HRC/33/L.24, 23 September 2016 (footnotes omitted)

The Human Rights Council,

Recalling all relevant General Assembly, Commission on Human Rights and Human Rights Council resolutions on human rights and indigenous peoples,

Reaffirming its support for the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in its resolution 61/295 of 13 September 2007,

Recognizing current efforts towards the promotion, protection and fulfilment of the rights of indigenous peoples, including the adoption of the American Declaration on the Rights of Indigenous Peoples,

Recalling the adoption of the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples,

Recognizing that indigenous women, youth, children and persons with disabilities face particular challenges and face multi-faceted and intersecting forms of discrimination in access to health services,

Stressing the need to acknowledge traditional knowledge and practices on health and for intercultural approaches that are sensitive to the health needs of indigenous peoples,

Welcoming the study by the Expert Mechanism on the Rights of Indigenous Peoples on the theme, “Right to health and indigenous peoples, with a focus on children and youth”, submitted to the Human Rights Council at its thirty-third session, and encouraging all parties to consider the examples of good practices and recommendations included in the study as practical advice on how to attain the end goals of the United Nations Declaration on the Rights of Indigenous Peoples,

Stressing the need to pay particular attention to the rights and special needs of indigenous women, children, youth, elders and persons with disabilities, and to intensify efforts to prevent and eliminate violence and discrimination against indigenous women and girls, as set out in the United Nations Declaration on the Rights of Indigenous Peoples and the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples,

Recalling the commitment made by the General Assembly at the World Conference to consider ways to enable the participation of indigenous peoples’ representatives and institutions in meetings of relevant United Nations bodies on issues affecting them, and looking forward to the outcome of the process initiated by the President of the General Assembly and its consideration by the Assembly,

Recalling the adoption of the Indigenous and Tribal Peoples Convention, 1989 (No.169) by the International Labour Organization, and its important contribution to the promotion and protection of the rights of indigenous peoples,

1. Welcomes the report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples, and requests the High Commissioner to continue to submit to the Human Rights Council an annual report on the rights of indigenous peoples containing information on relevant developments in human rights bodies and mechanisms and the activities undertaken by the Office of the High Commissioner at Headquarters and in the field that contribute to the promotion of, respect for and the full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and follow-up on the effectiveness of the Declaration;

2. Also welcomes the work of the Special Rapporteur on the rights of indigenous peoples, including the official visits made and her reports, and encourages all Governments to respond favourably to her requests for visits;

3. Welcomes the work of the Expert Mechanism on the Rights of Indigenous Peoples, takes note with appreciation of the report on its ninth session,⁴ and encourages States to continue to participate in and contribute to its discussions, including by their national specialized bodies and institutions;

4. Requests the Expert Mechanism to prepare a study, to be finalized by its tenth session, on good practices and challenges, including discrimination, in business and in access to financial services by indigenous peoples, in particular indigenous women and indigenous persons with disabilities, and to present it to the Human Rights Council at its thirty-sixth session;

5. Decides to hold, at its thirty-sixth session, its half-day panel discussion on the commemoration of the tenth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, with a special focus on challenges and good practices in achieving the ends of the Declaration, and requests the Office of the High Commissioner to make the discussions fully accessible to persons with disabilities and to

prepare a summary report of the discussion, to be submitted to the Human Rights Council prior to its thirty-eighth session;

6. Reaffirms its decision to continue its consideration of the issue of the elimination of all forms of violence against women and girls, its causes and consequences, including violence against indigenous women and girls, as a matter of high priority, in conformity with its annual programme of work;

7. Welcomes the ongoing cooperation and coordination among the Special Rapporteur, the Permanent Forum on Indigenous Issues and the Expert Mechanism, and their ongoing efforts to promote the rights of indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples, including the follow-up to the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, and invites them to continue to work in close cooperation with all Human Rights Council mechanisms within their respective mandates;

8. Reaffirms that the United Nations treaty bodies are important mechanisms for the promotion and protection of human rights, and encourages States to give serious consideration to their recommendations regarding indigenous peoples;

9. Welcomes the contribution of the universal periodic review to the realization of the rights of indigenous peoples, encourages effective follow-up to accepted review recommendations concerning indigenous peoples, and invites States to include, as appropriate, information on the situation of the rights of indigenous peoples, including measures taken to pursue the objectives of the United Nations Declaration on the Rights of Indigenous Peoples during the review;

10. Encourages States that have endorsed the United Nations Declaration on the Rights of Indigenous Peoples to adopt measures to pursue its objectives in consultations and cooperation with indigenous peoples;

11. Calls upon States that have not yet ratified or acceded to the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization to consider doing so;

12. Encourages States to give due consideration to all the rights of indigenous peoples in fulfilling the commitments undertaken in the 2030 Agenda for Sustainable Development and in the elaboration of relevant national programmes, strategies and plans;

13. Welcomes the role of national human rights institutions established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) in advancing indigenous issues, and recognizes the importance for such institutions of developing and strengthening their capacities, as appropriate, to fulfil that role effectively;

14. Takes note of the activity of the United Nations Indigenous Peoples Partnership and the system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, and invites States and other potential donors to support it;

15. Urges States and invites other public and/or private actors or institutions to contribute to the United Nations Voluntary Fund for Indigenous Peoples as an important means of promoting the rights of indigenous peoples worldwide and within the United Nations system;

16. Decides to continue its consideration of this question at a future session in conformity with its annual programme of work

X. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES: ADVICE

1. Expert Mechanism advice No. 8 (2015): Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, A/HRC/30/53⁴²

General

1. The cultural heritage of indigenous peoples is a holistic and inter-generational concept based on common material and spiritual values and includes distinctive manifestations in language, spirituality, membership, the arts, literature, traditional knowledge, customs, rituals, ceremonies, methods of production, festive events, music, sports and traditional games, behaviour, habits, tools, shelter, clothing, economic activities, morals, value systems, cosmovision, laws and activities such as hunting, fishing, trapping and gathering.
2. The cultural heritage of indigenous peoples is comprised of all objects, sites, plants and animal species, customs and practices, expressions, beliefs and knowledge, the nature or use of which has been transmitted from generation to generation, and which are regarded as pertaining to a particular people or its territory.
3. The cultural heritage of indigenous peoples includes tangible and intangible manifestations of their ways of life, achievements and creativity, and should be considered an expression of their self-determination and of their spiritual and physical relationships with their lands, territories and resources.
4. The right of access to and enjoyment of cultural heritage forms part of international human rights law and represents an important aspect of the rights of indigenous peoples, including the right to take part in cultural life, the right to enjoy their own culture and the right to self-determination. The right of indigenous peoples to self-determination implies their right to maintain, control, protect and develop their own cultural heritage.
5. The safeguard and development of the cultures of indigenous peoples require the protection of their lands, territories and resources. Cultural rights entail rights to land and natural resources, and imply an obligation to protect the cultural heritage of indigenous peoples through the recognition of their rights to own, control and manage their ancestral territories.
6. Heritage policies, programmes and activities affecting indigenous peoples should be based on full recognition of the inseparability of natural and cultural heritage, and the deep-seated interconnectedness of intangible cultural heritage and tangible cultural and natural heritage.
7. For indigenous peoples, cultural and natural values are inseparably interwoven and should be managed and protected in a holistic manner. It is imperative that all the instruments that derive from such regimes and relate to the cultural heritage of indigenous peoples are interpreted in the light of the United Nations Declaration on the Rights Indigenous Peoples, which is the most specific, representative and comprehensive instrument on indigenous cultural heritage.⁴⁴
8. Indigenous peoples have the right to redress when their cultural heritage is misappropriated without their free, prior and informed consent. This includes a right to repatriation and restitution.

Advice for States

9. States should recognize the value and livelihood aspects of the cultural heritage of indigenous peoples, which is not limited to the protection of specific manifestations, symbols or objects, but also includes tangible and intangible manifestations of their ways of life, achievements and creativity, and of their spiritual and physical relationships with their lands, territories and resources.
10. Indigenous peoples should be consulted and enabled to actively participate in the whole process of identification, evaluation, classification, interpretation, preservation, safeguarding, monitoring, stewardship and development of their cultural and natural heritage.
11. States should revisit the draft Principles and guidelines for the protection of the heritage of indigenous peoples (E/CN.4/Sub.2/1995/26, annex), with a view to adopting them as an instrument to protect the cultural heritage of indigenous peoples.
12. In accordance with the United Nations Declaration on the Rights of Indigenous Peoples, States have the obligation to seek the free, prior and informed consent of indigenous peoples before adopting measures

⁴² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/185/41/PDF/G1518541.pdf?OpenElement>.

affecting their cultural or natural heritage. No inscription on lists of the United Nations Educational, Scientific and Cultural Organization (UNESCO) relating to the cultural or natural heritage of indigenous peoples or national lists or registers should be requested or granted without the free, prior and informed consent of the indigenous peoples concerned.

13. States need to legally recognize and protect the right of indigenous peoples to their lands, territories and resources through appropriate measures and policies, including declaring cultural heritage sites, sacred sites and other areas of spiritual significance to indigenous peoples as “no-go zones” for extractive industries, tourism development and other development projects which have not received the free, prior and informed consent of the indigenous peoples concerned.

14. States need to harmonize their national legislations based on the provisions of the Declaration and taking note of the outcome document of the World Conference on Indigenous Peoples (General Assembly resolution 69/2), and should develop national action plans for the protection and promotion of the cultural heritage of indigenous peoples.

15. In the case of cross-border indigenous peoples, bordering States should ensure the protection of cultural rights on an equal basis.

16. States should ensure that the benefits arising from the use of the lands, territories and resources of indigenous peoples’ as World Heritage sites are defined by and genuinely accrue to the indigenous peoples concerned, in a fair and equitable manner.

17. States should guarantee that indigenous peoples have available financial resources that effectively allow them to maintain, safeguard and protect their cultural heritage, including through the recognition of indigenous peoples’ right to control and benefit from their natural resources, traditional knowledge and traditional cultural expressions.

18. States should provide measures for the revitalization and transmission of the cultural heritage of indigenous peoples in formal and informal education, including the promotion and protection of indigenous peoples’ languages through effective mother tongue education for indigenous children.

19. States should take effective measures to assess, redress and remedy the effects of past injustices and violations of the rights of indigenous peoples by ensuring the restitution and repatriation of their cultural heritage.

20. States should increase their financial support to museums that are owned and managed by indigenous peoples, as part of the redress and repatriation process.

21. States should strengthen their legal and policy frameworks to encourage public and private museums to reach out to indigenous communities in order to better understand the impact of restoring stolen cultural heritage.

22. States should ensure that investors and corporations respect the cultural heritage of indigenous peoples. Businesses have a responsibility to protect the right to cultural heritage; if operations have a negative impact on the realization of that right, businesses have a responsibility to remedy that impact.

23. States that have not already done so should ratify the Convention for the Safeguarding of the Intangible Cultural Heritage, as a measure to increase the protection afforded to indigenous peoples’ intangible cultural heritage.

Advice for international organizations

24. There is a need for better coordination and collaboration between institutions and agencies of the United Nations system on matters relating to cultural heritage and its human rights dimensions so as to increase coherence and avoid duplication of work. This issue could be addressed in the system-wide action plan on indigenous peoples that is currently being developed, as requested by the General Assembly in the outcome document of the World Conference on Indigenous Peoples.

25. Relevant special procedures should monitor State policies on access to cultural heritage to ensure that they respect the principles of the Declaration and that States act in accordance with the provisions in the International Labour Organization Indigenous and Tribal Peoples Convention No. 169 that protect cultural heritage.

26. International organizations working in the field of cultural heritage, such as UNESCO, the World Intellectual Property Organization (WIPO) and other United Nations specialized agencies, must integrate and respect the rights proclaimed in the Declaration in their work. This includes obtaining the free, prior and informed consent of indigenous peoples before any decision affecting their lands is taken.

27. The World Heritage Committee should take effective measures to ensure that the protection of World Heritage does not undermine indigenous peoples' relationship with their traditional lands, territories and resources, their livelihoods and their rights to protect, exercise and develop their cultural heritage and expressions.
28. The World Heritage Committee needs to review its current procedures and Operational Guidelines, with the full and effective participation of indigenous peoples, to ensure that the implementation of the World Heritage Convention is consistent with the Declaration.
29. The World Heritage Committee should adopt changes to the criteria and regulations for the assessment of "outstanding universal value" so as to ensure that the values assigned to World Heritage sites by indigenous peoples are fully and consistently recognized as part of their outstanding universal value.
30. UNESCO and the World Heritage Committee should dedicate resources to the development of mechanisms to ensure that indigenous peoples can effectively participate in all World Heritage Convention processes affecting them and that their rights, priorities, values and needs are duly recognized, considered and reflected.
31. UNESCO should strengthen its efforts to finalize its Policy on Indigenous Peoples, in cooperation with indigenous peoples and the three United Nations mechanisms with specific mandates regarding the rights of indigenous peoples.
32. UNESCO should consider developing a charter on sports and traditional games that protects the cultural heritage of indigenous peoples in the area of sports and traditional games.
33. United Nations institutions should continue to develop guidelines and other norms and practices aimed at the protection and inclusion of traditional cultural heritage, including the role of traditional knowledge, in enhancing community resilience and sustainable development.
34. WIPO and its Intergovernmental Committee should ensure that indigenous peoples fully participate in the current negotiations and that their free, prior and informed consent is sought and obtained before any new international instruments for the protection of traditional knowledge is adopted. The process in which laws governing the use of traditional knowledge, cultural expressions and genetic resources are developed needs to conform with the rights guaranteed under the Declaration, particularly article 31.
35. The Human Rights Council should consider calling for an immediate halt to any removal of ancestral remains and cultural items indigenous peoples for any reason, unless their free, prior and informed consent is obtained.

Advice for indigenous peoples

36. Indigenous peoples are the primary keepers of their cultural heritage. As such they have an active role to play in its preservation, transmission and revitalization.
37. Indigenous peoples should ensure the equal participation of women in discussions and decisions on cultural heritage at the level of the community.
38. Indigenous peoples should engage and take an active part in international fora related to the protection of cultural heritage, notably under the aegis of WIPO and UNESCO.
39. Indigenous peoples should participate in the practical Workshops for Indigenous Peoples and Local Communities on intellectual property, traditional knowledge and traditional cultural expressions that are organized by WIPO, which impart knowledge of the main principles of the intellectual property system, and explain, among other things, the rationale, objectives and methodology of the negotiations that are currently being conducted by the Intergovernmental Committee.
40. Indigenous peoples should participate actively to educate the non-indigenous population about the importance of the collective protection of the heritage of indigenous peoples.
41. Indigenous peoples should ensure the inter-generational transmission of their cultural heritage within their communities.

Advice for museums

42. Museums and other places in which the cultural heritage of indigenous peoples is stored should inform the relevant indigenous peoples and develop mechanisms to facilitate the return of such cultural heritage when sought by the indigenous peoples concerned.

2. Expert Mechanism advice No. 9 (2016) on the right to health and indigenous peoples, A/HRC/33/57, 10 August 2016⁴³

General advice

1. The right to health of indigenous peoples is enshrined in multiple international and national instruments, and forms an important part of human rights law. That right is interrelated with various key rights accrued by indigenous peoples, including the rights to self-determination; development; culture; land, territories and resources; language; and the natural environment.
2. Indigenous concepts of health are broad and holistic, incorporating spiritual, environmental, cultural and social dimensions in addition to physical health. Forced cultural assimilation; land disposessions and the use of indigenous land for the extractive industry; political and economic marginalization; poverty; and other legacies of colonialism have led to a lack of control over individual and collective health and undermined the realization of indigenous peoples' health rights.
3. Health statistics the world over illustrate indigenous peoples' disadvantaged position in terms of access to quality health care and their vulnerability to numerous health problems, including communicable and non-communicable diseases. Indigenous women, youth, children and persons with disabilities face particular challenges, including higher maternal mortality and suicide rates, and face multifaceted forms of discrimination.

Advice for States

4. States should recognize and enhance the protection of the right to health of indigenous peoples by ratifying and incorporating into their domestic law the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization, the International Covenant on Economic, Social and Cultural Rights and other key human rights treaties, and by taking concrete measures to implement the United Nations Declaration on the Rights of Indigenous Peoples.
5. States should recognize the inherent right of indigenous peoples to determine their own futures, including in terms of exercising control over their own health. States should consider entering into treaties with indigenous peoples, explicitly safeguarding rights to self-determination and health, and implement relevant treaty commitments where they already exist.
6. Health is an indispensable component of indigenous peoples' very existence, survival and entitlement to live in dignity and determine their own futures. States should therefore seek the free, prior and informed consent of indigenous peoples before implementing laws, policies or programmes affecting their health or health rights.
7. States should implement national plans for indigenous peoples' health with the full participation of indigenous peoples and with their free, prior and informed consent, or create or amend existing national health plans to incorporate specific programmes and policies for indigenous peoples. States should also incorporate the right to health into national action plans for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.
8. States should ensure that indigenous peoples are given full access to publicly run health-care facilities, goods and services, as well as to facilities, goods and services relating to underlying determinants of health, such as safe and potable water and adequate food and sanitation. The introduction and implementation of comprehensive anti-discrimination laws and the collection and use of disaggregated data are vital for achieving this objective.
9. Laws and policies that permit or sanction violence against indigenous peoples, even if only implicitly, should be repealed by States, and steps should be taken to address violence perpetrated by State representatives (such as armed forces) and third parties. Violence in health-care settings, such as forced sterilization and female genital mutilation, as well as discrimination against lesbian, gay, bisexual and transgender indigenous persons, should be explicitly prohibited.
10. States should not endanger the environmental health of indigenous peoples, including through air pollution or water and soil contamination by State-owned facilities or other activities. States should take steps to protect indigenous peoples from environmental damage caused by third parties (such as private companies) by minimizing, through legislative and practical measures, the impact that extractive industries in particular have on the physical and mental health of indigenous peoples.

⁴³ http://www.un.org/ga/search/view_doc.asp?symbol=a/hrc/33/57.

11. Indigenous peoples should be permitted to identify as distinct groups within States and States should take positive measures to ensure the collection of disaggregated data on indigenous peoples. States should facilitate access to health-care services through improved birth registration processes and by removing birth registration as a precondition for accessing health-care services.
12. States should take steps to support the preservation of indigenous cultures and protect indigenous peoples from the appropriation and commodification of their knowledge, their traditional medicines and other traditional practices by third parties. Indigenous peoples should be allowed to practice traditional medicine and enjoy its benefits but harmful practices that infringe on other rights, such as female genital mutilation, should be eradicated, in partnership with indigenous peoples.
13. States should provide sufficient resources to indigenous peoples to facilitate the creation and operation of their own health-care initiatives or, in the absence of indigenous-controlled services, provide programmes and interventions directly to indigenous peoples, including through the implementation of special measures necessary for indigenous peoples to fully realize their health rights.
14. States should secure access to quality health-care services, including preventive care, for nomadic and remote indigenous peoples, indigenous peoples in conflict-affected areas and indigenous persons in detention, including through mobile clinics, telemedicine and information and communications technologies.
15. States should ensure that interpretation services are available to indigenous patients, to ensure adequate communication in health-care settings. Recognizing the role of languages in the healing process, States should also promote the use of indigenous languages in health-care settings.
16. States should take steps to train indigenous health-care workers and accredit indigenous health practitioners and integrate them into health-care systems. States should also improve health-care training curricula to train health-care workers to deliver culturally appropriate services, and create programmes and services to raise the awareness of practitioners regarding the treatment and management of indigenous persons.
17. Culturally appropriate health promotion tools and information should be devised and disseminated by indigenous peoples in partnership with States, to prevent both communicable and non-communicable diseases. Sufficient resources should be allocated for healthy lifestyle information programmes to be devised and States should design specific strategies for the prevention of communicable and non-communicable diseases in partnership with indigenous peoples and with their free, prior and informed consent.
18. States should implement legislation, policies and programmes that support indigenous peoples in making informed choices about their health and that include initiatives to improve indigenous peoples' choices regarding the underlying determinants of health, such as healthful food and physical activity.
19. Educational initiatives for indigenous peoples should be prioritized by States, given the strong direct and indirect links between health and educational attainment. States should ensure that every indigenous child has access to primary and secondary education and that all indigenous peoples can access health-related educational resources.
20. The high rate of removal of indigenous children from their families and communities worldwide and the far-reaching health effects of intergenerational trauma attributable to such removal and placement in residential schools and other facilities should be further investigated by States. Steps should be taken to preserve the integrity of indigenous families in accordance with the rights of the child and to ensure that affected indigenous persons receive the preventive and curative health-care services they require for addressing sequelae such as mental illness.
21. States, in cooperation with indigenous peoples, must take immediate steps to reduce the high rate of indigenous suicide worldwide, in particular among children and youth. Proven preventive measures should be implemented in high-risk communities and sufficient resources should be allotted to achieve genuine improvements in mental health among indigenous peoples.
22. States should provide resources and materials to deliver culturally appropriate health care to women, especially in respect of maternal health and sexual and reproductive health and rights.
23. States should ensure that women are protected from violence by enforcing criminal laws and making use of indigenous juridical mechanisms. States should also offer support services and resources for women who experience violence, including monetary resources where necessary.
24. States should take steps to combat discrimination against indigenous persons with disabilities by implementing legislation, policies and programmes and creating mechanisms to protect these people from having their rights abused by third parties. States should also implement culturally appropriate services (diagnostic and otherwise), taking into account indigenous needs in identifying and managing disability.

25. States should promote the exercise of indigenous traditional games and sport, for example through the World Indigenous Games.
26. States need to legally recognize and protect the right of indigenous peoples to their lands, territories and resources through appropriate laws and policies, given their intrinsic connection with the rights to health and to food.
27. States should make concrete plans to implement the provisions of the Paris Agreement, to mitigate the harmful effects of climate change and to tailor their health-sector planning to prepare for the health-related impacts of climate change, which disproportionately affect indigenous peoples.
28. States should ensure that adequate mechanisms are in place to provide redress and remedy for health rights infringements, including treaty rights, either through mainstream or indigenous juridical systems. Indigenous juridical systems may have certain advantages in terms of the resolution of complaints linked to health rights violations.

Advice for indigenous peoples

29. Indigenous peoples should strengthen advocacy efforts for the recognition of indigenous health rights and rights to self-determination, with the aim of creating equitably funded indigenous community-controlled health-care facilities, goods and services that are available, accessible, acceptable and of good quality.
30. Indigenous peoples should continue to advocate for proportionate representation and genuine participation in policy decisions regarding health care and push States to ensure that their free, prior and informed consent is obtained before implementing laws, policies and projects affecting indigenous peoples.
31. Indigenous peoples can take measures to protect and promote traditional medicine and associated practices, including advocating for State recognition to receive full protection under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, and for traditional healing and medical practices to be included in mainstream health-care services.
32. Indigenous peoples should ensure that steps are taken within communities to protect children and youth from practices with negative health impacts, including alcohol and drug misuse, and work with States to address these issues.

Advice for international organizations

33. While acknowledging the work done in this area by the Pan American Health Organization, the Expert Mechanism suggests that the World Health Organization consider appointing a global focal point on indigenous peoples' health issues to better address the pressing concerns that are raised worldwide in respect of the realization of indigenous health rights.
34. The United Nations, its agencies and other international organizations should emphasize the importance of providing mental health services to indigenous peoples and take steps to address suicide among indigenous people, in particular indigenous children and youth. The World Health Organization should also coordinate further research into youth suicide. The above-mentioned organizations should share information and support indigenous communities in tackling this issue.
35. The United Nations Population Fund should take into consideration the rights of indigenous peoples, in particular women and young people, in their planning, given the disproportionate burden of morbidity and mortality suffered by indigenous women and the gaps in the realization of their sexual and reproductive health rights.
36. The World Health Organization, the World Bank and other international organizations should conduct research into and disseminate information on best practices regarding community-controlled health care, to promote its adoption.
37. Together with States, multilateral agencies and other entities should also invest more resources in research and development for novel, affordable treatments for neglected tropical diseases that are disproportionately experienced by indigenous peoples.
38. The World Health Organization and other United Nations agencies should work with indigenous peoples to develop policy guidelines for incorporation of indigenous traditional knowledge into national health-care systems, including through the recognition of best practices.

XI. SELECTED SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

A. Reports of the Special Rapporteur on the Rights of Indigenous Peoples

1. Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples on the impact of international investment and free trade on the human rights of indigenous peoples, A/70/301, 7 August 2015⁴⁴

Conclusions and recommendations

Conclusions

73. It is clear that international investment and free trade agreements have significant potential to contribute to violations of the rights of indigenous peoples. The threat posed by current regimes lies both in their direct impact on indigenous peoples rights and their contribution to systemic injustices and imbalances, which tend to disproportionately impact indigenous peoples as some of the most globally marginalized. For that reason the Special Rapporteur intends to dedicate ongoing attention to the issue during the fulfilment of the mandate.

74. The human and indigenous rights implications of international investment agreements constitute a complex and multifaceted issue that requires sustained and multilateral attention from United Nations Member States in close consultation with indigenous peoples and formal representatives. The Special Rapporteur believes that fundamental and systemic reform of the international management of investment and free trade is necessary within the context of broader efforts to address the human rights issues associated with business activities. The situation whereby companies and investors enjoy exceptionally strong rights and remedies while the only mechanisms available to hold them to account for any human and indigenous rights violations are voluntary and/or have a weak standing in international law cannot be allowed to continue. Furthermore, indigenous peoples continue to bear an unequal share of the burden that situation creates, and suffer from a spectrum of severe rights violations within the context of corporate activities and the related management of the globalized economy.

75. The need for wholesale and collective change is not, however, at odds with more immediate and incremental reform. The Special Rapporteur is also interested in the potential of emerging positive practices in relation to international investment agreements and believes that there are immediate steps States can take individually to better protect the rights of indigenous peoples.

76. More States are becoming increasingly dissatisfied with the injustices of free trade and investment regimes. At the same time, key stakeholders are become more fully sensitized to the deeply interrelated imbalances in the enforcement of corporate and human rights. Those trends provide an important opportunity to improve the protection and promotion of human and indigenous rights and to transform the international system of global economic management in such a way that it becomes significantly more just and equitable.

Recommendations

77. Concerning the reform of investment and free trade practices, the Special Rapporteur recommends that:

- (a) Based on the principle of free, informed and prior consent, as set out in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, Member States explore, jointly with affected indigenous peoples, participatory mechanisms that will allow them to take part in or at least comment on the negotiation and drafting of all relevant investment and free trade agreements. That should be included as part of broader efforts to increase the level of social dialogue involved in the negotiation and drafting of such agreements;
- (b) In addition to improving the level of social dialogue, the negotiation and drafting of international investment agreements be subject to parliamentary oversight and consultation with all levels of government. All indigenous self-governance structures should be formally included in decision-making relating to international investment agreements;

⁴⁴ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/301. See also Report of the Independent Expert on the promotion of a democratic and equitable international order on the impact of investor-State-dispute-settlement on a democratic and equitable international order, A/70/285, 5 August 2015, *infra*.

- (c) In accordance with the guiding principles on human rights impact assessments of all trade and investment agreements developed by the Special Rapporteur on the right to food, States undertake robust human rights impact assessments prior to signing all such treaties. Human rights assessments should routinely include specific consideration of the impact on the collective and individual rights of indigenous peoples developed through direct consultation with indigenous communities;
 - (d) Member States ensure that gender considerations are adequately integrated into the development of such human rights impact assessments and that its intersecting relationship with other sources of discrimination be analysed so that the specific vulnerability of indigenous women to the effects of investment practices is considered;
 - (e) Member States involve indigenous representatives, including women, in the negotiating process for all investment and free trade agreements when human rights impact assessments have identified potential issues relating to indigenous peoples;
 - (f) In consultation with indigenous peoples, Member States consider including exception clauses to protect the rights of indigenous peoples, including to ancestral land, related resources and autonomous government, within all relevant free trade and investment agreements;
 - (g) Member States ensure that references to the duties of both Governments and businesses to respect human rights, in accordance with the Guiding Principles on Business and Human Rights, are included in all new and renegotiated international investment agreements;
 - (h) For as long as investor-State dispute settlement tribunals take place, Member States routinely ensure that international human rights law, including all specific provisions on indigenous peoples, are used as a source of law in dispute arbitrations;
 - (i) Member States publish the results of all arbitration decisions made in investor-State dispute settlement cases, including any specific information on dimensions relating to the rights of indigenous peoples;
 - (j) Member States include analysis of the impact of investment and free trade agreements on indigenous peoples' rights and legal and policy responses in the development of national action plans on business and human rights and the implementation of the Guiding Principles on Business and Human Rights;
 - (k) Member States ratify the Convention on Transparency in Treaty-based Investor-State Arbitration, which opened for signature in March;
 - (l) Member States invest in targeted monitoring, research, and evaluation that develops understanding of the impact of international investment agreements on indigenous peoples and prepare reports on the effectiveness of policy and legal interventions to mitigate that impact.
78. Concerning deeper systemic reform, the Special Rapporteur recommends that Member States:
- (a) Act collectively to consider ways to achieve better balance between investor and corporate rights and the human rights of all citizens within investment and free trade regimes;
 - (b) Participate actively in the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, established by the Human Rights Council in its resolution 29/6, to elaborate on a legally binding instrument and develop ways to strengthen legal accountability and remedy for corporate violations of human rights;
 - (c) In the context of the post-2015 development agenda, reconsider development paradigms that do not lead to sustainable and inclusive development and poverty reduction amongst all groups, including indigenous peoples, and ensure that the agency of indigenous peoples as development actors is recognized in the reconceptualization of economic development.
79. The Special Rapporteur recommends that the United Nations and related organizations:
- (a) Provide any required technical support to Member States on immediate reform to investment and free trade agreements, as well as broader, longer-term systemic reform;
 - (b) Ensure the mainstreaming of human rights standards, including all those relating to indigenous peoples, within all United Nations and related agencies that work on issues relating to investment and free trade agreements, including UNCTAD, the World Trade Organization and the World Bank;
 - (c) Contribute to the base of evidence on the impact of investment and free trade agreements on the rights of indigenous peoples through targeted consultation and research;
 - (d) Take a leading role in coordinating Government efforts to increase transparency and oversight related to international investment agreements;
 - (e) Develop tools and guidance that Member States can use to ensure that protection for the rights of indigenous peoples is included within all investment and free trade agreements.

2. Report of the Special Rapporteur on the rights of indigenous peoples (Rights of indigenous women and girls), A/HRC/30/41, 6 August 2015⁴⁵

Rights of indigenous women and girls

5. Indigenous women experience a broad, multifaceted and complex spectrum of mutually reinforcing human rights abuses. That spectrum is influenced by multiple and intersecting forms of vulnerability, including patriarchal power structures; multiple forms of discrimination and marginalization, based on gender, class, ethnic origin and socioeconomic circumstances; and historical and current violations of the right to self-determination and control of resources.

6. Despite many barriers to inclusion, indigenous leaders and advocates have made significant strides in achieving recognition of indigenous peoples' rights and perspectives, including the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the establishment of the Permanent Forum on Indigenous Issues, the mandate of the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples. Indigenous women actively participated in the processes that gave birth to all those mechanisms and thus feel some ownership over the Declaration and the mechanisms.

7. All the provisions of the Declaration apply equally to indigenous women and indigenous men. Article 22 (2) specifically provides that States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. In the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, which focused on indigenous women, the participating Heads of State and Government, ministers and representatives of Member States invited the Human Rights Council to consider examining the causes and consequences of violence against indigenous women and girls, in consultation with the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on the rights of indigenous peoples and other special procedures mandate holders.

8. Despite the progress made, systematic attention to the specific vulnerability of indigenous women has remained limited in relation to the scale of abuses against them. Furthermore, what international attention has been given to the issue has not sufficiently focused on the nexus between individual and collective rights, nor on how intersecting forms of discrimination and vulnerability contribute to ongoing abuses of indigenous women's rights. That has created a gap that has contributed to ongoing widespread impunity in relation to the rights of indigenous women and girls.

Collective rights

Self-determination

11. A cornerstone of the Declaration on the Rights of Indigenous Peoples, self-determination is defined as both a choice to determine political status, as well as the right to have autonomy over economic, social and cultural development. Self-determination is a right in itself and has been conceptualized as a precondition for the fulfilment of other rights.

12. When examining the rights of indigenous women and girls, it is vital to consider the unique historical experiences of indigenous communities. Many forms of violence and abuse against indigenous women and girls have a strong intergenerational element. Violations of the broad right to self-determination of indigenous peoples are historically and currently endemic. Those have included gross and sustained assaults on the cultural integrity of indigenous peoples; denigration and non-recognition of customary laws and governance systems; failure to develop frameworks that allow indigenous peoples appropriate levels of self-governance; and practices that strip indigenous peoples of autonomy over land and natural resources. Those patterns of violations are vividly exemplified by colonization, but have also been perpetuated by post-colonial power structures and State practices. Those violations of the right to self-determination have been highly detrimental to the advancement of the rights of indigenous women and girls in a number of ways.

13. The response of indigenous communities to attacks against self-determination has, at times, additionally subjugated the rights of women. In the battle for indigenous communities to assert their right to self-determination, women's rights have often been considered divisive and external to the indigenous struggle and connected to "external values" or "Western values" that privilege individual over communal rights. Such a false dichotomy between collective and women's rights has, paradoxically, further entrenched the vulnerability of indigenous women to abuse and violence. Indigenous women are therefore stripped of

⁴⁵ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/173/83/PDF/G1517383.pdf?OpenElement>.

their right to self-determination by both violations against their collective rights, as members of indigenous communities, and violations against their individual rights, as sub-collectives within those communities.

14. Such multiple victimization and the denial of the agency of indigenous women has had a pronounced impact on the prevalence of violence and abuses through the entrenchment of power structures that create and perpetuate systematic vulnerability. The further loss of women's agency caused by those violations then negatively impacts collective efforts to fight group rights, thereby contributing to negative cyclical patterns.

Land rights

15. A strong link to the land, territory and natural resources is a characteristic that is commonly associated with indigenous peoples. Despite relevant provisions in international human rights law, indigenous peoples experience weak protection of their land and property rights, which exposes them to risks of displacement, expropriation and exploitation. Indigenous peoples inherent the right to the land that they traditionally occupy and use. They often do not hold formal titles to their land and their right to such land is one of the rights most violated. That allows Governments to impose destructive development projects or to lease and sell indigenous land without obtaining their free, prior and informed consent. Large-scale economic projects have been constructed on indigenous lands. Additionally, mass tourism has been encouraged in areas that are of significance to indigenous peoples. The implementation of those projects has repeatedly caused forced displacement and migration, ecological degradation and armed conflicts. Furthermore, the commodification of land that is inherent in such practices is an assault on indigenous cultures and the importance placed on land.

16. Land appropriation is not gender neutral and indigenous women's rights interact with violations of collective land rights. In indigenous communities where matriarchy and matrilineal practices exist, the loss of land will likewise undermine indigenous women's status and roles. The gendered effects of those violations become manifest in situations where indigenous women lose their traditional livelihoods, such as food gathering, agricultural production, herding, among others, while compensation and jobs following land seizure tend to benefit male members of indigenous communities. The loss of land and exclusion of women can create vulnerability to abuse and violence, such as sexual violence, exploitation and trafficking. Additionally, the secondary effects of violations of land rights, such as loss of livelihood and ill health, often disproportionately impact women in their roles of caregivers and guardians of the local environment.

17. External threats to indigenous land rights are not the only cause of abuses of women's rights in relation to land. The roles that women hold within indigenous communities and the way that some indigenous property frameworks reflect patriarchal power structures. Indigenous women commonly experience significant barriers to holding and inheriting land, especially when they are widowed.

Key challenges and promising practices

Key challenges

Gaps and weaknesses in monitoring systems and implementation

61. Systematic analysis of the conclusions of United Nations human rights mechanisms conducted for this report showed significant gaps and weaknesses in relation to the rights of indigenous women and girls. The Special Rapporteur appreciates the attention of other mechanisms and agencies, in particular special procedures mandate holders, treaty bodies and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), and hopes that the developing focus on indigenous women's rights continues to grow.

62. Gaps and weaknesses in some human rights and development monitoring mechanisms include:

- (a) The lack of geographical balance in relation to the comments made by the different mechanisms;
- (b) Failure to discuss the role that intersecting forms of vulnerability and discrimination plays in violations of the rights of indigenous women and girls;
- (c) Limited exploration of the nexus between individual and collective rights;
- (d) The absence of gender analysis when discussing issues that impact indigenous communities.

63. Similarly, a number of development and other policy mechanisms, including the Millennium Development Goals, the proposed sustainable development goals and the Beijing Platform for Action, have given disproportionately low attention relative to needs.

Conclusions and recommendations

Conclusions

73. Indigenous women and girls experience complex, multidimensional and mutually reinforcing human rights violations. Abuses of indigenous women's collective; economic, social and cultural; and civil and political rights are varied and severe. Those violations are alarming infractions on their own, but constitute a form of structural violence against indigenous women whereby they are victimized by the realities of the circumstances of their everyday life and routinely excluded from enjoying the rights and resources otherwise guaranteed to citizens. Indigenous women also suffer from other forms of violence, including traditional practices, sexual violence, trafficking, domestic violence and gender-based killings.

74. Despite the severity and regularity of violations of the rights of indigenous women, the attention of much of the United Nations human rights and development policy architecture has been limited. Gaps and weaknesses in analysis include a lack of geographical balance, limited inclusion of collective rights, little exploration of intersectionality in relation to the vulnerability of indigenous women and a lack of exploration of the gender implications to rights issues affecting indigenous communities. There are, however, promising signs that the gap in monitoring indigenous women's rights is closing.

75. To protect the rights of indigenous women, both a paradigm shift and the development of a multidimensional approach is needed. States must find a way to strike a delicate balance between protection of indigenous women and respect for self-determination and autonomy of indigenous peoples. Engagement and consultation with indigenous women and girls is central to finding that balance.

76. The United Nations system must support Member States in striking that balance, as well as contribute to the paradigm shift needed through increasing attention to the needs of indigenous women and reconceptualizing rights issues to include the nexus between individual and collective rights, as well as the intersectionality between different forms of inequality and discrimination.

Recommendations

Recommendations to Member States

77. With regard to economic, social and cultural rights, Member States should:

- (a) Improve access by indigenous peoples to education, with interventions targeted towards understanding and overcoming the specific barriers faced by girls;
- (b) Improve access by indigenous peoples, including women and girls, to culturally sensitive health-care services; learn from and build on existing examples of the good practices promoted by the United Nations Population Fund and the Pan American Health Organization to develop an intercultural approach to health; and support reinforcement of traditional healing and health practices of indigenous peoples that have been proven to be effective;
- (c) Pay particular attention to providing a range of sexual and reproductive health services to indigenous women and girls, with their free, prior and informed consent;
- (d) Review and improve poverty-reduction programmes, such as conditional cash transfers, to ensure cultural and gender sensitivity;
- (e) Invest in research that supports understanding of food insecurity among indigenous communities and develop programmes to ensure the rights of indigenous peoples to food;
- (f) Develop educational materials that sensitize non-indigenous populations to the cultural realities of indigenous communities and women. Those materials should be integrated into school curricula and in human rights training for Government officials providing services to indigenous peoples, including the police, border guards and the judiciary, as well as health and education professionals.
- (g) When developing initiatives to improve the economic, social and cultural rights, pro-actively engage with indigenous women and girls and other members of indigenous communities on how best to meet their needs; apply the principle of free, prior and informed consent to the development of all laws, policies and programmes[.]

78. With regard to civil and political rights, Member States should:

- (a) Ensure that the birth of every indigenous child is formally registered in national systems;
- (b) Develop interventions to increase the number of indigenous women in national and local political and public processes and explore the feasibility of implementing quota systems for indigenous women's representation in local and national politics;

- (c) Explore ways to invest in the leadership capacity of indigenous women so that they can play more active roles in indigenous decision-making structures to protect women and girls within their communities;
 - (d) Ensure protection of the activities of all female human rights defenders;
 - (e) Consider the development of the special tribunals to ensure access to justice for indigenous women following abuses of their human rights. Such special provisions would allow for the individual needs of indigenous women to be met, the development of focal points to establish effective links with indigenous justice systems, greater recognition of specific cultural needs, as well as the accumulation of a systemic view of rights violations;
 - (f) Provide legal aid, interpretation and translation services, and culturally sensitive information about their rights and available remedies to all indigenous women and girls;
 - (g) Within the context of the implementation of the Guiding Principles on Business and Human Rights and the development of national action plans on human rights and business, ensure that judicial mechanisms are the primary means by which corporate violations of the rights of women and girls are remedied; and avoid legitimizing voluntary, private forms of remedy that do not provide effective access to justice for violations of the rights of women;
 - (h) Ensure that due process is undertaken in relation to all indigenous women who enter the criminal justice system;
 - (i) In relation to the overrepresentation of indigenous women in national criminal justice systems, invest in country-specific research into the root causes; develop targeted prevention programmes based on such research; and, where possible, consider alternatives to detention. When indigenous women are detained they must still be afforded protection based on their human rights.
79. With regard to violence against indigenous women and girls, Member States should:
- (a) As recommended by the Special Rapporteur on violence against women, its causes and consequences in her 2011 report (A/HRC/17/26), develop a holistic approach to violence against women, based on the indivisibility and universality of all human rights, which recognizes the multiple interconnections between different forms of violence against women, its causes and consequences, and addresses multiple and intersecting forms of discrimination;
 - (b) In the context of affording indigenous people legal jurisdiction that is compatible with their rights to self-determination, develop mechanisms that allow indigenous women and girls to pursue other means of recourse against violence if they are unable to obtain support and access to justice within indigenous communities;
 - (c) Balance respect for the right to self-determination of indigenous communities with their responsibility to protect indigenous women and girls in their capacity as national citizens and rights bearers;
 - (d) Ensure that all forms of violence against women, including female genital mutilation and child marriage, are included as violations within criminal law;
 - (e) Ensure clarity with regard to the relationship between indigenous, national and local jurisdictions in relation to violence against women; and ensure that the justice process is accessible and sensitive to the needs of indigenous women;
 - (f) In engagement with indigenous women and girls and building on existing good practice, develop more comprehensive anti-violence and recovery programmes within indigenous communities;
 - (g) Build the capacity of female indigenous leaders to advocate for the rights of women and girls to freedom from violence within indigenous communities;
 - (h) Invest in research into the root causes of domestic violence against women in indigenous communities and design preventive and recovery programmes;
 - (i) Refrain from any forms of violence against women, particularly in situations of conflict, and prosecute all allegations of violence carried out by Government officials, such as border guards, the military and police.
80. With regard to monitoring and accountability, Member States should:
- (a) Consider developing national action plans on indigenous women's rights, which are strongly linked with clear monitoring and accountability systems;
 - (b) Invest in research and data collection systems to collect data disaggregated by gender, ethnicity or race, religion, language and territory or geographical area. Such data collection and research should include information on human rights violations, with particular focus on the situation of women and girls;

- (c) Ensure that the targets and indicators agreed to monitor the sustainable development goals include ways to measure and incentivize progress in relation to indigenous communities and women in a meaningful way;
- (d) Work with the United Nations to ensure that a more consistent and robust analysis of indigenous women's rights is included in the monitoring of all international human rights mechanisms;
- (e) Monitor the full implementation of the recommendations made by the treaty bodies, special procedures mechanisms and universal periodic review.

Recommendations to United Nations organizations and mechanisms

81. While the Special Rapporteur appreciates the attention given to the rights of indigenous peoples within the work of other United Nations mechanisms, more consistent and geographically comprehensive analysis of the fulfilment of human rights among indigenous women and girls is urgently needed. United Nations human rights mechanisms should direct additional attention to the nexus between individual and collective rights and how that impacts indigenous women and girls, as well as how intersecting forms of discrimination and vulnerability impact human rights violations.

82. In the context of this increasing attention to indigenous peoples, the Special Rapporteur recommends that the Committee on the Elimination of Discrimination against Women develop a general comment on the rights on indigenous women and girls.

83. In addition, as invited to in the outcome document of the 2014 World Conference on Indigenous Peoples, the Commission on the Status of Women should consider the issue of the empowerment of indigenous women at a session.

84. The Human Rights Council should, as it was also invited to do in the outcome document of the 2014 World Conference on Indigenous Peoples, consider examining the causes and consequences of violence against indigenous women and girls, in consultation with the Special Rapporteur and other special procedures mandate holders.

85. United Nations organizations and mechanisms should:

- (a) Ensure effective follow-up to all the relevant recommendations made by treaty bodies, special procedures mechanisms and the universal periodic review;
- (b) Work with Member States to develop research into underdeveloped areas which particularly impact the rights of indigenous women and girls. Research should be developed on intersecting discrimination and vulnerability and the relationship between individual and collective rights;
- (c) Recognize the agency of indigenous communities, women and girls as development actors within the sustainable development goal for development partnerships;
- (d) Ensure that the concerns of indigenous women and girls are included within the post-2015 framework;
- (e) Work with indigenous women to strengthen analysis of both collective and individual indigenous rights within the monitoring of the Beijing Platform of Action.

3. Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, regarding the situation of indigenous peoples in Paraguay, A/HRC/30/41/Add.1, 13 August 2015⁴⁶

Conclusions and recommendations

Conclusions

75. Paraguay has a constitutional framework in which the rights of indigenous peoples are recognized. However, this normative framework has not been translated into the legislative, administrative or other measures needed to ensure the enjoyment by indigenous peoples of their human rights, in particular their fundamental right to self-determination and their rights over their lands, territories and natural resources. The lack of access to justice and the persistence of racism and discrimination are also causes for concern.

76. The Special Rapporteur has observed a widespread lack of legal protection for indigenous peoples' rights over their lands, territories and resources, which are vital to ensure their survival and uphold their dignity. This situation gives rise to numerous conflicts and subsequent human rights violations. The Government of Paraguay should regard this as an emergency situation.

77. The indigenous peoples of Paraguay are also subject to widespread poverty and extreme poverty. In order to alleviate the situation, what is needed is coordinated and systematic action on the part of all

⁴⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/179/84/PDF/G1517984.pdf?OpenElement>.

institutions, donors and other stakeholders to develop public policies, in conjunction with the indigenous peoples concerned, to address its root causes. Short-term projects and programmes which are primarily funded by foreign aid have proved to fall short of what is needed to resolve the serious problems that exist. Institutional weaknesses and a lack of inter-agency coordination also diminish the State's capacity to respond to this critical situation.

General recommendations

78. In the light of the above conclusions, the Special Rapporteur would like to present the Government of Paraguay with the following recommendations, which should be implemented in collaboration with the indigenous peoples of the country.

Lands, territories and natural resources

79. The Special Rapporteur recommends:

- (a) The establishment and adoption, with the full participation of the indigenous peoples concerned, of a new legal framework for indigenous peoples' rights over their lands, territories and natural resources, in accordance with the constitutional framework and relevant international standards. The new legislation should establish an accessible, rapid and effective procedure for the adjudication of land titles and should provide for a review of existing laws on expropriation;
- (b) The use of all financial, judicial and other measures needed to resolve existing conflicts concerning the ownership of indigenous lands as quickly as possible, in keeping with the parameters set by the rulings of the Inter-American Court of Human Rights in the Yakyé Axa, Sawhoyamaya and Xakmók Kasék cases;
- (c) The effective enforcement of legislation relating to the protection of lands claimed by indigenous communities and the development and implementation of suitable instruments and mechanisms, including early warning systems, arrangements for expedited legal action and on-site monitoring systems, in order to ensure the security of land tenure of indigenous peoples and to prevent third parties from intruding into their lands, while imposing appropriate penalties for such intrusions when they occur and compensating the affected communities for any damage that they may have sustained;
- (d) The provision of training to the police force and other law enforcement agencies of the State regarding the rules of international law concerning the forced eviction of indigenous peoples so as to ensure that their actions are fully consistent with international human rights standards and international instruments relating to the rights of indigenous peoples;
- (e) The full implementation, as a matter of urgency, of the decisions handed down by the Inter-American Court of Human Rights in the Yakyé Axa, Sawhoyamaya and Xakmók Kasék cases, including measures relating to appropriate procedures for the adjudication of land titles.

Access to justice

80. The Special Rapporteur recommends:

- (a) The establishment of a specialized unit of the Public Prosecution Service within the criminal justice system to deal with offences involving the collective or individual rights of indigenous peoples. The Attorney General's Office should grant this unit the powers, resources and means that it needs to conduct its work in the nation's courts in a prompt and efficient manner. This unit should, in addition, submit such applications and petitions to the nation's criminal courts as may be necessary to help to ensure that the courts' decisions are in conformity with international human rights standards concerning the rights of indigenous peoples;
- (b) The establishment of prosecution services and courts specializing in indigenous law that are empowered to assert jurisdiction over civil cases relating to indigenous peoples, communities, families and persons or, alternatively, the adoption of legislative reforms that establish special procedures in each jurisdiction in order to guarantee full respect for indigenous peoples' rights as recognized in the Constitution and in international human rights law. It is also recommended that steps be taken to ensure that these justice officials possess adequate experience in the area of indigenous peoples' rights;
- (c) The redoubling of efforts to provide training to judges and other justice officials regarding indigenous peoples' rights and legal systems and to harmonize the national and indigenous legal systems;
- (d) The adoption of the necessary measures to provide prompt and full reparation for all the violations of indigenous peoples' human rights that have been documented by the Truth and Justice Commission, in

accordance with international human rights standards and the rights of indigenous peoples, and of the measures and action plans that are needed to comply with the Commission's recommendations.

Racism and discrimination

81. The Special Rapporteur recommends:

- (a) The immediate adoption of a general law prohibiting all forms of discrimination, including discrimination against indigenous peoples;
- (b) The adoption of special measures to counter the discrimination faced by indigenous peoples in all areas, including access to basic social services, health, education, participation in public life and documentation.

Consultation and consent

82. The Special Rapporteur recommends that the Government fulfil its obligation to hold consultations with indigenous peoples, including through the adoption and implementation of legislative instruments. The Special Rapporteur wishes to stress that the formulation of any procedure or instrument to facilitate or regulate the right to consultation and to free, prior and informed consent should be carried out with the full and effective participation of the indigenous peoples of Paraguay.

Socioeconomic situation

83. The Special Rapporteur recommends:

- (a) The reinforcement of the National Institute for Indigenous Affairs (INDI), which should be allocated a larger, regular and predictable budget and granted the power to coordinate all public policies relating to indigenous peoples, including by means of its conversion into a ministry with full powers;
- (b) The establishment of an in-depth dialogue with indigenous organizations, advocacy organizations and the donor community, including United Nations entities, concerning the socioeconomic status of the indigenous peoples of Paraguay in order to identify the underlying causes of the current worrisome situation and to design effective public policies for resolving it;
- (c) The provision of support to indigenous peoples, including financial and technical support when they so request, by the Government of Paraguay, entities of the United Nations and the donor community with a view to enabling indigenous peoples to formulate and implement their own freely determined development proposals;
- (d) The urgent implementation of the recommendations issued by various United Nations entities, special procedures mechanisms and treaty bodies that deal with indigenous peoples' labour rights, access to employment and working conditions;
- (e) The design and effective implementation of a REDD+ programme and the application of the associated social and environmental safeguards, which include respect for indigenous peoples' rights and knowledge, guarantees for their full and effective participation and the prevention of deforestation, among other measures;
- (f) Full recognition of and respect for the rights of indigenous peoples as they apply to the activities involved in the conservation and sustainable use of biodiversity, especially in terms of the establishment and management of protected areas that affect their lands, territories or natural resources. The indigenous peoples concerned should be consulted with a view to obtaining their consent prior to the establishment of such areas and should participate in their management;
- (g) Thorough research into how the spraying of pesticides and other agrochemical products impairs the health and other human rights of members of indigenous communities. The Government should adopt and implement legislation to regulate the use of such products and duly compensate those who have been harmed by them.

Education

84. The Special Rapporteur recommends:

- (a) The formulation, adoption and implementation of a national public policy on indigenous education that gives effect to indigenous peoples' right to education, which includes their right to establish their own educational systems in their own languages. The policy should also provide for special measures to ensure access to the general education system, especially at the secondary and tertiary levels;

- (b) The implementation of a review of the curricula used in the general education system in order to ensure that they promote interculturalism and contribute to a better understanding of and due respect for indigenous peoples and their history, heritage, culture and rights.

Health

85. The Special Rapporteur recommends the adoption, without delay, of a new law on health care for indigenous peoples and of all the administrative and budgetary measures necessary for its implementation so that indigenous peoples may fully enjoy their right to health, which includes the right to the protection of their traditional health practices, the use of a suitable intercultural approach in health-care facilities and the elimination of discriminatory practices in health-care systems.

Indigenous women

86. The Special Rapporteur recommends that the Government work with indigenous women to compile disaggregated data on all aspects of their situation, including violence against women, women's socioeconomic status, general and sexual and reproductive health, trafficking in persons and other issues, and that it adopt the necessary targeted policies for indigenous women.

Peoples in voluntary isolation

87. The Special Rapporteur recommends the adoption of the necessary measures for ensuring the survival of indigenous peoples in voluntary isolation and eliminating the risks of unwanted contact that appear to exist at present, taking into account the Guidelines for the Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact in the Amazon Basin, El Gran Chaco and the Eastern Region of Paraguay. Due attention should be paid to the situation of groups in initial contact.

Specific recommendations

88. The Special Rapporteur recommends that the Government of Paraguay accelerate the process of according recognition to the ancestral lands claimed by the Ayoreo Totobiegosode people and that all private property owners in the area cooperate with the Government and, in good faith, engage in dialogue with the Ayoreo Totobiegosode and representatives of their institutions in order to settle this claim justly and definitively.

89. Until such time as an equitable procedure for land title adjudication has been conducted, the State should take whatever measures are necessary to prevent further violations of the rights of the Ayoreo Totobiegosode in relation to their lands, territories and resources, including by means of the suspension of any relevant permits and of any works, projects or activities on the claimed lands, including privately owned property.

90. The Special Rapporteur recommends that the Government take the necessary measures to ensure the favourable settlement, as a matter of urgency, of the land claim submitted to the National Institute for Indigenous Peoples (INDI) in 1999 by the Avá Guaraní community of Y'apo. The authorities should guarantee the personal safety of the community's members while their claim is being settled, investigate and punish those responsible for the attacks perpetrated against the community and ensure that the community receives just reparation for the damages it has sustained.

91. The Special Rapporteur also recommends that the Government take all necessary measures to finally give effect to the conveyance of the lands awarded to the Mbyá Guaraní community of Cheiro Ara Poty.

92. The Special Rapporteur recommends that a dialogue be established among all stakeholders, including the indigenous peoples concerned, in the cases relating to indigenous communities that have been affected by the construction of the Yacyretá dam with a view to developing a plan for the provision of reparation and compensation and a strategy for its implementation. The Special Rapporteur recalls the right of indigenous peoples to obtain reparation by means of the recovery of the lands or territories that they had previously owned or utilized and had lost without their consent and, if this is not possible, by means of the award of lands, territories and resources that are of a quality, size and legal status similar to those that they had previously owned or occupied.

4. Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples (Conservation and Indigenous Peoples' Rights), A/71/229, 29 July 2016⁴⁷

Conservation and indigenous peoples' rights

8. The impact that conservation initiatives have on indigenous peoples has been a constant and recurring theme since the establishment of the mandate of the Special Rapporteur on the rights of indigenous peoples in 2001. The consequences indigenous peoples have faced in the wake of evermore expanding protected areas have been raised by respective special rapporteurs during numerous country visits and communications to governments.

9. The three Special Rapporteurs on the rights of indigenous peoples have, since the creation of the mandate, paid particular attention to the human rights violations that conservation measures have caused indigenous peoples worldwide, notably by the expropriation of land, forced displacement, denial of self-governance, lack of access to livelihoods and loss of culture and spiritual sites, non-recognition of their own authorities and denial of access to justice and reparation, including restitution and compensation.

10. The focus of the present report on terrestrial protected areas and, to a limited extent, on World Heritage sites, is not intended to diminish the onus on the key factors causing displacement of indigenous peoples from their lands and the overall violations of their rights to lands and territories by extractive industries, agribusiness expansion and mega infrastructure development. Previous special rapporteurs have written thematic reports on extractive industries and violations of the right to development of indigenous peoples.

11. While the conservation community is in the process of adopting conservation measures that respect the human rights of indigenous peoples, considerable implementation gaps remain and new threats to human rights-based conservation are emerging. The Special Rapporteur has therefore decided that it is a timely and important moment to explore this topic in further depth. The present report charts legal developments and commitments and measures taken made to advance a human rights-based paradigm in conservation, while also identifying certain key remaining challenges. The report concludes with recommendations on how conservation, in policy and practice, can be developed in a manner which respects indigenous peoples' rights and enhances sustainable conservation.

12. A protected area is a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives. Protected areas consist of many different conservation modalities, among them national parks and forests, wildlife refuges, marine areas, private and non-governmental organization (NGO)-governed preserves, indigenous peoples' protected areas, community lands and other areas where the protection of nature and the practice of sustainable livelihoods foster ecosystem integrity.

13. Protected areas have the potential of safeguarding biodiversity for the benefit of all humanity; however, these have also been associated with human rights violations against indigenous peoples in many parts of the world. For over a century, conservation was carried out with the aim of vacating protected areas of all human presence, leading to cultural destruction and large-scale displacements of indigenous peoples from their ancestral lands in the name of conservation. Past conservation measures caused complex and multiple violations of the collective and individual human rights of indigenous peoples.

14. The expanse of protected areas nearly doubled over a period two decades, from 8.7 million square kilometres in 1980 to 16.1 million square kilometres in 2000.² There is significant spatial overlap between the traditional lands of indigenous peoples and areas which retain the highest levels of high-biodiversity. Traditional indigenous territories encompass around 22 per cent of the world's land surface and they coincide with areas that hold 80 per cent of the planet's biodiversity. It has been estimated that 50 per cent of protected areas worldwide has been established on lands traditionally occupied and used by indigenous peoples and that this proportion is highest in the Americas, where it may exceed 90 per cent in Central America. Bolivia, Brazil, Chile and Colombia, as well as Canada and the United States of America, all have a high percentage of protected areas on indigenous traditional territory. Overlap is also significant in Australia and New Zealand. Most of the protected areas in India, Nepal and the Philippines include the territories of indigenous peoples. Botswana, Cameroon, Kenya, Namibia, South Africa and the United Republic of Tanzania are among the African countries in which large parts of the protected areas are located on indigenous peoples' ancestral domains.

⁴⁷ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/71/229.

15. Indigenous peoples retain strong spiritual links with the plants, trees and animals on their lands and protecting their lands is a sacred duty. Yet, indigenous peoples may not refer to themselves as conservationists and this has resulted in a considerable lack of acknowledgement within the conservation community of indigenous peoples' contribution to conservation. There is increasing recognition that the ancestral lands of indigenous peoples contain the most intact ecosystems and provide the most effective and sustainable form of conservation. Studies have demonstrated that the territories of indigenous peoples who have been given land rights have been significantly better conserved than the adjacent lands. Yet, to date, the important role played by indigenous peoples as environmental guardians has still failed to gain due recognition. According to the United Nations Environment Programme World Conservation Monitoring Centre, in 2014, less than 5 per cent of protected areas worldwide were governed by indigenous peoples and local communities.

16. Conservation efforts traditionally were state-centric and based on expropriation of lands subsequently placed under government control. Indigenous peoples were displaced, denied self-governance, deprived of access to natural resources for their livelihood and their traditional and spiritual links to ancestral land were disrupted. Marginalized and impoverished indigenous peoples have continued to struggle for access to their territories and tenure rights, resulting in enduring friction and conflict.

17. From the conservation perspective, the loss of the guardianship of indigenous peoples and the placing of their lands under the control of government authorities who have often lacked the capacity and political will to protect the land effectively, has left such areas exposed to destructive settlement, extractive industries, illegal logging, agribusiness expansion and large-scale infrastructure development. Even where national policies and laws require strict protection for protected areas, in many countries State agencies have still authorized mining, oil and gas extraction, logging, dams and reservoirs, highways and other projects in direct conflict with conservation goals.

18. Mobilization of indigenous peoples' movements has led to advances in international law recognizing their collective right to their traditional lands and growing awareness among conservationists of the important role indigenous peoples play in conserving biodiversity are factors which have led to relatively recent, yet significant, shifts towards greater recognition of indigenous peoples' rights in the context of conservation. Leading conservation organizations have adopted commitments and policies seeking to adopt a "new paradigm" of undertaking conservation, while respecting the rights of indigenous peoples. However, significant gaps remain between these policies and their effective implementation on the ground.

19. Furthermore, among the principal challenges that indigenous peoples continue to face globally are difficulties in gaining legal recognition of collective ownership over their ancestral lands, especially when these have already been declared protected territories. National legislation is often contradictory. Laws pertaining to conservation and forestry are commonly not harmonized with subsequent national legislation and international law asserting the rights of indigenous peoples and the authorities responsible for enforcement of the different laws frequently fail to coordinate.

Human rights legal standards and jurisprudence

20. The aim of the present section is to chart and affirm the existing legal obligations to guarantee indigenous peoples' rights in the context of conservation. The rights of indigenous peoples stem from various branches of international law and have developed through international human rights law, international labour law and international environment law. International and regional human right jurisprudence have further advanced the application of key indigenous peoples' rights in conservation. Taking stock of the standing in international law of indigenous peoples' rights in relation to conservation thus requires consideration of the interrelatedness of the different rights, notably self-determination, cultural and property rights, and appreciation of the complementarity of international human rights law and international environment law.

21. While human rights-based approaches to conservation have become widely accepted among conservation NGOs, their internal policy documents are at times elusive regarding the specific rights of indigenous peoples. This underlines the importance of reiterating the key applicable legal provisions.

The right to self-determination and land rights

22. Self-determination is a right in itself and is also a necessary pre-condition for the fulfilment of other human rights. The right is a fundamental principle in international law and has been interpreted in a variety of legal contexts. Self-determination is considered an overarching right to indigenous peoples because of its cross-cutting nature and because it affirms their right to freely pursue their economic, social and cultural development. It is crucial to the issue of land conservation efforts because of its links with land rights and the

right to participate within processes and decisions affecting them, such as the establishment and management of protected areas. The right to self-determination is enshrined within both the International Covenant on Civil and Political Rights (1966, article 1) and the International Covenant on Economic, Social and Cultural Rights (1966, article 1) and is included in the United Nations Declaration on the Rights of Indigenous Peoples (2007, article 3). Human rights treaty bodies, notably the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, have all affirmed, in analogous terms, that States must recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and to participate in the management and conservation of the associated natural resources. The Committee on Economic, Social and Cultural Rights and the Human Rights Committee have underlined the importance of the provision of land titles on the ancestral lands by linking the right to self-determination with cultural rights (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 Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) enshrines land rights for indigenous peoples in articles 14 to 19). The United Nations Declaration on the Rights of Indigenous Peoples, which consolidates the rights of indigenous peoples already recognized in other human rights instruments and through the jurisprudence of the international human rights treaty bodies, affirms the right of indigenous peoples to own and control their lands (articles 25, 26 and 27).

Participation and free, prior and informed consent

23. Respect for the right to participate and to free, prior and informed consent are sine qua non elements of effective advancement of indigenous peoples' rights in practice. ILO Convention No. 169 sets out the duty of States to consult indigenous peoples through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly (article 6). Human rights treaty bodies have consistently affirmed the principle of free, prior and informed consent of indigenous peoples in matters relating to their rights and interests and specifically in relation to their ancestral lands and conservation.

24. The Declaration on the Rights of Indigenous Peoples makes specific reference to conservation in article 29, which states 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 and that States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. The Declaration furthermore states that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that States 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 (article 32).

Forced displacement and the right to reparation, including restitution

25. Article 12(1) of the International Covenant on Civil and Political Rights establishes the right to liberty of movement and freedom to choose one's residence. This provision includes protection against all forms of forced internal displacement. Persons whose rights or freedoms under the Covenant are violated shall have an effective remedy, as set out in article 2(3). In relation to forced evictions, the Committee on Economic and Social and Cultural Rights has affirmed that States must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions. The Guiding Principles on Internal Displacement emphasize that States are 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). Due to the special relationship that indigenous peoples have with their land and the profound impact forced displacement has on their survival, human rights treaty bodies have consistently expressed concerns over the forcible displacement of indigenous peoples and urged States to provide reparation, with emphasis on the obligation to provide restitution of their original lands. Reparation measures should be provided in accordance with international standards and, where appropriate, should entail elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.

26. ILO Convention No. 169 (article 16) and the Declaration on the Rights on Indigenous Peoples (article 10) stipulate that indigenous peoples shall not be forcibly removed from their lands unless they have provided their free, prior and informed consent. Should such violations have occurred, they have the right to fair

reparation including restitution and compensation and, where possible, the option of returning to their lands. Article 28 of the Declaration furthermore stresses the right of indigenous peoples to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Key conservation challenges and opportunities

51. The respective Special Rapporteurs on the rights of indigenous peoples have, since the establishment of the mandate in 2001, received numerous allegations of large-scale violations of the rights of indigenous peoples in the context of conservation measures. Among the consequences indigenous peoples have faced following forced displacement from protected areas are marginalization, poverty, loss of livelihoods, food insecurity, extrajudicial killings, and disrupted links with spiritual sites and denial of access to justice and remedy. The successive special rapporteurs have raised serious concerns over the impact that protected areas have had on indigenous peoples in a wide range of countries, including: Argentina, Botswana, Chile, Ecuador, Ethiopia, Honduras, Kenya, Mexico, Namibia, Nepal, the Russian Federation, South Africa and the United States of America.

52. Many of these violations persist in countries where protected areas were declared prior to the introduction of rights-based conservation and where legal reforms in favour of indigenous peoples' rights remain deficient. The lack of collective land rights for indigenous people is a primary obstacle to ensuring that rights-based conservation becomes effective, as are conflicting legal norms and failure to implement legislation effectively. The declaration of World Heritage status on protected areas adds additional complexities. The management and co-management of protected areas by indigenous peoples has to date only been applied to a limited extent but holds key potential in enhancing conservation in a manner which respects and enhances the rights of indigenous peoples.

Forced displacement and the failure to provide recognition of collective rights to lands, territories and natural resources

53. In Kenya, respective special rapporteurs have expressed long-standing concerns regarding the repeated evictions and forced displacement of several indigenous peoples, including the Ogiek and Sengwer from ancestral lands, which have been declared protected areas. The Ogiek have faced repeated evictions from their ancestral forest lands since the creation of the Mount Elgon national park in 1968 and further gazetting of their lands for the Chepkitale game park in 2000. The Sengwer continue to face displacement from the Embout forests, dating back to the 1970s. Forced away from their lands, indigenous peoples are denied their cultural and subsistence practices. Indigenous peoples who seek to return to their lands are regularly arrested and charged of poaching or even killed by armed "eco-guards". While indigenous peoples in Kenya have repeatedly emphasized their desire to engage in conservation, difficulties in settling collective land tenure remain a key obstacle.

54. A 2016 study by the Rainforest Foundation of 34 protected areas in five countries in the Congo Basin (Cameroon, Central African Republic, the Democratic Republic of the Congo, Gabon and the Republic of the Congo) found that indigenous communities have virtually no tenure security over their traditional lands in any of the five countries. The creation of at least 26 of the protected areas resulted in partial or complete relocation or displacement of local indigenous and farming communities present in the area prior to park establishment. In no case was any reparation for the displacements reported. Furthermore, of the 34 protected areas studied, 25 bordered with logging concessions, 19 overlapped with mining concessions and 9 overlapped with oil concessions.

55. Protected areas constitute approximately 20 per cent of the total landmass in Nepal. The National Parks and Wildlife Conservation Act in that country provides no recognition of indigenous peoples' right to consultation or to access their traditional lands and resources. During a country visit in 2009, the Special Rapporteur received reports of mistreatment, arbitrary detention and sexual abuse of indigenous villagers, in particular indigenous women, by Chitwan National Park rangers and military officials (see HRC/12/34/Add.3, para. 37).

Inconsistent national legislation or poor application thereof

56. The U'wa indigenous peoples in Colombia request that the National Park of El Cocuy, partly overlapping with the territory over which they hold legal title, be fully incorporated into it and placed under their custodianship. For the U'wa, the area has special spiritual and cultural significance, as the peak of the Cocuy mountain is home to the spirits and gods and cannot be tread upon without permission from U'wa spiritual authorities. The National Park was established in 1977, before the Constitution and national legislation was adopted on indigenous land rights, and the park remains under the jurisdiction of the government environment authorities. The U'wa reject the presence of settlers and tourism on the mountain and have expressed concern over the degradation of the park, claiming that the park authorities are not protecting the park properly. In discussions with government authorities, the U'wa have rejected co-management proposals and demanded to be designated the environmental authority for the protection of the park.

57. In India, Adivasis and tribal peoples have been evicted from tiger reserves for decades, often without any form of reparation. This continues to occur despite the Forest Rights Act of 2006, which only allows displacement from "critical wildlife habitats" if scientifically determined that the habitat is being damaged irreversibly and that co-existence is not possible. The Forest Rights Act stipulates that even then, displacement can only be carried out after obtaining free, prior and informed consent. In practice, however, displacement from protected areas continues across India through a combination of misinterpretation, coercion, and inducement. Reportedly, tribal peoples have faced prosecution for "offences" in protected areas, such as the traditional practice of collecting honey.

58. Many States are still encumbered with legal, regulatory, and institutional frameworks developed for a strict wilderness conservation model. Commonly, agencies for protected areas and cultural heritage were institutionally separated from other government bodies to protect them from corruption and commercial interests. Independent or semi-independent agencies were given sovereign responsibility for decisions within protected areas in contradiction to other constitutional and legal provisions protecting the rights of indigenous peoples, resulting in overlapping jurisdictions.

59. An analysis undertaken by the NGO Rights and Resources Initiative in 2015 of 21 countries where conflicts affect indigenous peoples in protected areas concluded that inadequate, inconsistent and poorly implemented legislation is a key obstacle to advancing rights-based conservation. The same report noted that legal reforms undertaken since the 2003 World Parks Congress provide a measure of the response of countries to the "new paradigm" articulated in the Durban Accord. Their review of new legislation adopted between 2003 and 2014 showed that these years have largely represented a missed opportunity. Only 8 of the 21 countries enacted or reformed their protected area legislation related to community land and resource rights during this time period. Where such reforms occurred, they mostly focused on enabling co-management or making provisions for communities who already owned land to include their lands in national protected-area systems.

World Heritage sites and tourism

60. Protected areas overlap with World Heritage sites in multiple instances. As raised by the previous Special Rapporteur (see A/67/301, paras. 33-42), the impact on indigenous peoples of the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage sites is a recurring concern, notably because, on numerous occasions, these sites have been declared without consultation with indigenous peoples and have a serious negative impact upon their rights. Protected areas with heritage status have in several instances resulted in forced removal of indigenous peoples or significant restrictions on their access to livelihood resources and sacred sites. Furthermore, heritage listings often lead to an unprecedented increase in tourism. Yet, the Operational Guidelines for Implementation of the World Heritage Convention, which set out the procedure for the inscription of properties on the World Heritage list and the protection and conservation of sites, do not require participation by indigenous peoples. All three of the United Nations mechanisms dedicated specifically to promoting the rights of indigenous peoples, namely, the United Nations Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur, have called for reforms on how the Convention is applied, underlining the urgent need to reform the Operational Guidelines through which potential heritage sites are assessed, so that they are aligned with the Declaration on the Rights of Indigenous Peoples and adopt procedures to ensure indigenous peoples' free, prior and informed consent.

61. There are numerous examples of protected areas with heritage status over which concerns have been raised by indigenous peoples. In Kenya, the designation of Lake Bogoria National Reserve as a World Heritage site in 2011 was undertaken without the consent of the indigenous Endorois community, despite the ruling by the African Court on Human and Peoples' Rights in favour of the Endorois indigenous peoples' rights in 2009. The Endorois people have expressed concern that the Government of Kenya may use the World Heritage status as a pretext for denying them restitution, as required by the Court's decision.

62. In Argentina, the Special Rapporteur observed during a country visit in 2011 that after the Quebrada de Humahuaca was listed by UNESCO as a World Heritage site in 2003, there was a huge increase in tourism and in the economic value of the land occupied by indigenous peoples. The provincial government had issued land titles to foreign investors, and as a result, the surrounding indigenous communities were dispossessed of their land and had fewer water resources. The communities were not involved in the management of the site and derived no economic benefits therefrom. The Special Rapporteur recommended increased participation by indigenous peoples in the management of the site (see A/HRC/21/47/Add.2, paras. 50 and 97).

63. In Thailand, the Government requested the listing of the Kaeng Krachen National Park in 2013 as a World Heritage park in 2013 without consulting the local indigenous Karen peoples. The Karen have experienced forced evictions, destruction of housing and crops, arrests and enforced disappearances. On 17 April 2014, a Karen human rights defender disappeared after attending a meeting on a lawsuit against park officials for destruction of Karen housing in 2010/2011. Park officials acknowledged having detained him earlier that day for illegal possession of wild honey, but claimed to have released him subsequently. His whereabouts have been unknown since. The Karen have expressed concerns over the potential listing of the park as a World Heritage site, fearing that it would result in further evictions, prohibitions on the gathering of wild honey and herbs and an increase of tourism, which would affect the environment negatively, creating problems, notably with waste management. The Office of the United Nations High Commissioner for Human Rights has advised the World Heritage Committee to ensure that comprehensive consultations are held by the Thai Government with Karen communities, to ensure respect for their rights, to refrain from evictions and to ensure that the communities can participate in the management of the park if it is designated a World Heritage park.

64. If the designation of World Heritage sites is done constructively and with the consent of the indigenous peoples affected, such status could provide an effective contribution to conservation and the protection of indigenous rights. In 2011, the World Heritage Committee incorporated the uranium-rich Koongarra area into the Kakadu National Park World Heritage site, at the joint request of the Government of Australia and the indigenous landowners, the Djok clan, which in effect barred future mineral development in the area.

Indigenous management of protected areas

65. Over the past decade, increasing evidence supports the correlation between secure indigenous tenure and positive conservation outcomes, at times better than those achieved in State-managed protected areas. The effectiveness of indigenous-owned lands in resisting deforestation in Brazil is well known. In Namibia, community-based wildlife management has resulted in significant growth in wildlife populations, especially in areas that had formerly been subject to heavy poaching. In Australia and the United States of America, indigenous peoples effectively manage or co-manage protected areas, through dynamic and sustainable partnerships which seek to redress past exclusion policies. In the Philippines, the national Indigenous Peoples' Rights Act includes a provision that protected areas within or overlapping ancestral domains will remain protected but that indigenous communities have primary responsibility for maintaining and protecting such areas. The law governing protected areas in the Philippines, the National Integrated Protected Areas Act, calls for indigenous peoples' participation in protected-area management boards. However, certain obstacles remain. For example, indigenous participation in management boards is impeded by a lack of training and orientation for indigenous peoples on their roles and responsibilities and such meetings tend to be conducted using overly technical language.

66. The management capacity of indigenous peoples is recognized as part of the new conservation paradigm. IUCN has committed to advocating for the recognition of "indigenous peoples and local community conserved territories and areas" in conservation policy as a new governance category. Yet, over the past decade only limited progress has been made towards their recognition and such governance still only exist in less than 5 per cent of all protected areas. Significant expansion of areas under indigenous management, coupled with solid partnerships with indigenous peoples for knowledge exchange, remain key

opportunities for States and conservationists to operationalize the participation of indigenous peoples in conservation.

67. As the creation of protected areas and emerging conservation activities is further advanced by climate change initiatives, notably reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries, the active participation of indigenous peoples in these processes is essential to their sustainable success. The Special Rapporteur will continue to monitor these ongoing developments.

Conclusions

68. While the high rate of biodiversity in indigenous ancestral lands is well established, the contribution of indigenous peoples to conservation has yet to be fully acknowledged. Although a new rights-based paradigm to conservation has been advancing during the last decades, it remains in its initial stages of being applied. Rights-based conservation measures continue to be hampered by the legacy of past violations and by the lack of legal recognition by States of indigenous peoples' rights. Conservation organizations and indigenous organizations could be powerful allies in their mutually shared goals to safeguard biodiversity and protect nature from external threats such as unsustainable resource exploitation. Protected areas continue to expand, yet threats against them from extractive industry, energy and infrastructure projects are also increasing, and thus the urgency to address effective, collaborative and long-term conservation is of paramount importance. The escalating incidence of killings of indigenous environmentalists highlights the importance of conservationists and indigenous peoples joining forces. Insecure collective land tenure continues to undermine the ability of indigenous peoples to effectively protect their traditional lands, territories and natural resources. Conservation organizations should make much more use of their leverage vis-a-vis States to advocate for the legal recognition of indigenous peoples' rights at the national level.

69. Full recognition of indigenous land rights and participation are key enabling conditions for conservation to be sustained. The Durban Action Plan which states that all existing and future protected areas shall be managed and established in full compliance with the rights of indigenous peoples and the Sydney Vision which promised that there should be redress and remedy for past and continuing injustices in accord with international agreements are powerful commitments of the conservation community. The Special Rapporteur believes that the effective implementation of these commitments can operationalize the human rights-based conservation paradigm.

Recommendations

To States:

70. Undertake all necessary measures for the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples and ratify the ILO Indigenous and Tribal Peoples Convention No. 169.

71. Adopt all necessary policy, legal and administrative measures for the full recognition of the rights of indigenous peoples over their lands, territories and resources as enshrined in international human rights law.

72. Review and harmonize the environmental, legal and institutional framework with their obligations regarding the rights of indigenous peoples and ensure that a rights-based approach is applied to the creation or expansion of existing protected areas.

73. Comply with the duty to consult and obtain the free, prior and informed consent of indigenous peoples before the development of conservation initiatives which may affect their rights.

74. Support partnerships between government authorities and indigenous peoples to encourage intercultural engagement in order to build trust and collaboration to favour of shared goals of sustainable conservation.

75. Comply with judgments and decisions of international and regional human rights monitoring mechanisms regarding indigenous peoples' rights.

76. Establish accountability and reparation mechanisms for infringements on indigenous rights in the context of conservation and provide redress for historical and contemporary wrongs.

To conservation organizations:

77. Respect and support the rights of indigenous peoples as recognized in international human rights law and enhance their ability to engage in conservation by advocating for recognition of their collective rights.

78. Shift the new paradigm from paper to practice; adopt human rights-based policies, including on the rights of indigenous peoples, and ensure effective dissemination of these and trainings for conservation staff, especially for those involved in implementation at the national and local level.

79. As part of due diligence, improve monitoring and include compliance with indigenous peoples' rights in regular project assessments. Ensure that information obtained through monitoring and reporting is transparent and accessible.

80. Develop mechanisms for solid partnerships for regular and continuous engagement with indigenous peoples, including ensuring their full and effective participation in designing, implementing and monitoring conservation initiatives.

81. Support indigenous peoples to develop and sustain their own conservation initiatives and exchange conservation management experiences with them. This will allow learning from indigenous traditional conservation measures and transfer of technical skills to engage indigenous peoples in protected areas management.

82. Ensure that culturally appropriate complaints mechanisms are 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 impacted their rights.

To donors:

83. Require that conservation organizations adopt human rights policies and monitor the application of human rights-based conservation programmes, notably in relation to indigenous peoples' rights.

84. Provide direct funding to better support indigenous peoples' own initiatives for conservation.

To UNESCO:

85. Reform the Operational Guidelines through which the World Heritage Convention is implemented to align them with the United Nations Declaration on the Rights of Indigenous Peoples and adopt procedures to ensure indigenous peoples' free, prior and informed consent.

To human rights monitoring mechanisms and relevant United Nations bodies and agencies:

86. Devote further attention to monitoring the impact conservation measures have on indigenous peoples, in order to promote a rights-based approach to protected areas management by government authorities and conservation organizations.

5. Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras, A/HRC/33/42/Add.2, 21 July 2016⁴⁸

Conclusions and recommendations

79. The situation of the indigenous peoples of Honduras is critical, since their rights over their lands, territories and natural resources are not protected and they face acts of violence when claiming their rights.

80. They call for immediate and decisive protection measures, including the prevention, investigation and punishment of persons responsible for murdering, threatening and harassing members of indigenous peoples and of those responsible for actions that infringe their rights over their lands, natural resources and other human rights. The legal, political and institutional framework must be overhauled and strengthened in order to deal with the situation properly and effectively, with reforms including coordination between government agencies to ensure the cross-cutting implementation of the Government's international commitments on the rights of indigenous peoples.

81. All this requires more public resources and greater political will. Serious and committed participation by the international community and the international human rights bodies is also essential in order to ensure international oversight of such efforts and provide the necessary technical and financial assistance.

Legal, political and institutional framework

82. All the State agencies dealing with the indigenous peoples, in particular the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage and the Directorate of Indigenous and Afro-Honduran Peoples, should be significantly strengthened and provided with the resources required to meet the needs of the indigenous peoples as regards access to justice, protection of their lands and natural resources and other

⁴⁸ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/162/03/PDF/G1616203.pdf?OpenElement>.

rights. Another key institution requiring more resources is the Office of the National Commissioner for Human Rights, if the important aims set out in paragraph 15 of its Plan of Action are to be achieved.

83. Public officials and the private sector should be given education and training in the international standards on the rights of indigenous peoples, with a particular focus on mayors, local and national justice officials and members of the police, the armed forces and private security forces. This should be accompanied by effective procedures for monitoring, supervising and assessing public and private officials on their respect for and implementation of these international standards.

84. It is recommended that consultations be held with the widest possible range of representative bodies of the country's indigenous peoples on the various legislative and public policy initiatives relating to indigenous peoples (paras. 12 to 17) and that their own legislative and policy proposals should be considered. Under article 19 of the United Nations Declaration on the Rights of Indigenous Peoples, consultations must be held on such legislative or other measures in order that the free, prior and informed consent of indigenous peoples is obtained before their adoption.

85. Honduras must examine the compatibility of current legislation and policies in the areas of property, natural resources, mining, hydrocarbons, energy projects, model cities, tourism, protected areas, forest issues and agro-industry with the country's international obligations on indigenous peoples, taking into account the constitutional status of international human rights instruments. The implementation of the law should not be to the detriment of the rights contained in the international instruments on indigenous peoples. Reforms or amendments to the law should be made in consultation with the indigenous peoples, in accordance with international standards.

Violence, impunity and access to justice

86. More resources are needed to strengthen the justice system for the investigation, prosecution and punishment of State officials or individuals responsible for the murder of members of the indigenous peoples and other forms of violence, including violence against indigenous women and children. This should include the investigation and punishment of members of the police, the armed forces and private security forces who commit such acts of violence.

87. It is recommended that Honduras engage in special investigations and impose criminal sanctions in particularly serious cases, such as the situation of Tolupe in Locomapa (para. 22), targeting not only those responsible for the killings but also the land issues that lie behind the violence against the Tolupe. With regard to the murder of Ms. Berta Cáceres, it is recommended that the Government request and accept technical assistance from international bodies and independent experts, as Ms. Cáceres' family and representatives of indigenous organizations and civil society have asked.

88. Criminal policy should take account of the causes underlying the protests over land and the other claims by indigenous peoples, with a view to promoting solutions to these causes and not imposing unnecessary or excessive punishments on indigenous demonstrators.

89. Mechanisms for the protection of human rights defenders, including those granted protective measures by the Inter-American Commission on Human Rights, should be extended, strengthened and given the necessary resources to cover indigenous leaders and their families who are dedicated to the defence of their peoples' rights. Protective measures should be developed in consultation with the indigenous persons concerned. Effective early warning systems should be established and urgent action taken jointly with indigenous peoples to prevent attacks against members and leaders of the indigenous peoples.

90. With regard to the drug trafficking and organized crime found on indigenous lands, security measures must be developed in consultation with the peoples concerned to protect their lives, personal safety, lands and cultures. Particular attention should be paid to the situation of indigenous women, children and young people.

91. Indigenous peoples that might be affected should be consulted on anti-drug policies and operations that involve the presence of national or foreign police or armed forces and guarantees should be given that the lives, cultures, lands and natural resources of the indigenous peoples are not violated as a result of such operations. Abuses committed by drugs squad officials must be investigated and punished. In the case of the massacre in Ahuas (para. 26), the necessary measures should be taken at the national and international level to ensure that the victims and their families obtain justice and fair and appropriate compensation.

92. The Special Rapporteur recommends that, in regions with large indigenous populations, justice officials should be given more training in the rights of indigenous peoples and in the local indigenous languages and cultures. Measures must be developed, in cooperation with the indigenous peoples of those

areas, to facilitate the appointment of justice officials, preferably from indigenous communities, and the activities of such officials should be subject to oversight by the indigenous peoples themselves.

93. She also recommends legislative or other measures to recognize indigenous systems of justice and courts and to develop mechanisms for coordination between indigenous and ordinary courts.

Land, natural resources and governance

94. Honduras should redouble its efforts to respond to existing requests by the indigenous peoples with regard to the delimitation, demarcation, registration, expansion and upgrading of their lands. It should comply with the commitments agreed with the Chortí people with regard to the acquisition and registration of lands and meet the requests of the Garífuna, Tawahka and Tolupán peoples, among others, for the expansion of their registered lands (paras. 35-44). As stated in ILO Convention No. 169, article 13 (2), recognition of their lands should include not only the areas in which they are settled but also the “total environment of the areas which the peoples concerned occupy or otherwise use”. Moreover, the indigenous peoples have the right to participate in the use, management and conservation of the natural resources pertaining to their lands (art. 15 (1)).

95. Judicial and agrarian institutions and the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage should take coordinated action to develop and strengthen specialized permanent mechanisms to enable the indigenous peoples to lodge their claims and obtain compensation for violations of their rights over their lands and natural resources, in accordance with articles 12 and 14 of ILO Convention No. 169 and articles 27, 28 and 40 of the United Nations Declaration on the Rights of Indigenous Peoples. This should include measures for the prompt settlement of cases in which third parties have been granted title to indigenous lands and for the prevention and punishment of the break-up and illegal sale of indigenous lands.

96. Prompt and effective measures should be taken to upgrade registered indigenous lands and to investigate and punish persons responsible for the occupation and environmental degradation of indigenous territories. In addition, the agreement signed with the Auka community should be implemented immediately and in full in order to avoid a deterioration in this divisive situation.

Investment projects

97. The indigenous peoples must be included in national development planning and energy policy, taking into account international standards on the protection of their cultures, lands and traditional resources. Prior consultation and free, prior and informed consent are essential in this regard. Social, cultural, environmental and human rights impact studies must be carried out and an agreed definition of mitigation, compensation and benefit measures must be reached. International standards apply in the case of energy projects, and also extractive, agro-industrial, tourism and infrastructure projects, model cities and other projects that affect or may affect indigenous peoples.

98. With regard to the Patuca III project and other energy and investment projects (paras. 46 to 50), the Special Rapporteur considers that there must be appropriate prior consultation to provide the indigenous peoples with accessible information on the social, environmental and cultural impact of those projects and possible measures of mitigation, compensation and benefits. No project should proceed until guarantees have been honoured and the free, prior and informed consent of all the indigenous peoples affected has been obtained. Indigenous peoples whose lands, natural resources or other rights have been violated by the implementation of such projects should obtain justice and compensation.

99. The private sector, meanwhile, has the obligation to exercise due diligence and assess the real and potential impact of its activities on human rights before undertaking operations. The corporate responsibility to respect human rights exists independently of a State’s ability or willingness to fulfil its own human rights obligations and it exists over and above compliance with national laws and regulations protecting human rights. Before applying for permission or signing contracts relating to investment projects, companies should carry out studies on the presence of indigenous peoples in or around sites proposed for such projects and on the rights to lands, natural resources and prior consultation that indigenous peoples have under international standards.

Protected areas

100. The creation of protected areas also requires prior consultation, the consent of the indigenous peoples directly or indirectly affected and due regard for their rights under national and international law. The

management of existing or proposed protected areas should be conducted with the full and effective participation of the indigenous peoples affected, respecting their own forms of use and management of natural resources in their ancestral territories. The Special Rapporteur urges that the necessary measures be taken to facilitate access to and use of their lands and natural resources by the indigenous peoples in areas that are currently protected, free of charge and without penalty.

Economic, social and organizational development

101. Census information on the indigenous population and its social and economic situation must be updated and systematized and methods to evaluate the scope and effectiveness of social policies and programmes targeting indigenous peoples must be developed, taking into account also the situation of indigenous women and children.

Programmes to provide indigenous people with identity documents should also be extended.

102. In consultation and coordination with indigenous authorities and organizations, appropriate measures should be taken to improve the development and implementation of education, health and economic development programmes and policies in indigenous territories and to allocate more resources for this purpose. This includes measures to extend educational and health coverage, with the necessary infrastructure, equipment and staff. The effective implementation of bilingual intercultural education must be assured in order to strengthen and, where necessary, recover indigenous languages. National textbooks should include specific information on indigenous peoples, their rights, cultures, languages and contributions to society. Measures should be developed to recognize ancestral health practices and incorporate them into health services in indigenous regions.

103. The Government should provide resources to enable the indigenous peoples to develop and implement their own economic models and initiatives. It is also recommended that measures be taken to support and promote communication media for the indigenous peoples. Moreover, it is essential that the indigenous peoples should participate fully and effectively in the management and spin-off benefits of their ancestral heritage sites.

104. The Special Rapporteur urges the Government to adopt the necessary measures to regulate and monitor effectively underwater fishing and to address the demands of Miskito divers and their families for health services, other necessary social services and compensation.

105. The necessary resources should be allocated to enable the indigenous peoples to develop their organizational capacities with regard to their own structures, cultures and autonomy. Activities that divide indigenous peoples and organizations must be avoided. Moreover, the existence of internal divisions should not be a pretext for not adopting measures to resolve the human rights problems affecting the indigenous peoples.

Other recommendations

106. The Special Rapporteur recommends that the Government, donor countries and business partners promote and implement initiatives in support of the rights of the indigenous peoples of Honduras, in consultation with them, in particular with regard to their lands, natural resources, governance, social and economic development and organizational capacities. To that effect, they should ensure that the Voluntary Partnership Agreement under the Forest Law Enforcement, Governance and Trade initiative (para. 44) and the private initiatives that they promote in Honduras guarantee the rights of the indigenous peoples and their participation.

107. It is also recommended that the United Nations agencies in Honduras, including the OHCHR representation in Honduras, should, in cooperation with the Government and the indigenous peoples, provide the State with technical assistance to implement the recommendations made in this report. The United Nations agencies should also ensure that they consult the indigenous peoples when planning and implementing programmes and activities in Honduras, in cases where such activities may have some impact on the indigenous peoples' rights and interests.

6. Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil, A/HRC/33/42/Add.1, 8 August 2016⁴⁹

Conclusion and recommendations

Conclusion

92. The Special Rapporteur's overall impression, following her visit, is that Brazil has a number of exemplary constitutional provisions pertaining to indigenous peoples' rights and was, in the past, a leader in the area of demarcation of indigenous peoples' territories. However, in the eight years since the visit of the previous mandate holder, there has been a disturbing absence of progress in the implementation of his recommendations and the resolution of long-standing issues of key concern to indigenous peoples. Instead, information received points to an extremely worrying regression in the protection of indigenous peoples' rights. In the current political context, the threats facing indigenous peoples may be exacerbated and the long-standing protections of their human rights may be at risk.

93. The Special Rapporteur makes some recommendations to address the most pressing issues she observed during her mission. They relate to the need for urgent measures to address violence and discrimination against indigenous peoples; strengthen State institutions such as FUNAI; build the capacity of State officials, including senior members of the executive and lower court judges, in the light of their inappropriate application of doctrines that deny rights; redouble efforts in land demarcation and protection; allocate resources to improve access to justice; guarantee meaningful good-faith prior consultation and participation of indigenous peoples in relation to large-scale or high-impact development projects and respect for indigenous peoples' own consultation and consent protocols and proposals for addressing development issues; and ensure participatory impact assessments and redress for harm caused.

94. Given the marginalized status of indigenous peoples, the fact that serious violations of their rights, over recent decades, have not been adequately investigated or remedied and the urgent need to address ongoing structural discrimination, the Special Rapporteur places particular emphasis on the importance of initiating an independent and transparent national inquiry into violations of their rights. This should be implemented in cooperation with indigenous peoples, with the aim of transforming the State's relationship with them into one that is based on respect, justice and self-determination.

95. Brazil owes a historical debt to its indigenous peoples who have suffered marginalization and discrimination since the formation of the State. Despite the hardships they have endured, they remain unwavering in their resolution to preserve their lands, to maintain and develop their cultures, customs and languages and to determine their own futures. Rather than being seen as a burden on the State or an obstacle to national development, their contributions to Brazilian society should be widely recognized and fully appreciated and celebrated. With this in mind, Brazil should embark on an inclusive process of belated State-building with its indigenous peoples premised on respectful and just relationships between self-determining peoples.

Recommendations

Right to life, violence and racial discrimination

96. The Special Rapporteur respectfully urges the Government of Brazil to:

- (a) Take immediate measures to protect the safety of indigenous leaders, including through strengthened and culturally appropriate protection programmes, and to conduct investigations into all attacks and killings of indigenous peoples and bring perpetrators to justice;
- (b) Conduct a public campaign aimed at eliminating racism, discrimination, hate speech and violence towards indigenous peoples;
- (c) Accord particular and urgent attention to the situation of indigenous children, youth and women, especially in relation to the alarming rates of suicides in indigenous communities, the increasing violence against indigenous women and the illegal adoption of indigenous children.

Land rights

97. The Special Rapporteur recommends that the Government:

- (a) Redouble efforts to move beyond the current impasse in relation to land demarcation. This is particularly urgent in the states of Mato Grosso do Sul, Bahia, Santa Catarina and Rio Grande do Sul.¹⁸

⁴⁹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/174/05/PDF/G1617405.pdf?OpenElement>.

The executive should develop, in collaboration with indigenous peoples, proactive proposals to respect and fulfil indigenous rights to land, through a thorough examination of all avenues available. This should include approaches to address the judicialization of demarcation processes and give consideration to appropriate compensation in relation to their repossession of lands, recognized in the 1988 Constitution as indigenous lands, and for which the Federal or state governments granted titles to private individuals;

- (b) Complete all demarcation processes pending at FUNAI, the Ministry of Justice and the Presidency, in particular those threatened by development projects, agribusiness expansion and natural resource extraction activities;
- (c) Develop concrete and prioritized actions to guarantee environmental protection of indigenous lands and their natural resources and to prevent illegal activities, with due consideration to and respect for indigenous peoples' forms of organization and their special relationship with their lands;
- (d) Ensure that all courts have a clear and uniform interpretation of the limitations of the Raposa-Serra do Sol ruling and its inapplicability to the issuance of eviction orders for indigenous peoples or the halting of demarcation procedures. The Federal Supreme Court should continue to accept requests for the suspension of eviction orders and ensure that future rulings concerning indigenous peoples' rights are fully consistent with national and international human rights standards.

Self-determination, the duty to consult and free, prior and informed consent

98. The Special Rapporteur recommends that the Government:

- (a) In collaboration with representatives of indigenous peoples and in accordance with their right to self-determination, develop a national action plan for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in keeping with Brazil's commitment at the World Conference on Indigenous Peoples;
- (b) Implement the State duty to consult indigenous peoples in relation to projects, policies and legislative and administrative measures that have an impact on their rights. Such consultations should be conducted to see their free, prior and informed consent in a manner that takes into account the specificities of each indigenous people, as affirmed in ILO Convention No. 169, the United Nations Declaration on the Rights of Indigenous Peoples and the Organization of American States draft American Declaration on the Rights of Indigenous Peoples. In the case of development projects, consultations should be informed by independent and participatory environmental, social and human rights impact assessments;
- (c) Acknowledge and support the proactive measures taken by indigenous peoples to realize their rights, including their right to self-determination. This includes observing and responding to consultation and consent protocols developed by indigenous peoples in the context of the State duty to consult;
- (d) Ensure full respect for the rights of indigenous peoples in voluntary isolation in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and the draft guidelines on their protection.

Impacts of development projects

99. The Special rapporteur recommends that the Government:

- (a) Adopt measures to redress the impacts and consequences of mining activities, agribusiness expansion and other large-scale development projects on indigenous peoples' health, lands, cultures and way of life, including their social and economic forms of organization. These measures should also address the secondary impacts of such projects, which are often associated with speculation and the entry of third parties as a result of increased ease of access to indigenous lands;
- (b) In the light of the allegations of ethnocide in the Belo Monte case brought by the Public Prosecutor, extreme caution should be exercised in relation to the Belo Sun mining and the Tapajós dam projects. These projects should not be considered if the potential for similar impacts exists or if the indigenous peoples concerned withhold their free, prior and informed consent following the conduct of participatory social, environmental and human rights impact assessments and good faith consultations.

Access to justice

100. The Special Rapporteur recommends that:

- (a) The judiciary, the legislature and the executive give urgent consideration, in collaboration with representatives of indigenous peoples, to the elimination of barriers that prevent indigenous peoples from realizing their right to justice and guarantee that adequate resources be available to this end;
- (b) The Government initiate dialogue with indigenous peoples in relation to the possible conduct of a national inquiry into the allegations of violations of their rights, as well as raise awareness, recognize State wrongdoings and provide redress for human rights violations.

Capacity of government agencies

101. The Special Rapporteur recommends that the Government:

- (a) Provide adequate funding to FUNAI, strengthening its capacity to deliver services and its role in protecting indigenous peoples' land and self-determination rights. This necessitates revisiting cuts to its budget and ensuring that local FUNAI offices are not the target of such measures. Local offices should have adequate resources to be able to provide core services that are relied upon by other organs of the State and by indigenous peoples, including those in voluntary isolation. The National Council on Indigenous Policies should participate in the appointment of the President of FUNAI, who should have the necessary technical competence and political independence to fulfil the Foundation's mandate;
- (b) Continue to support and strengthen the Special Department on Indigenous Health of the Ministry of Health and the Department of Continuing Education, Literacy, Diversity and Inclusion of the Ministry of Education;
- (c) Guarantee conditions for the independent and participative functioning of the National Council on Indigenous Policies;
- (d) Develop a more responsive and targeted family allowance programme for indigenous peoples, taking into account their specific situations;
- (e) Draw on lessons learned and the experience of FUNAI and the Public Prosecutor's Office in support of the implementation of indigenous peoples' rights and disseminate them among other government agencies, including higher level government officials;
- (f) Ensure the provision of specific training and guidance on indigenous peoples' rights to members of the judiciary who address issues such as land rights, prior consultation and adoption of indigenous children. This could include, for example, collegial dialogues with members of the judiciary in countries with an extensive body of jurisprudence on indigenous peoples' rights, such as Colombia.

Recommendations to other actors

102. The United Nations country team should assume a proactive role in promoting awareness of and respect for indigenous peoples' rights in Brazil and assist the Government in the realization of its duty to respect, protect and fulfil those rights. In cooperation with and guided by indigenous peoples, the country team should support indigenous peoples in their efforts to assert and realize their constitutionally and internationally recognized human rights and to participate in relevant processes of the Human Rights Council, such as the universal periodic review.

103. The Special Rapporteur encourages the Brazilian Development Bank (BNDES) to align its policies with those of other international financial institutions, such as the International Financial Corporation, and to develop specific safeguards aimed at ensuring that it does not fund projects that pose a risk to indigenous peoples' rights. These policies should guarantee that indigenous peoples are consulted, their free, prior and informed consent is obtained and transparent and participatory environmental, social and human rights impact assessments are conducted whenever their rights are potentially impacted by a project funded by the Bank.

104. In keeping with their independent obligations to respect indigenous peoples' rights, corporations, including banks and other investment facilities, should conduct due diligence in relation to indigenous peoples' rights, including their land and consultation and consent rights, both for their own operations and for those in their supply chains. In all cases where human rights have been violated, companies should participate in meaningful remediation processes in consultation with the concerned indigenous peoples, use their leverage to prevent further rights violations and ensure appropriate remediation.

105. The Special Rapporteur reiterates the recommendations of the Working Group on Business and Human Rights on its mission to Brazil in 2016 regarding the need to (a) review the use of the security suspension mechanism in the context of vulnerable communities affected by development projects; (b) promptly carry out indigenous land demarcation and ensure that it remains the responsibility of the executive, contrary to the proposal contained in PEC 215 to place it under the responsibility of the legislature; (c)

improve the capacity of and the resources allocated to the Brazilian Institute of Environment and Renewable Natural Resources (IBAMA) and improve coordination between the Institute and FUNAI in order to strengthen the regulation of large development projects and deliver sustained protection for affected communities and enable them to monitor the social and environmental impacts of such projects and the fulfilment of any conditions imposed in mitigation plans.

106. The Special Rapporteur also urges the Government to implement the recommendations from the 2012 universal periodic review that it had accepted, with regard to the need to ensure protection of leaders of indigenous peoples and human rights defenders fighting for their rights; awareness campaigns on the rights of indigenous peoples and the implementation of laws related to them; implementation of consultation and consent rights in accordance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples in relation to projects and legislative and administrative measures impacting them; greater protection of their rights to land, territories and resource, as recognized in the Constitution and ILO Convention No. 169; and poverty reduction and social services that directly target indigenous peoples in a culturally appropriate manner.

107. Implementation of the recommendations in the present report as well as the recommendations of the previous mandate holder on his visit to Brazil in 2009, of the Working Group on Business and Human Rights and of the universal periodic review process should proceed with the full and effective participation of indigenous peoples.

108. The Government of Brazil should make every effort to address the concerns raised by the Special Rapporteur in the present report and live up to the emblematic global benchmark that Brazil had set for the protection of indigenous peoples in its 1988 Constitution and through its ratification and adoption of international human rights instruments. To realize this, the measures outlined in these recommendations are urgently required.

7. Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the Sami people in the Sápmi region of Norway, Sweden and Finland, A/HRC/33/42/Add.3, 9 August 2016⁵⁰

Conclusions and recommendations

73. For the Sami people, rights over their lands and resources are the sine qua non conditions for their long-term well-being and a prerequisite for them to be able to continue to exist as a distinct people. Those rights do not appear to be sufficiently established, implemented or judicially protected in Norway, Sweden or Finland, resulting in their perpetual insecurity and instability. While the Special Rapporteur appreciates that natural resource investments are of key importance for the domestic economies of the three countries, it is her view that their ambition to promote mining in a socially and ecologically sustainable manner cannot be achieved as long as Sami rights are not adequately reflected and safeguarded in the legislation that regulates natural resource extraction.

74. In the light of the countries' international human rights obligations and the commitments they have assumed with respect to the Sami people, the Mining Act in Norway and the Minerals Act in Sweden raise serious doubts about the States' ability to respect, protect and fulfil human rights in the context of extractive activities. They also raise doubts as to whether the States are clearly setting out the expectation that all business enterprises respect human rights throughout their operations. From a business perspective, the deficient regulatory frameworks have also created barriers for companies to carry out their operations in a manner consistent with international expectations regarding the rights of indigenous peoples.

75. In Finland, the Mining Act shows that the Government is responding to concerns raised by the Sami people. However, in practice the Act appears to have fallen short of its stated objective to ensure that mining activities and gold panning are adapted "so as to secure the rights of the Sami as an indigenous people". The Special Rapporteur also notes that the 2016 Finnish Forest and Park Enterprise Act will have a significant impact on the Sami people, and that removing safeguards for the Sami people is not in line with international human rights obligations with respect to the Sami people.

⁵⁰ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/175/50/PDF/G1617550.pdf?OpenElement>.

Norway

76. The Special Rapporteur recommends that Norway enhance efforts to implement the right of the Sami people to self-determination and to more genuinely influence decision-making in areas of concern to them. That may to some extent be achieved through a more effective consultation arrangement, which should be extended to clearly cover budgetary decisions.

77. The Special Rapporteur recommends that Norway, together with the Sami Parliament and Sami communities, assess the adequacy of the Finnmark Act in advancing the Sami people's self-determination and land and resource rights. She calls on Norway to finalize the process of clarifying and securing Sami land and resource rights outside Finnmark County, and to ensure that due respect is paid to the customs, traditions and land tenure systems of the Sami people in implementing the Finnmark Act and in designing and implementing measures for recognition of land and resources outside Finnmark County.

78. Noting that sea salmon fishing and spring duck hunting in the municipality of Guovdageaidnu/Kautokeino form an important part of Sami cultural heritage and should be protected by special measures to ensure they can be pursued and maintained according to Sami tradition in a culturally and ecologically sustainable way, the Special Rapporteur urges the Government of Norway and the Sami Parliament to find solutions on regulations related to sea salmon fishing and spring duck hunting.

79. The Special Rapporteur calls on Norway to revise the Minerals Act to ensure that it conforms to relevant international standards, including those requiring adequate consultations with the affected indigenous communities and their free, prior and informed consent, mitigation measures, compensation and fair and equitable benefit-sharing. In addition, applications for exploration and exploitation permits should be evaluated against already existing projects and the cumulative impact that they have on the affected Sami communities.

80. The Special Rapporteur commends Norway for the adoption of the Action Plan for Sami Languages, which contains a number of good initiatives. In order to ensure that the plan is effective, relevant ministries should follow up and assess whether and to what extent all the measures have been completed and publicize the information in a final report that includes a follow-up plan for measures yet to be completed. In addition, the Government should enter into dialogue with the Sami Parliament on measures needed to ensure that government departments are better informed about Sami conditions and Sami languages and the development of a more comprehensive language policy. With respect to education, the Sami Parliament should be ensured a role in the oversight and evaluation of Sami educational programmes and their quality.

Sweden

81. The Special Rapporteur encourages Sweden to introduce reforms to ensure that the Sami Parliament has greater independence from State institutions and authorities. To that end, she urges Sweden to review the Sami Parliament's statutory status and functions in relation to government authority structures to ensure its independent decision-making powers and to ensure that adequate funding is allocated for the Sami Parliament to carry out its work as a popularly elected body.

82. The Special Rapporteur recommends the expeditious resolution of Sami land and resource rights issues by introducing appropriate legislation. She also reiterates the recommendation of the previous Special Rapporteur that Sweden adopt legislation to revise the high burden of proof required to establish traditional Sami rights to land in court proceedings and to provide Sami parties with legal aid in such proceedings.

83. As a matter of priority, Sweden should revise its Minerals Act to ensure that it is in compliance with international human rights standards, including adequate consultations with affected indigenous communities and their free, prior and informed consent at all stages of the permit process, mitigation measures, compensation and fair and equitable benefit-sharing.

84. Sweden should redouble its efforts to revitalize Sami languages and strengthen programmes for education in Sami languages, including by providing adequate funding to the Sami Parliament to assist in the implementation of concerted efforts to those ends, and by revising the Swedish Educational Decree to ensure that it does not hamper full Sami language immersion. In addition and at a minimum, all municipalities in the Sami administrative area should provide integrated Sami teaching.

Finland

85. The Special Rapporteur encourages the Government to reopen negotiations with the Sami Parliament on amendments to the Sami Parliament Act and to jointly develop a final and mutually acceptable proposal

that addresses the full range of issues, including those relating to identification of a person as Sami for the purpose of registering on the electoral register.

86. Finland should, as a matter of priority, revise the Reindeer Husbandry Act and introduce special protection for Sami reindeer husbandry given the centrality of that means of livelihood to the culture of the Sami people.

87. In consultation with the Sami Parliament, Finland should continue to assess why the Mining Act is not being enforced effectively and what additional measures may be taken to reasonably correct that situation.

88. In order to ensure that the human rights of the Sami people are not eroded by the implementation of the Finnish Forest and Park Enterprise Act, the Sami Parliament and the Skolt Sami Village Council, as well as affected Sami communities, should be ensured a strengthened voice in related processes. At a minimum, the membership of the municipal boards provided for in the Act should have full and effective representation of the Sami people and a clearly defined mandate to assess any potential impacts of activities on the Sami people's rights to maintain and develop their own language and culture prior to approving any permits, to refrain from granting such permits if the activities risk undermining conditions for Sami or Skolt livelihoods and culture, or if they will cause considerable harm to reindeer herding.

89. As a matter of priority, Finland should ensure that the revival programme for the Sami languages receives adequate and long-term funding and that its implementation is evaluated annually, and is reported on to United Nations human rights mechanisms in the context of treaty body reviews. Finland should address the shortage of Sami teachers and education material, especially in the numerically smaller Skolt and Ánár Sami languages, and ensure that distance learning receives additional funding. In close consultation with the Sami Parliament, Finland should develop a Sami teaching curriculum for education in the Sami homeland and work with the Sami Parliament in preparing and approving the national school curriculum to ensure that it includes sufficient and accurate guidance on Sami history and culture.

B. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

1. Adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, A/71/310, 25 August 2016

Towards a more inclusive understanding of the right to life and the right to adequate housing

Draft general comment No. 36 of the Human Rights Committee on the right to life

43. The drafting by the Human Rights Committee of a new general comment (No. 36) on the right to life provides an important opportunity to reaffirm a commitment to a more inclusive understanding of the right to life. The Committee received submissions from many civil society organizations as well as from former Special Rapporteurs emphasizing the indivisibility and interdependence of the right to life with the rights to adequate housing, food, health and other economic, social and cultural rights and affirming the need for positive measures to address systemic violations. The Committee also generously set aside time to meet with the Special Rapporteur to discuss the particular relationship between the right to life and the right to adequate housing.

44. The Committee's preliminary draft general comment No. 36, of October 2015, includes components that could lay the foundation for a renewed commitment to the more expansive approach and the recognition of positive obligations that was affirmed in the Committee's general comment No. 6 on the right to life. For example, the draft reaffirms that article 6 imposes obligations to adopt strategies and programmes — components of which would be longer-term — to address extreme poverty, homelessness and other systemic deprivations of the right to life. It recognizes that the right to life includes the "right to a dignified life", referring to the famous decision of the Inter-American Court on the right to life of children in street situations. The draft directs States to "aim to facilitate and promote adequate conditions for a dignified existence for all individuals".

Other treaty bodies

46. Other treaty monitoring bodies can also play a critical role in elaborating a more inclusive understanding of the right to life. The Committee on Economic, Social and Cultural Rights, for example, is responsible for interpreting and applying the right to adequate housing and other rights in the International

Covenant on Economic, Social and Rights as indivisible from and interdependent with the right to life. In its general comment No. 7 on forced evictions, the Committee noted that evictions may violate the right to life and in periodic reviews it has made important contributions to an understanding of the interplay between the right to adequate housing and the right to life.

56. Another rich source for understanding the right to life and the right to adequate housing in international human rights law is article 7 of the United Nations Declaration on the Rights of Indigenous Peoples. It affirms that indigenous individuals “have the rights to life, physical and mental integrity, liberty and security of person” and that indigenous peoples have “the collective right to live in freedom, peace and security as distinct peoples”. The development and application of these rights has the potential to enhance the understanding of the social dimensions of the right to life and the interplay between the collective and individual dimensions of that right; it may also prompt a response to violations of rights to lands, territories or resources.

Regional jurisprudence

57. Through its jurisprudence over the past two decades, the Inter-American Court of Human Rights has developed the concept of *vida digna* (the right to a dignified life) in the context of article 4 (right to life) of the American Convention on Human Rights.

58. The Court has applied the *vida digna* principle in a number of other contexts, including indigenous peoples’ claims to their ancestral lands. For example, in *Sawhoyamaya v. Paraguay*, an indigenous community was displaced from its lands and left to live on the side of a road. Without access to adequate housing and basic services, including potable water, sanitation and health care, many died of preventable illnesses associated with displacement and homelessness. The court found a violation of the right to life in the light of the physical conditions in which the members of the Sawhoyamaya Community had been living, and still lived as well as the death of several persons due to those conditions.

The way forward: conclusions and strategic recommendations

67. Advances in the understanding of the right to life and the right to adequate housing by regional bodies and domestic courts provide a solid platform for a reunified approach to these rights at the international level, consistent with the principles of universality, indivisibility and interdependence. More importantly, rights holders living the connection between the right to life and the right to adequate housing must have their claims heard and responded to. The international human rights system must lead, not resist, the move towards a more inclusive understanding of these rights.

71. Fifty years after the separation of international human rights into the two covenants, the United Nations is well situated to retrieve a unified and inclusive understanding of human rights and to affirm that the right to life includes the right to a place to live in dignity and security, free of violence. The Human Rights Committee has the opportunity to affirm this integrated understanding of the right to life in the ongoing preparation of its general comment No. 36. The Committee on Economic, Social and Cultural Rights has the opportunity under its Optional Protocol to highlight the connection between the rights to life and adequate housing in lived experience. Other treaty monitoring bodies have the opportunity to ensure that the understanding of the rights to life and adequate housing is informed by the experiences and unique claims of people with disabilities, women, children, migrants, racial minorities and indigenous peoples, among others.

C. Special Rapporteur in the Field of Cultural Rights

1. Copyright policy and the right to science and culture, A/HRC/28/57, 24 December 2014⁵¹

Introduction

1. Science and culture are not only of great importance to the knowledge economy; they are also fundamental to human dignity and autonomy.

2. In that area, two influential paradigms of international law — intellectual property and human rights — have evolved largely separately.

⁵¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/249/51/PDF/G1424951.pdf?OpenElement>

3. Recent developments, however, have rendered the interface of those two regimes more salient. Since the 1990s, a new wave of international intellectual property treaties has increased the tension between intellectual property and human rights standards. In 2000, the Sub-Commission on the Promotion and Protection of Human Rights adopted a resolution on intellectual property and human rights calling for the primacy of human rights over trade law (resolution 2000/7). Since then, public interest groups and developing countries have gradually aligned in an “access to knowledge” movement seeking to rebalance international intellectual property governance. Asserting that “humanity faces a global crisis in the governance of knowledge, technology and culture,” the 2005 Geneva Declaration on the Future of the World Intellectual Property Organization (WIPO) called for renewed attention to alternative policy approaches to promote innovation and creativity without the social costs of privatization. Increasing attention given to the rights of indigenous peoples has also provided impetus to approaching intellectual property policy from a human rights perspective.

The rights of indigenous peoples and local communities

55. Recognizing the rights of indigenous peoples to self-determination and to maintain and develop their culture and their struggle for cultural survival, the United Nations Declaration on the Rights of Indigenous Peoples assures indigenous peoples the right to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge and traditional cultural expressions (art. 31, para. 1). Some indigenous peoples consider it vital to keep certain cultural expressions and forms of knowledge from public disclosure, to be used only by persons and in ways appropriate to their customary laws and practices, and never commercially exploited. Some indigenous peoples desire to benefit from the commercial potential of licensing products based on their traditional knowledge and cultural expressions.

56. Intellectual property regimes have historically failed to take into account the unique concerns of indigenous peoples. For instance, trade secrecy regimes require that the information be of commercial value; that is useful for protecting commercial secrets but not sacred songs or folklore. Copyright regimes provide time-limited protections, meaning that traditional cultural expressions may be regarded as being in the public domain.

57. Moral rights might be adapted to provide protection for the collective holders of traditional cultural expressions. Like individual authors, communities care deeply about the right to attribution and credit, protecting their cultural works from destruction and preventing the exhibition of their cultural expressions in ways that disparage the community. As with individual authors, however, the right to freedom of expression protects the right to criticism and parody, from within as well as from outside the community, taking into consideration all circumstances of a particular case.

58. In 1995, the principles and guidelines for the protection of the heritage of indigenous peoples made an important contribution to adapting the concept of moral and material interests of authors to the specific context of indigenous cultural property (E/CN.4/Sub.2/1995/26). Of note are the principles that indigenous peoples’ ownership and custody of their heritage must continue to be collective, permanent and inalienable; that the free and informed consent of the traditional owners be a precondition of any agreements for the recording, study, use or display of indigenous peoples’ heritage; and that concerned peoples be the primary beneficiaries of commercial application of their heritage.

59. Efforts by States to give effect to indigenous claims over their cultural heritage vary enormously. The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is continuing negotiations about a possible international legal instrument, or instruments, for the effective protection of traditional knowledge, traditional cultural expressions and genetic resources.

Copyright policy and cultural participation

60. The human rights perspective calls for recognition of the social and human values inherent in copyright law and a heightened regard for fundamental rights and the needs of marginalized groups. The emphasis on active participation in cultural and scientific life, rather than simply the ability to access cultural and scientific works, recognizes the dual importance of accessing the knowledge and expressive creations of others and of self-expression within the broader cultural context.

Promoting cultural participation through exceptions and limitations

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66. A human rights perspective also requires that the potential of copyright exceptions and limitations to promote inclusion and access to cultural works, especially for disadvantaged groups, be fully explored

Conclusion and recommendations

90. The human rights perspective focuses attention on important themes that may be lost when copyright is treated primarily in terms of trade: the social function and human dimension of intellectual property, the public interests at stake, the importance of transparency and public participation in policymaking, the need to design copyright rules to genuinely benefit human authors, the importance of broad diffusion and cultural freedom, the importance of not-for-profit cultural production and innovation, and the special consideration for the impact of copyright law upon marginalised or vulnerable groups.

91. The Special Rapporteur draws the following conclusions and makes the following recommendations.

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Indigenous peoples, minorities and marginalized groups

114. Creativity is not a privilege of an elite segment of society or professional artists, but a universal right. Copyright law and policy must be designed with sensitivity to populations that have special needs or may be overlooked by the marketplace.

115. States should institute measures to ensure that all people enjoy the moral and material interests of their creative expressions and to prevent limitations, such as geography, language, poverty, illiteracy, or disability, from blocking full and equal access to, participation in and contribution to cultural and scientific life.

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117. States should adopt measures to ensure the right of indigenous peoples to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge, and traditional cultural expressions.

118. Further studies should be undertaken to examine what reforms are needed to better enable access to copyrighted materials in all languages, at affordable prices.

2. Report of the Special Rapporteur in the field of cultural rights: Patent policy and the right to science and culture, A/70/279, 4 August 2015

Summary

In the report, the Special Rapporteur addresses the implications of patent policy for the human right to science and culture. She reaffirms the distinction to be made between intellectual property rights and human rights, emphasizing that the right to the protection of the moral and material interests of authors does not necessarily coincide with the prevailing approach to intellectual property law. There is no human right to patent protection. The right to protection of moral and material interests cannot be used to defend patent laws that inadequately respect the right to participate in cultural life, to enjoy the benefits of scientific progress and its applications, to scientific freedoms and the right to food and health and the rights of indigenous peoples and local communities.

Patents, when properly structured, may expand the options and well-being of all people by making new possibilities available. Yet, they also give patent-holders the power to deny access to others, thereby limiting or denying the public's right of participation to science and culture. The human rights perspective demands that patents do not extend so far as to interfere with individuals' dignity and well-being. Where patent rights and human rights are in conflict, human rights must prevail.

Whereas from the perspective of trade law, exclusions, exceptions and flexibilities under international intellectual property law, such as the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, remain optional, from the perspective of human rights, they are often to be considered as obligations.

International and national regulation of patent policy

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27. Of concern is the patenting of second or third (etcetera) uses of products, in particular medicines, and more generally the practice of ever-greening, which, through minor or artificial improvements, extends the life

of patents beyond the time limit of 20 years. The appropriation of scientific knowledge through patents (such as patents on genes) and the patenting of discoveries (that is, pre-existing information versus inventions); of frivolous innovations; and the practice of misappropriation of indigenous and local communities' innovations through patents is equally of concern.

Inventors under article 15, paragraph 1 (c), of the International Covenant on Economic, Social and Cultural Rights

Moral and material interests of inventors and discoverers

28. A strongly debated question is whether “authors” in article 15, paragraph 1(c) of the International Covenant on Economic, Social and Cultural Rights includes inventors and scientific discoverers, and whether the latter, like “authors”, enjoy the right to the protection of the moral and material interests resulting from their scientific production, and if so, with what meaning.

29. Some commentators, arguing strongly against such an extension, stress that the right to protection of authorship is historically and uniquely related to expressive creativity and copyright protection. In contrast, patent law is based on considerations of economic incentives for innovation, not on the concept of inventions as an expression of the personality of the inventor. Additionally, commentators are concerned that expanding the recognition of “moral and material interests” to the field of inventions and patents may create additional barriers to the human rights to health and food, and the rights of indigenous peoples.

31. In contrast, other commentators believe that the right to protection of the moral and material interests of authors extends to inventors and, therefore, that the human right to protection of authorship requires protection of the interests of individuals and communities who contribute to technological innovation as one form of human creativity.

32. The Committee on Economic, Social and Cultural Rights considers that the term “author” includes a “creator” of scientific innovations (E/C.12/GC/17, paras. 7 and 9). This expansive reading, however, has been set within specific parameters and safeguards, which deserve to be restated. Article 15, paragraph 1(c) of the International Covenant on Economic, Social and Cultural Rights does not recognize a human right to protection of intellectual property along the lines set out by intellectual property treaties. The equation of intellectual property regimes with the human right to protection of the moral and material interests of authors is false and misleading. Whereas the human right to benefit from the protection of the moral and material interests resulting from one’s scientific, literary and artistic productions safeguards the personal link between authors and their creations and between peoples, communities or other groups and their collective cultural heritage, as well as their basic material interests, which are necessary to enable authors to enjoy an adequate standard of living, intellectual property regimes primarily protect business and corporate interests and investments. In addition, contrary to intellectual property rights, human rights are inalienable. The entitlements of legal entities under the intellectual property treaties, because of their different nature, are not protected at the level of human rights (E/C.12/GC/17, paras. 2, 3 and 7).

33. The Special Rapporteur acknowledges that the human right to property has sometimes been used as a basis for patent protection, in particular within the European human rights system. The provisions on the right to property oblige States to comply with the patent rules that have been legally adopted, but do not mandate any particular approach to the design of patent laws and policy; neither do they provide guidelines regarding the form that the protection of intellectual property should take. Additionally, the right to property is subject to very far-reaching government power to regulate its use in line with its social function. Under the jurisprudence of the European Court of Human Rights, the rejection of a particular patent application or the issuance of a compulsory license in the interests of public health might be viewed as an interference with the right to property, but is highly unlikely to be viewed as a violation, unless done in an arbitrary or capricious way.

Rights of indigenous peoples and local communities

35. There is a “defensive” and a “positive” approach in using intellectual property to protect the biocultural heritage of indigenous peoples and local communities. The defensive approach seeks to prevent the patenting of (or the acquisition of other intellectual property rights over) traditional knowledge by third parties, in violation of the rights and/or interests of indigenous and local peoples. The positive approach seeks to leverage indigenous and local intellectual property to provide indigenous and local groups with greater control over their knowledge assets.

36. The United Nations Declaration on the Rights of Indigenous Peoples states that indigenous peoples have the right to maintain, control, protect and develop their intellectual property (see art. 31, para. 1, of the

Declaration). It differs from the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights in that it specifically enunciates a right to intellectual property, rather than to the protection of moral and material interests. The discussion has come to be framed around traditional cultural expressions (such as artwork, narratives, rituals and music), traditional knowledge (such as indigenous medical and agricultural know-how and technologies) and genetic resources (which might be plant, animal or microbial biological genetic material).

37. Several motivations underlie this right, including the right of indigenous peoples to self-determination, their right to maintain and develop their culture and their struggle for cultural survival. Some indigenous and local communities consider it vital to keep certain forms of knowledge from public disclosure, to be used only by persons and in ways that are appropriate according to customary laws and practices, and never commercially exploited. Simultaneously, some peoples wish to take advantage of the commercial potential of licensing products based on their traditional knowledge and genetic resources. Additionally, indigenous and local communities may object to the improper patenting of their natural or genetic resources and associated traditional knowledge and practices in ways that deny appropriate credit and ownership to the true source of the resource or knowledge.

38. International and national intellectual property regimes have historically failed to adequately take into account the concerns of indigenous peoples and local communities. The interests in maintaining control over non-commercial, communally created and historically rooted cultural assets tend to fall through the cracks of intellectual property regimes. For example, traditional knowledge that has been made available to the public is generally regarded as being in the public domain and therefore free for anyone to use, and there is enormous variation in the ways that States have sought to give effect to indigenous rights connected to patent policy.

39. In 1995, the Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples were presented to the Commission on Human Rights (see E/CN.4/Sub.2/1995/26). Of note are the principles that indigenous peoples' ownership and custody of their heritage must continue to be collective, permanent and inalienable; that the free, prior and informed consent of the traditional owners or custodians must be a precondition to any agreements for the recording, study, use or display of indigenous peoples' heritage; and that peoples concerned must be the primary beneficiaries of any commercial application of their heritage (see principles 5, 9 and 10).

40. The 1992 Convention on Biological Diversity and its 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization contain provisions on traditional knowledge associated with genetic resources held by indigenous and local communities. States must ensure these communities' prior informed consent, as well as fair and equitable benefit-sharing, keeping in mind community laws and procedures and customary use and exchange.

41. "Protection" of traditional knowledge or traditional cultural expressions in the intellectual property sense means ensuring that the intellectual innovation and creativity embodied in traditional knowledge and traditional cultural expressions are not wrongly used. It may include protection against misuse or misappropriation, such as copying, adaptation or use by unauthorized third parties, equitable compensation schemes and protection against unfair competition. Requiring inventors to include and make public relevant information about important inputs obtained from communities can be used as a protective mechanism. Such disclosure can serve as a check against misappropriation, and help to determine the scope of benefit sharing due to indigenous groups.

42. "Protection" is therefore different from "preservation" and "safeguarding," which emphasize the identification, documentation, transmission, revitalization and promotion of cultural heritage in order to ensure its maintenance or viability. "Protection," "preservation" and "safeguarding" are collectively reinforcing and need to be implemented with such awareness, taking into consideration that indigenous and local knowledge systems are in constant evolution.

43. The recognition of the interests of indigenous peoples to maintain, control, protect and develop their intellectual property over their cultural heritage (traditional knowledge/traditional cultural expressions) falls within the wider human rights framework. Accordingly, it too is subject to limitations established to ensure equitable and universal access to the benefits of scientific advancement. For example, important medicines might be classified as traditional knowledge. The right to the benefit of scientific advancement in this context might require that the traditional knowledge be made available to others for the fulfilment of their right to health.

44. Under article 46, paragraph 2, of the Declaration on the Rights of Indigenous Peoples, the exercise of the rights set forth in the Declaration are subject only to such limitations as are determined by law and in

accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society. Such limitations can be problematic, however, if they are justified by reference to the interest of a mainstream society that otherwise does not recognize indigenous interests. In such cases, limitations can be misused to the detriment of indigenous communities.

45. While the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore has undertaken negotiations for an agreement on an international legal instrument(s) that will ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions, progress seems uncertain.

Asserting the right to science and culture in patent policy: the way forward

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Promoting the right to science and culture through exclusions, exceptions and flexibilities

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65. Exclusions from patentability preclude a given subject matter from protection and can lead to the non-granting of a patent. For example, under article 27 of the TRIPS Agreement, States may exclude from patentability diagnostic therapeutic and surgical methods for the treatment of humans and animals. States may also exclude plants and animals other than microorganisms, and essentially biological processes for the production of plants and animals other than non-biological and microbiological processes (however plant varieties shall be protected either by patents or by an effective sui generis system or a combination thereof).

66. This latter point has raised considerable concern, in particular among developing countries, as article 27, while providing some flexibility, simultaneously obliges States to protect microorganisms, certain biotechnological processes and plant varieties. Specific concerns relate to the protection of biological resources and traditional knowledge, and the need to reconcile article 27 with the Convention on Biological Diversity, particularly on the free, prior informed consent of indigenous and local communities and benefit sharing. The patenting of plant variety raises concerns about the impact on farming practices, genetic diversity and food security.

Conclusions and recommendations

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90. There is no human right to patent protection under article 15 of the International Covenant on Economic, Social and Cultural Rights. This provision does not obligate States parties to enact any particular form of patent protection. Patents are one policy tool among many for encouraging innovation and technological research and development. More caution is required in assessing their positive versus negative effects depending on the context and the technologies at stake. Human rights law operates as a limit to prevent the overreaching of economic claims by patent-holders in contexts where the rights to health, food, access to technology or other human rights would be compromised.

Indigenous peoples and local communities

114. States should (1) ensure availability of legal measures and remedies to ensure the control by indigenous peoples and local communities over their biocultural heritage; (2) prohibit unethical and/or unlawful appropriation of the heritage of indigenous peoples and local communities through patents; (3) ensure appropriate credit and compensation; and (4) ensure that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the free, prior and informed consent or approval and involvement of these communities, and that mutually agreed terms have been established.

115. Enhanced disclosure requirements in intellectual property legislation, such as sources, should be adopted to protect the right of attribution of communities whose traditional knowledge contributed to a patent application.

116. States should develop strategies to assist user countries in the assessment of patent applications that contain domestically sourced genetic resources or associated traditional knowledge. Ideally, intellectual property offices should take the lead in coordinated efforts among local stakeholders to develop dossiers on identified priority biological resources.

3. Report of the Special Rapporteur in the field of cultural rights, Mapping of cultural rights and preliminary views on destruction of cultural heritage as a violation of human rights, A/HRC/31/59, 3 February 2016

Cultural rights: revisiting and reconfirming the conceptual and legal framework

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Definition of cultural rights: meaning and terminology

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7. The Special Rapporteur recalls the definition of cultural rights used by the first mandate holder, based on academic research and general comment No. 21 (2009) of the Committee on Economic, Social and Cultural Rights on the right of everyone to take part in cultural life:

Cultural rights protect the rights for each person, individually and in community with others, as well as groups of people, to develop and express their humanity, their world view and the meanings they give to their existence and their development through, inter alia, values, beliefs, convictions, languages, knowledge and the arts, institutions and ways of life. They may also be considered as protecting access to cultural heritage and resources that allow such identification and development processes to take place.

8. The Special Rapporteur believes her predecessor made the correct decision when she declined to define culture, but took a holistic, inclusive approach to its meanings. Significantly, she stated that culture is created, contested and recreated within social praxis (see A/67/287, para. 2), in other words through human agency. The current Special Rapporteur further notes that: (a) all people and all peoples have culture, not merely certain categories or geographies of people; (b) cultures are human constructs constantly subject to reinterpretation; and (c) while it is customary to do so, referring to culture in the singular has problematic methodological and epistemological consequences. It must be understood that culture is always plural. “Culture” means cultures.

9. On many occasions, the first Special Rapporteur stressed that the purpose of the mandate is not to protect culture or cultural heritage per se, but rather the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life in a continuously developing manner. Based on the work undertaken by her predecessor, the Special Rapporteur understands cultural rights as protecting, in particular: (a) human creativity in all its diversity and the conditions for it to be exercised, developed and made accessible; (b) the free choice, expression and development of identities, which includes the right to choose not to be a part of particular collectives, as well as the right to change one’s mind or exit a collective, and indeed to take part on an equal basis in the process of defining it; (c) the rights of individuals and groups to participate – or not to participate – in the cultural life of their choice and to conduct their own cultural practices; (d) their right to interact and exchange, regardless of group affiliation and of frontiers; (e) their rights to enjoy and have access to the arts, to knowledge, including scientific knowledge, and to their own cultural heritage, as well as that of others; and (e) their rights to participate in the interpretation, elaboration and development of cultural heritage and in the reformulation of their cultural identities. Article 27 of the Universal Declaration of Human Rights holds that “everyone has the right freely to participate in the cultural life of the community,” which today must be understood to refer to the plural form “communities” (see A/HRC/14/36, para. 10).

10. The Special Rapporteur is of the view that the relationship between individuals and groups needs further exploration, as does the terminology used to refer to the latter. She recognizes that some groups are indeed deemed rights holders under human rights law. Notably, the importance of the collective exercise of cultural rights is stressed throughout the United Nations Declaration on the Rights of Indigenous Peoples. However, one difficulty of accurately describing human groups is their diverse typology, including inter alia indigenous peoples, minorities within a population and new migrants, whose legal status, histories and relationship to States may differ.

11. It is important to query the precise meaning of terms such as “communities” and “identities” in the realm of cultural rights, which are frequently employed without definition. In international human rights instruments, “community” seems to refer to various interlocking groups, including: (a) the international community; (b) a national community; and (c) indigenous, tribal, minority, migrant, local or other communities formed in accordance with criteria such as language or ethnicity. Guidance as to which kind of category is under discussion is often implicit and contextual. Although some insight may be gained from commentaries on diverse standards, the Special Rapporteur has been unable to find a specific definition or

authoritative explanation of the term “community” in international human rights law and proposes exploring further its meanings and implications.

12. Human rights law sometimes uses the term “community” in the relational sense, as well when stressing the importance for people of enjoying their rights either individually or “in community with others”, such as their right to manifest religion or belief (art. 18 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights) or their rights as members of minorities, particularly in the fields of culture, religion and language (art. 27 of the Covenant and art. 3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities).

13. The centrality and meaning of group identities — and how to characterize them — are contested notions. What may be considered as “central” in terms of identity from the point of view of “community” leaders or outsiders may not coincide with individuals’ choices and realities. Individuals identify themselves in numerous ways and may select one identity over others in particular interactions and engagements.

14. A key challenge that the Special Rapporteur sees in the field of cultural rights, beyond international norms, is the routine presumption of the primordial nature of community identities. The term “community” is too often assumed to suggest homogeneity, exclusivity, structure and formality. Such a construction is embraced not only by some outside observers not willing to recognize plurality and dynamism within groups, but also by often self-proclaimed “representatives” of the concerned groups — or presumed groups — themselves. This contributes to creating, continuing and legitimizing situations of oppression. Cultural rights should never be used to those ends.

15. Moreover, Hazem Sagieh and Saleh Bechir have argued that some especially large and heterogeneous groups labelled as “communities” in contemporary parlance are in their view “to a certain extent, a ‘virtual reality’ that exists above all in the minds of ... politicians, ‘experts’ and journalists — and, of course, in the minds of their supposed and self-appointed ‘spokesmen’”. In their view, this threatens the idea of citizenship. The vocabulary that they criticize and the associated world view has become the basis for “community-based” policy in many contexts and spheres, the impact of which the Special Rapporteur plans to investigate during her mandate.

16. Theorists such as the historian Lotte Hughes caution us not to “use the term ‘community’ uncritically”. The Special Rapporteur intends to heed such cautions, while fully respecting those group rights that are guaranteed in international law. As her predecessor did, she recognizes that “communities are run through with divergent interests ... [and] thick seams of power that structure any given collection of people”. She hopes to problematize the term “community” along the lines of the critical conceptualization suggested by some cultural heritage experts: “one that engages with social relationships in all their messiness, taking account of action, process, power and change”. Hence, she will aim to use alternate terms like “group” and “collectivity” when possible and, where she refers to “community”, to do so carefully.

17. The problem is, however, not only one of vocabulary but also of concept. The Special Rapporteur regards the assumption of “community” as one that can have positive consequences for securing the rights of individuals to enjoy and practise their culture with others and also as one that can pose a threat to the rights of dissenting or disempowered individuals within any of these groups and to social cohesion if carelessly applied. It can lead to what Amartya Sen has deplored as “plural monoculturalism” rather than genuine pluralism, which is a key goal of cultural rights.

18. While the recognition of difference is important in the field of human rights, so is the recognition of commonality. We must not forget that one of the most important communities to which we all belong is “the human family”. As Souleymane Bachir Diagne warned, “democracy is threatened by the fragmentation that produces the retreat into micro-identities and the resurgence of ethnicism”. In a world of increasing sectarianism, we need a vocabulary that respects diversities and recognizes power differentials and historical injustices, while still promoting the idea of living together in harmony or *vivre-ensemble*. Diversity must be inscribed in equality and solidarity and vice versa. Indeed, cultural rights are vital in this regard. As Elsa Stamatopoulou has noted, “were we to convince policy makers at the national and international level to actively and visibly pursue the promotion and protection of cultural rights, we would have certainly gone a long way ... towards creating a polis where one would focus less on identities that divide us and more on the many cultures we share and enjoy”.

19. The Special Rapporteur has been particularly disturbed by recent political discourses of exclusion, sometimes directed at entire religious or other groups. One of her key commitments is to promote the enjoyment of cultural rights without any discrimination, including that based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, sexual orientation,

gender identity, age, migrant status, disability or poverty. Committed to integrate both disability and gender perspectives into her work as emphasized by the terms of her mandate, she will also give particular focus to the equal cultural rights of women. Moreover, she plans to pay close attention generally to the cultural rights of those at heightened risk of human rights violations due to group or other status.

Universality of human rights, cultural rights and cultural diversity

25. Moreover, cultural practices — or what are claimed to be cultural practices — must evolve when they constitute or lead to discrimination against women, including gender-based violence. Under article 5 (a) of the Convention on the Elimination of All Forms of Discrimination against Women, States are required to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Similarly, the cultural explanations sometimes offered in the past for systematic racial discrimination or slavery are recognized as entirely incompatible with contemporary notions of human dignity. The Universal Declaration on Cultural Diversity (art. 4), further stresses that no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope. Therefore, not all cultural practices can be considered as protected in international human rights law and cultural rights may be subjected to limitations in certain circumstances.

26. The Special Rapporteur notes in this respect that, as stressed by the Committee on Economic, Social and Cultural Rights, limitations should be a last resort only and should be in accordance with certain conditions as established under international human rights law. Such limitations must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the International Covenant on Economic, Social and Cultural Rights. Any limitations must therefore be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed. The Committee also stressed the need to take into consideration existing international human rights standards on limitations that can or cannot be legitimately imposed on rights that are intrinsically linked to the right to take part in cultural life, such as the rights to privacy, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and to freedom of association (see the Committee's general comment No. 21, para. 16).

27. It is perhaps useful at this juncture to recall what cultural rights are not. They are not tantamount to cultural relativism. They are not an excuse for violations of other human rights. They do not justify discrimination or violence. They are not a licence to impose identities or practices on others or to exclude them from either in violation of international law. They are firmly embedded in the universal human rights framework. Hence, the implementation of human rights must take into consideration respect for cultural rights, even as cultural rights themselves must take into consideration respect for other universal human rights norms. This is the holistic vision of the Special Rapporteur, carrying on from that of her predecessor. She recalls article 5 (1) common to both of the covenants on human rights, which is all too often overlooked: “nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein”

28. While observing that reference to culture, religion and tradition has often been wrongly used to justify discrimination, Ms. Shaheed proposed a paradigm shift: from viewing culture as an obstacle to women's rights to emphasizing the need to ensure women's equal enjoyment of cultural rights. It is important to ensure the right of all women to access, participate in and contribute to all aspects of cultural life, including in identifying and interpreting cultural heritage and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether, and to do so without fear of punitive action.

29. The Special Rapporteur believes that this innovative approach to the question of women's rights is valid for many other groups that are the victims of human rights violations justified in the name of tradition, religion, or culture. It paves the way for future similar work to be done concerning other subordinated groups, be it persons with disabilities, migrants, indigenous peoples, lesbian, gay, bisexual, transgender and intersex persons or people living in extreme poverty, for example.

Methodological commitments and challenges

30. The Special Rapporteur is committed to cooperation and dialogue with States and other stakeholders, including inter alia national human rights institutions, non-governmental organizations, intellectuals, artists, scientists and professionals in relevant fields, such as cultural heritage professionals, teachers and educators and representatives of relevant professional associations and the private sector.

31. The Special Rapporteur recognizes the need to centre the issue of State responsibility to respect, protect and fulfil cultural rights, but also to find innovative ways to speak directly about the impact on cultural rights of a wide range of non-State actors, and not only through the lens of State due diligence.

32. As mandated by the Council, the Special Rapporteur plans to consult with other relevant human rights bodies and mechanisms, in particular UNESCO, the treaty bodies, other special procedures and the Permanent Forum on Indigenous Issues. She would also like to interact with relevant regional mechanisms, such as the Unit on Economic, Social and Cultural Rights of the Inter-American Commission on Human Rights and the Working Group on Economic, Social and Cultural Rights of the African Commission on Human and Peoples' Rights.

Priorities for the mandate holder: 2015-2018

33. The present section identifies some urgent concerns of high priority based on the Special Rapporteur's initial consideration. However, it is also critical to leave room for flexibility to respond to emerging challenges and opportunities.

34. One priority theme that the Special Rapporteur will address in her first report to the General Assembly is the intentional destruction of cultural heritage, as exemplified by the demolitions of the Baalshamin Temple and the Temple of Bel in Palmyra in 2015. That issue is introduced below. The Special Rapporteur hopes to also take up the question of the destruction of cultural heritage in the name of "development" in the future, taking into consideration the particular impact on indigenous peoples.

Importance of cultural heritage from a human rights perspective

47. Cultural heritage is significant in the present, both as a message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and groups and their identity and development processes (see A/HRC/17/38 and Corr.1, para. 77). Cultural heritage is to be understood as the resources enabling the cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations (*ibid.*, paras. 4-5).

48. While in the Special Rapporteur's view, specific aspects of heritage may have particular resonance for and connections to particular human groups (see A/HRC/17/38 and Corr.1, para. 62), all of humanity has a link to such objects, which represent the "cultural heritage of all [hu]mankind," in the words of the preamble to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (1954 Hague Convention). For example, in 2012, Ms. Shaheed noted that "the destruction of tombs of ancient Muslim saints in Timbuktu, a common heritage of humanity, is a loss for us all, but for the local population it also means the denial of their identity, their beliefs, their history and their dignity".¹⁷ As Judge Cançado Trindade explained in his opinion related to the 2011 order of the International Court of Justice regarding the case of the Temple of Preah Vihear, "the ultimate titulaires of the right to the safeguard and preservation of their cultural and spiritual heritage are the collectivities of human beings concerned, or else humankind as a whole".¹⁸ To quote Gita Sahgal, "heritage is humanity".

49. Cultural heritage includes not only tangible heritage composed of sites, structures and remains of archaeological, historical, religious, cultural or aesthetic value, but also intangible heritage made up of traditions, customs and practices, aesthetic and spiritual beliefs, vernacular or other languages, artistic expressions and folklore. Both of these categories should be understood in broad and holistic terms. For example, tangible heritage includes not only buildings and ruins, but also scientific collections, archives, manuscripts and libraries, which are critical in preserving all aspects of cultural life, such as education, as well as artistic and scientific knowledge and freedom.

50. In her work, the first mandate holder established how the right of access to and enjoyment of cultural heritage forms part of international human rights law, finding its legal basis, in particular, in the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage.

51. The right of access to and enjoyment of cultural heritage includes the right of individuals and collectivities to inter alia know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation and safeguard policies and programmes (see A/HRC/17/38 and Corr.1, para. 79). Cultural heritage is a fundamental resource for other human rights also, in particular the rights to freedom of opinion and expression, freedom of thought, conscience and religion, as well as the economic rights of the many people who earn a living through tourism related to such heritage, the right to education and the right to development.

Preliminary recommendations

90. The Special Rapporteur calls upon States to:

- (a) Respect, protect and fulfil cultural rights in the context of implementing the full range of human rights and ensure the exercise of these rights is firmly embedded in the universal human rights framework;
- (b) Ensure the right of all individuals to practise their culture, including with others. This includes ensuring non-discrimination in the enjoyment of cultural rights across all categories protected by international human rights law and upholding the rights of dissenting or disempowered individuals within any groups;
- (c) Ensure the right of all persons, including women, to access, participate in and contribute to all aspects of cultural life, including in identifying and interpreting cultural heritage, and deciding which cultural traditions, values or practices are to be kept intact, modified or discarded altogether and to do so without fear of punitive actions. States should similarly ensure this right with respect to other groups, including persons with disabilities, migrants, indigenous peoples, lesbian, gay, bisexual, transgender and intersex persons and persons living in extreme poverty.

4. Report of the Special Rapporteur in the field of cultural rights, Intentional destruction of cultural heritage, A/71/317, 9 August 2016

Introduction

...

5. Recent highly visible and openly declared acts of intentional destruction of cultural heritage, spread across multiple regions of the world, require urgent response. In that regard, the Special Rapporteur was reminded by representatives of indigenous peoples that, unfortunately, many other acts of cultural heritage destruction go unnoticed.³ Given that destruction of cultural heritage is most often irreversible, even in this digital age, we must come together to prevent and stop, as a matter of priority, such deliberate attacks on cultural rights and the culture of humanity.

The human rights meaning of “cultural heritage”

6. Cultural heritage is significant in the present, both as a message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes (see A/HRC/17/38 and Corr.1, para. 77). Cultural heritage is to be understood as encompassing the resources enabling the cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations (*ibid.*, paras. 4-5). It is critical to emphasize the connections between culture more broadly and cultural heritage, and to recognize cultural heritage as living and in an organic relationship with human beings. This encourages its preservation and discourages its destruction. The Special Rapporteur notes the holistic approach to examining the interconnections between tangible and intangible cultural heritage taken by many experts. Attacks on one form of heritage are often accompanied by assaults on the other. She intends to illustrate those interconnections in this report, while noting the particular logistical aspects of the destruction and preservation of tangible cultural heritage due to its physical manifestations and the particular legal standards that pertain thereto.

8. While specific aspects of heritage may have particular resonance for and connections to particular human groups (see A/HRC/17/38 and Corr.1, para. 62), damage to any cultural property damages the cultural heritage of all humankind, since each people makes its contribution to the culture of the world. For example, “the destruction of tombs of ancient Muslim saints in Timbuktu, a common heritage of humanity, is a loss for

us all, but for the local population it also means the denial of their identity, their beliefs, their history and their dignity”. As Judge Cançado Trindade explained in his opinion related to the 2011 order of the International Court of Justice regarding the case of the Temple of Preah Vihear, “the ultimate titulaires of the right to the safeguard and preservation of their cultural and spiritual heritage are the collectivities of human beings concerned, or else humankind as a whole”. [*Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Separate Opinion of Judge Cançado Trindade, I.C.J. Reports 2013, p. 606, para. 114].

The international legal framework

14. The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, deriving its legal basis, in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous peoples to self-determination and to maintain, control, protect and develop cultural heritage. Other human rights must also be taken into consideration, in particular the rights to freedom of expression, freedom of thought, conscience and religion, the right to education, the economic rights of the many people who earn a living through tourism related to such heritage and the right to development. The right of access to and enjoyment of cultural heritage includes the right of individuals and collectivities to, inter alia, know, understand, enter, visit, make use of, maintain, exchange elements of and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation and safeguard policies and programmes (see A/HRC/17/38 and Corr.1, paras. 78-79).

29. The concept of cultural genocide should be given serious consideration, “perhaps not to explicitly incorporate it as a form of genocide, but ... to modify the existing barriers to effective deterrence to the destruction of cultural heritage”. It bears remembering that the Genocide Convention incorporates as genocide acts “committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group” including “(d)eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”. The idea is not to “set ‘cultural genocide’ on a par with systematic mass murder” or “dilute (its) unique nature ... as ‘the gravest and greatest of crimes against humanity’”, but rather to recognize “that the task of destroying a group” also aims at destroying “identity as expressed through language, customs, art and ... architecture”. Within a broader context of genocide, as Patty Gerstenblith has written, destruction of cultural heritage becomes an act of genocide, as well as evidence of genocidal intent. This is especially the case, as has been noted in regard to Nazi practices and those of Da’esh, when destruction and related looting of cultural heritage is carried out to fund the further commission of atrocities rising to the level of genocide. A number of submissions to the Special Rapporteur specifically referred to the term cultural genocide.

Intentional destruction of cultural heritage: cultural warfare, “cultural cleansing” and other violations of cultural rights

32. The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage defines “intentional destruction” as “an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience”. The qualification of intentional destruction may also be applied in cases of wilful neglect of cultural heritage either during armed conflicts or in times of peace, including with the intent of letting others destroy the cultural heritage in question, for example, through looting. The Special Rapporteur underscores the importance of also addressing the widespread destruction of cultural heritage engendered by development and modernization, a subject that cannot be addressed in this report owing to space constraints. She will continue to respond to this issue in future, including through communications.

A human rights approach to the intentional destruction of cultural heritage

The importance of a human rights approach

52. The intentional destruction of cultural heritage, and the responses to it, have many human rights-related implications. Except in a few important initiatives,³⁸ and as highlighted by the joint statement made at

the thirty-first session of the Human Rights Council and new strategies deployed at UNESCO, the destruction of cultural heritage is generally still not addressed by the international community as a question of human rights.³⁹ This situation must change. Most often, intentional destruction of cultural heritage constitutes a violation of human rights and may be accompanied by other grave human rights violations. It is crucial that human rights mechanisms address this issue as a matter of priority. The Special Rapporteur sketches the contours of a human rights approach below.

53. The human rights approach to cultural heritage obliges one to go beyond preserving and safeguarding an object or a manifestation in itself to take into account the rights of individuals and groups in relation to such object or manifestation and to connect cultural heritage with its source of production (see A/HRC/17/38 and Corr.1, para. 2). It is impossible to separate a people's cultural heritage from the people itself and that people's rights. The importance of having access to one's own cultural heritage and to that of others has been emphasized by the Committee on Economic, Social and Cultural Rights in its general comment No. 21. A human rights approach must also emphasize the many living connections between tangible and intangible heritage, and focus on the ways in which attacks on each are interrelated.

58. Adopting a human rights approach entails consulting the people who have particular connections with heritage, including for the purpose of understanding and incorporating the multiplicity of interpretations of that heritage, and determining whether (or not) they wish to rebuild, reconstruct and re-establish such a heritage and if so, how. Such consultations must include marginalized groups; further, women must be fully involved. Consultations must aim at obtaining free, prior and informed consent, in particular where the rights of indigenous peoples are at stake.

Conclusions and recommendations

...

78. To effectively prevent and stop intentional destruction of cultural heritage as a violation of human rights, the Special Rapporteur recommends that States: ... (p) Tackle, in accordance with international standards, extremist and fundamentalist ideologies, sectarianism and discriminatory attitudes towards, inter alia, those with different views, minorities, indigenous peoples and women, which often lead to cultural cleansing in the form of cultural heritage destruction, while ensuring that critical strategies in this regard include humanist education, respect for human rights and promotion of tolerance and pluralism. ...

Intentional destruction as a form of cultural warfare and cultural cleansing

...

43. The Special Rapporteur recalls the grievous history of destruction of diverse forms of indigenous cultural heritage in many parts of the world as a systematic part of, inter alia, colonialism or nationalist policies in post-colonial States. She agrees with the determination in the final report of the Truth and Reconciliation Commission of Canada that such policies can amount to cultural genocide. That history has shaped international law itself, as the notion of cultural genocide was excluded from the Genocide Convention owing to opposition from a number of settler colonial and Western States vulnerable to the accusation that they had historically engaged in such practices vis-à-vis indigenous peoples. The totality of these policies have had long-lasting effects on the human rights of many indigenous peoples in diverse geographical contexts and have impoverished the heritage of humanity.

D. Special Rapporteur on the Right to Food

1. Report of the Special Rapporteur on the right to food on her mission to Philippines, A/HRC/31/51/Add.1, 29 December 2015

General overview of food security and nutrition

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7. While the country has abundant natural resources, environmental assets often remain unavailable to those living in poverty as a result of exclusion, insecure land tenure, lack of access to new technologies or the degrading of existing resources. Indigenous people, fisher-folk, women and the informal sector are impacted the most by social inequities. Indigenous people make up about 15 per cent of the population and occupy an estimated 17 per cent of the total land area. The struggle to secure land or ancestral domains is a leading cause of instability in areas inhabited by indigenous communities.⁶ In the 2014 Human Development Report, the

Philippines scored 0.406 in the Gender Inequality Index, reflecting inequalities in labour market participation, political representation and access to health services.

Large-scale development and mining projects

35. During her visit, the Special Rapporteur met with representatives from indigenous communities affected by large-scale development projects and the expansion of commercial plantations. The loss of ancestral land due to displacement by development projects and extractive industries, including mining and dams, as well as environmental degradation, has undermined the capacity of the indigenous peoples to survive since they are very dependent on their land and resources. Damage to the traditional environment, along with involuntary displacement, threats to health and disruption of the right to food and shelter, has a particular impact on women and children. The Special Rapporteur heard concerns about the relocation and resettlement of communities for development projects, and the need to find ways to improve dialogue between the Government and affected communities. Reportedly, it is envisaged that an additional 26 coal-fired power plants will be constructed by 2020, as a result of 71 coal-operating contracts awarded by the Government to various contractors between 2007 and 2013.

36. The Special Rapporteur recommends that all levels of Government implement human rights impact assessments as a means of building trust between the authorities in charge of development projects and the affected communities. It is imperative that such a process be conducted in a transparent manner, with the provision of adequate information to affected communities, that it include the full consideration of all alternatives and that it be undertaken prior to the launch of any project, rather than as a means to validate a project that has already commenced.

37. In this regard, the Special Rapporteur stresses the importance of the principle of free, prior and informed consent to any change to the lands and territories of indigenous peoples, as also provided for in the United Nations Declaration on the Rights of Indigenous Peoples. As the Declaration underlines, in its article 32(2), States 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. Similarly, consultations should allow for discussion about alternatives and serve to ensure that, consistent with the right to development, development projects will be aimed “at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Concluding observations and recommendations

...

65. The Special Rapporteur recommends that the Government: ... (h) Ensure that adequate basic social services, including food and drinking water, are made available to all indigenous peoples in the country to the maximum extent possible, as also recommended by the previous Special Rapporteur on the rights of indigenous peoples. ...

2. Interim report of the Special Rapporteur on the right to food, Impact of climate change on the right to food, A/70/287, 5 August 2015

Summary

... The report outlines the adverse impact of climate change on the right to food. It places particular emphasis on the geographic and socioeconomic vulnerabilities of those most affected and highlights the negative impact that current agricultural practices and food systems are having on climate change. The report concludes by stressing that in order to eradicate hunger and ensure the full realization of the right to food, more must be done to develop relevant, effective mitigation and adaptation policies and a human rights approach must be adopted as a means of achieving climate justice.

Effects on vulnerable populations and their livelihoods

...

32. While more affluent countries are better able to cope with the effects of climate change, nations with a higher proportion of people living in poverty may not have access to necessary infrastructure and resources

and their populations have fewer opportunities to diversify their livelihoods and reduce their dependence on agriculture. Within this group of vulnerable populations, small-scale farmers and indigenous peoples, particularly women who depend on climate-sensitive natural systems for their food and livelihoods, are expected to be particularly susceptible to the effects of climate change on their food security.

Indigenous peoples

38. Indigenous peoples are already among the world's most vulnerable and marginalized communities in many parts of the world owing to discriminatory policies. They are highly dependent on natural resources, with subsistence agriculture, hunting and gathering forming a core part of their livelihoods, and they often have very limited additional income from other activities. Additionally, they may face situations where the land tenure and access rights of their communities are not legally recognized.

39. Indigenous peoples often live in physically isolated and harsh environments and rely on fragile ecosystems that are particularly susceptible to climate change and natural disasters. Such ecosystems include tropical rainforests, arctic regions, deserts, low-lying and coastal areas, small islands, open grasslands and mountainous areas. Damage to these ecosystems threatens indigenous peoples' resource bases and traditional ways of securing food. As a result of a decline in biodiversity, traditional subsistence food is being lost in these regions, along with access to medicinal plants traditionally used to ward off pests and disease.

40. The Intergovernmental Panel on Climate Change has recognized that climate change in polar regions will affect the informal, subsistence-based economy of indigenous peoples, with changing sea ice conditions likely to reduce their ability to hunt the marine mammals that are a significant source of both food and livelihood.

Adverse impact of mitigation policies on the right to food

60. Climate change mitigation refers to efforts to reduce or prevent greenhouse gases. Mitigation measures may be problematic when they rely on resources that are currently devoted to food production and have a negative impact on the right to food. One of the most significant examples of this is the production of biofuel as a method of reducing greenhouse gas emissions.

Agriculture for biofuel production

61. Biofuels are biomass-derived fuels designed to replace petroleum. As they depend on soil and water, these resources may be diverted from agricultural purposes and therefore diminish impoverished communities' ability to grow the food they require. In less than a decade biofuel production has increased fivefold and has contributed to high volatility in food prices as well as increases in prices of staple foods.⁵⁴ This is of particular concern for low-income countries reliant on international food markets. In recent years, there has been an alarming increase in the number of large-scale land deals for the purpose of producing biofuels. Forced relocations as a result of large-scale land acquisitions and long-term leases pose a particular threat to smallholder farmers and indigenous populations, especially when land rights and tenure are weak. Evidence also indicates that efficient biofuel production depends on capital-intensive farming, which favours large agricultural producers who are better connected to the markets, leaving small-scale farmers in poor countries unable to compete effectively.

Water diversion for climate-friendly energy production

64. Other examples of reallocation of resources for the benefit of clean energy at the expense of food security are cleaning coal and constructing dams for the generation of hydroelectric power. Cleaning coal requires large amounts of water that could otherwise be used for irrigating arable land, while the construction of dams for hydroelectricity may affect water supply for agricultural activities downstream and also flood land that could otherwise be used for food production. Indeed, any mitigation and adaptation policies that affect water resources must carefully consider competing water uses and the various implications for food security. Measures that mitigate one type of adverse impact could exacerbate another.

65. Hydropower is presented as a climate-friendly option and a way to increase water storage infrastructure. However, hydropower can also create conflicts between water for energy and water for agriculture. For example, indigenous communities have raised serious objections to the hydroelectric plant in the Alta Verapaz region in Guatemala owing to violations of environmental and human rights norms. The affected people allege that they were never consulted, as required by Guatemalan law and the rules of the clean development mechanism registration process. Another example is the Barro Blanco Hydroelectric Power Plant Project in Panama. It has significantly affected the Ngabe Bugle people who live alongside the

Tabasara River. Construction commenced despite evidence that it would impact cultural and religious sites and access to medicinal plants highly valued by the Ngabe people.

Emission reduction strategies

66. Climate change mitigation strategies that aim to reduce emissions from land use may also have a negative impact on food production methods. The clean development mechanism was established to encourage industrialized States to fund carbon reduction projects in developing countries. It has generated many projects and in 2012 it was estimated to have generated approximately \$215 billion for developing countries. Yet the mechanism has been criticized for failing to ensure human rights protections and to prevent the approval of projects that have negative human rights impacts, including on food security, owing to a lack of a rigorous impact assessment procedure for prospective projects. Activities have been proposed that would change land use patterns to reduce carbon emissions or promote carbon capture and storage; it is claimed that such projects have led to the displacement of small-scale farmers and indigenous peoples and that farmers may not be directly compensated for the carbon credits derived from their activities.

67. The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation encourages developed countries and their companies to make investments in forest preservation in developing countries and provides incentives for developing countries to sustainably manage their forests and enhance forest carbon stocks. However, concerns have been raised about the validity of this process, as communities that live in and are dependent on forests for their livelihoods and subsistence have been negatively affected by some of the projects, especially those initiated without the consent of the population concerned.

68. Recent evidence from the REDD-plus mechanism shows that smallholder coffee farmers and forest communities can make a significant contribution to the mitigation of climate change. However, existing mechanisms have failed to offer effective avenues for benefiting these actors and in some cases even threaten to undermine their livelihoods. The principal method for compensating these actors would be a system of carbon credits; however, such a system is unlikely to be suitable to support the mitigation potential of traditional agriculture given the high transaction costs and low returns. In some cases, participating in the REDD-plus process has backfired terribly. For example, according to reports received, the indigenous Dayak community, which participated in the Kalimantan Forests and Climate Partnership through the REDD-plus process, lost access to the forest and its resources and questions have been raised as to whether the project adhered to the requirement of prior informed consent. Similarly, a massive palm oil farm in Cameroon has inflamed tensions between locals, investors and the State as a result of environmental destruction and resource conflicts as well as uncertainties about who will ultimately be the beneficiary of the carbon credits.

69. While some indigenous and small farmer groups support REDD-plus solutions, others reject these and all other market solutions and urge global organizations to recognize and support the sustainable agriculture of family farmers and indigenous people as a way of maintaining global biodiversity and mitigating greenhouse gas emissions. In fact, some observers contend that, if well supported and scaled up, projects involving peasants and indigenous peoples could reduce current global emissions by 75 per cent by increasing biodiversity, recuperating soil organic matter, replacing industrial meat production with small-scale diversified food production, expanding local markets, halting deforestation and practising integrated forest management.

Agroecology: an alternative to industrial agriculture

73. It is important that adaptation policies focus on ensuring the right to food for both present and future generations through sustainable agricultural practices. This implies moving away from industrialized agricultural practices. Agroecology is an ecological approach that integrates agricultural development with relevant ecosystems. It focuses on maintaining productive agriculture that sustains yields and optimizes the use of local resources while minimizing the negative environmental and socioeconomic impacts of modern technologies. Recycling nutrients and energy rather than augmenting nutrients with external inputs, integrating crops and livestock and improving interactions and productivity throughout the agricultural system rather than focusing on individual species are also important components of agroecology. It is a system that foregoes the use of synthetic inputs, such as synthetic fertilizers and pesticides, veterinary drugs, genetically modified seeds and breeds, preservatives, additives and irradiation.

Proven success of agroecology

76. Agroecology is particularly beneficial and well suited to the needs of poor rural communities, as it is relatively labour intensive, most effectively practised on small plots of land and relies on locally produced inputs, thereby reducing dependence on access to external inputs and on subsidies. It is also of particular benefit to vulnerable groups such as smallholder farmers, women and indigenous peoples, owing to their reliance on local inputs and practices. The shift being advocated builds on the skills and experience of the world's small farmers. Farmers living in harsh environments in Africa, Asia and Latin America have developed traditional knowledge and skills that facilitate resilience and sustainability. One of the virtues of agroecology is that it combines local knowledge with innovative technology.

Conclusions and recommendations

...

89. In this context, the Special Rapporteur recommends that: ...

(i) The pivotal roles in food production of smallholder farmers, women and indigenous and local communities be recognized and protected and their acute vulnerability to climate change acknowledged;

(j) Knowledge and information as well as technology transfer and appropriate training in relation to changing climatic conditions be prioritized and available to smallholder farmers, women and indigenous communities.

...

E. Special Rapporteur on the rights to freedom of peaceful assembly and of association

1. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/29/25, 28 April 2015 (Rights to freedom of peaceful assembly and of association in the context of natural resource exploitation)

1. The present report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association is submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5. It covers activities carried out between 1 March 2014 and 28 February 2015 and addresses legislation and practices in the context of natural resource exploitation that violate the rights to freedom of peaceful assembly and of association. At the end of the report, the Special Rapporteur addresses recommendations to various stakeholders with a view to better promoting and protecting the rights under his mandate.

Rights to freedom of peaceful assembly and of association in the context of natural resource exploitation

A. Background

6. The global economy relies heavily on the availability and exploitation of natural resources. With the industrialization of emerging economies and the ever-increasing needs of older market-economy countries, the demand for natural resources has increased dramatically. With that demand has come a plethora of concerns relating to the sustainability of economic growth and its impact on the climate, the environment and, more generally, on human rights.

7. Increased demand for resources has resulted in the opening up of more areas for exploration and exploitation, especially in populated areas, leading to conflict between competing interests. By some accounts, between 93 and 99 per cent of 73,000 mining, logging, agriculture, oil and gas concessions in eight tropical forested countries were inhabited. The same sources indicate that, for example, up to 40 per cent of the territory of Peru has been handed over by the Government to private for-profit entities to exploit natural resources and that in Liberia and in Indonesia 35 and 30 per cent, respectively, of the land is in the hands of the private sector for exploitation operations. The existence of widespread social conflict associated with natural resource exploitation is therefore not surprising. For example, in Peru, the Ombudsman's Office documented 211 social conflicts in the month of February 2015, 66 per cent of which were related to natural resource exploitation. In Colombia, the Ombudsman's Office participated in 218 dialogues between mining companies, protestors and the Government.

8. Moreover, many resource-rich countries suffer from low levels of development, particularly human development, endemic corruption and economic and political instability — the “resource curse”. This, despite a widely shared understanding that natural resources are managed by Governments on behalf of their citizens;

an understanding which many countries enshrine in law. The Constitution of Burkina Faso, for example, provides that citizens may petition individually or collectively against acts that harm the environment or the interests of communities. A large proportion of the world's poor lives in resource-rich countries but does not share in the benefits of those resources because of inadequate governance. More than 80 per cent of the 58 resource-rich countries in the Resource Governance Index fail to meet satisfactory governance standards.

9. Citizen engagement in the natural resources sector is notoriously difficult, with some sectors, such as oil, gas and mining, presenting heightened risks of human rights abuses because they are especially lucrative. The State plays a significant role in regulating access to exploitation opportunities. Secrecy cloaks decision-making processes and outcomes; there is a lack of mechanisms through which interested parties may express their concerns; discussions are often highly technical; and, above all, the financial stakes are often massive. This opaque and lucrative environment presents ideal conditions for corruption to thrive, a challenge with which many resource-rich countries have to contend.

10. The Special Rapporteur believes that the rights to freedom of peaceful assembly and of association play a key role in opening up spaces and opportunities for genuine and effective engagement by civil society in decision-making processes across the spectrum of natural resource exploitation activities. These rights help foster increased transparency and accountability in the exploitation of resources and are basic prerequisites for the ultimate goal of securing substantive rights. Peaceful assembly and association rights can facilitate constructive dialogue, which is necessary given the shared interests and sometimes competing priorities that are intrinsic to exploiting natural resources.

11. When the rights to freedom of peaceful assembly and of association are restricted contrary to international human rights law standards, questions automatically arise as to how genuine consultation processes or decisions are and how valid is the expression of free, prior and informed consent of affected parties. While restricting these rights in order to streamline resource exploitation may seem tempting to States and corporations in the short term, it can be costly in the long run and cause irrevocable damage. As the Special Rapporteur has previously noted (see A/HRC/26/29, para. 26), the failure to provide any outlet for excluded groups to air their grievances can be counterproductive and carry severe consequences. He believes that social conflicts experienced in the context of natural resource exploitation are a stark demonstration of the truth of this statement.

12. The overall political environment in a State can also have a profound impact on the exercise of peaceful assembly and association rights. States that generally do not respect or facilitate those rights are unlikely to be any more accommodating in the context of natural resource exploitation. In fact, the Special Rapporteur believes that the space to exercise peaceful assembly and association rights is often more limited in relation to natural resource exploitation because of the significant impact this sector has on the economies of resource-rich countries, the bottom lines of the enterprises involved and the potential for corruption. Having citizen engagement is, therefore, imperative throughout the decision chain right from the initial stages of the process when exploration potential is determined, through to exploitation activities and investment of revenue. The rights to freedom of peaceful assembly and of association provide the necessary avenues for this engagement.

B. Key actors in the natural resource exploitation field

19. In many cases, the most egregious violations of the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation are committed against groups and individuals inhabiting regions far from centres of power, who are often at risk or already marginalized within society. They may lack access to information or the means of effectively advocating for their concerns, or they may be confronted with authorities that are unable or unwilling to address their grievances. The ability to freely associate and to peacefully assemble are indispensable in this regard. Some of the categories of persons that require special attention in the context of the rights to freedom of peaceful assembly and of association and of natural resource exploitation are women (including women human rights defenders), Afro-descendants, indigenous peoples, peasant farmers, fisher folk and forest dwellers.

E. Challenges to the right to freedom of peaceful assembly

44. Negative perceptions of the exercise of the right to freedom of peaceful assembly are also manifested through the increasing harassment, intimidation and criminalization of activities by environmental, land rights and other activists and groups that advocate for the effective consultation and participation of affected communities in decisions affecting them. They are charged with crimes that often carry severe sentences, such

as sabotage and terrorism. In Chile, the Mapuche indigenous peoples, who have long protested over the loss of their lands and territory, were charged (though eventually acquitted) under the country's anti-terrorism law; legitimate protest had thus been equated with criminal offences (see A/HRC/21/47/Add.3, case CHL 1/2011, and A/HRC/19/44, case CHL 1/2011). In the Philippines, penalties have been imposed under the Penal Code for "grave coercion", an offence defined as using violence to prevent another person from doing something that is not unlawful or compelling the person to do something against their will. The Special Rapporteur was informed that peaceful protestors who obstruct mining company employees and equipment are often charged with grave coercion. Civil society organizations in Canada have expressed concern about the definition of "activities that undermine the security of Canada" contained in the Security of Canada Information Sharing Act proposed in Bill C-51 (Anti-Terrorism Act) and the potential for the authorities to interfere with legitimate peaceful protests that they define as "undermining" security. The Australian State of Tasmania in November 2014 enacted the Workplaces (Protection from Protestors) Act 2014, which makes it a criminal offence to participate in a protest that may obstruct or prevent a business activity or access to a business premises (see also A/HRC/28/85, case AUS 3/2014).

45. Violations are perpetrated in many resource-rich countries where authorities and others rely on criminalization to intimidate communities into giving up their land for industry. In Brazil, confrontations between non-indigenous farmers and indigenous groups have led to criminal prosecution of the latter for occupying lands as a form of protests (see A/HRC/12/34/Add.2, para. 49). The Special Rapporteur on the rights of indigenous peoples has reported that the Government of Argentina had responded to protests from indigenous groups opposing evictions or other projects by prosecuting those involved (see A/HRC/21/47/Add.2, paras. 51, 56 and 57). In Ecuador, the Committee on Economic, Social and Cultural Rights has expressed concern about the criminal investigations and convictions of indigenous leaders protesting against legislative proposals concerning water management and development projects (see E/C.12/ECU/CO/3, para. 10).

47. The Special Rapporteur has received numerous reports concerning violations of the rights of human rights defenders, activists and community members who exercised their rights to freedom of peaceful assembly in the context of natural resource exploitation. Civil society activists in countries such as Colombia (A/HRC/28/85, case COL 7/2014), the Philippines (A/HRC/27/72, case PHL 2/2014) and Thailand (A/HRC/24/21, case THA 3/2013), to name a few, have paid with their lives for leading advocacy campaigns against natural resource exploitation operations. According to the Special Rapporteur on the situation of human rights defenders, human rights defenders working on extractive and the construction and development projects in the Americas were the subject of most communications to her and faced the highest risk of death as a result of their human rights activities (see A/HRC/19/55, para. 71). In South Africa, over 30 miners at the Marikana Mine were shot and killed by police during a strike, although the workers' action was not entirely peaceful (see A/HRC/22/67 and Corrs.1 and 2, ZAF cases 3/2012). In Guatemala, where agriculture provides the main livelihood for the majority of the population, competition between landowners, farmers, indigenous communities and their associations and large-scale commercial agricultural and mining projects has resulted in the criminalization of social movements and their claims (see A/HRC/26/29/Add.1, paras. 193–199, and A/HRC/10/12, para. 34–35).

49. Unfortunately, despite their potential for mitigating the underlying reasons for many peaceful protests in the context of natural resource exploitation, consultation mechanisms are often overlooked or employed inadequately. International human rights law and standards mandate that free, prior and informed consent is a prerequisite for the exploitation of natural resources in areas owned by indigenous peoples. As recommended in the Guiding Principles on Business and Human Rights, due diligence, including conducted through human rights impact assessments before the start of the project, is key for ensuring that exploitation activities do not violate the rights of affected communities.

50. In this regard, the Special Rapporteur welcomes the launch by Colombia of new public policy guidelines on human rights and business in July 2014. The guidelines are being promoted as a way to guarantee that business operations are conducted in accordance with human rights. He similarly welcomes information from the Government of Costa Rica that indicates that the country's overarching legal norms regulating commercial agreements guarantee the rights to freedom of peaceful assembly and association. Chile has recently assembled an interministerial commission responsible for reviewing and aligning regulations governing the General Consultation Process and the Environmental Impact Evaluation System. This action was a direct consequence of criticism levelled at existing indigenous participation mechanisms by the National Institute of Human Rights and the Human Rights Centre of Diego Portales University.

F. Challenges to the right to freedom of association

57. Associations involved in environmental protection, or community mobilization against natural resource exploitation activities, or generally any activities that are perceived as a threat to natural resource exploitation operations, face heightened risks of restrictions of their rights. Associations are a vehicle for people to join their voices together on an issue of common concern, thus amplifying their grievances. Associations also gather together or facilitate access to resources, such as funding, skills, knowledge and solidarity. This aggregation brings increased power and, when this power is deployed to oppose natural resource exploitation activities, it can be threatening to those with financial stakes in the projects. It is thus not surprising that States and corporations may use a variety of measures to interfere with the right to freedom of association.

58. Restrictive laws, for example, are used to target organizations working on issues that the authorities find sensitive. Emblematic of this approach is the use by Ecuador of Executive Decree No. 16 to close the Pachamama Foundation, which had worked peacefully and legitimately for 18 years to defend human rights, especially the rights of indigenous peoples in the Amazon (A/HRC/26/21 and ECU 4/2013).

2. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to Chile, A/HRC/32/36/Add.1, 16 June 2016

3. During his visit, the Special Rapporteur travelled to Santiago, Valparaíso, Temuco and Copiapo. He had fruitful exchanges with the President of Chile, the Minister of Justice, the Minister of Defence, the Minister Secretary-General of the Presidency, representatives of the Ministries of Foreign Affairs, Interior and Public Security, Education, and Labour and Social Affairs, the Public Prosecutor, the General Director of Carabineros de Chile (the unified national police), the General Director of the Investigation Police of Chile, the President of the Supreme Court, the Vice-President and representatives of the Senate, representatives of the Chamber of Deputies, and the Presidents and representatives of the Commission for Constitution, Legislation and Justice, and the Commission for Human Rights and Indigenous peoples, from the Senate and Chamber of Deputies. He had similar exchanges with local authorities in Temuco and Copiapo.

Situation of indigenous peoples

55. The Special Rapporteur travelled to Temuco, Araucanía region, to look into the particular challenges faced by the indigenous Mapuche community when exercising their right to freedom of peaceful assembly. He met with Mapuche representatives from different communities, farmers, and with the local authorities. Assembly rights are mainly exercised by the Mapuche in the context of land disputes with farmers. These demonstrations take place in a very tense and volatile environment, as the issue of indigenous land rights is a complex, emotional topic that stretches back more than 200 years.

56. For the general human rights situation of indigenous peoples in Chile, the Special Rapporteur refers to the reports of the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the promotion and protection of human rights while countering terrorism and fundamental freedoms on their visits to Chile in 2009 and 2013 respectively.

57. The Special Rapporteur was informed by the authorities of Araucanía that peaceful cohabitation with the Mapuche is a priority for the region, and that the Government values diversity and fosters it. The Ministry of Justice reportedly has six specialized units which all have special sub-units dealing with Mapuche issues. The Ministry also has inter-cultural facilitators and Mapuche staff interacting with the Mapuche community. According to the Head of the police in Temuco, since taking up his functions in December 2013, the city had not witnessed any incident in relation to Mapuche protests. The police have specific protocols to ensure that they respect Mapuche culture and do not breach community rights. Mapuche detainees are allegedly allowed to practice their culture.

58. However, the Special Rapporteur received several reports that the police have resorted over the years to excessive use of force in the context of protests by indigenous peoples who have called for the respect of their rights, especially land rights.

59. The majority of protests by Mapuche take place in rural areas, on the lands they consider as theirs ancestrally and which are today owned by farmers. Many of the protests are “occupation” style demonstrations. They are typically peaceful, though there have been instances of violence against farmers’

properties. In such cases, police special forces are called to disperse the occupation, often using excessive force and apprehending the demonstrators.

60. The most emblematic cases of excessive use of force by the police against Mapuche have occurred in this context of land occupation. In 2002, Mr. Alex Lemún, a 17-year old Mapuche, was shot dead by the police in Ercilla. The perpetrator received a one-day suspension as disciplinary measure, and was acquitted by a military court. In 2008, Mr. Matias Catrileo, a 22-year old Mapuche student from the Requiem Pillan community, was killed by a police officer during a protest on the Santa Margarita farm in Vilcún. The internal police investigation cleared the officer. A military court, nevertheless, sentenced him to three years and one day on probation. The police maintained the police officer in his functions until January 2013 where he was eventually dismissed after repeated criticisms from civil society. In 2009, Mr. Jaime Mendoza Collio, a 24-year old Mapuche, was shot in the back by a police officer while occupying the farm San Sebastian. An internal investigation similarly cleared the alleged perpetrator, but in 2011 a military court sentenced him to five years and one day in jail. However, the sentence was overturned a year later by the Court Martial which upheld the thesis that the police officer had acted in self-defense. In 2013, the Supreme Court quashed this decision, ruling that the conditions justifying self-defense had not been met, and sentenced him to three years on probation.

61. Mapuche demonstrators have reportedly been detained and mistreated in other instances as well. In July 2012, a group of Mapuche belonging to the Temucuicui community peacefully occupied the farm La Romana, in Ercilla. The police then forcibly evacuated the demonstrators, including children, and detained them. Similarly, on 1 October 2014, members of the Mapuche Huilliche marriao Collihuinca community proceeded with peacefully occupying the land Lumaco Bajo. The demonstration was immediately dispersed by a large number of police forces. Two children aged 10 and 12 started recording the eviction and were aggressively ordered to stop (one police officer reportedly pointed his gun at one of the children). They were then handcuffed, taken to a police van and brought to the police station of Río Bueno where the boy aged 12 presented minor injuries.

62. The Special Rapporteur acknowledges that farmers involved in land disputes have on some occasions been the victims of threats and acts of violence by some Mapuche. However, as the farmers recognized themselves during their meeting with him, these violent Mapuche individuals only represent a very small portion of the entire Mapuche community. Furthermore, farmers have also assaulted Mapuche and have reportedly not been prosecuted.

63. In addition, the Special Rapporteur was informed that in rural areas, there is a constant presence of police forces in Mapuche communities, hence fuelling tension and frustration within these communities. Between 2009 and 2013, there were reportedly 70 police raids into Mapuche communities, most without any search warrant. In this context, there were six decisions by a court in Temuco ordering police to refrain from violence and to care for the safety of children during their operations. The police stated that since December 2013, all police interventions have been done on the basis of a court order.

64. In one distressing case, a female Mapuche religious leader (Machi) was put under house arrest for eight months after an illegal gun allegedly had been discovered by the police in her house. The Machi denied hiding this weapon and claimed that it had been planted in her house. She had previously filed a complaint against a farmer for land restitution, reportedly the first such claim of its kind. She was prosecuted and found guilty of hiding a weapon, but later acquitted by the Supreme Court. While in police custody, she was forced to remove her traditional outfit and necklaces, which she felt to be a deeply humiliating measure. She was later granted compensation by a civil court in Temuco because the police officers failed to respect her ancestral Mapuche authority (though it ruled that her detention and the raid at her place had been done in accordance with the law).

65. Mapuche demonstrations in urban areas are reportedly regularly authorized, but the massive presence of the police – seen as a form of intimidation – hinders participation. According to testimonies, if the organizers seek the permission from the authorities, the police will unilaterally determine the route of the protest. In this regard, the Special Rapporteur clarifies that the choice of location and route of the assembly principally belongs to the organizers of the assembly.

66. The Special Rapporteur was informed that when a protest happens spontaneously, for instance in reaction to the sentencing of a Mapuche leader, it will be dispersed immediately, usually by the police firing tear gas and rubber bullets or beating of protestors. For instance, in 2014, the leader of a Mapuche movement against land grabbing was reportedly apprehended during a protest in front of a court, forced into a car and beaten inside the vehicle.

67. From 17 August to 7 September 2015, a group of Mapuche, including several women and children, belonging to 11 communities from the Malleco region, peacefully occupied the premises of the National Corporation for Indigenous Peoples' Development (CONADI) in Temuco. They demanded that their ancestral land be respected and that security forces present in the communities of Bajo Malleco be withdrawn. The police special forces eventually intervened to clear the occupation, in a reportedly excessive manner and in complete disregard of the fact that there were children in the premises. Several Mapuche were injured in the course of the operation. The police operation also breached a court order that required the presence of an INDH representative during any action to evacuate the premises. The police told the Special Rapporteur that they had tried to reach out to the local INDH representative ahead of the operation, to no avail. However, the INDH representative told the Special Rapporteur that he only had one missed call from the police late at night, a few hours before starting the intervention.

68. The Special Rapporteur calls on the authorities to ensure a safe and conducive environment for the Mapuche when exercising their right to freedom of peaceful assembly. Fundamentally, a lasting solution to the issue of land dispute must be achieved, and to this end, he once again refers to the reports of his peers and other human rights mechanisms, who have made concrete recommendations in this regard.

Freedom of association Associations

...
89. Another issue of concern to the Special Rapporteur is the fact that under Law No. 19.253 on the protection, promotion and development of indigenous people and its regulation, claims to land restitution by indigenous peoples are restricted to communities or to indigenous individuals. However, indigenous leaders expressed concerns, which the Special Rapporteur shares, that this legal requisite favours forms of associations for reclaiming of land that erode their traditional structures and organizations, which are generally based on larger territories than those of communities, or on family relations.

90. Article 20 of this law establishes a land and water fund, administered by CONADI, whose task is to consider land claims from indigenous individuals or groups. In order to make a claim, indigenous groups must be recognized as legal entities as provided by Law No. 19.523. To this effect, "indigenous communities" are recognized as legal entities, as per article 10 of the law. As a consequence, indigenous people's traditional institutions, such as Lof or Aillu in the case of Mapuche and Aymara respectively, cannot submit claims to CONADI since they were not created in accordance with Law No. 19.523 and are not registered as legal entities with CONADI as requested by this law.

91. The Special Rapporteur calls on the Government to rectify this situation without delay. This is all the more troubling as the International Labour Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Chile, acknowledges the existence of indigenous traditional institutions and requires that States party to the Convention recognize them.

Recommendations

105. The Special Rapporteur calls on the competent authorities to: ...

- i) Further train police officers on the rights and culture of indigenous peoples of Chile, and ensure that they effectively respect such rights and culture;
- p) Amend Law 19.253 with a view to allowing indigenous traditional institutions to claim land restitution, while implementing ILO Convention 169, which acknowledges the legitimacy of such institutions;

F. Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

1. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Malaysia, A/HRC/29/33/Add.1, 1 May 2015

Right to health

Background

...

8. The Special Rapporteur commended the achievements related to some of the underlying determinants of health, including the reduction of poverty, improvements in access to water and sanitation and the effective control of outbreaks of recent epidemics. Malaysia has achieved impressive results in reducing poverty, especially in urban areas, where the percentage of households living in poverty has fallen from 21.3 per cent to an estimated 0.5 per cent between 1970 and 2014. However, about 3.4 per cent of rural households still live in poverty. In this respect, the Special Rapporteur noted with concern stark disparities in the enjoyment of basic health indicators between certain groups of the population, with indigenous and migrants particularly affected.

Groups in vulnerable situations

25. In addition to the challenges mentioned face the health-care system in Malaysia, the Special Rapporteur identified during his visit important barriers to accessing health care, including with respect to accessibility and affordability affecting some groups of the population.

Indigenous communities

46. The indigenous peoples in Malaysia represent around 12 per cent of the total population and include the Orang Asli, or aborigines of Peninsular Malaysia, and the natives of Sabah and Sarawak, also referred to as Orang Asal. The Orang Asli represent about 0.63 per cent of the total population. It is estimated that the natives of Sabah and Sarawak represent about 70 and 60 per cent of the population in the two States, respectively. About 60 per cent of the indigenous population live in rural areas, sometimes in remote locations of difficult access.

47. The indigenous communities in Malaysia all have a struggle to preserve their own ways of life based on customary systems (adat), constantly under pressure owing to profound changes brought by the rapid economic development in the country. Indigenous peoples are among the most marginalized and disadvantaged groups in Malaysia suffering from higher levels of poverty and social exclusion.

48. Malaysia has endorsed the United Nations Declaration on the Rights of Indigenous Peoples but it has not ratified International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Aboriginal Peoples Act set forth the rights of the Orang Asli to education, health, socioeconomic development and culture and beliefs. In 2010, the Department of Orang Asli Development was established under the Ministry of Rural and Regional Development to provide protection to this group and their way of life in the wake of rapid development. The Orang Asli Development Strategic Plan (2011–2015) includes such objectives as expanding access to infrastructure, improving health and cultivating traditional knowledge and heritage.

49. Despite commendable efforts by the part of the Government to address health-related issues affecting the indigenous communities, the Special Rapporteur observed that serious challenges remain with regard to their enjoyment of the right to health and related rights, both in peninsular Malaysia and in Sabah and Sarawak. Health indicators among indigenous populations are significantly worse than those of the general population. Their life expectancy is below 60 years, while the average in Malaysia is over 70 years, and they carry a larger burden of disease, both for communicable and non-communicable diseases, including tuberculosis, malaria and leprosy. Infant and maternal mortality rates are higher than the national averages. Birth registration is a serious problem among indigenous communities living in remote areas with a negative impact on access to health care.

50. Access to health-care services for indigenous populations has significantly improved through the development of the infrastructure for health-care services, mostly primary care in remote areas and specialized care, including a hospital for Orang Asli, the Gombak Orang Asli Hospital. Some initiatives, such as “flying

doctors' services or the community-based Village Health Promoter Programme, have improved the accessibility of and participation in health-care services by indigenous communities in remote areas.

51. However, health information is not always accessible in a culturally appropriate manner to the indigenous communities, and they are not always properly informed about or involved in public health decisions that affect them. Language continues to be a barrier to accessing health-care services for indigenous communities in the country.

52. Moreover, the right to health of indigenous people is threatened by changes in the use of land caused by development projects linked to logging operations, palm oil plantations and energy-intensive industries in certain parts of the country, in particular in Sabah and Sarawak. This has led to a substantial loss of access to traditional land and sources of livelihood, resettlement processes and instances of violence, which have had a direct impact on the physical and mental health of these communities.

53. During his visit to Sabah, the Special Rapporteur heard testimonies that, as a consequence of ongoing development projects, some of the communities have lost access to traditional lands and sources of livelihood, which has had a negative impact on their diet and physical health. Testimonies also pointed to a lack of meaningful dialogue between authorities and indigenous communities, and these communities do not have access to basic information about the projects in their region and the potential environmental impact. This can have a serious effect on the mental health and emotional well-being of indigenous communities owing to uncertainties about the security of their livelihood in the future, which leads to chronic stress and anxiety.

54. The Special Rapporteur would like to underline that the right to health should be promoted and protected not only through access to health-care services, which should be available, affordable, appropriate and of good quality. The right to health also implies the design and implementation of cross-sectoral programmes that address socioeconomic, cultural and environmental factors and are guided by a human rights approach, with strong emphasis on the principles of non-discrimination, participation and empowerment and accountability.

Conclusion and recommendations

109. However, during his visit, the Special Rapporteur observed deeply entrenched discriminatory attitudes towards groups in vulnerable situations, mostly based on certain restrictive interpretations of culture or religion that discriminate and restrict the rights of these groups, including the right to health. These arguments go against international human rights principles and standards, and when initiated, supported or tolerated by public authorities, they threaten the development of a healthy and inclusive society.

110. Malaysia needs to move away from a selective approach to human rights. The rights of all people living in Malaysia need to be protected, and more efforts are needed to combat the discrimination of the more disadvantaged groups and to achieve their full inclusion in society.

111. The Special Rapporteur recommends that the Government: ...

(j) Take the necessary measures so that indigenous communities enjoy their right to health by ensuring access to information and that health services are available, accessible, affordable, adequate and of good quality;

(k) Involve indigenous communities in the health decisions that affect them by consulting them in advance on relevant policies and providing health-related information in a culturally sensitive manner. ...

G. Independent Expert on the enjoyment of all human rights by older persons

1. Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to Costa Rica, A/HRC/33/44/Add.1, 4 August 2016⁵²

Background and context

3. Costa Rica has a population of approximately 4.7 million inhabitants, nearly 9.24 per cent of whom are over the age of 65, a figure which is expected to rise to 11.5 per cent by 2050. Costa Rican society is in the advanced stages of demographic transition, characterized by a narrowing of the base of the population pyramid and an increase in older segments resulting from the combination of a low birth rate and high life

⁵² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/171/99/PDF/G1617199.pdf?OpenElement>.

expectancy. Women have gone from having an average of 2.12 children in 2003 to 1.76 children in 2014, and life expectancy, which stands at 79 years, is one of the highest in Latin America.

4. However, there are disparities among regions and among groups of older persons. Approximately two thirds of this demographic live in the central region and half live in urban areas. Furthermore, indigenous peoples make up the largest share of the 60-year age group, while persons of African descent are the least represented in that bracket.

5. Costa Rica is a multilingual, multicultural and multi-ethnic society. The latest national census, conducted in 2011, included for the first time a focus on ethnic self-identification: 3 per cent of the population considers itself to be indigenous, 8 per cent black or mulatto and 83 per cent white or mestizo. The diversity of Costa Rica is recognized in the recent constitutional reform, in which the country is described as a democratic, free, independent, multi-ethnic and multicultural republic. The same diversity does not apply to religion insofar as the Constitution establishes Costa Rica as a catholic State. Moreover, although the Constitution establishes Spanish as the official language and guarantees that the State will ensure the continuity and promotion of national indigenous languages, it does not include other minority languages, such as the English Creole spoken by Afro-Caribbean communities, in the administration. The Government has acknowledged that providing bilingual education in the native tongues of indigenous peoples and persons of African descent is a challenge for the State, a source of discrimination and a barrier to access to public services by minorities. The Independent Expert recommends that the country renew its efforts to remove linguistic barriers faced by older persons.

Main Findings

Discrimination

22. The Constitution safeguards the right to equality and non-discrimination, but without mentioning age. However, Act No. 7935 contains specific provisions prohibiting discrimination on grounds of age and is intended to guarantee equal opportunities and dignity in all spheres, from employment to access to health.

23. Costa Rica has developed targeted policies for the protection of certain groups, such as the national policy on a society free from racism, racial discrimination and xenophobia 2014-2025, but without specifically including the issue of ageing. The target groups include indigenous peoples, persons of African descent, migrants and refugees. The Government has also adopted a new Migration Act and a comprehensive migration policy whose goal is the integration of those population groups in Costa Rican society.

24. Domestic legislation notwithstanding, older persons continue to be discriminated against in various areas such as health, pensions, housing and employment. For some subgroups of this age bracket, in particular indigenous peoples, persons of African descent and migrants, language becomes a barrier when filling out forms in order to receive social benefits, hence the importance of removing linguistic barriers so that everyone may enjoy their economic, social and cultural rights.

25. There are eight indigenous ethnicities or peoples in the country, distributed across 24 territories throughout the country and who speak six indigenous languages. During her visit, the Independent Expert was informed that there is no institutional mechanism for prior consultation with or participation by older indigenous persons in decision-making on issues related to their welfare.

26. Costa Rica has recognized the challenges it faces with regard to indigenous peoples by acknowledging that the existence of a favourable judicial framework is insufficient to ensure full protection of the rights of communities if it is not accompanied by State policies and actions which sought its effective application. Accordingly, the Independent Expert recommends that the State redouble its efforts to develop targeted policies in cooperation with the National Council for Older Persons and the National Commission on Indigenous Affairs with a view to ensuring that older persons belonging to the most vulnerable groups enjoy all their rights.

Social welfare and the right to social security

33. The Social Insurance Fund of Costa Rica is the autonomous institution responsible for managing and governing social and health insurance. The State is required to ensure a sufficient income in the event of a shortfall, in keeping with the Constitution.

35. The non-contributory scheme is managed by the Social Insurance Fund and provides support to persons who have not contributed or paid into any scheme. The following categories of people have a right to this support: persons over 65, persons under 65 with a disability that prevents them from working, widows between the ages of 55 and 65 who are in financial difficulty or who have children under 21 who are students

or unemployed, and the destitute. The amount of the allowance is 75,000 colones (approximately US\$ 140), and the scheme is part of the strategy to combat extreme poverty under the Development Plan. Indigenous peoples are the population group most represented among recipients of the scheme, which could point to a deterioration of their quality of life and poverty in old age.

Adequate standard of living, autonomy and access to justice

38. Costa Rica has increased public investment in education, health and social programmes, with social spending rising to 2.5 per cent of gross domestic product. However, the Independent Expert is concerned about the fiscal deficit and hopes that spending cuts are not having a negative impact on investment in social programmes for older persons.²⁵

39. The Constitution protects the right to work while Act No. 7935 addresses non-discrimination on grounds of age in the labour market and stipulates that all older persons should have the opportunity to engage in income-generating activities. Thus far, the Ministry of Labour and Social Security has piloted job fairs entitled “Intégrate al Trabajo” (Join the Workforce), and workshops on empowerment, entrepreneurship and business plans have been run in coordination with the National Training Institute.

40. These measures are clearly inadequate considering that nearly 85 per cent of older persons are inactive because they are retired, have never been part of the workforce or have given up the job search. The remaining 15 per cent are in the workforce, mainly in the agricultural and informal sectors.²⁶ The lack of a national policy to promote the right to work of older persons is a factor that prevents this demographic from continuing to contribute to the country’s economic and social development if they so choose.

41. In addition, according to the 2011 census, home ownership figures show that most older persons live in their own homes. The indigenous population has the highest rate of home ownership. However, their homes are in average or poor condition. The worst figures are those on persons of African descent and migrants, who for the most part live in rented accommodation that is in derelict, poor or average condition.

Care

46. The Costa Rican health-care system provides nearly universal coverage. Approximately 97 per cent of older persons have health insurance despite the fact that only 80 per cent of them have some form of income, though many of them get their health insurance indirectly through a family member.²⁷ The Social Insurance Fund of Costa Rica has been the institution responsible for providing public health-care services since the 1970s, after taking over from the Ministry of Health, which is tasked with monitoring the execution of essential health-care functions and ensuring sectoral governance.

47. The health-care system provides three levels of care. The first consists of health posts, centres and clinics, which have Basic Comprehensive Health-Care Teams (EBAIS) and serve about 94 per cent of the population. Even though there are 43 such teams who provide care to the indigenous and migrant population and doctors and social workers conduct visits in remote areas,²⁸ the Independent Expert observed that in some regions, such as Valle de Estrella, the indigenous communities do not receive the necessary care. She was informed that when indigenous persons do go to the nearest Basic Integrated Health-Care Teams, it is in emergencies and that many do not turn to health-care outposts for a variety of reasons, including difficult access, lack of transport, opening hours that do not take into account the distance and geographic situation of these communities and cultural considerations.

Education, training and lifelong learning

55. The constitution establishes equality of opportunity for older persons in access to education.²⁹ More specifically Act No. 7935 provides for a range of measures to promote access for older persons to university courses and study facilities. Nonetheless, specific programmes need to be developed to reduce illiteracy among older persons, particularly in rural areas and indigenous territories.

Conclusions and recommendations

...

63. However, the ageing of Costa Rican society is marked by regional disparities; they are determined by the social and economic inequality that affects certain groups of the elderly, principally those who belong to communities that are indigenous or of African descent and migrant communities. Such asymmetry is also apparent in metropolitan urban areas with a high level of economic development, as well as in rural and coastal areas and areas on the borders.

76. The Independent Expert recommends that Costa Rica conduct an updated study into the situation of older persons in order to pinpoint the trends and challenges that currently affect them, and in particular older women and women who live in rural and remote areas, women who belong to indigenous populations, populations of African descent, migrant, refugee and undocumented populations and lesbian, gay, bisexual, transgender and intersex persons. The study will be a vital tool for discussing and analysing the challenges posed by the ageing population and for developing specific public policies which improve the living conditions of these groups, which lack visibility. The Independent Expert also stresses the need to ensure that older persons are included and effectively participate in meetings and consultations which concern them.

79. The Independent Expert underscores the need to redouble efforts in order to combat discrimination on grounds of age, which particularly affects certain communities and ethnic groups, such as older persons who are indigenous, of African descent, migrants or undocumented. She also draws attention to the importance of revitalizing the native languages of older persons so as to do away with linguistic barriers to equality and to the exercise of all their rights.

80. It is important to draw attention to issues of equality and to bring about a change in societal attitudes and beliefs so as to dispel prejudice towards particular groups of older persons. The Independent Expert urges the Government to undertake affirmative action on behalf of all marginalized groups in order to correct existing disequilibria. Some indigenous peoples consider older persons to be a source of wisdom, and it is they who take decisions on behalf of the community; accordingly, the Independent Expert recommends that the State adopt specific measures to protect and promote the rights of these groups. She also recommends the implementation of the recommendation made by the Human Rights Committee in respect of the adoption of the draft legislation on the autonomous development of indigenous peoples,³⁰ and of a legal mechanism to ensure that indigenous peoples are consulted before any decisions are taken that might affect the exercise of their rights. The adoption of that draft legislation and of the mechanism for consultation should make provision for participation by indigenous older persons, on account of the need for effective channels of communication and for representation of this age group.

85. The State should introduce a complaints procedure in order to collect disaggregated data on the violence and abandonment suffered by persons in institutions or in private or public premises, in coordination with all the agencies concerned and in particular with the National Institute for Women, the National Commission for Indigenous Affairs, the National Council for Older Persons, the Social Insurance Fund of Costa Rica, the Ministry of Health, the Public Transport Council and the Ombudsman's Office. Victims of violence should be afforded legal assistance and support and mechanisms should be introduced to prevent reprisals, especially in cases in which a family member is responsible for the ill-treatment or violence.

90. The Independent Expert recognizes that Costa Rica has one of the highest human development indices in the region. However, fresh measures need to be adopted in order to reduce poverty among older persons, including among the most vulnerable groups such as indigenous groups and those of African descent. She encourages the Government to pay particular attention to the situation of older persons in indigenous territories, and in particular to adopt effective measures to combat poverty during old age in order to ensure that older persons possess food, access to housing and satisfactory health to enable them fully to exercise their human rights.

94. As regards access to justice, information campaigns on access to justice should be conducted; these should also be translated into indigenous languages and include standard protocols on assistance that have been developed by coordination among institutions, to provide preferential and priority assistance to older persons. It is also recommended that an assessment be made of the measures implemented to identify the challenges, to produce data and to encourage the necessary changes to the care of older persons. Notwithstanding the existence of legal consultations in universities and of legal advice centres, the Independent Expert recommends the adoption of measures to guarantee free legal assistance for older persons in all administrative and legal matters.

99. The Independent Expert recognizes the efforts made by the Government to expand the offer of health services, with health posts providing periodic check-ups and premises for Basic Comprehensive Health-Care Teams. Nevertheless, the Independent Expert urges that specific measures be adopted to facilitate access to the right to health and to welfare benefits by populations living in isolated areas and indigenous territories. The State should considerably expand its action on behalf of promotion, prevention and rehabilitation and should adapt indicators and benefits to take account of the actual circumstances and customs of these populations during old age.

108. In view of the intensity of ageing, additional measures are called for to encourage active ageing and to reduce illiteracy among older persons and especially among those belonging to indigenous populations and populations of African descent

H. Special Rapporteur on the human rights of internally displaced persons

1. Report of the Special Rapporteur on the human rights of internally displaced persons, Progress and challenges relating to the human rights of IDPs, A/HRC/32/35, 29 April 2016

Addressing neglected drivers of internal displacement globally

...

Internal displacement as a result of development projects and business activities

65. Greater attention to development-induced and business-related internal displacement is overdue and urgently required. The Special Rapporteur recognizes the sensitivities and that a balance must be drawn between the legitimate development needs and aspirations of national Governments and the human rights of those who are required to leave their homes. However, examples globally demonstrate that development projects and business activities are going ahead without due attention to the rights of affected persons.

66. International law and standards and national laws are sometimes given scant regard when approving development projects or granting business concessions that result in internal displacement. Often, there may be only a symbolic recognition of such standards, including the Guiding Principles on Internal Displacement. In other disturbing cases, development projects and agendas are pursued with the use of force and the forced displacement of communities from their lands and territories involving the use of military or paramilitary units, using threats, intimidation and killings.

67. It is telling that there is a relative lack of national, regional and global figures of those internally displaced by development and business enterprises and attention to the phenomenon in comparison to conflict and disaster-induced displacement. Some research has put the number of persons displaced by development at as many as 15 million annually.²¹ Closely associated with economic development patterns, development-induced displacement may increase in countries moving from developing to developed and from low- to middle- or high-income, owing to factors including the exploitation of previously untapped natural resources, increasing energy or water requirements, urbanization and population redistribution policies. Development and displacement may take place without necessary legal safeguards, to the detriment rather than benefit of those displaced.

68. While displacement due to development is commonly associated with major projects, such as dams, numerous activities cause displacement annually, including mining and extractive industries, logging, pipelines, national parks and conservation projects, port or military installations, sports projects and events, industrial plants and urbanization and infrastructure projects. Small-scale development projects can be just as damaging as larger-scale projects and are often harder to identify and monitor. While some projects meet international standards of consultation prior to displacement and compensation, resettlement and rehabilitation when displacement takes place, many fail to do so. Those affected are often poor, belong to marginalized or indigenous groups and lack political representation or an equal voice in decision-making.

69. Under Principle 6 of the General Guiding Principles, the prohibition of arbitrary displacement includes displacement caused by “cases of large-scale development projects, which are not justified by compelling and overriding public interests”. As in all cases of international human rights law, such justification would be subject to proportionality and a pressing social need. In addition, under Principle 9 of the General Guiding Principles, there is a particular international obligation for States to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

70. The Kampala Convention calls upon States Parties to “endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests”. It requires States to “ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts” and to “ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement”. International standards relating to the operations of business enterprises,

including the 2011 Guiding Principles on Business and Human Rights, require States and businesses to comply with all applicable laws and to respect human rights.

71. Development and business-related activities can create or exacerbate complex displacement scenarios. The rights of some communities, including indigenous or minority communities, such as their rights to the land on which their identity rests, can prove inconvenient in the face of development or economic interests. Militarization of areas allocated for resource development has been evident, with some companies using private military or security companies to enforce their encroachment onto some territories. Tactics to divide communities or bypass and undermine local leadership structures have been employed and may involve corrupt practices or payments that lead to breakdown of the social fabric of communities.

72. It is essential to establish national legal and policy frameworks relating to development, land and non-State actors that intersect with and complement legal provisions relating to internal displacement and the rights of internally displaced persons, and conform to international standards. For example, the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) relates to the rights of indigenous and tribal peoples and incorporates the right to free, prior and informed consent for indigenous peoples. Articles 6, 7 and 9 of the Convention establish that consent must be acquired before indigenous communities are relocated or before development is undertaken on their land. Where displacement is approved or agreed to following an appropriate and rigorous consultation and participatory process, internally displaced persons must be provided with appropriate compensation, support and durable solutions in line with international standards.

73. This is not often the case; compensation is often pitiful and unable to sustain livelihoods and the responsibility to ensure that development-induced displacement leads to a durable solution by relocation or settlement elsewhere in the country is avoided. Development-induced displacement and resettlement processes have resulted in landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property and ancestral lands and social disintegration, and have a cumulative impact seen in massive impoverishment and even death.

74. The 2007 Basic principles and guidelines on development-based evictions and displacement²³ provide valuable guidance in addressing the human rights implications of development-linked evictions and related displacement. They provide practical guidance to States on measures and procedures to be taken in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute “forced evictions”. The guidelines also focus on effective remedies for those whose human rights have been violated, should prevention measures fail. Independent human rights and environmental impact assessments of development and business activities likely to cause displacement should be conducted at the earliest opportunity, with their findings informing a legal project approval process and resettlement and rehabilitation programmes.

75. The 2030 Agenda for Sustainable Development can give new impetus to attempts to ensure that development is conducted responsibly and takes into account the impact on those displaced. It requires that the development activities are implemented in a manner that is consistent with the rights and obligations of States under international law, including human rights law and standards. It is important that this new global development agenda is not interpreted as giving States a green light to pursue development without due consideration to human rights and the costs to those who own or occupy the lands on which development projects may take place. The pledge by States to “leave no one behind”, including internally displaced persons, also requires that those who are displaced by development projects and other triggers benefit from and are the target of development programmes.

3. Recognizing the vulnerability of disadvantaged and marginalized groups to internal displacement

76. In some situations, internal displacement disproportionately affects certain communities that, due to their characteristics, geographical location, poverty, discrimination or other unique circumstances, make them particularly vulnerable to internal displacement. Such groups may include indigenous peoples and ethnic, religious or other minorities, who are frequently numerically few relative to majority communities, among the poorest, and who may experience different forms of marginalization and commonly lack representation in political or other State bodies. In some cases they may face long-standing discrimination and violence targeted against them. Such population groups are often overrepresented in internally displaced person populations.

77. These and other factors may make certain marginalized communities vulnerable to violent displacement in situations of conflict and intercommunity or interfaith tensions or result in their being poorly

equipped to resist efforts to displace them from their lands due to development or business activities. Greater research and data is required globally to reveal the full impact of displacement on such communities, as well as regional trends, patterns and dynamics of displacement. In particular, this makes it necessary to disaggregate data not only by sex and age but also by diversity categories, such as ethnicity and religion, that should be determined by contextual realities. Such information, fully adhering to international standards of data protection and use, would help to predict and prevent displacement targeted against certain communities and contribute to much needed displacement risk assessment and early warning mechanisms.

80. The Special Rapporteur has been struck by the vulnerability of indigenous peoples to internal displacement, including during his official visit to the Philippines, following which he highlighted the impact of displacement or threatened displacement on them. Indigenous peoples are severely affected by displacement given their ties to ancestral lands and may have more challenges in adopting coping mechanism for survival when displaced. The protection of the rights of indigenous peoples displaced or threatened by displacement must be strengthened in law and practice. Legal provisions on land rights and the rights of indigenous peoples should be fully implemented and specific provisions on the rights of indigenous peoples should be included in laws on internally displaced persons where appropriate.

81. In conflict- and disaster-related scenarios of displacement, discrimination and marginalization may continue to be a factor that adversely affects access by internally displaced persons to safety, protection and humanitarian assistance and durable solutions in some cases. The Framework on Durable Solutions for Internally Displaced Persons emphasized the centrality of non-discrimination to the concept and achievement of durable solutions. States, national human rights commissions and all humanitarian actors and development actors, and civil society, must ensure that all those in need are treated equitably and in a non-discriminatory manner, including with regard to access to protection and assistance, livelihood opportunities and the realization of durable solutions.

Conclusions and recommendations

...

99. National authorities should collect and share data on all causes of displacement in their country, including generalized and criminal violence and hate-based crimes, development and business activities. Equality and anti-discrimination laws and legal protection of minorities, indigenous peoples and other potentially vulnerable groups should be in place and include provisions relating to the prohibition of unlawful displacement.

103. Recognition of internally displaced persons as holders of civil and political rights and economic and social rights is crucial and requires human rights-based approaches. As such, all States must recognize, respect and protect the fundamental rights of such persons, including to be consulted, informed and to participate and exercise free choice in decisions affecting them, including decisions on whether to return to their places of origin or to choose to settle and integrate elsewhere.

2. Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Philippines, A/HRC/32/35/Add.3, 5 April 2016

Note by the Secretariat

...

In Mindanao, over the last four decades, multiple displacements due to conflict and disaster have become the common pattern in some localities. Intensified efforts are required to achieve lasting peace and to provide durable solutions to the many internally displaced persons who face relative neglect. Armed conflict and extractive and logging activities on indigenous ancestral territories have a devastating impact on indigenous peoples (Lumads), displacing them and subjecting them to gross violation of their rights and to conditions that threaten their unique communities, cultures and lifestyles.

Conflict-induced internal displacement in Mindanao

39. In Mindanao, decades of two long-standing internal armed conflicts — one between Government forces and the Moro people (the collective name for minority Muslim groups), non-State armed groups, and the other between the Government and the communist insurgency, the New People's Army — have killed tens of thousands of people, including civilians. The Internal Displacement Monitoring Centre considers that the conflicts have displaced some 3.5 million people multiple times since 2000. In 2013 alone, more than 325,000

people were displaced by conflict, generalized and clan-related violence. UNICEF estimates that 30,000 to 50,000 children are displaced annually due to armed conflict, with some recruited as child soldiers by armed groups.

43. Continuing armed conflicts resulted in ongoing and grave human rights violations and internal displacement in 2015, particularly in central and eastern Mindanao. A counter-terrorism operation by the Special Action Force of the Philippine National Police in central Mindanao (Mamasapano) on 25 January 2015 led to the death of 44 members of the police, 18 members of the Moro Islamic Liberation Front and 6 civilians, after the Philippine National Police reportedly entered territories that were covered by the peace deal. This incident caused the Philippine Congress to suspend the passage of the Bangsamoro Basic Law and raised significant concerns regarding national unity, which ultimately compromised the passage of the Law, which was scheduled to be completed before the end of President Aquino's term in May 2016.

44. In February 2015, the Armed Forces of the Philippines declared an all-out offensive against the Bangsamoro Islamic Freedom Fighters, and law enforcement operations were conducted for months, resulting in the displacement of over 125,000 people. Following the end of the offensive and despite assurances by officials of the Autonomous Region in Muslim Mindanao that all internally displaced persons had returned to their homes and communities of origin, humanitarian agencies estimated that 2,102 families (some 10,399 persons) remained in evacuation centres or with host families at the time of the Special Rapporteur's visit, reportedly receiving no assistance from the authorities.

Zamboanga

45. In September 2013, an offensive by a faction of the Moro National Liberation Front led to three weeks of intense fighting against the Armed Forces of the Philippines in the city of Zamboanga, in the southern island of Mindanao. The occupation of parts of the city and subsequent action by the Armed Forces to regain control resulted in approximately 118,000 persons being displaced and 10,000 houses destroyed. The Special Rapporteur visited Zamboanga and several transitional and permanent housing sites for internally displaced persons in the vicinity of the city.

47. The vast majority of those who remained displaced belonged to the Muslim minority in the majority Christian city. Out of over 17,000 internally displaced persons in 12 transitional sites across the city, almost two thirds were Tausug people, who originated from the Sulu archipelago and the northern part of Borneo Island, and about one third were indigenous peoples of Zamboanga, the majority of whom were Sama Dilaut (or Badjaos), sometimes referred to as "sea gypsies". The remaining internally displaced persons were from other indigenous groups or non-indigenous settlers.¹⁷ Displacement has therefore particularly affected the poorest and most historically marginalized minority communities.

Impact of internal displacement on indigenous people

70. With regard to the communist insurgency, the indigenous peoples of Mindanao, known as Lumads, have been disproportionately affected by the long-standing conflict between the Government and the New People's Army. Many live in areas where the communist insurgency and counter-insurgency by the Armed Forces of the Philippines are taking place. Indeed, Lumads are often accused by the Armed Forces of being members or supporters of the New People's Army. Due to their unique lifestyles and particular association with and reliance on their ancestral lands, Lumads can be significantly affected by displacement.

71. From January 2015 to early October 2015, 10 internal displacement incidents involving Lumads and related to the activities of the Armed Forces of the Philippines and paramilitary groups were reported in four Mindanao regions (Regions X, XI, XIII and the Autonomous Region in Muslim Mindanao). Some 1,750 families (an estimated 8,689 persons) were displaced from the provinces of Agusan del Sur, Bukidnon, Davao del Norte, Maguindanao, Misamis Oriental, Surigao del Sur and South Upi, of which 1,264 families (an estimated 6,316 persons) remained displaced as of early November.

72. To note some examples, on 9 August 2015, 84 families were reportedly displaced when members of Magahat-Bagani, a paramilitary group, interrogated and harassed villagers in Sitio Nalindog, Barangay Bolhoon, in the municipality of San Miguel, in the province of Surigao del Sur. Residents were accused of being supporters or members of the New People's Army. On 28 August 2015, in the neighbouring village of Siagao, around 332 families reportedly fled their homes when Magahat-Bagani threw a grenade into a house in the village, killing two brothers.

73. On 1 September 2015, in a village in northern Mindanao, in the municipalities of Lianga, Marihatag, San Agustin, San Miguel and Tago, members of the Manobo Lumad tribe were reportedly rounded up by the paramilitary group Magahat-Bagani. Three community leaders were beaten and arbitrarily executed and

residents were accused of being affiliated with the New People's Army and threatened with death and burning of community schools if they did not leave. Around 573 families fled to the provincial capital of Tandag. The Department of Justice ordered an investigation and an arrest warrant was issued on 28 September 2015, with the names of the alleged perpetrators, as some villagers identified the paramilitary group. However, as of February 2016, no arrests had been made and the displaced persons do not feel safe to return. Approximately 2,621 Lumads reportedly remained displaced and were receiving assistance in the municipal stadium in Tandag.

74. Lumad groups have publicly protested against being caught up in a conflict, which is not their own, which is being carried out on their ancestral domains and in which they are manipulated and exploited by both parties to the conflict. Lumads, human rights organizations and others have accused the Armed Forces of the Philippines of creating and arming the indigenous peoples paramilitary groups, known as "Alamara" or "Magahat-Bagani", which are both actively engaged in fighting the New People's Army and which very often protect the interests of public and private development projects and companies. The Armed Forces of the Philippines denies any such links to these indigenous peoples paramilitary groups.

75. From January 2015 to early October 2015, 17 Lumad leaders, activists, or villagers, including one child, were confirmed killed, seven of which are considered incidents of extrajudicial killings. The Commission on Human Rights of the Philippines has denounced the violations of the rights of the Lumads by both sides. It highlighted 35 cases of extrajudicial killings from 2001 to September 2015, involving 59 members of indigenous peoples communities, of which, 10 cases were allegedly perpetrated by the Armed Forces of the Philippines, while 8 cases were attributed to the New People's Army.

76. Lumad ancestral lands are resource-rich and there is encroachment onto them by public and private development projects, extractive companies, large-scale plantations and small-scale illegal mining and logging, carried out increasingly by local paramilitary groups. This is a factor in the complex dynamics of the ongoing conflict and displacement that requires increased attention. It is in the interests of some to maintain instability and displace Lumad groups so as to pursue mining or logging activities. Lumads in northern and eastern Mindanao reported that they had returned after displacement to find mining equipment or fenced off areas on their land. When they have resisted these activities, they, their families and, in some areas, entire communities have been threatened and harassed and many have been killed.

77. The Indigenous Peoples' Rights Act is an exemplary law which includes the rights to ancestral domain, self-governance and empowerment, social justice and cultural integrity. The Act established the National Commission on Indigenous Peoples, which has been mandated to "protect and promote the interest and well-being of the Indigenous Cultural Communities and Indigenous Peoples with due regard to their beliefs, customs, traditions and institutions". However, its implementation in practice is deeply flawed and the structure and processes established to uphold those rights are reportedly often misused against indigenous peoples.

Haran Centre, United Church of Christ in the Philippines, Davao City

78. The Special Rapporteur learned about the situation of some 700 Lumads who had been displaced from Talaingod and Kapalong in Davao del Norte and were living at the Haran Centre facilities, run by the United Church of Christ in the Philippines in the city of Davao. According to the Lumad leaders and clergy in the church, the Lumads had been in the facility for several months due to a long history of conflict and militarization of their localities, which had begun in the mid-1990s with the arrival of a large logging company. The Special Rapporteur travelled to Davao City to consult with the authorities and the Lumads themselves.

79. The Armed Forces of the Philippines and a few prominent politicians claim that "leftist" organizations aligned with the communists coerced the Lumads into moving to Davao, where they are used to further their political agendas. Armed Forces representatives asserted that the Lumads were the victims of "trafficking" and were being held against their will. The Armed Forces stated its intention to protect the communities and wanted those in Davao to return to their homes. Legal action was taken against groups supporting the Lumads, but those cases were dismissed due to lack of evidence.

80. The authorities alleged that suicides had occurred and that some members of the community had sought their assistance to leave. They indicated that concern over the welfare of women and children had led to an operation by the riot police to gain access to the Haran Centre, which had resulted in a violent response. They claim that conditions are crowded and unsanitary and pose a risk to the health and welfare of those in the facility, including children and the elderly.

81. Having informed the Government, the Special Rapporteur visited the Haran Centre unannounced to meet Lumad leaders. They stated that they were not detained against their will and that the military, paramilitary and New People's Army presence in their communities created danger and anxiety for their communities. They wished to return, but stressed that they could only do so safely if the long-term militarization ends and they have guarantees of safety, dignity and protection. They described forced recruitment into paramilitary groups which allegedly operate under the auspices of the Armed Forces of the Philippines and regular harassment by the Armed Forces in the context of the conflict. Following his visit, the Special Rapporteur was informed that, at the end of December 2015, 295 people left the Haran Centre to return to their territories. The paramilitary group, Alamara, allegedly killed a 15-year old boy, resulting in their return to the Haran Centre.

82. The demands of the Lumads include the following: disband and disarm paramilitary groups; cease forced recruitment; arrest and prosecute paramilitary or military forces that engage in violence against civilians; stop "tagging" individuals as New People's Army suspects; withdraw the Armed Forces troops from communities; ensure that schools operate freely without interference or military/paramilitary presence, threats or violence; ensure that their schools are accredited in a timely manner; ensure a functioning rule of law and law enforcement; and provide social services to indigenous peoples equal to that provided to people in other areas of the country.

83. The Lumads stated that they had lost trust in the National Commission on Indigenous Peoples, which they consider to be working with the authorities and the Armed Forces of the Philippines against their interests. They also expressed distrust of the independence of the Commission on Human Rights. Public inquiries held by the Commission on the Haran Centre case failed to gain the confidence of the Lumads, who perceived bias towards the Government's position.

84. Lumad concerns include ensuring the preservation of indigenous lands and culture and the certification of ancestral domains, as well as transparent processes and adequate information dissemination regarding development projects. They claim that their schools have been closed and/or occupied by the Armed Forces or paramilitaries, which has hampered education for indigenous children. During a field visit to Talaingod and Kapalong conducted by the United Nations following the Special Rapporteur's visit, interviews with the communities confirmed the views of those in the Haran Centre.

Tampakan

85. Mindanao has some of the Philippines' largest gold, nickel and copper deposits in areas including Davao, Agusan del Sur and Surigao del Sur. Many are in the ancestral domains of the Lumads. Lumad lands are targeted by extractive mining companies which encroach on the lands often with the support of the Government. Corporations are engaged in logging, plantations and development projects. Armed groups are also engaged in small-scale, often illegal, mining and logging on indigenous peoples' land. These activities have been characterized as "development aggression" without consultation with the Lumads, as required by the Indigenous Peoples' Rights Act.

86. The Special Rapporteur visited Koronadal and Tampakan in South Cotabato Province, a site of potential mass displacement due to a proposed open-pit mining project in Tampakan. If implemented, this project would be located on the boundaries of South Cotabato, Sultan Kudarat, Davao Del Sur and Sarangani, and would displace over 5,000 people, the majority being Balaan indigenous peoples, from their recognized ancestral lands. The project has been put on hold by the Governor of South Cotabato, however, indigenous leaders expressed their fears that it would eventually proceed despite their objections.

87. Indigenous peoples expressed frustration that consultation processes, including the process to obtain their free, prior and informed consent had not been transparent or inclusive of their chosen tribal leaders nor had it taken adequate account of their views and rights to the land and to the maintenance of their cultures and lifestyles. One unverified account claimed that the Lumads were asked at a meeting who had not had lunch, and when the majority raised their hands, a photograph was taken and subsequently used to suggest their agreement to the project.

88. Indigenous peoples stated that the actions of mining companies and those in support of the project had created tensions in an attempt to deliberately divide the community. The mining operation has led to a military presence (the 27th Infantry Battalion) in the region, which many opposed to the project blame for the killing of a number of anti-mining activists and Lumad leaders and members of their families, including the pregnant wife and two sons (aged 13 and 8) of Daguil Capion, on 18 October 2012, and his brother in 2013.²⁷

89. A human rights impact assessment, published in July 2013, found that the Tampakan Mining Project would have significant impacts on the human rights situation in the area. It was embedded in a context characterized by a combination of prevailing poverty, a high level of marginalization and discrimination against indigenous groups, especially in terms of basic services, the Government's failure to meet its human rights duties, and an overall volatile conflict situation, interrelated with other factors. This amounted to a scenario in which a responsibly operated open-pit mine of such large scale did not seem feasible. The Philippine Government bears the major responsibility for this fragile situation in the Tampakan area.

90. The report stated that if the project proceeded, there would be a high risk of cultural loss and violations of cultural rights of the indigenous people affected by the mine. Thousands of members of the Balaan communities would be relocated and thereby lose their land, which interviewees described as the backbone of their everyday routines, their religious traditions and their source of food.

Recommendations

...

108. Transitional sites, such as Mampang, have generally poor conditions and service provision and are inappropriate to the cultures and livelihoods of many internally displaced persons. They must not transition into permanent housing and resources must instead be directed to finding more appropriate locations.

110. The Government must ensure that its responses do not differentiate against any displaced community on the basis of their identity, religion or belonging to a minority or indigenous community and fully respect the right to freedom of movement.

Impact of displacement on indigenous peoples

116. Displacement of indigenous peoples has an incalculable impact on indigenous cultures and ways of life that are part of the rich and diverse cultural heritage of the Philippines, which must be protected and respected.

117. The protection of the rights of indigenous peoples displaced or threatened by displacement must be strengthened in law and in practice. The Indigenous Peoples' Rights Act must be fully implemented and specific provisions on the rights of indigenous peoples should be included in the final law on the rights of internally displaced persons.

118. Indigenous peoples are severely affected by displacement, given their ties to ancestral lands, and may have more challenges in adopting coping mechanisms for survival when displaced. The Government, in consultation with the affected peoples, should pay greater attention to addressing the often complex causes of their displacement, including the militarization of their areas, natural or man-made disasters and resource development.

Haran Centre, United Church of Christ in the Philippines, Davao City

119. It is essential to find a rapid and peaceful solution that takes into account the demands of the Lumads in the Haran Centre so as to ensure their voluntary, secure and sustainable return to their ancestral lands. The humanitarian and protection needs of these vulnerable internally displaced persons must be the highest priority of all involved parties.

120. Any solution must be peaceful and achieved in full consultation with the Lumads. Any attempt to remove them by force is inappropriate, unnecessary and may escalate an already tense situation, resulting in fatal consequences.

Tampakan

121. While it is beyond the mandate of the Special Rapporteur and the scope of this report to make conclusive assessments of specific development projects, the actual or potential internal displacement of thousands of Lumads justifies attention by the Special Rapporteur.

122. Under the Guiding Principles on Internal Displacement, development projects must have a legitimate aim and be justified on public grounds by a threshold of "compelling and overriding public interests" (see principle 6 (2) (c)). Under principle 9, States have a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

123. At every stage of development projects, international standards on the rights of indigenous peoples must be fully adhered to, including their rights to land and property, their participation and consultation and the free, prior and informed consent of affected communities.

124. The Special Rapporteur considers that these obligations have not been adhered to with regard to the Tampakan mining project. The rights of affected Lumads who face displacement due to the project have been and continue to be violated. A full review should be undertaken by independent and impartial actors.

J. Special Rapporteur on freedom of religion or belief

1. Report of the Special Rapporteur on freedom of religion or belief on his visit to Bangladesh, A/HRC/31/18/Add.2, 22 January 2016

Interreligious coexistence

A deep rooted tradition of pluralistic coexistence

...
13. Muslims, Hindus, Buddhists and Christians are the most commonly found religious communities in Bangladesh, while there are also other religious minorities, such as the Baha'is (about 300,000 followers), animists or indigenous peoples who practise other beliefs or traditional forms of spirituality in combination with one of the four religions mentioned above.

Changes of the religious demography

...
20. In the Chittagong Hill Tracts region, where the religious landscape has distinctively differed from the rest of Bangladesh, demographic changes have been even more pronounced, not least as a result of government-induced population transfer in the past. Unlike a few decades ago, when the indigenous peoples living in that region — mostly following Buddhism and Christianity — constituted the vast majority, the numerical relationship between indigenous and Bengali populations has by now become more or less even. As a result of those changes, Islam has become quite visible, not least in the shape of many newly erected mosques and madrasas, while many Hindus have also migrated to the Chittagong Hill Tracts region, where they feel safer than in some other regions of Bangladesh. It should be noted that, in that region, ethnic and religious minority situations although largely overlapping, are not identical. For instance, some of the Buddhists or Christians living in the region have a Bengali background, while the majority of the followers of those two religions are indigenous.

Feelings of insecurity and vulnerability

43. In discussions with religious minority communities, indigenous peoples and civil society organizations, the Special Rapporteur often sensed feelings of anxiety and insecurity. Such insecurity has different political, legal and societal dimensions, which may affect individuals and groups in various ways.

Contested land ownership

...
48. Much insecurity concerning real estate also exists in the Chittagong Hill Tracts, an area traditionally inhabited by various indigenous peoples. The lack of proper documentation proving ownership (land titles) has led to many disputes and to allegations of land grabbing. Legal insecurity also affects the land on which religious infrastructure has been built, such as temples, pagodas, churches, graveyards or cremation grounds. Obviously, this gives rise to concerns from the perspective of freedom of religion or belief, since religious community life, especially in a minority situation, cannot prosper without an adequate infrastructure, which itself presupposes legal clarity and security.

49. When visiting Bandarban and Rangamati, the Special Rapporteur met with members of various religious communities, most of whom were also indigenous. While acknowledging that their situation had improved in recent years, they were very aware of cases — including some recent cases — in which land previously utilized for religious purposes had been taken away, sometimes in connection with false documentation of land ownership, acts of vandalism and physical attacks. Legal insecurity of religious property, in combination with other factors, is a major reason underneath the feelings of vulnerability and insecurity still existing among indigenous peoples in the Chittagong Hill Tracts region, which also affects their freedom of religion or belief. It should be noted that, from the perspective indigenous peoples, land is not

just a commodity but also intimately interlinked with their identity and may even carry a direct religious or spiritual significance.

Personal and community safety

...

56. When visiting the Chittagong Hill Tracts region, the Special Rapporteur received specific information about ongoing community policing projects in Bandarban and Rangamati. Moreover, the number of indigenous persons who operate in the regular police force (unlike in the military) has reportedly risen in the Chittagong Hill Tracts region and is clearly above the national quota. This has apparently led to a somewhat improved sense of security among the indigenous peoples. However, “mixed policing”, i.e. a direct cooperation between Bengali and indigenous individuals operating within the police, seem to face obstacles.

New issues for further exploration

Integrating indigenous spirituality into freedom of religion or belief

89. In addition to the problems mentioned above, indigenous peoples may also feel disadvantaged because of their broad concept of spirituality, which does not easily match the usual patterns of handling religious freedom. For instance, instead of entertaining spatially demarcated houses of worship, indigenous spirituality often venerates natural sites the spatial dimensions of which cannot easily, if at all, be defined.

90. Indigenous ceremonies are so deeply interwoven into daily life that the distinction between religious and non-religious aspects may become inapplicable in practice. Religious loyalties, too, may be less clear-cut than in mainstream religions and may even combine elements of different religions. The term “syncretism”, mostly used to describe such phenomena, is perceived as carrying a pejorative meaning.

91. Freedom of religion or belief requires an inclusive application, i.e. an openness for people who themselves have to decide what matters to them in issues of faith, personal convictions, religious ceremonies and spiritual practices. In the case of indigenous spirituality, this appears to be particularly challenging, as indigenous individuals may encounter difficulties in articulating their specific demands, which they traditionally just took for granted as part of their everyday world and life. The only way out of this predicament is through open communication, which presupposes willingness to respect indigenous rights as an indispensable part of human rights.

Conclusions and recommendations

...

104. The Special Rapporteur would like to make the following recommendations, addressed mainly to Government agencies: ...

(i) The Government should investigate allegations of land grabbing and protect the rights of indigenous peoples and religious minorities to their land where religious infrastructures, graveyards and cremation grounds rest;

(j) The Government should engage in discussions with representatives of indigenous peoples on how better to accommodate their spiritual practices and needs;

(k) The Government is encouraged to continue and broaden projects of community policing in order to enhance the sense of security, especially for minority populations and indigenous peoples. ...

105. The Special Rapporteur would like to make the following recommendations addressed to religious communities: ... (d) Religious communities should discuss existing anxieties concerning missionary activities, based on freedom of religion or belief and a sensitive handling of particular vulnerabilities, for instance, of minorities and indigenous peoples. ...

2. Interim report of the Special Rapporteur on freedom of religion or belief, Elimination of all forms of religious intolerance, A/71/269, 2 August 2016

Summary

...

Thematically, the focus of the report is on the broad range of violations of freedom of religion or belief and their manifold root causes, as well as additional variables, including from a gender perspective, which need to be taken into account for an appropriate analysis of the problems. The aim of the report is to sensitize readers

to the broad range of violations, many of which do not attract adequate, if any, public attention. Governments are obliged to take effective measures to prevent violations of freedom of religion or belief, including abuses committed by non-State actors. At the outset, the Special Rapporteur defines the scope and contours of the right to freedom of thought, conscience, religion or belief, which must be broadly construed in keeping with the universalistic spirit of human rights.

Root causes and motives

...

Social power imbalances and other variables

39. When undertaking country visits, the Special Rapporteur has become aware that land-grabbing may be an important factor accounting for violations of freedom of religion or belief in some regions. Indigenous peoples are particularly vulnerable in this regard. They often cannot present ownership titles (in the modern understanding) to land that they may have used and cultivated since time immemorial. This has led to bitter and often violent disputes. Freedom of religion or belief issues enter the picture, for example, if land disputes affect the real estate on which religious institutions, such as churches, temples, mosques, pagodas or graveyards, have been erected. In addition, some indigenous peoples may entertain an understanding of “holy sites” that goes beyond any spatially demarcated areas and may include broader parts of the physical environment (see A/HRC/31/18/Add.2).

40. Land-grabbing is merely one example illustrating the relevance of economic and social variables that need to be taken into account for an appropriate understanding of violations of freedom of religion or belief and their root causes. In that context, one also should always pay attention to power imbalances, which typically render parts of the population vulnerable to pressure, exploitation and discrimination. Moreover, gender is a crucial factor that must never be neglected in any analysis of violations of freedom of religion or belief. The generally subordinated role of women in many societies is often also reflected in obstacles to their full enjoyment of freedom of religion or belief. In a few countries, questions of religious minority status are deeply interwoven with the caste society, which creates situations of increased vulnerability, including for converts from lower-caste backgrounds (see A/HRC/10/8/Add.3).

Conclusions

75. Furthermore, societal power imbalances may lead to situations of increased vulnerability for certain individuals or communities, including persons from lower-caste backgrounds, individuals belonging to religious minority communities or indigenous peoples, whose freedom of religion or belief thus may be at stake, often in conjunction with violations of other human rights. Any analysis of the root causes underlying violations of freedom of religion or belief should also address gender issues. Countless women and girls suffer from human rights violations in the intersection of freedom of religion or belief and gender issues, for example in the context of State-enforced denominational family laws.

K. Special Rapporteur on contemporary forms of slavery, including its causes and consequences

1. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, A/HRC/33/46, 4 July 2016

Trends in the prevalence of debt bondage

Global

9. Debt bondage occurs worldwide and is not confined to any one country or region and it occurs across various sectors of the economy. A global trend can be seen whereby vulnerable people, including those belonging to minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, are disproportionately impacted by debt bondage. As will be discussed below, many victims of debt bondage face multiple and intersecting sources of discrimination which make them vulnerable to exploitation and abuse.

13. It has also been reported that indigenous peoples in the Democratic Republic of the Congo are subjected to practices similar to slavery, including debt bondage, by the Bantu majority. Indigenous peoples are often trapped in debt bondage by Bantu “masters” who often sell them goods such as clothes, food and medicine at inflated prices and add exorbitant rates of interest if the goods are not paid for on time and who

demand their work in return. It is also a common practice for the Bantu to create new debts in order to sustain the exploitation of bonded labourers. For example, it has been reported that they provide food to indigenous children and then add inflated costs to the debts of parents.

15. The practice of debt bondage in South Asia is reported to be widespread, particularly in India, Pakistan, Bangladesh and Nepal. The existence of debt bondage has also been reported in Afghanistan and Sri Lanka. However the majority of those in debt bondage are reported to be in India, Pakistan, Bangladesh and Nepal, despite the specific prohibition on such practices within the legal frameworks of these countries. Those who are trapped in debt bondage in South Asia are reportedly predominantly Dalits, persons of “low” caste, indigenous peoples or members of other minority groups.

18. In India, debt bondage is geographically widespread and has been reported to be prevalent in sectors such as the brick kiln industry, stone quarries, mining, manufacturing of beedi (Indian cigarettes), carpet weaving, construction, agriculture, power looms and cotton handlooms, as well as fish processing. Such practices are reported to be present in both the formal and the informal sectors. A survey conducted in 10 States in 1978 and 1979 by the Gandhi Peace Foundation and the National Labour Institute, which remains the most detailed survey on debt bondage, estimated the total number of bonded labourers in the agricultural sector at 2.62 million. The majority of people who are in debt bondage are Dalits, of “low” caste, or indigenous peoples — also referred to as members of the scheduled castes and scheduled tribes.

21. In Nepal, bonded labour can be found in sectors such as agriculture, cattle rearing, domestic labour, the brick kiln industry, embroidered textiles and the stone-breaking industry.²⁶ A United Nations assessment carried out in 2011 suggested that 547,000 individuals in Nepal were in forced and bonded labour. A large proportion of bonded labourers were reported to be involved in traditional forms of agricultural bonded labour, such as haruwa-charuwa, haliya or kamaiya. The majority of kamaiya labourers were released following the declaration in 2000 that abolished the system and the enactment of the Bonded Labour (Prohibition) Act, 2058 (2002). However, traces of the kamaiya system still remain, particularly where government action aimed at identification, release and rehabilitation has not reached those affected. In 2008 the Government abolished the haliya system and cancelled the debts of haliya bonded labourers, but in the absence of a comprehensive rehabilitation programme some reportedly remain trapped in debt bondage. A study conducted by ILO between 2008 and 2010 addressing forced labour of adults and children in agriculture, with a particular focus on the haruwa-charuwa system in central and eastern Tarai and the haliya system in the far western hills, found that haruwa-charuwa and haliya households accounted for 72 per cent of adults in forced labour. The ILO study also estimated that 33.5 per cent of the 89,545 working children aged from 5 to 17 were in forced labour, 62 per cent of whom were male and 38 per cent of whom were female. The vast majority of bonded labourers in Nepal are reported to be Dalits, persons of “low” caste, indigenous peoples or members of religious minorities.

22. In Latin America, debt bondage mainly affects marginalized communities, including those impacted by poverty, indigenous peoples, those living in rural areas and persons of African descent. Victims of debt bondage are often recruited to work within their own locality or transported to areas where there are new commercial developments. They work in a range of industries, including production of charcoal and pig iron, timber processing and agriculture. Debt bondage has been reported in countries such as the Plurinational State of Bolivia, Guatemala and Peru, where there are high proportions of indigenous peoples.

24. In Peru, debt bondage is reported to occur in the illegal logging and timber extraction industries, with mestizos (individuals of mixed colonial and indigenous descent) and indigenous peoples in the Peruvian Amazon commonly victimized. Two forms of forced labour in logging activities have been identified in the Amazon. The first involves indigenous workers being contracted to perform activities in their own communities, whereas the second sees indigenous and mestizo workers being hired to work in logging camps owned by timber bosses. Enforcement of the arrangements between workers and employers is in some cases ensured through threats and abuse, including physical violence.

25. In the Plurinational State of Bolivia, bonded labour has been reported among the indigenous Guaranis in the Chaco region and among indigenous workers and mestizos on sugar plantations, and in relation to the production of Brazil nuts in the northern Amazon. The indigenous Guaranis in the Chaco region are mainly involved in farming and ranching, in activities such as the production of corn, beans, cassava, plantain and fruits, and fishing and hunting. It is estimated that a large number of indigenous Guaraní families in the Bolivian Chaco are subjected to debt bondage and forced labour and are thus referred to as “captive communities”. Furthermore, every year during the sugar harvest, tens of thousands of indigenous workers and

their families, recruited by intermediaries or contractors through the enganche recruitment system, migrate to Santa Cruz and Tarija.

26. In Paraguay, debt bondage has reportedly been observed among members of various indigenous ethnic groups on traditional low-technology cattle farms located in remote areas of the Chaco region. Casual workers are hired for changa work — short-term work clearing fields or bringing in the harvest, and receive very low pay or no pay for their work after employers have deducted amounts from their wages corresponding to the items purchased on credit at the estate shop. Permanent workers are employed as playeros (ranch hands) to perform a variety of tasks, such as cutting wood or milking the cows, and in some cases due to the debts they have contracted are directly or indirectly held against their will. ILO estimated in 2005 that a total of 8,000 indigenous workers could be victims of debt bondage in Paraguay.

Conclusions and recommendations

Conclusions

53. The practice of debt bondage is prevalent worldwide in numerous sectors of the economy and particularly affects people belonging to minority groups, including women, children, indigenous people, people of “low” caste and migrant workers. Poverty, the lack of economic alternatives, illiteracy and the discrimination that people from minority groups suffer leave them with no other option than to take a loan or advance from employers or recruiters to meet basic needs, in exchange for their work or the work of their families. People in debt bondage end up working for no wages or wages below the minimum in order to repay the debts contracted or advances received, even though the value of the work they carry out exceeds the amount of their debts. Furthermore, bonded labourers are often subjected to different forms of abuse, including long working hours, physical and psychological abuse, and violence. Debt bondage is prevalent in many countries, due to a failure by many Governments to implement effective legislation on debt bondage, including deficiencies in the areas of identification, release, rehabilitation, and the prosecution of offenders, and due to a lack of data on the prevalence of debt bondage, weak rule of law, social exclusion and discrimination.

Recommendations to Member States

Institutional and legal framework

...

- Remove any forms of discrimination that negatively impact on the rights of certain groups, including girls, indigenous peoples and migrant children, to an education.

L. Working Group on the issue of human rights and transnational corporations and other business enterprises

1. Report on the First African Regional Forum on Business and Human Rights A/HRC/29/28/Add.2, 2 April 2015

An African strategy to advance the business and human rights agenda

61. The aim of the session was to reflect on options for developing an African strategy on business and human rights through leadership at the regional level, including through promoting development of national action plans.

62. During the discussion, participants highlighted the steps taken by African national human rights institutions to promote implementation of the Guiding Principles and that business and human rights was a priority for the regional network of national institutions. At the network’s 2011 conference in Yaoundé, three key areas had been identified: land rights, water and work conditions. With regard to an African regional strategy on business and human rights, the African network of national human rights institutions stressed the following elements as important:

- (a) The need to contextualize the Guiding Principles both at country and continental level and identify innovative approaches by all actors;
- (b) The Guiding Principles should be integrated in existing processes and become a priority at the African Union level;
- (c) The African Union should consider developing a legally binding instrument;

(d) The role of national human rights institutions should be recognized.

63. Civil society participants highlighted and challenged two assumptions that often formed the basis of the business and human rights debate in Africa: first, the notion that Africa had “weak States” was seen as problematic because States were not as weak as they were often made out to be; second, the emphasis on the need for large-scale development could be used as a pretext to ignore concerns raised by local communities.

64. It was argued there was a need to change the conversation, with emphasis on the following points:

(a) Communities needed to have the right to choose their own path to development;

(b) Customary law needed to be taken seriously;

(c) Community experience needed to be the starting point;

(d) Communities needed to be involved before a project was decided upon in order to have the possibility of refusing consent.

65. Those four points were already enshrined in African instruments, such as the African Charter and the resolution of the African Commission on Human and Peoples’ Rights on a human rights-based approach to natural resource governance or the African Land Policy Initiative.

Groups, contexts, sectors and national action plans

Supporting and protecting human rights defenders and the role of national human rights institutions

67. The session aimed to identify challenges faced by human rights defenders and discuss how the Guiding Principles clarify the respective duties and responsibilities of States and business and corresponding actions to address those challenges. A key issue was the role that national human rights institutions could play.

68. It was highlighted that the human rights defenders working on issues related to environmental protection, indigenous peoples, minority rights, people living in poverty and construction projects frequently experienced serious attacks and harassment.

Investment in land: applying a human rights lens

84. The session aimed to identify challenges and opportunities in implementing the Guiding Principles in land-related investments and business activities. The focus was on agribusiness and large-scale land investments, including the implications of impacts on women’s rights.

85. The discussion highlighted several key human rights issues, such as a lack of consultation with local communities, loss of land and land acquisition without fair compensation, forced resettlements, food insecurity and loss of livelihoods, and poor working conditions for those employed in the sector. Case studies of corporate land investments carried out by Oxfam were referred to, which found that, even if a company had good policies and practice in relation to land rights, women were not commonly involved in the consultation process and their land rights were not respected. The lack of recognition of the rights of women and adverse impacts on their rights among investors was found to be prevalent, and there was an urgent need to ensure empowerment and meaningful engagement of affected women in that context.

86. The South African Human Rights Commission had also uncovered cases where projects that were publicized as demonstrating good practice with regard to respect for human rights showed a different reality, and that the affected poor community had not been empowered to engage meaningfully. It was suggested that good practice would include elements such as gender-sensitive budgets that supported promotion of gender equity.

87. A business representative stated that the Guiding Principles provided a good starting point for companies to deal with business and human rights issues. In terms of practical approaches, the need to build trust among different stakeholders and engender mutual communication were emphasized and, at the same time, it was noted that such processes took time and that companies faced a range of challenges (political history and context, social expectations, environmental concerns, agronomical targets, economic costs and the legal landscape) that had to be balanced. Free, prior and informed consent and participatory approaches were seen as key elements for ensuring sustainable investments.

88. Human rights due diligence was also increasingly included in the portfolio of corporate law firms, as it was increasingly seen as presenting opportunities for investors. The experience by one major firm of advising clients investing in natural resources and land to increasingly bringing human rights into investment negotiations and “putting humans into the corporate speak of due diligence” was shared. A number of elements to be considered for moving towards better practices and contracts were highlighted, including short durations, specifying the land and resources that were being allocated, flexibility to re-negotiate contracts,

making entitlements of investors subject to national law and development priorities, avoiding “stabilization clauses” and ensuring transparency.

89. Finally, the guidance on State-investor contracts by the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises was highlighted as a key reference.

2. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Brazil, A/HRC/32/45/Add.1, 12 May 2016

Issues related to large-scale development projects

18. The Growth Acceleration Programme has promoted public and private investment in large-scale development projects. Many projects have had significant adverse human rights impacts on local communities, as documented by a special commission of the National Council on Human Rights, which studied seven large-scale development projects, including hydropower plants and mines, over a period of four years.

19. The Working Group heard testimonies from affected communities about cases related to extractive industries, agribusiness and construction, including the Belo Sun gold mining project on the Xingú River in Pará; development projects in Sepetiba Bay, Rio de Janeiro, which reportedly caused industrial pollution, skin and lung disease and destroyed the local fishing economy; intimidation against activists seeking to prevent business-related human rights harm resulting from the Suape Port and industrial complex in Recife, Pernambuco; hydro-electric dams proposed for the Tapajós River in Pará; the Grande Carajás project in Pará, the largest open-pit iron ore mining complex in the world, which reportedly affects 100 communities and is responsible for the railway connecting the mine to the Ponta da Madeira port in Maranhão and which has reportedly brought deforestation, land conflict, pollution and violence to the area, to the detriment of the indigenous peoples; and the Açú logistics industrial port complex, located in São João da Barra, which reportedly affects the water supply and housing of the population in local mining towns. The cases illustrate recurrent concerns such as pollution, lack of consultation, inadequate government oversight, land expropriation, health impacts and destruction of communities.

Belo Monte

21. The Working Group visited Altamira and Belém in the State of Pará to look into the construction of the Belo Monte hydropower plant,²³ located along the Xingú River. The Belo Monte dam was due to become operational in March 2016 and provide energy for 60 million people in 17 states. Located in an area comprising 11 indigenous lands and 2 indigenous areas (although the Government emphasized that the dam itself was not located on indigenous lands), Belo Monte is being constructed by Norte Energia, a consortium of 10 Brazilian public and private energy companies and investment funds. Its major shareholder is Eletrobras, a State-owned enterprise. Although construction had almost been completed, in 2015, both the Federal Public Ministry and the Brazilian National Indian Foundation advised against granting the operating licence as Norte Energia had not met the licence conditions to mitigate adverse social and environmental impacts. In response to human rights concerns and at the request of the Federal Public Ministry, an interministerial fact-finding mission was carried out in June 2015. It formulated 55 specific observations concerning the lack of implementation of mitigation measures to protect against adverse human rights impacts. Despite this, the Brazilian Institute of Environment and Renewable Natural Resources granted the operational licence on 24 November 2015.

22. A court filing made on 7 December 2015 with the Federal Court in Altamira, Pará, by the Federal Public Ministry accused the Federal Government and Norte Energia of ethnocide owing to the destruction of indigenous society and culture during the construction of the dam. The impacts of the Belo Monte dam were considered by the Inter-American Commission on Human Rights in April 2011, further to a request for precautionary measures on behalf of indigenous communities of the Xingu River Basin in Pará. The request was granted on the basis that the life and physical integrity of the communities were at risk owing to the impact of the construction of the Belo Monte dam. The Commission requested Brazil to suspend the licensing process and cease construction work until certain conditions were met. The Commission evaluated the precautionary measures in July 2011 and removed the request to suspend construction work, while requesting the State to adopt measures to protect the life and health of the indigenous communities affected by the Belo

Monte project. The Commission opened a case against Brazil on 21 December 2015, to which Brazil is required to respond.

23. The Working Group met with officials of Norte Energia, affected communities, indigenous peoples and public prosecutors, in Altamira, and with state authorities in Belém to assess the measures taken to identify and prevent human rights risks and mitigate adverse human rights impacts. Norte Energia informed the Working Group of the socio-environmental actions undertaken in accordance with the licensing conditions, such as a programme to combat malaria and the construction of water, sewage and landfill facilities, health clinics, schools, a hospital in Altamira and a fish market. While these will likely be of benefit to the local population, Norte Energia did not seem to have a human rights-based approach. The Working Group heard claims of a lack of engagement and consultation on the part of Norte Energia and a lack of recognition of its responsibility to exercise human rights due diligence and avoid causing human rights harm. State authorities in Belém said that a school built by Norte Energia was just a temporary container that was inadequate for the hot Altamira climate and it was now being used as a warehouse. Riverine people reported that they had been resettled in housing far from the river — their main source of livelihood — with no infrastructure. In both cases, there appeared to have been limited or no consultation with affected communities about effective mitigation measures. In a report on assessments forming part of the technical reports produced by the Brazilian Institute of Environment and Renewable Natural Resources, Instituto Socioambiental emphasized that the Brazilian Institute did not consider whether the homes built to rehouse displaced people were suitable for the local cultural conditions, only whether an adequate number of homes had been built. If true, this would be a weakness in the Brazilian Institute's oversight of compliance with environmental licensing conditions intended to mitigate the loss suffered by affected communities.²⁹

24. Reportedly, there was little planning to prepare Altamira for the large influx of construction workers,³⁰ and the population growth resulting from the commencement of construction work was accompanied by cases of violence, trafficking, sexual exploitation of women and girls and alcohol abuse. The Secretariat of Human Rights highlighted the sexual exploitation of children in the context of displaced populations and the construction of hydroelectric dams.

25. The Working Group visited the Independente II neighbourhood, a poor residential area of 400 houses in Altamira, which is to be flooded when the dam reservoir is filled. Residents reported that Norte Energia had resisted resettling them and they had not received any information nor had they been consulted on their resettlement. Following advocacy by civil society organizations, the Brazilian Institute of Environment and Renewable Natural Resources included a new licensing condition in November 2015, which requires Norte Energia to provide alternative housing for the residents of Independente II before October 2016. Residents were worried this would not happen and they did not have information about relocation plans.

26. Testimonies pointed to a failure to fully consider the social and cultural contexts surrounding the Belo Monte project and to take seriously the duties owed to the members of the affected communities, in accordance with human rights standards. Those responsible for development projects have the duty to prevent disruption to the life of those living in local and indigenous communities and to ensure adequate protection for vulnerable groups. Given the involvement of State-owned enterprises in the project, the Federal Government would also be expected to use its leverage to ensure that effective human rights due diligence is implemented.

27. The Government informed the Working Group that human rights issues were included in environmental licensing rules relating to large development projects and cited, for example, resolution 1/1986 of the National Council on the Environment. It emphasized that, apart from the judiciary and federal prosecutors, many governmental bodies, including the Brazilian National Indian Foundation and the Fundação Cultural Palmares (responsible for people of African descent) participate in the licensing process associated with large development projects. It maintained that local communities were consulted and informed about the Belo Monte project through public hearings.

Mining and the Doce River disaster

28. The Working Group met with state authorities, businesses, civil society and community representatives in Minas Gerais, the state with the highest concentration of mines. The Working Group's visit took place following the rupture, on 5 November 2015, of the Fundão tailings dam in the district of Mariana — referred to as the worst environmental disaster in Brazil. The tailings dam operated by the mining company Samarco Mineração SA contained iron ore residue. The dam rupture resulted in the release of 55 million to 60 million cubic metres of mining residue into the Doce River, inundating villages with mud, destroying the towns of Bento Rodrigues and Paracatu de Baixo and causing the death of 18 people (with one person

missing) and affecting the lives of the 3.2 million people who live along the Doce River. The mud travelled more than 600 kilometres down river to the ocean, killing fish, fauna and flora, and causing a major social and environmental crisis that affected the livelihood and access to drinking water of the population, including the Krenak indigenous community and thousands of fishermen who depend on the river.

29. The Working Group met with executives of Samarco, Vale and BHP Billiton to discuss the actions taken since the disaster. It also met with people affected from Mariana, Minas Gerais and Espírito Santo, and state and federal prosecutors involved in the case. Affected communities were concerned about receiving support to rebuild their lives and worried about the health and environmental risks posed by the contaminated river and ocean, and the lack of information in that regard. They did not trust the information provided by Samarco, including assurances that the tailings did not include toxic material and that the water was safe to drink following the installation of provisional water treatment facilities. They were also concerned that more dams could collapse. The Working Group noted that it had taken almost two weeks for Samarco to announce that two other structures were unsafe and that there had been a failure in the company's contingency plan as people had not been alerted about the disaster, despite the 10-hour interval between the dam rupture and the flooding of Barra Longa. Prior warning would have allowed people to save belongings and might have saved lives.

30. While the Working Group considered it positive that it was the Chief Executive Officer who led the company's response and showed willingness to consult with the communities and to provide just compensation to those affected, it encouraged Samarco to pay close attention to critical voices and to be transparent and explain the failings in the early response to the disaster. The Working Group emphasized the need to restore trust by improving consultation and ensuring access to information and essential services. It also advised Samarco to create an environment where people, including its employees, could express concerns without fear of reprisal.

40. While Brazil has a well-developed legal framework and regulations and mechanisms to protect human rights against business-related harm, the Working Group considers that regulatory agencies such as the Brazilian Institute of Environment and Renewable Natural Resources and the Brazilian National Indian Foundation should be strengthened to ensure that they are able to act unhindered and independently as a check against adverse human rights impacts in the context of large-scale development projects. Rights holders who may be affected by development projects must be provided with sufficient support to enable them to be in a balanced negotiating position vis-à-vis a company. Effective stakeholder engagement, especially enabling the voice of the most vulnerable, is particularly important. The Working Group observed that, in some cases, without the support of civil society and public prosecutors, affected communities would be virtually powerless.

41. A common theme that was reported to the Working Group in relation to large-scale development projects was concern that measures to mitigate adverse human rights impacts were conceived and implemented without effective and meaningful prior consultation. In this regard, the Working Group underlines the importance of Government and businesses carrying out human rights due diligence and consultation with affected communities, in line with the Guiding Principles, guidance provided by the Committee on Economic, Social and Cultural Rights,³⁹ the Basic Principles and Guidelines of Development-based Evictions and Displacement⁴⁰ and the Guiding Principles on Internal Displacement.⁴¹ In the case of indigenous peoples, the Working Group highlights the requirement of free, prior and informed consent regarding relocation, as provided for in the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), which Brazil has ratified, and the United Nations Declaration on the Rights of Indigenous Peoples. Where resettlement is unavoidable, international human rights standards require that the people affected be provided with fair compensation and not be deprived of their sources of livelihood.

Specific issues

A. Indigenous peoples

46. Brazil has about 240 tribes, totalling around 900,000 people, or 0.4 per cent of the population. Thirteen per cent of the country, that is, 690 territories, is recognized as indigenous land, nearly all of which (98.5 per cent) lies in the Amazon region. The Working Group repeatedly encountered human rights concerns affecting indigenous peoples and the Quilombolas, people of African origin. Over past decades, indigenous peoples have been subjected to forced displacement owing to the expansion of agribusiness and large-scale development projects. In addition to concerns related to development projects in Amazonas, the Working Group was alarmed to learn from civil society and federal prosecutors about the lack of effective consultation

with indigenous peoples and violent social conflict in Mato Grosso do Sul, perpetrated by armed militias and private security companies in the context of the intrusion of agribusiness on indigenous land and ineffective or incomplete demarcation of indigenous land. Information gathered by the Missionary Council for Indigenous Peoples documented the murders of 138 indigenous persons in Brazil in 2014, almost one third of which (41 murders) took place in Mato Grosso do Sul. The registration of 138 murders in 2014, up from 97 murders registered in 2013, reveals a worrying upward trend.

47. The Working Group is concerned about indigenous land that has not yet been demarcated. The indigenous peoples and civil society organizations with whom it met were anxious about a proposed Constitutional amendment, PEC 215/2000, which would transfer decisions on the demarcation of indigenous territories from the Brazilian National Indian Foundation and the President (the executive branch) to Congress. The Working Group queries the appropriateness of such a step and underlines the importance of prompt land demarcation and of upholding the rights of indigenous peoples as provided for in ILO Convention No. 169 and the Federal Constitution. In this regard, the Working Group notes the concerns expressed by Supreme Court Justice Luís Roberto Barroso about the constitutionality of amendment PEC 215/2000. On 23 September 2013, on rejecting an application for an injunction (MS 32262) against PEC 215/2000, he stated that it was “not unreasonable for the authors of the injunction to claim that the constitutional protection of indigenous rights could be undermined by assigning to the competence of the legislature the demarcation of the lands they traditionally occupy”. He pointed out that, “in a matter of principle, to make the recognition of a fundamental right subject to the decision of a political majority seems to contradict its own reason for being. ... These rights are included in the Constitution precisely so that the majority has no power over them”.

Conclusions and recommendations

67. The Working Group welcomes the commitment of the Government of Brazil to the Guiding Principles on Business and Human Rights and its interest in developing a national action plan on business and human rights. As the Government considers how best to advise businesses, including the many State-owned enterprises in Brazil, in relation to their responsibility to respect human rights, the Working Group stands ready to continue the dialogue on how to overcome obstacles on the basis of best international practice.

68. A key finding of the visit was the need to further strengthen the support provided to rights holders to enable them to be in a balanced position vis-à-vis companies and public officials. The affected communities with whom the Working Group met conveyed a sense of vulnerability, isolation and rejection by the decision makers and those with power. The Working Group emphasizes the importance of the Government and businesses listening to the voice of the most marginalized. Deeply considering the opinions and experiences of those affected by, for example, large development projects, is essential to ensuring that human rights are not jeopardized in the pursuit of economic growth.

69. The Working Group makes the following recommendations to the Government, business enterprises and civil society organizations.

70. The Working Group recommends that the Government:

- (a) Raise awareness and build the capacity of civil servants and lawmakers on the respective obligations and responsibilities of the Government and all business enterprises, including State-owned enterprises, to prevent and address adverse business-related human rights impacts, in line with the Guiding Principles on Business and Human Rights;
- (b) Set out clear expectations in relevant policies that all business enterprises in Brazil respect human rights throughout their operations and conduct human rights due diligence in relation to their domestic and international operations;
- (c) Encourage the Brazilian Development Bank (BNDES) to ensure that bank-funded projects include safeguards against adverse human rights impacts, in line with the Guiding Principles;
- (d) Develop a national action plan on business and human rights on the basis of multi-stakeholder engagement;⁷²
- (e) Create platforms and strengthen mechanisms for dialogue between Government, businesses and civil society on business and human rights issues;
- (f) Include human rights considerations in public procurement policies and include the corporate responsibility to protect human rights in procurement contracts;
- (g) Reinforce the importance of compliance with the Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises in relation to domestic and overseas business

activity and highlight the progress made by State-owned enterprises that have already committed to such compliance;

- (h) Build on the current programmes and policies to combat child and forced labour and avoid weakening safeguards, including the current definition of slave labour;
- (i) Conduct a review of access to effective remedy with a view to strengthening judicial and non-judicial mechanisms to identify and address business-related human rights abuses;
- (j) In the context of improving access to remedy, require the ombudsperson of the Brazilian Development Bank (BNDES) to provide information regarding the content of past or pending complaints, the outcomes of closed cases or the rationale for determinations regarding individual complaints;
- (k) Strengthen the capacity of, the resources allocated to and coordination between the Brazilian Institute of Environment and Renewable Natural Resources and the Brazilian National Indian Foundation in order to strengthen the regulation of large development projects and deliver sustained protection for affected communities;
- (l) Enhance the technical capacity and the resources of the Brazilian Institute of Environment and Renewable Natural Resources to enable it to better monitor the social and environmental impacts of large development projects and the fulfilment of any conditions imposed in mitigation plans;
- (m) Strengthen the dam inspection activities undertaken by the National Department of Minerals Research so as to improve governmental oversight and prevent further collapses;
- (n) Ensure that, where disasters like the collapse of the Fundão tailings dam occur, adequate compensation is provided to all those affected, following full consultation, and that adequate environmental mitigation and remediation measures are carried out;
- (o) Apply its best efforts to seek to prevent the deletion of key environmental protections from the Mining Code and also apply its best efforts to seek to ensure that infrastructure licensing processes contain thorough social and environmental considerations;
- (p) Apply its best efforts to seek the appropriate level of resources to enable federal and state prosecutors to continue to challenge the actions of companies and public bodies;
- (q) Review the current use of the legal mechanism of “safety suspension” with a view to ensuring that it does not amount to an obstacle to access to justice for communities affected by large-scale development projects;
- (r) Ensure that rights holders and stakeholders (especially the most vulnerable) who may be affected by development projects receive information, including adequate legal advice, in order to be in a balanced negotiating position with a company;
- (s) Apply its best efforts to provide the Brazilian National Indian Foundation with the resources necessary to properly and promptly carry out indigenous land demarcation and also apply its best efforts to seek to ensure that the demarcation of indigenous land remains the responsibility of the executive branch of Government;
- (t) Increase resources for the National Programme for the Protection of Human Rights Defenders and place emphasis on alleviating the social, political and economic conditions that place human rights defenders at risk;
- (u) Provide enhanced human rights training to staff of ministries, officials responsible for environmental licensing and judges so as to ensure that current legal principles, human rights standards and international best practices are known and applied by decision makers.

71. The Working Group recommends that all business enterprises, including private enterprises and State-owned enterprises:

- (a) Comply with their responsibility to respect international human rights by adopting a human rights policy and carrying out human rights due diligence to identify, prevent, mitigate and account for how they address adverse human rights impacts;
- (b) In assessing actual or potential adverse human rights impacts, ensure meaningful consultation with potentially affected individuals and communities, paying attention to potentially vulnerable or marginalized groups and ensuring that they have timely and complete information about proposed projects or changes that may affect them and the capacity to put forward their opinions;
- (c) Pay particular attention to how human rights risks affect women, children and men differently, especially regarding construction and infrastructure projects involving access to land and the resettlement of communities;

- (d) Establish and run operational grievance mechanisms in line with Guiding Principle 31, in order to identify and address adverse impacts;
 - (e) Engage in the development of a national action plan on business and human rights;
 - (f) Engage with the Global Compact Network Brazil and business associations to promote understanding of and to learn from the experiences of implementing the Guiding Principles;
 - (g) Ensure greater focus on safety and contingency plans, particularly companies operating mines and infrastructure development projects, and draw on the United Nations Environment Programme technical report No. 41, “APELL for Mining: Guidance for the Mining Industry in Raising Awareness and Preparedness for Emergencies at Local Level”.
72. The Working Group recommends that civil society organizations:
- (a) Continue to raise awareness about the respective obligations and responsibilities of the Government and of business enterprises under international human rights law to prevent and address adverse human rights impacts related to the operations of business enterprises;
 - (b) Consider holding human rights awareness-raising events for government agencies that focus on economic and commercial matters;
 - (c) Continue to champion the rights of affected communities and human rights defenders;
 - (d) Engage in developing a national action plan on business and human rights through multi-stakeholder dialogue, including the voices of affected communities and human rights defenders.

3. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the Asia Forum on Business and Human Rights, A/HRC/32/45/Add.2, 30 May 2016

Focus of the Forum

7. The Asia Forum programme⁴ focused on the three pillars of the Guiding Principles on Business and Human Rights (“the Guiding Principles”):
- (i) The State duty to protect human rights against business-related impacts;
 - (ii) The corporate responsibility to respect human rights;
 - (iii) The need for effective remedy for victims of business-related human rights abuse.
8. During the two-day conference, participants explored the salient business and human rights issues across Asia, and they identified areas at the national level where accelerated action is needed by States and companies to prevent and address business-related human rights harm.
9. Salient issues discussed at the Asia Forum included:
- the rights of migrant workers
 - impacts of large-scale land acquisitions
 - garment sector supply chains
 - forced and child labour and human trafficking
 - the right to privacy in the digital domain
 - access to remedy through judicial and non-judicial mechanisms
 - mega sporting events
 - human rights defenders
 - indigenous peoples’ rights.

The need to ensure access to remedy for victims

30. It has been consistently noted that the third pillar of the Guiding Principles – “access to remedy for victims” – is where progress is lacking the most and the pillar that requires urgent focus and implementation. The Asia Forum gave specific focus to the situation facing victims of business-related human rights abuses in accessing an effective remedy and it included discussions on a mix of judicial and non-judicial mechanisms as well as new instruments and tools that are being developed.

31. Speakers outlined the familiar challenges with State-based judicial remedy such as: the lengthy court processes; unequal access to the courts for certain groups such as indigenous communities notably because of the huge expense of mounting and maintaining a legal case, and the deficit in linguistic skills; the lack of judicial independence in some regions across Asia; and intimidation of defendants and fear of reprisals against those making a complaint.

Human rights due diligence in specific sectors

...

47. In the context of land acquisitions, it was noted that Government actors are often complicit in and benefit from land acquisitions that take place without meaningful consultation or adequate compensation for affected communities; or they fail to enforce existing laws meant to protect rights-holders. In the absence of strong governance systems and enforcement of national regulations to protect affected communities, there is an expectation that business enterprises should be more proactive and not only respect the law but also bring in higher standards with respect to environmental and social impact assessments; stakeholder consultations; and resettlement/compensation/remediation.

48. Another key point is that land acquisitions are a complex issue because land is part of the identity and culture of so many communities in Asia (both indigenous communities and small scale farmers), and in many Asian countries (such as in South-East Asia) the local population depends on land and water for its livelihood. Thus, land cannot be viewed as a mere commodity. Resettlement should be avoided at all costs. Speakers also noted that cultural considerations must be included in any process of consultation or resettlement. One example highlighted a complex resettlement process of an indigenous community in Asia where a company was developing a natural gas field and needed to remove sacred stones. This produced the lesson that “it is harder to move the dead than the living.”

49. Free prior informed consent (FPIC) also has implications for the company’s human rights due diligence process especially as it implies meaningful consultations prior to approval of land acquisitions or projects. FPIC is a key principle for indigenous peoples, but it is often misunderstood or done inadequately. At present, most consultations that do take place are carried out after the project has already been approved or after the business operations have already started. Given the lack of consultation, there is no management plan to prevent or mitigate harm, leading to conflicts and rising costs for all stakeholders including business. Speakers noted that to ensure meaningful consultations, businesses must dedicate enough staff and resources and invest in this process early on. Consultations must also include all groups within a community, in particular women.

50. The discussion on human rights in the ICT sector highlighted that all human rights are potentially relevant – from labour rights and issues arising from conflict minerals in the supply chain to the right to privacy. Participants examined the key issues for this sector in Asia, in particular digital surveillance, the right to privacy and freedom of expression online, and internet access for the poor. They reiterated the clear expectation – as set out in the Guiding Principles – that companies across all sectors should have in place appropriate due diligence policies to identify, assess, prevent and mitigate any adverse impacts. Participants also discussed how the ICT sector can contribute to respect, protection and fulfilment of human rights and the role of new “disruptive” technologies.

Civil society and affected stakeholders

64. As well as focusing on engagement with Governments and business, the Forum sought to promote the role of civil society organizations including NGOs, trade unions, campaigners and human rights defenders and, crucially, to hear the voice of victims and affected communities. Throughout the Forum discussions, it became clear that a lot more capacity-building is needed in order to strengthen the role and impact of civil society to drive more responsible business conduct. Participants repeatedly made the point that, bar notable exceptions, civil society organizations across Asia largely struggle to engage meaningfully on business and human rights issues and with the key players – Governments and companies – due to a lack of expertise, experience and capacity. Building capacity to improve this is sorely needed to allow for more targeted advocacy campaigns and collaboration with business to garner positive results and help put the business and human rights agenda firmly on the map.

65. At the same time, the Forum examined the plight of directly affected stakeholder groups who are particularly vulnerable to business-related human rights harm in Asia, namely: (i) Migrant workers; (ii) Indigenous Peoples; and (iii) human rights defenders:

Indigenous Peoples

71. Two thirds of the world’s indigenous peoples live in Asia, which is home to more than 2,000 civilizations and languages. Government and business good practice when it comes to ensuring indigenous peoples’ rights is the exception not the rule in Asia. Discrimination against indigenous communities and certain members, including women, is a challenge. Representation and empowerment of IPs requires careful

thought. The meaning of FPIC is still being debated, and in some Asia countries “consent” is substituted for “consultation”.

72. From the perspective of a company, engagement activities with indigenous communities – and applying the principles of free, prior and informed consent (FPIC) – take time and require careful thought to ensure trust, clear two-way communication, and the identification of real issues and the people most at risk of suffering harm. It is, however, increasingly considered essential to the long-term success of the company’s operation.

73. A particular challenge in relation to indigenous peoples’ rights is land acquisitions by business enterprises. The Asia Indigenous Peoples Pact noted that over 70 percent of some 500 complaints received by affected indigenous communities in the past few years were related to land acquisitions and business operations. Indigenous peoples have a special relationship with three natural resources that are of key business interest: forests, water and minerals. In this regard, there are three common issues: (i) a lack of understanding of what land means for indigenous peoples versus an understanding of land as mere property; (ii) a lack of understanding of what IP rights, and in particular their collective aspects, are. FPIC is also widely misunderstood. and (iii) IP women are particularly affected by the loss of land as they are often responsible for the community’s livelihoods. In addition, land grabbing is often accompanied by or takes place in a context of militarization (or the use of private military companies) whereby violence against women increases.

Conclusions and recommendations from the Working Group

81. The Working Group was encouraged by the high interest in and support for the Guiding Principles expressed by the wide range of stakeholders who participated in the Asia Forum. These actors – who include affected individuals, Governments, companies, business associations, employers’ federations, NGOs, trade unions, NHRIs, lawyers, investors and academia – form a critical part of the business and human rights movement that is needed to scale up action to implement the Guiding Principles across Asia.

82. The discussions at the Asia Forum help inform the Working Group’s efforts to fulfill its mandate and promote effective implementation of the Guiding Principles worldwide. Based on the inputs from participants, the Working Group would like to make the following overall observations and recommendations:

(a) Asia’s economic development has been fast paced and has brought massive results. These economic achievements have, however, also left some people behind. The Regional Forum heard about the harsh conditions faced by workers in a range of sectors, including female workers in global garment supply chains, migrant workers, workers in the informal sector, and small-scale farmers and indigenous communities evicted from their land, among others;

(b) At the same time, the civil society space (including the space for human rights defenders to play their vital role and the space for freedom of association and collective bargaining) is limited and shrinking;

(c) Strengthening the human and social aspects of economic development is critical. Sustainable development is only possible with human rights at the core, which will require a rebalancing of the economic and social pillars.

87. The Working Group is concerned by reports of continued — and in some instances, increasing — adverse business-related human rights impacts across Asia, including relating to the difficult situation of human rights defenders; the negative impacts on the human rights of communities affected by land acquisitions; the harms suffered by migrant workers in countries of origin and destination; and the violations of core labour rights.

88. The Working Group calls on all Asian States and business enterprises in the region — both domestic and transnational corporations — to meet their respective duties and responsibilities set out in the Guiding Principles: the State duty to protect against human rights abuse, the corporate responsibility to respect human rights and the need to enhance access to remedy for victims. It also calls on home States of transnational corporations to play a more active and constructive role. Other actors, such as regulators, investors and business associations can play a positive role in demanding greater transparency by companies in reporting on human rights risks and impacts, including on how they are being addressed, in line with the Guiding Principles.

89. Regional organizations, such as the Association for Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC), should play a bigger and more prominent part in promoting implementation of the Guiding Principles and ensuring that focus on economic growth does not ignore human rights. UNDP, UNESCWA and UNESCAP can also play a leadership role in promoting the

Guiding Principles, including by ensuring alignment and coherence in the context of 2030 Agenda implementation efforts.

4. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Addressing the human rights impacts of agro-industrial operations on indigenous and local communities: State duties and responsibilities of business enterprises, A/71/291, 4 August 2016⁵³

Summary

In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises looks at the human rights impacts of agro-industrial operations, especially with respect to the production of palm oil and sugarcane, on indigenous peoples and local communities. It examines the duties and responsibilities, under the Guiding Principles on Business and Human Rights, of host and home Governments and business enterprises, including financial institutions and traders, in preventing, mitigating and addressing these impacts. It also offers reflections on issues of particular importance, such as transparency, leverage, meaningful consultation, multi-stakeholder initiatives and access to remedy.

The Working Group makes recommendations to States, business enterprises, multi-stakeholder initiatives and industry associations, civil society and international organizations on transforming current practices in order to benefit communities affected by agro-industrial operations.

Introduction

Context, aims and focus of the report

...

2. Governments sell, lease, or otherwise grant, domestic and foreign business enterprises access to land and forest for agricultural operations, often resulting in major impacts on the communities that live on, cultivate or use those very lands and forests. Agriculture-driven land conversion is also a key driver of deforestation, in particular of tropical forests and peatlands. It is difficult to obtain precise data on the number and scale of land acquisitions worldwide. One global database indicates that, since 2000, over 1,200 “land deals” have been contracted. The real figure is likely to be higher. The report uses the term “land acquisitions” to encompass all means through which land is obtained by a company for intensive crop production.

3. The Working Group has chosen to focus its discussion on agro-industrial operations with reference to two commodities, namely, palm oil and sugarcane, and on the impacts related to their production at the country level. Palm oil and sugarcane are among the agricultural commodities with the largest land footprint and have similar impacts on the human rights of communities surrounding or using land acquired by plantations and mills.

Human rights impacts related to agro-industrial operations

7. In the present report, the Working Group addresses the adverse impacts on “local communities”, understood in a broad sense to refer to individuals or groups who are affected by palm oil and sugarcane operations. They include indigenous, tribal and forest-based peoples, traditional hunter-gatherers and fisherfolk, and small landholders. The Working Group examines rights and responsibilities in relation to all types of communities, while clarifying entitlements and duties specific to indigenous peoples.

8. Relevant international human rights instruments and guidelines include the International Covenant on Economic, Social and Cultural Rights, which recognizes everyone’s right to an adequate standard of living, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, and the 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Voluntary Guidelines on Land Tenure). They affirm the fundamental link between the right to food and access to secure tenure (see A/65/281).

9. The United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), among others, specifically recognize the rights of indigenous peoples, in particular their 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 their right to free, prior and informed consent (see A/68/279 and section IV.B below).

⁵³ http://www.un.org/ga/search/view_doc.asp?symbol=A/71/291

10. Countless cases highlight adverse impacts resulting from agro-industrial operations, including oil palm and sugarcane plantations.⁹ Land acquisitions routinely take place without regard for the land and tenure rights of indigenous and non-indigenous communities, and in particular the communal basis for customary land rights, leading to loss of land and property, involuntary resettlement and forced eviction, and reduced access to land used for hunting, gathering or grazing. Land acquisitions also take place with little consultation with potentially affected communities, and impact assessments are often conducted after land leases/contracts are signed. The lack of adequate consultation with communities has also resulted in the destruction of sites of religious, spiritual and cultural significance. Deforestation and loss of land have led to increased food insecurity, malnutrition and mental and physical health issues among communities. As a result, land conflicts have proliferated.

11. Evidence suggests that affected communities rarely obtain effective remedy, with judicial remedies being seen as particularly ineffective and unaccountable. The criminalization of affected community members and human rights defenders continues to mar efforts towards access to justice, in the context of widespread intimidation, harassment and killings of community members and human rights defenders in relation to land acquisitions. Labour rights are also an issue at plantations and mills. Documented cases include child and forced labour, precarious working conditions, health and safety issues, and limitations on freedom of association and collective bargaining.

Duties of States

13. Under the Guiding Principles, States have the duty to provide protection against human rights abuses perpetrated by business enterprises within their territory and/or under their jurisdiction (Guiding Principle 1). States should consider the full range of measures at their disposal, namely, “a smart mix of measures — national and international, mandatory and voluntary — to foster business respect for human rights” (commentary to Guiding Principle 3).

Host States

An environment conducive to respect by business for human rights

15. At the outset it is important to note that State obligations with regard to local communities extend well beyond their duty to protect. Governments have a duty to respect, protect and promote the rights of indigenous and non-indigenous individuals and communities under international human rights law. The manner in which States discharge all of their obligations has an impact on the overall environment in which businesses operate. As stressed in Guiding Principle 3, there is often a failure in State practice to enforce existing laws and policies that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and States should review whether such laws and policies provide an environment conducive to respect by business for human rights. Greater clarity in the laws and policies governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises.

16. In practice, the protection of indigenous peoples’ rights starts with their recognition in national law, which has been provided by a number of States. However, there are many other States that have failed to recognize their presence. Not only is the legal framework pertaining to their rights and land-related rights overall not applied, it is often purposely ignored by the very government authorities in charge of enforcing it. The widespread corruption that mars land acquisitions and contracts is a compounding factor. Recommendations have been made to address this underlying cause of many human rights impacts.

17. Another issue concerns inconsistencies between laws protecting indigenous peoples and tenure rights, on the one hand, and national regulations supporting land acquisitions and land markets, on the other. National legislation and sector-specific regulations on land acquisitions should be reviewed to ensure legal coherence and compliance with the duty to protect indigenous peoples and tenure rights. National laws and policies, as well as land reform, registration and titling processes, should recognize and protect the diversity of tenure rights (see A/HRC/13/33/Add.2 and A/HRC/22/46). Laws should also clearly state the conditions under which expropriation for public purpose and evictions are allowed.

State-investor contracts

20. Land acquisitions are frequently concluded with a foreign investor (often in partnership with a domestic partner), in the form of a “State-investor contract”. Contract negotiations are often affected by imbalances in negotiating capacity between investors and Governments, to the detriment of the protection of

rights guaranteed in national law, while there may also be alignment of interests between the Government and an investor to the detriment of local communities.

21. The former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises noted in his report (A/HRC/17/31/Add.3) that the negotiation process between a host State and a business investor offered a unique opportunity to identify, avoid and mitigate human rights risks. The Special Representative proposed a set of principles for responsible contracts, which are contained in the annex to the report, to help States and business investors to integrate the management of human rights risks into State-investor contract negotiations. A key principle (principle 3) is that the laws, regulations and standards governing the executing of the project should facilitate the prevention, mitigation and remedy of any negative human rights impact throughout the life cycle of the project. This should include the rights of indigenous peoples and land-related rights (see A/68/279).

22. Overall, adequate policy space to meet the State's human rights obligations should be maintained when pursuing investment contracts (Guiding Principle 9). This is relevant to stabilization causes, and State-investor contracts should not offer protections for investors from future changes in the law that could potentially interfere with the State's efforts to meet its human rights obligations. In addition, the Voluntary Guidelines on Land Tenure (para. 12.10) provide that when investments involving large-scale transactions of tenure rights are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential impacts that those investments could have on tenure rights and food security. The Special Rapporteur on the right to food makes similar recommendations his "Minimum human rights principles applicable to large-scale land acquisitions or leases".

23. Consultations with potentially affected communities and individuals, which meet international standards, and respect for free, prior and informed consent, are key aspects of contract negotiations (see section IV.B below).

Home States

Setting clear expectations for business enterprises investing in or sourcing from third countries

24. In accordance with Guiding Principle 2 States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. This includes operations abroad.

25. The Guiding Principles recognize that the understanding of extraterritorial obligations of home States with respect to regulating the human rights impacts of business enterprises domiciled in their territory and/or jurisdiction when operating abroad is evolving. In line with commentary by United Nations human rights treaty bodies, the Working Group considers that States should take steps to prevent human rights abuse abroad by business enterprises that are domiciled in their territory and/or jurisdiction.

Providing guidance to and assisting business

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29. Government agencies that support and promote investment in third countries, development agencies and diplomatic missions also have a role to play to alert businesses to particular issues related to land distribution and management or to the vulnerability of particular groups such as indigenous peoples or human rights defenders. For instance, CDC (United Kingdom) and DEG (Germany) recently issued a guidance note on managing legacy land issues in agro-industrial investments.

International investment agreements and arbitration

31. Over 3,000 international investment agreements (sometimes called "investment treaties"), concluded between two or more States, offer guarantees to investors to protect their investments against adverse State conduct, through broad standards of protection and direct access to investment arbitration. There is increased recognition of the human rights risks associated with such agreements and arbitration.

32. A recent study shows that the majority of farmland deals concluded in low- and middle-income countries since 2000 are protected by at least one investment agreement. By protecting the landholdings of investors, international investment agreements can have a detrimental impact on the legitimate land claims of indigenous peoples and small-scale farmers because indigenous peoples and farmers do not have similar entitlements to remedy, and there are competing interests between protecting the rights of investors and the rights of affected stakeholders, with a clear substantive and procedural advantage to foreign investors (see A/HRC/33/42).

33. All States have a responsibility and role to play in ensuring that international investment frameworks and agreements support rather than undermine human rights. It is also a matter of policy coherence (see Guiding Principles 8 and 9). A key measure would be for States to integrate human rights considerations (including respect for land and tenure rights) when they conclude international investment agreements and in investment policymaking more broadly.

Business enterprises

Corporate responsibility to respect human rights

34. The corporate responsibility to respect human rights applies to all business enterprises and in relation to all human rights. In section III of the present report the Working Group focuses on the different ways in which businesses across the supply chains of palm oil and sugarcane can be involved in human rights abuses and what actions they are expected to take.

35. In principle, any business, wherever it is in the supply chain, can be involved with human rights abuses through causing, contributing to, or being directly linked to them as a result of its business relationships with other parties. Business relationships are relationships that are formed with business partners, entities in supply chains and any other non-State or State entity directly linked to business operations, products or services (Guiding Principle 13).

Policy commitments

38. According to Guiding Principle 16, business enterprises should express their commitment to respecting human rights through a statement of policy. For businesses operating in and sourcing from the sugarcane and palm oil sectors, such a policy should include commitments to respecting the legitimate land and tenure rights of communities, including those held in customary and communal fashion, and their right to free, prior and informed consent (see also section IV.B below). Such commitments would reflect the fact that in palm oil and sugarcane, as in other agro-industrial sectors, land and relations with communities are salient human rights issues. The policy should be informed by relevant internal and/or external expertise, including experts on indigenous peoples and land.

39. Quite a few growers, producers and consumer goods companies in the sugarcane and palm oil supply chains have committed to respecting land and tenure rights, and indigenous peoples' rights, including the right to free, prior and informed consent, in various policies. These commitments are often made with reference to the International Finance Corporation Performance Standards or the Voluntary Guidelines on Land Tenure. Some have in addition adopted an explicit zero-tolerance policy for land grabs, a key demand of Oxfam's campaign Behind the Brands. In the light of increased attacks against land and environmental rights defenders, the Working Group also encourages agro-industrial companies to follow the lead of companies that have articulated a policy on human rights defenders.

40. Under Guiding Principle 16, respect for human rights must be embedded through in the business enterprise. This includes ensuring that policy commitments are reflected in operational policies and procedures and stipulating the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services.

41. Building the capacity of company staff, suppliers and business partners is key to ensuring that commitments are anchored in practice and that due diligence is effective. Several companies have capacity-building programmes in place that specifically target suppliers. Such programmes should include raising awareness of the relevant human rights of affected communities, including indigenous peoples' rights.

Human rights due diligence

42. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence (Guiding Principle 17). The process comprises four steps: (a) assessing actual and potential human rights impacts; (b) integrating and acting upon the findings; (c) tracking responses; and (d) communicating how impacts are addressed.

Overall considerations

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44. The severity of human rights risks should be the most important factor in prioritizing due diligence and determining the scale and complexity of the processes the enterprise needs to have in place.³⁸ Companies operating in or sourcing from the sugarcane and palm oil sectors should assume that risks related to land

acquisitions are severe, unless proven otherwise, and should be one of the issues to prioritize for due diligence. In fact, loss of land has dramatic impacts on the livelihoods of individuals and communities, and often land acquisitions are accompanied by violence, further exacerbating the harm.

45. Companies assessing (or wishing to prioritize the assessment of) the particular risks of an operating/sourcing context should, at a minimum, consider the following factors: weak governance and lack of transparency/perceived corruption level; weak land governance and unclear land and tenure rights; the presence and scale of land conflicts between communities and companies/authorities; the level of democratic space for communities and human rights defenders to voice concerns; and the existence of complaints before grievance mechanisms. The scale of production and sourcing is a relevant factor but it should not be the only one.

Human rights impact assessments

46. Business enterprises should conduct impact assessments to assess potential and actual adverse human rights impacts. Because human rights situations are dynamic, assessments should be undertaken at regular intervals.

48. While impact assessments should cover all potentially affected human rights, when applied to plantations and mills, they should systematically identify impacts on the land and tenure rights of affected communities. Those conducting the assessments should have expertise in and use sources specific to land and economic, social and cultural rights, such as the Land Matrix.

49. Meaningful consultation with potentially affected groups is essential for assessing adverse impacts, to understand the specific impacts on specific people, in a specific context of operations (Guiding Principle 18). This will ensure the legitimacy and effectiveness of the due diligence process. Such process requires adequate time and resources.

Specific issues

61. In section IV of the present report, the Working Group discusses issues that are either cross-cutting or seem particularly important to ensure the actual protection of local communities affected by the production of palm oil and sugarcane.

Transparency and disclosure

62. In many countries, procedures for decision-making on land acquisitions, including those related to access to information and transparency, do not exist or are not implemented, and contract negotiations are made without the knowledge or consent of communities potentially affected. Often there is no complete official list of land concessions and no public information on impact assessments. Financial institutions are perceived as particularly opaque and as hiding behind “walls of client confidentiality”

Consultation with indigenous peoples and local communities, and the right to free, prior and informed consent

State duties

67. The State has a duty to consult with indigenous peoples through their own representatives in order to obtain their free, prior and informed consent whenever taking decisions, such as authorizing projects in or near their lands, that have a direct impact on their collective rights and interests.

68. The State duty to consult applies during the project planning stage, prior to the authorization or to entering into contracts and is ongoing throughout the project lifecycle. It is aimed at ensuring meaningful participation in decision-making processes and must be accompanied by participatory human rights, and environmental and social impact assessments. In this regard, consultation and consent protocols, maps addressing community land tenure, or impact assessments developed by the communities themselves should be respected (see A/68/279, paras. 10 and 57; and A/HRC/33/42/Add.1).

69. In the case of non-indigenous peoples, human rights law requires FPIC in certain contexts, for example for groups, such as tribal peoples and other groups, who share similar characteristics with indigenous peoples. In the case of other non-indigenous communities, international human rights law also requires that at a minimum there must be good faith, informed consultations with all affected persons, including women and those particularly vulnerable, and full respect for human rights (see, e.g., A/HRC/4/18, annex 1, paras. 38-39).

Core elements of free, prior and informed consent

70. Free, prior and informed consent is an internal process of consensus-building among the concerned indigenous people and a mechanism through which they operationalize their self-governance rights vis-à-vis external actors (see, e.g., A/HRC/4/18, annex 1, paras. 38-39). This implies that processes regarding free, prior and informed consent must, as far as possible, be determined and controlled by the indigenous peoples in question.

71. The core elements of free, prior and informed consent can be summarized as follows:

- “Free” implies that there is no coercion, intimidation or manipulation, and that the communities are consulted through their self-chosen representatives.
- “Prior” implies that consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous consultation/consensus processes.
- “Informed” implies that communities have been provided with all the information relating to project plans and activities, and the potential impacts on their rights, and that the information is objective, accurate and presented in a manner and form understandable to them.
- “Consent” must be the objective of consultation, and implies that all affected peoples and communities have the opportunity to decide if they agree to the proposed project or not. This process must include the option of withholding consent.

Meaningful consultation by companies

72. Companies should respect the rights of local communities and indigenous peoples to be consulted and to give or withhold free, prior and informed consent, in all their operations, and should protect these rights in the conduct of due diligence. This applies irrespective of a national legislative framework.

73. From a pragmatic perspective, engaging in good faith consultations in order to obtain free, prior and informed consent provides a mechanism through which corporations can avoid the material, legal and reputational risks they will otherwise face. Free, prior and informed consent provides the platform for constructive engagements with indigenous peoples in a manner consistent with the corporate responsibility to respect human rights. It should not be seen as a mere compliance exercise.

74. A number of companies have recognized the ethical and practical imperatives for the commitment to respect free, prior and informed consent. Several have made this commitment without differentiating between indigenous or non-indigenous peoples. Given the distinctive characteristics of indigenous peoples and their collective self-determination rights, implementation of this commitment will necessarily be different in a local community that does not have its own institutional structures and customary laws and processes. In all contexts when attempting to operationalize free, prior and informed consent it is essential to bear in mind the territorial, cultural and self-governance rights upon which the requirement for free, prior and informed consent is premised and to which it seeks to give effect.

Access to effective remedy

89. Access to remedy is an essential component of the State’s duty to protect and a company’s responsibility to respect. It covers both State-based judicial and non-judicial mechanisms and non-State based mechanisms, including operational-level grievance mechanisms. These can be supplemented by the remedial functions of international and regional human rights mechanisms.

90. Access to remedy has both procedural and substantive aspects (Guiding Principle 25). Remedy may include apologies, restitution, rehabilitation, compensation and sanctions, as well as the prevention of harm. In the case of local communities and land acquisitions, remedies must assess impacts on land and tenure rights. Restitution and compensation in the form of land commensurate in quality size and value, or better, are particularly important. Procedures for remedy should be impartial, protected from corruption and free from political or other influences.

Challenges and opportunities of non-judicial grievance mechanisms

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100. An additional criterion that is stipulated in Guiding Principle 31 for business enterprise operational-level grievance mechanisms is that the mechanisms are based on engagement and dialogue (consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances). Businesses at various tiers of the supply chain have

developed such mechanisms and standard operational procedures in relation to customary land rights, conflict resolution and information-sharing in order to guide their activities and interaction with local communities. However, operational ground staff often lack awareness of these mechanisms. The absence of independent monitoring and evaluation procedures, and of independent legal counsel to communities, further limits their effectiveness.

101. Underexplored thus far in this regard, indigenous peoples' mechanisms of customary law have the advantage of being accessible and controlled by indigenous peoples and oriented towards rehabilitation and reconciliation. They could be instrumental in solving long-standing conflicts.

Conclusion and recommendations

104. Land investments are among today's most difficult business and human rights issues. When land acquisitions take place without due regard for the human rights of indigenous peoples and local communities living on and using the land, they have major impacts. They lead to hardship and the impoverishment of the communities, violence and countless conflicts between the communities and the companies and government authorities, who often view land in a fundamentally different manner.

105. On the one hand, land and forests have social, cultural, spiritual, economic and environmental value to indigenous peoples and other communities — as such, they are essential to the existence of the communities. On the other hand, land is a major economic asset for Governments and companies. The demand for palm oil and sugar, basic commodities used by people worldwide, is increasing, and with it comes continuing and increased pressure on land for sugarcane and oil palm plantations.

106. The problems are well known. Addressing them requires extra effort by all stakeholders. While systemic change involves considerable time and resources, efforts to prevent, mitigate and address adverse impacts on human rights are both urgent and critical for the affected communities.

107. While the present report discusses at some length the responsibilities of companies, the primary obligations of Governments cannot be ignored. Business-related human rights abuse is often exacerbated by a lack of rule of law, legislation and enforcement in support of the rights of communities. If Governments in production countries were actually ensuring and protecting the rights of indigenous peoples and other communities to their land under international human rights law, land acquisitions would not result in the scale of harm seen today.

108. An obstacle to enforcement is the lack of capacity of central and local authorities in charge of overseeing the allocation and use of land for agro-industrial plantations. At a more fundamental level, a major obstacle relates to the political economy of land and land governance. When the rule of law is absent or out of the reach of the poorest and most vulnerable, decision-making processes related to the access and use of land can easily lead to conflicts of interest, exclusion and discrimination.

109. A weak land governance context makes it more difficult, but all the more important, for businesses to exercise due diligence and take robust measures to prevent, mitigate and remedy negative impacts on communities. The Working Group welcomes the commitments made by a number of business enterprises to respect land rights and indigenous rights in all of their operations, including business relationships. Implementing the commitments, however, is not an easy task. In the present report, the Working Group highlights some of the measures that businesses could take or are already taking. Leverage is essential in this regard, and the Working Group reiterates that business enterprises contributing or with direct linkage to negative impacts through their business relationships should use their leverage to the fullest extent, and increase it when leverage seems inadequate.

110. Communities deprived unlawfully of their land have a right to remedy, and Governments must do much more to ensure the independence, accessibility and effectiveness of State-based remedies. At the same time, businesses cannot stay idle — they must do their part to facilitate remediation of harm suffered, even when this may create tension between them and their business partners, suppliers or Governments.

111. Financial institutions also have a major role to play, but today few seem to accept their full responsibility to respect human rights through their loans or investments. This has real consequences — when finance freely flows without accountability, there is little incentive to respect rights, and both affected communities and businesses trying to address harm find themselves with less influence over the situation.

112. The present report also flags the complementary roles of home States and multi-stakeholder initiatives in closing governance gaps and increasing leverage. The need for such initiatives to address human rights risks more decisively is essential.

113. The Working Group makes the recommendations below to those actors who have not only the duty or responsibility but also the leverage to transform current practices in agro-industrial operations so that they benefit communities and ultimately the industry as a whole.

114. Recommendations to host States:

- (a) Guarantee in law, and protect, the land and tenure rights of local communities and their members, and indigenous peoples' rights, including 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, and to give or withhold their free, prior and informed consent;
- (b) Guarantee access to information on land acquisitions, State-investor contracts and land concessions impacting the rights of local communities, in an appropriate form and language;
- (c) Ensure that adequate environmental, social and human rights impact assessments are conducted prior to granting land;
- (d) Require business enterprises to conduct due diligence and ensure respect for the rights of indigenous peoples and local communities in all their operations;
- (e) Maintain the necessary policy space when entering into investment contracts and international investment agreements to protect the human rights of indigenous peoples and local communities. In particular, investor protections should not override the rights of indigenous peoples and local communities;
- (f) Ensure access to effective judicial and non-judicial remedies for communities affected by land acquisitions, including land restitution and compensation in the form of land, in particular for indigenous peoples. Remove financial, administrative and other barriers to accessing remedy;
- (g) Protect land and environmental rights defenders. Under no circumstances should the judiciary be used to criminalize the legitimate activities of defenders.

115. Recommendations to home States:

- (a) Ensure that OECD national contact points are accessible, independent, impartial and competent to address land-related complaints. This includes knowledge of indigenous peoples' rights;
- (b) Require companies to conduct human rights due diligence to ensure respect for indigenous peoples and local communities' rights in their supply chains;
- (c) Require supply chain transparency;
- (d) Adopt and enforce regulations in relation to the human rights impacts overseas of companies domiciled in home States.

116. Recommendations to business enterprises, including financial institutions and traders:

- (a) Adopt or strengthen policies on human rights, responsible sourcing or lending, including commitments to respect land and tenure rights, to meaningfully engage with affected stakeholders and to respect the right of indigenous peoples to free, prior and informed consent, including their right to define the process through which free, prior and informed consent is sought;
- (b) Conduct and prioritize human rights due diligence, in particular country- and sector-specific human rights impact assessments, wherever the rights of indigenous peoples or local communities are potentially affected. Due diligence should include the participation of potentially affected indigenous peoples and local communities;
- (c) Ensure that operational grievance mechanisms comply with the effectiveness criteria of the Guiding Principles, including consulting indigenous peoples and local communities in relation to their design;
- (d) Businesses contributing to or directly linked to adverse human rights impacts on communities in countries of production should exercise or increase leverage to effectively address and remediate harm;
- (e) Traders should know and show that the sugarcane and palm oil they trade are not products of human rights abuse.

117. Recommendations to multi-stakeholder initiatives and industry associations:

- (a) Take a more decisive role to encourage member companies to improve practices related to human rights, in particular land-related rights;
- (b) Carry out independent field investigations where reports of protracted or serious human rights abuses have been reported and confirmed;
- (c) Assess independently and through multi-stakeholder consultations the extent to which their grievance mechanisms fulfil the effectiveness criteria set out in Guiding Principle 31;
- (d) Increase outreach and awareness-raising efforts about the multi-stakeholder initiatives towards indigenous peoples and local communities;

- (e) Promote and participate in cross-sectoral dialogue with other multi-stakeholder initiatives and associations to share lessons learned and recommendations for improvement, in particular on land issues.
118. Recommendations to civil society and international organizations:
- (a) Raise awareness of indigenous peoples and local communities about their rights and the remedy mechanisms available to assert the rights and, in line with the decision-making processes of communities, assist in accessing these mechanisms;
 - (b) Assist indigenous peoples and local communities in documenting and compiling formal evidence towards supporting complaints submitted, such as in the form of written chronologies, documents, photographs and recordings.

M. Independent Expert on the right to water and sanitation

1. Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to Botswana, A/HRC/33/49/Add.3, 13 July 2016

People in transition from nomadic life and in resettlements

58. The Special Rapporteur observed inadequate water and sanitation situations both in urban and rural poor areas. However, the lack of access to water and sanitation in settlements where traditionally nomadic communities, including San communities, have settled over the past 25 to 30 years, as well as in their resettlements, was a particularly grave concern. The Special Rapporteur met with some San communities, which comprise an estimated 50,000 to 60,000 people. They are a traditional hunter-gatherer people and many of them have shifted from a nomadic to a semi-settled or settled lifestyle. The population of some of their villages was larger than the 250-people requirement to be entitled to basic services, yet there was no water connection. Part of the reason for that situation was the communities' desire to maintain their own education system, traditional lifestyle and land uses, therefore, they chose not to be part of the formal government structure. In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people recommended that the Government incorporate respect for and recognition of traditional systems into the land-board system.¹⁸ There does not seem to be great progress in this regard.

59. In the Shaikaware community of Okavango sub-district that the Special Rapporteur visited, a pipeline was connected to the public water point, but people did not know why the Water Utilities Corporation sometimes supplied water through the pipeline and sometimes delivered water by truck to tanks in the schoolyard. Some told the Special Rapporteur that the Community Committee had brought the issue to the attention of the local authorities on several occasions since 2009, as well as to members of Parliament. However, they were told that it would soon be sorted out. Since the community was using the water from the tanks located in the schoolyard, only teachers could call the Corporation to deliver water when the tanks were empty. The provision of water was not systematic and public water tanks were sometimes empty for four to five consecutive days. The public water tanks in the community that the Special Rapporteur visited were empty and most of the members of the community had gone looking for water in a village that was 20 kilometres away. The community was tired of the lack of will on the part of the authorities to provide water to the San community without discrimination even though a pipeline was already connected.

60. The Central Kalahari Game Reserve, created in 1961 to preserve wildlife resources, was also ancestral lands to some San communities. In 1985, the Government decided that the communities' new, more settled way of living with water boreholes, for example, was no longer compatible with the objective of the Reserve and it decided to relocate the residents off the Reserve. Most of the residents were relocated between 1997 and 2001 and, in 2002, the Government terminated the provision of services inside the Reserve. A group of residents filed an appeal with the High Court to claim their right to continue to live in the Reserve. In 2006, the Court ruled that the eviction was unlawful, but it did not order the Government to provide access to water and sanitation in the Reserve. In 2011, the Court of Appeal held that the applicants did not need the authorization of the Government to use the Mothomelo borehole and that they could open new wells in the vicinity. The Government has allowed the 243 applicants to return to the Reserve — some with one-month entry permits — but it has not provided any assistance regarding access to water and sanitation.

61. Based on information received during interviews with residents of New Xade, a resettlement outside the Reserve, people in Molapo in the Reserve struggled to secure water by traditional methods, such as

harvesting water from rain and certain fruits. In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people already noted that indigenous people who had remained on or returned to the Reserve faced harsh and dangerous conditions due to a lack of access to water, a situation that could be easily remedied by reactivating the boreholes in the Reserve. Some communities appeared to be caught in the transition from their nomadic way of living to living in a settlement. They could no longer move freely to look for water owing to restrictions inside the Reserve. At the same time, they did not receive adequate water services from the State in their settlements. People also opted to return to the Reserve, even temporarily, because they were bored in the resettlement without any work.

62. The exercise of their cultural or other human rights by these communities must not be the reason why they are excluded from access to water and sanitation services. In the report on her visit to Botswana in 2014, the Special Rapporteur in the field of cultural rights stated that communities were willing to develop economically, but were not always ready to follow the model of the Government, preferring instead to seek alternatives that would enable them to better reconcile economic development and the preservation of specific ways of life and world visions. This also applied to water and sanitation. Meaningful consultation with communities is key to designing a sustainable solution for the communities concerned, therefore the Special Rapporteur urges the Government to continue and to strengthen its dialogue with the communities and to ensure equal and adequate access to water and sanitation for those in transition from nomadic to settled life and those living in resettlements.

Conclusions and recommendations

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72. In this regard, the Special Rapporteur recommends that the Government of Botswana: ... (j) Continue and strengthen dialogue with communities who are living a nomadic life or who are in transition from a nomadic to a sedentary life to find sustainable solutions for their access to water and sanitation. ...

2. Report of the Special Rapporteur on the human right to safe drinking water and sanitation on his mission to El Salvador, A/HRC/33/49/Add.1, 3 August 2016

People belonging to the indigenous populations

79. The indigenous peoples of El Salvador include the Nahuatl, Pipil, Lenca, Kakawira and the Maya Chortí. According to the 2007 census, the 13,319 indigenous people in El Salvador make up approximately 0.2 per cent of the country's total population, although this is thought to be a huge underestimate. According to some estimates, the actual figure is between 10 and 12 per cent of the national population.

80. According to a World Bank report, the living conditions of indigenous peoples in El Salvador are unfavourable and unequal in comparison with those of other population groups. In 2003, 61.1 per cent of indigenous people were living in poverty, and 38.3 per cent in extreme poverty. Poverty, which frequently includes lack of access to basic sanitary services and to drinking water, contributes to their precarious health situations. The World Bank has identified areas in which indigenous people experience worse health situations than other sectors of El Salvador's population. For example, the proportion of indigenous children under the age of 5 who suffered from undernutrition was 40 per cent, in comparison with 20 per cent in the country's overall population. In 2010, the Committee on the Rights of the Child expressed its continuing concern about the limited enjoyment of rights by indigenous children and at the incomplete information provided by the State party on that issue.

81. During his visit, a number of representatives of indigenous peoples living in the canton of Pushtan, in Nahuizalco municipality in Sonsonate department told him that they thought that they were at the bottom of the social ladder, even below peasant farmers, in terms of access to goods and services such as water. They also thought that some economic activities, such as farming, reduce their access to water for their requirements. One of them told the Special Rapporteur that when he thinks about access to water for their peoples, "the word of law pales in the sight of money".

82. In 2013 the Special Rapporteur on the rights of indigenous peoples recommended to El Salvador that apart from any constitutional reforms and ratification of the ILO Indigenous and Tribal Peoples in Independent Countries Convention, 1989 (No. 169), the Government should develop a legal framework within which the rights of indigenous peoples may be better protected and implemented. Government agencies and officials require specific State policies, together with better legal and regulatory guidance to determine their responsibilities as regards indigenous rights. The Special Rapporteur reiterates the call made by his colleague

and the importance of implementing this recommendation, which could also strengthen protection of the rights of indigenous peoples to water and sanitation.

Conclusions and recommendations

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96. In this connection, the Special Rapporteur recommends to El Salvador: ... (n) Develop legislation under which the rights of indigenous peoples, including the rights to water and sanitation, may be better protected and implemented.

N. Special Rapporteur on extreme poverty and human rights

1. Report of the Special Rapporteur on extreme poverty and human rights, Philip Alston, on the World Bank and human rights, A/70/274, 4 August 2015⁵⁴

Summary

The present report begins with an analysis of the confusing approaches to human rights taken by the World Bank in its legal policy, public relations, policy analysis, operations and safeguards. The Special Rapporteur then seeks to explain why the Bank has historically been averse to acknowledging and taking account of human rights, argues that the Bank needs a new approach and explores what differences that might make.

The Special Rapporteur concludes that the existing approach taken by the Bank to human rights is incoherent, counterproductive and unsustainable. For most purposes, the World Bank is a human rights-free zone. In its operational policies, in particular, it treats human rights more like an infectious disease than universal values and obligations. The biggest single obstacle to moving towards an appropriate approach is the anachronistic and inconsistent interpretation of the “political prohibition” contained in its Articles of Agreement. As a result, the Bank is unable to engage meaningfully with the international human rights framework, or to assist its member countries in complying with their own human rights obligations. That inhibits its ability to take adequate account of the social and political economy aspects of its work within countries and contradicts and undermines the consistent recognition by the international community of the integral relationship between human rights and development. It also prevents the Bank from putting into practice much of its own policy research and analysis, which points to the indispensability of the human rights dimensions of many core development issues.

The Special Rapporteur argues that what is needed is a transparent dialogue designed to generate an informed and nuanced policy that will avoid undoubted perils, while enabling the Bank and its members to make constructive and productive use of the universally accepted human rights framework. Whether the Bank ultimately maintains, adjusts or changes its existing policy, it is essential that the policy should be principled, compelling and transparent. The recommendations that follow provide some indication as to what a World Bank human rights policy might look like in practice.

Human rights policy of the World Bank

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Safeguard policies

32. One context in which the relevance of human rights might have been expected to be acknowledged is the environmental and social “safeguard” policies of the Bank. However, the current safeguards contain no explicit human rights policy and the sole reference to human rights occurs in operational policy 4.10 on indigenous peoples. Human rights have sometimes had an indirect influence on the interpretation of the safeguard policies by the World Bank Inspection Panel, but the practice in that regard has been inconsistent and piecemeal.

33. Safeguards for investment project financing within a new environmental and social framework are expected to be adopted by the end of 2015. In late 2014, 28 special procedures mandate holders addressed a lengthy and detailed analysis of the July 2014 draft framework to the World Bank. The Special Rapporteur notes that his own position is adequately summarized in the letter, in which the authors state that “the document seems to go out of its way to avoid any meaningful references to human rights and international

⁵⁴ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/274

human rights law, except for passing references in the vision statement and environmental and social standard (ESS) 7.” Unfortunately, the second draft, which is about to be released, is no improvement in that regard, despite voluminous submissions by large numbers of stakeholders calling upon the Bank to take account of human rights

Time for change: why the World Bank needs a new approach to human rights

52. Based on the preceding review, the following propositions seem to encapsulate the actual practice of the World Bank: (a) pay lip service to human rights in official settings, as long as there are no consequences; (b) acknowledge the theoretical significance of human rights in studies and analyses of issues in relation to which they are incontestably relevant; (c) ensure that, as a general rule, the Bank does not engage with any aspect of human rights in its actual operations and lending; and (d) be prepared to make exceptions when political imperatives require it, even if that involves a high degree of inconsistency.

53. There are many reasons why a new approach is needed. The following six seem especially compelling.

54. First, an inconsistent, ad hoc and opaque policy of the type that exists today is in no one’s interests. The world has changed dramatically since the 1980s and human rights are an unavoidable feature of national and international policies and debates. It is illusory to believe that the Bank can be fully effective without any meaningful engagement with that entire field of activity. By treating human rights as a taboo issue, the Bank has ensured that a whole range of issues that are universally acknowledged to be crucial to the development and poverty eradication agendas cannot be openly addressed or factored into its work.³⁹ As noted below, the valiant effort to rely upon surrogate terms can never be an adequate substitute for engaging with the human rights framework and norms. The result is a staff and management with relatively little understanding of the complexity of the international human rights regime, which in turn results in unfounded fears, avoidance of debates that would otherwise be a matter of course, a poor sense of how to respond when human rights problems force themselves onto the agenda and the absence of a credible Bank voice when those issues are discussed in other settings.

55. Second, the policies of the Bank need to reflect the current status of international human rights law, rather than the situation in the 1960s or the 1980s, when its existing policies were frozen into place. Even in the late 1980s, international human rights law was in its infancy and remained relatively contested. There were relatively few human rights treaties and many States had ratified none of them. The cold war dominated and distorted discussions. By contrast, today every country in the world is a party to multiple international human rights treaties and all engage voluntarily in international forums in which they explain and justify their human rights policies and practices. In short, it might have been justified to suggest in the late 1980s that much of the human rights regime was of a political nature. Today that is no longer the case and human rights law is an integral part of the international system.

56. Third, rather than being an outlier, the Bank needs to bring its approach into line with that of almost every other major international organization. In the mid-1980s, the Bank was one of many international organizations that were reluctant to engage with the human rights regime. The easiest example to cite is the United Nations Children’s Fund (UNICEF), which gradually changed from a policy of ignoring rights issues during the 1980s to become an agency devoted to promoting the provisions of the Convention on the Rights of the Child. The same transition has occurred in many other international organizations, so that by 2013 the Secretary-General could adopt a “Human Rights Up Front” initiative, in which he called upon the United Nations, its agencies, funds and programmes to treat human rights as a system-wide core responsibility.

57. As of January 2015, the United Nations Development Programme (UNDP) officially recognized “the centrality of human rights to [its goals] ... and is committed to supporting ‘universal respect for, and observance of, human rights and fundamental freedoms for all.’” It “shall ... refrain from providing support for activities that may contribute to violations of a State’s human rights obligations and the core international human rights treaties ...”. The UNDP policy does, however, contain provisions that seek to limit its human rights obligations. The policy says that it will support State efforts meet human rights obligations “as requested,” notes that UNDP does not have a human rights “monitoring role” and notes that it will monitor its own compliance with its policies as a matter of “due diligence”. That is a formulation that has been carefully crafted both to acknowledge the centrality of human rights, but also to allay any concerns of Governments and officials that the organization is in the business of human rights enforcement.

58. Even in comparison with other multilateral development banks, the World Bank is still an outlier. A recent Bank study concluded that “[m]ost of the other MDBs refer to ‘human rights’ in supportive aspirational

terms while recognizing the responsibility of clients to respect human rights.” The World Bank, it noted, does so solely in relation to indigenous peoples. Thus, while the World Bank was in good company in the 1980s in being wary of incorporating human rights standards into its work, it now stands almost alone, along with the International Monetary Fund, in insisting that human rights are matters of politics which it must, as a matter of legal principle, avoid, rather than being an integral part of the international legal order.

59. Fourth, the Bank needs to bring its operational policies into line with mainstream development theory, especially its own. In 1999, Amartya Sen published a landmark study entitled *Development as Freedom*, based on lectures given at the Bank. Sen made a powerful case that freedom and the enjoyment of a range of rights were integral to achieving meaningful development. More recently, William Easterly has argued that “the cause of poverty is the absence of political and economic rights, the absence of a free political and economic system that would find the technical solutions to the poor’s problems”. He dismissed policies that seek to artificially separate human rights from development as technocratic illusions. The Bank itself has often paid lip service to the consensus that has emerged since the end of the cold war that recognizes that “democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing,” as proclaimed in the Vienna Declaration and Programme of Action, adopted by consensus by 171 States in 1993. By staunchly maintaining the technocratic illusion, not in its conceptual work, but in its operations where it really matters, the Bank has not only placed itself firmly outside mainstream development thinking and policies formally endorsed by all States, but perhaps more problematically has sent the message that rights and development can, and in its own case must, be kept separate. The flow-on effect of that negative example cannot be underestimated;

60. Fifth, the Bank needs at least a convincing due diligence policy to enable it to adjust or reject projects that would otherwise lead to, or support, human rights violations. Its safeguard policies have long been referred to as “do-no-harm” policies, but their very limited coverage in terms of the full gamut of the human rights obligations of States has meant that many serious violations are alleged to have occurred in the context of projects funded by the Bank. The Special Rapporteur is in no position to judge the accuracy of any particular allegations of rights violations and nor is it necessary to do so in the present report. Suffice it to note that the Bank’s own internal reports have made clear that existing safeguard arrangements have often proved to be inadequate. Reports by the Inspection Panel have highlighted significant problems in specific projects and a report by the Internal Audit Department on resettlement programmes has revealed serious systemic deficiencies. To its credit, the Bank responded to the latter by announcing extensive reforms. Nonetheless, those evaluation reports provide powerful evidence of the need for a more sustained and better integrated approach, reflecting the full range of international human rights standards rather than the static list of specific concerns that are currently singled out for monitoring. Integrating human rights into operational policies is necessary to comply with the Bank’s aim of doing no harm.

61. Sixth, by refusing to take account of any information emanating from human rights sources, the Bank places itself in an artificial bubble, which excludes information that could greatly enrich its understanding of the situations and contexts in which it works. That includes especially the materials generated by human rights treaty bodies, special procedures mandate holders and the universal periodic review process of the Human Rights Council, as well as analyses generated by NGOs. It is striking that the Bank regularly consults religious leaders, such as the faith-based and religious leaders’ round table it held in 2015, but has no comparable meetings with human rights experts.

What difference would a human rights policy make?

62. The two most common responses heard from Bank officials in reply to suggestions that it adopt a human rights policy are in direct contradiction to one another. The first takes various forms, suggesting that such a reform would transform the nature of the Bank’s role, open up a Pandora’s box, create political havoc or be generally unmanageable. The second is that the Bank already does so much to promote the realization of human rights that a change in policy would make little difference and is thus unnecessary. The argument tends to go something like this: by improving access to goods and services such as health care, education and water and by lifting people out of poverty, the Bank enhances the enjoyment of human rights in many countries. Its focus on governance improves human rights, its emphasis on consultation enhances people’s right to participate and its publications often acknowledge the importance of human rights. At the end of the day, the Bank might use different language from that of human rights law, but its goals are the same.

63. The last of those claims is reflected in the following statement: “In fact, it has been possible to integrate human rights (using principles derived from the human rights framework) without an explicit

approach, as can be seen in the work of some of the international financial institutions.” But the very next sentence in the same report provides a compelling rebuttal of that very claim: “A potential shortcoming of such an approach is the risk of ‘rhetorical repackaging,’ which involves a superficial use of human rights terms in development without a full incorporation of human rights obligations or principles”.⁴⁶

64. The key question then is whether it actually matters if the Bank uses the language of human rights or opts instead for surrogates which are perceived to be less politically loaded or contentious. After all, if it advocates for gender equality, does it really matter if it uses the language of human rights, or whether any reference is made to United Nations standards or the work of bodies such as the Committee on the Elimination of Discrimination against Women? Or if the Bank works to expand access to water and sanitation, who cares if it characterizes them as human rights or not? Or if the Bank talks about problems relating to inclusion, participation, governance or the rule of law, does it matter if the issues are framed in “Bank speak” rather than in terms of the human rights obligations of the State? Or if the focus is on assisting those living in extreme poverty, why worry if the Bank assiduously stops short of talking about a human right to social protection? Surely, what counts are results, not scoring points for correct language usage?

65. However, the use of a human rights framework and discourse actually makes an enormous difference, which is of course precisely why the Bank is so resistant to using it and so attached to the never-ending search for surrogate language that enables it to get at the same concerns. Human rights provides a context and a detailed and balanced framework; it invokes the specific legal obligations that States have agreed upon in the various human rights treaties; it emphasizes that certain values are non-negotiable; it brings a degree of normative certainty; and it brings into the discussion the carefully negotiated elaborations of the meaning of specific rights that have emerged from decades of reflection, discussion and adjudication. Even more importantly, the language of rights recognizes the dignity and agency of all individuals (regardless of race, gender, social status, age, disability or any other distinguishing factor) and it is intentionally empowering. Whether in the home, the village, school or workplace, or in the political marketplace of ideas, it makes a difference if one is calling for the realization of agreed human rights to equality or to water, rather than merely making a general request or demand, and human rights are inseparable from the notion of accountability. Where rights are ignored or violated, there must be accountability.

66. That can be applied to the plight of those living in extreme poverty, who continue in most societies to be marginalized, stigmatized and the objects of condescension and charity. Recognition of their human rights does not guarantee them food, education, or health care, but it does acknowledge their dignity and agency, empower them and their advocates and provide a starting point for a meaningful debate over the allocation of societal resources in contexts in which their interests have been systematically ignored. It is indeed a technocratic illusion to assume that those dimensions can be ignored as long as bureaucratically directed projects and policies are well designed by the staff of the Bank. Similarly, it makes a huge difference if education reforms are premised on the right to education of the beneficiaries, as opposed to the good intentions or largesse of the World Bank.

67. Finally, it is not necessary in the present report to repeat the powerful ethical, legal and instrumentalist arguments that have been made in the extensive literature on integrating human rights into development policies and programmes. Ironically, nowhere have the arguments been more systematically explored than in the World Bank’s own publication on integrating human rights into development, produced in collaboration with OECD.

2. Report of the Special Rapporteur on extreme poverty and human rights on his mission to Chile, A/HRC/32/31/Add.1, 8 April 2016

Main findings

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Indigenous rights, poverty and inequality

52. The rights of indigenous peoples are the Achilles’ heel of the human rights record of Chile in the twenty-first century. The matters of contention are complex and wide-ranging and the solutions not straightforward. But there seems all too little preparedness to tackle them other than in a superficial way. Yet if the Government is serious about its commitment to ending extreme poverty and reducing inequality, indigenous policy must be an essential element in such efforts.

53. The fact that the State does not have a clear picture of the number of its indigenous citizens is symptomatic. It also impedes effective policy design and targeting and raises questions about consultation. In

the 2002 census, the figure for the proportion of indigenous persons among the population was 4.6 per cent. The disputed 2012 census yielded a figure of around 11 per cent and the 2013 CASEN survey suggested 9.1 per cent. It is not contested, however, that poverty rates are especially high among indigenous peoples in Chile. In 2013, their income poverty rate was almost double that of the non-indigenous population (23.4 per cent compared to 13.5 per cent). The extreme poverty rate of the indigenous population, also measured by income, was exactly double that for the non-indigenous population (8.2 per cent compared to 4.1 per cent). In 2013, 27.4 per cent of the households with an indigenous head of household were living in multidimensional poverty, compared to 15.1 per cent of the non-indigenous population.

54. There exist profound inequalities between indigenous and non-indigenous groups. One study concluded that “income disparity between Chile’s ethnic groups is ... among the highest in Latin America”. There are many other inequalities between indigenous and non-indigenous groups in Chile. While 56.6 per cent of non-indigenous people aged 20 years and over have completed secondary education, the figure is only 42.8 per cent for the indigenous population. In 2006, life expectancy was 77 years for non-indigenous people, compared to 65 for the indigenous population.³⁵ Lack of political representation is also a problem. In 2013, the Committee on the Elimination of Racial Discrimination expressed its concern about the low level of participation by indigenous peoples in public affairs (see CERD/C/CHL/CO/19-21, para. 16). Despite the fact that around 1 in 10 Chileans self-identifies as indigenous, there is not one indigenous member of Congress in Chile.

55. The response by the Chilean State to what is widely acknowledged as a problem of exclusion, marginalization and discrimination has been piecemeal and the State has been especially reluctant to address the major issues of concern. As a result, Chilean policies have been strongly criticized by a broad range of international bodies. The Committee on the Elimination of Racial Discrimination devoted an important part of its 2013 concluding observations to the marginalization of indigenous peoples (see CERD/C/CHL/CO/19-21). The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted problems faced by indigenous peoples in a compelling analysis in 2014 (see A/HRC/25/59/Add.2). There is no need to repeat here what was said and what other international bodies have said. Suffice it to add that no serious effort to eliminate extreme poverty in Chile can succeed without a concerted focus on the situation of indigenous peoples.

Conclusions and recommendations

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Constitutional and institutional reform

71. President Bachelet has announced that a dialogue on constitutional reform will begin in late 2015. The Special Rapporteur urges the Government of Chile to ensure that the full range of economic, social and cultural rights are recognized in a revised constitution. The rights of particular groups such as women, children, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons and others should also be specifically recognized in the revised constitution. Recognition should also be accorded to the indigenous peoples of Chile and their rights.

Indigenous peoples

74. The Special Rapporteur strongly urges the Government to respect its obligations under the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which it ratified in 2008. ILO and most other observers do not consider that this is currently the case. The tendency of government officials to dismiss the relevance of the United Nations Declaration on the Rights of Indigenous Peoples on the grounds that it is not legally binding is simplistic and unhelpful. The Declaration represents an international consensus on an appropriate framework for dealing with these issues and its provisions must be taken into account in policy formulation. The Special Rapporteur recommends that the Government of Chile integrate the Declaration into its domestic legal system.

75. The Government of Chile should require the Ministry of Social Development to prepare, in consultation with all concerned groups, a comprehensive strategy for the elimination of indigenous poverty. There is, at present, no such integrated strategy. Addressing the issue of land rights is central to the elimination of indigenous poverty. But, until there is a major increase in the financial resources allocated for this purpose, stated commitments to resolve the land issue will remain entirely unconvincing.

76. The proposal to create a ministry for indigenous affairs is extremely important. Given the relatively short timetable envisaged by some for achieving this, there would seem to be a serious risk that inadequate

attention will be paid to the need for the new ministry to have a structure and functions that are very different from those of other ministries. Meaningful consultation with indigenous peoples is indispensable in devising an approach that meets both international standards and the specific needs of the peoples concerned.

77. The lack of any representative in Congress of indigenous origin, despite the fact that around 10 per cent of the population is indigenous, is a symptom of highly unsatisfactory arrangements to ensure meaningful political participation by indigenous groups. The Special Rapporteur recommends that a formula be sought that will enable an appropriate level of representation in Congress. The Special Rapporteur also strongly recommends that the 2017 census should retain a question that permits the respondent to self-identify his or her ethnicity, including indigenous and Afro-descendant peoples.

78. The Special Rapporteur recommends that the handful of corporations that dominate the extractive, forestry and agricultural industries on the lands claimed by the indigenous people should adopt a set of human rights policies that conform, as a minimum, to the requirements of the Guiding Principles on Business and Human Rights.

P. Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment)⁵⁵

1. Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Compilation of good practices, A/HRC/28/61, 3 February 2015

2. One aspect of the mandate has been to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. In March 2014, the Independent Expert presented to the Council the results of his study of human rights obligations relating to the environment (A/HRC/25/53). On the basis of an extensive review of sources in human rights and environmental law, he described procedural obligations (including duties of States to assess environmental impacts on human rights and to make environmental information public, to facilitate participation in environmental decision-making, and to provide access to effective remedies), substantive obligations (including duties of States to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors), and obligations concerning those who may be particularly vulnerable to environmental harm (including women, children and indigenous peoples).

Good practices in the use of human rights obligations relating to the environment

Obligation to provide access to legal remedies

66. The Malaysian national human rights commission (SUHAKAM) has used “national inquiries” to examine systemic human rights issues. An important recent example of its use of the national inquiry process in the environmental context was the National Inquiry into the Land Rights of Indigenous Peoples, undertaken to investigate violations related to the land rights of indigenous peoples in Malaysia. Between 2002 and 2010, SUHAKAM received numerous complaints from indigenous peoples, including allegations of encroachment and/or dispossession of land, and of delays in processing requests for indigenous titles. SUHAKAM decided to address the root causes of the issues comprehensively by taking cognizance of the experiences of indigenous peoples throughout the country. Its National Inquiry resulted in a final report published in April 2013, with detailed findings and 18 recommendations.

Obligations relating to non-State actors

82. Individual companies have also reported good practices. For example, Asia Pulp Paper Group (APP), one of the world’s largest pulp and paper companies, adopted a Forest Conservation Policy in 2013 that provides that where “new plantations are proposed, APP will respect the rights of indigenous peoples and local communities”, including recognition of customary land rights, constructive dialogue with stakeholders

⁵⁵ See also <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>, containing a series of useful reports mapping statements and jurisprudence made by important sources on the human rights obligations relating to the environment.

and responsible handling of complaints. APP has developed an online “monitoring dashboard” to allow interested parties to follow progress of the policy.

Obligations relating to transboundary environmental harm

90. Two other States provide good practices in ensuring that efforts to abate or adapt to climate change respect the rights of indigenous and tribal peoples. The Reducing Emissions from Deforestation and Forest Degradation (REDD+) programme, which was initiated by the sixteenth Conference of the Parties to the UN Framework Convention on Climate Change, creates incentives for developing countries to reduce emissions from deforestation and forest degradation, including through forest conservation and sustainable management. To avoid conflicts and to protect the rights of indigenous peoples in forests that might be subject to REDD+ projects, Suriname created the REDD+ Assistants Programme, in which representatives selected by their own communities are trained by the Government to understand REDD+ and to help involve indigenous and tribal peoples in the REDD+ decision-making process.

91. In Australia, the National Indigenous Climate Change project is a forum established in 2008 by indigenous leaders to facilitate dialogue between corporate representatives, indigenous peoples and other experts about climate change and participation in carbon markets. According to the project’s webpage (www.indigenousclimatechange.com.au), the project, “(along with other organizations and alliances representing Indigenous perspectives) has worked to identify mutual opportunities with representatives of Corporate Australia and to have issues such as land tenure, native title and cultural and moral rights addressed by Government in the formulation of an emissions trading scheme.”

Obligations relating to members of groups in vulnerable situations

93. The human rights obligations relating to the environment include a general obligation of non-discrimination in the application of environmental law and policy. As described by the Independent Expert in his mapping report, States have additional obligations with respect to those who may be particularly vulnerable to environmental harm, including women, children, minorities and those living in poverty, as well as indigenous peoples (A/HRC/25/53, paras. 69-78).

94. For example, the Committee on the Elimination of Discrimination against Women has emphasized that States should ensure that public participation in environmental decision-making, including with respect to climate policy, includes the concerns and participation of women. The Feminist Participatory Action Research programme of the Asia Pacific Forum on Women, Law and Development is a good practice in empowering women to participate in policy debates over climate change. Together with local partner organizations, the Asia Pacific Forum helps women in rural, indigenous and urban poor communities to document their own experiences by setting their own research agenda, conducting the research themselves and advocating for change as a result. For example, after conducting its own research, a community in the Philippines passed a resolution to prevent the use of destructive fishing practices and now requires individuals to adhere to strict fishing and hunting schedules.

96. In the United States of America, an Executive Order issued in 1994 by the President provides a basis for continuing attention to the environmental and human health effects of actions by the national Government on members of minority and low-income groups, as well as on indigenous peoples, with the goal of achieving “environmental justice” for all communities. The Executive Order requires agencies of the Government to address any potentially adverse human health or environmental effects of their activities on members of minority or low-income populations. Each major agency has a working group on environmental justice, which provides guidance for that agency and coordination with other agencies. In addition, the Environmental Protection Agency has developed Environmental Justice Access Plans that set out measurable commitments. By engaging with environmental justice advocates and communities through community research and open dialogue, the Agency strives to ensure public participation in integrating environmental justice into day-to-day work and decision-making.

97. A number of international instruments and human rights bodies have detailed the obligations of States with respect to indigenous peoples, whose rights are particularly vulnerable to environmental harm. Among other duties, States should recognize the rights of indigenous peoples with respect to the territory that they

have traditionally occupied, including the natural resources on which they rely, facilitate the participation of indigenous peoples in decisions that concern them, guarantee that the indigenous community affected receives a reasonable benefit from any such development, and provide access to remedies, including compensation, for harm caused by the activities (A/HRC/25/53, para. 78).

98. Many good practices were presented in relation to indigenous rights. At the regional level, the Inter-American Court of Human Rights has done a great deal to clarify the obligations of States relating to indigenous and tribal peoples' rights in the territory that they have traditionally occupied. At the national level, a number of courts have also issued decisions clarifying the rights of tribal peoples. For example, the Supreme Court of Mexico decided in 2013 that the Government had not adequately consulted with the Yaqui tribe with respect to construction of an aqueduct, and that the authorization of the project must wait until after consultation takes place. Also in 2013, the Supreme Court of India requested the state of Odisha to consult with tribal assemblies in accordance with the Indian Forest Rights Act, which recognizes a broad range of customary forest rights of tribal peoples and traditional forest dwellers, in connection with an application to clear a forest area to mine for bauxite. After the tribal assemblies rejected the proposal, the Minister for the Environment and Forests turned down the application.

99. Another type of good practice is legislative action that recognizes the legal rights of indigenous representatives in natural resources. After many years of legal uncertainty about the management and use of natural resources in the county of Finnmark, the ancestral land and home of the Sami people, in 2005 the Norwegian Parliament adopted the Finnmark Act through a process of consultation with the Sami Parliament. The Act transferred ownership of the land to a new entity governed by a board half of whose members are appointed by the Sami Parliament, and created a special court to decide disputes concerning land rights.

100. Indigenous organizations have engaged in good practices to protect indigenous rights and promote the sustainable use of resources, including in connection with protected areas. For example, the Commission on Environmental, Economic and Social Policy of the International Union for Conservation of Nature, the Forest Peoples Programme and other indigenous peoples' organizations help local communities to assess and redress situations where they believe that they have been negatively affected by the designation or management of a protected area.

101. An example of a good practice in the management of protected areas is provided by the Sarstoon Temash Institute for Indigenous Management (SATIIM), a community-based indigenous environmental organization that co-manages, together with the Forest Department of Belize, the Sarstoon Temash National Park on lands traditionally used by indigenous Garifuna and Maya communities. With the assistance of SATIIM, in 2008 the communities of Conejo and Santa Teresa prepared forest sustainable management plans, which identify the timber and other resources that each community can harvest based on ecological surveys, and which include mitigation measures for any possible adverse effects on the environment.

102. Another good practice is raising the awareness of indigenous communities of their rights. Natural Justice, a civil society organization based in South Africa, assists local communities and indigenous groups to prepare "community protocols" that set out their understanding of their customary, national and international rights relating to their land and natural resources. Each community develops its own protocols in a format that is most meaningful to that community. Protocols can be written documents, and can also take the form of visual art, theatre or music.

2. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Climate change, A/HRC/31/52, 1 February 2016⁵⁶

Note by the Secretariat

... In this report, [the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox], describes the increasing attention paid to the relationship between climate change and human rights in recent years, reviews the effects of climate

⁵⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/015/72/PDF/G1601572.pdf?OpenElement>

change on the full enjoyment of human rights and outlines the application of human rights obligations to climate-related actions. He explains that States have procedural and substantive obligations relating to climate change, as well as duties to protect the rights of the most vulnerable.

Increasing attention to the relationship between climate change and human rights

...

11. In December 2009, at the beginning of the fifteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Copenhagen, 20 mandate holders issued a joint statement emphasizing that climate change poses serious threats to the full enjoyment of a broad range of human rights, warning that a weak outcome of the negotiations would threaten to infringe upon those rights and stating that mitigation and adaptation measures should be developed in accordance with human rights norms, including with the participation of affected communities.¹

12. At its sixteenth session, in Cancun in December 2010, the Conference of the Parties adopted a decision quoting the statements in Human Rights Council resolution 10/4 that the adverse effects of climate change have a range of implications for the effective enjoyment of human rights and that the effects will be felt most acutely by those segments of the population that are already vulnerable. The decision stated that “Parties should, in all climate change related actions, fully respect human rights” (decision 1/CP.16, para. 8, FCCC/CP/2010/7/Add.1).

13. Since then, the Human Rights Council has adopted three more resolutions on climate change. In addition to reiterating concerns about the effects of climate change on human rights, particularly those of the most vulnerable, the resolutions have stated that climate change has contributed to the increase of sudden-onset natural disasters and slow-onset events, both of which have adverse effects on the full enjoyment of all human rights. The Council has also held a seminar and several panel discussions on climate change. In the panel discussion at its twenty-eighth session, the President of Kiribati, Anote Tong, and the Prime Minister of Tuvalu, Enele Sosene Sopoaga, among others, described how climate change threatens their countries and called on States to respond effectively and swiftly. The Council has also discussed the effects of climate change on particular countries during its universal periodic review.

14. The Human Rights Council has encouraged mandate holders to consider the issue of climate change and human rights within their respective mandates.⁴ They have published a number of reports on different aspects of the relationship, including by 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 (A/64/255), the Special Rapporteur on the rights of internally displaced persons (A/66/285), the Special Rapporteur on the human rights of migrants (A/67/299) and, most recently, the Special Rapporteur on the right to food (A/70/287). In June 2014, the then-Independent Expert on human rights and the environment issued an informal report summarizing the statements of the mandate holders, the human rights treaty bodies and others on climate change.

15. In 2014 and 2015, mandate holders took several joint actions to emphasize the importance of a human rights perspective on climate action. In an open letter in October 2014, 27 mandate holders called on the parties to the United Nations Framework Convention on Climate Change to recognize the adverse effects of climate change on the enjoyment of human rights and to adopt urgent and ambitious mitigation and adaptation measures to prevent further harm. They proposed that the climate agreement then under negotiation include language stating that the parties “shall, in all climate change related actions, respect, protect, promote, and fulfil human rights for all”. On 10 December 2014, Human Rights Day, which fell during the twentieth session of the Conference of the Parties, held in Lima, all 73 of the mandate holders issued a statement urging States to adopt the proposed language and underscoring that “human rights must be pivotal in the ongoing negotiations and the new agreement must be firmly anchored in the human rights framework”. The then-Independent Expert and several other mandate holders delivered this message in person at the session.

16. In April 2015, at the request of the Climate Vulnerable Forum (a group of the States most vulnerable to climate change), the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on human rights and the environment, the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on the human right to safe drinking water and sanitation, and the Independent Expert on human rights and international solidarity issued a report on the adverse effects on the enjoyment of human rights of even a 2°C increase in the average global temperature. On World Environment Day, 5 June 2015, 27 mandate holders described these effects and again urged States to ensure that human rights are at the core of climate change governance.

17. The attention to climate change and human rights reached a crescendo at the twenty-first session of the Conference of the Parties, which met in Paris in December 2015. The United Nations High Commissioner for Human Rights made a powerful statement that urgent, effective and ambitious action to combat climate change is not only a moral imperative, but also necessary in order to satisfy the duties of States under human rights law. The Special Rapporteur on human rights and the environment also reminded States that their human rights obligations encompass climate change and urged them to adopt a rights perspective in negotiating the new agreement.⁸ He and other mandate holders, including the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on the right to food and the Independent Expert on human rights and international solidarity, presented these messages in Paris in person, as did a delegation from OHCHR.

20. The most important sign of the increasing attention to the relationship between climate change and human rights is the new agreement adopted by the Conference of the Parties in Paris on 12 December 2015. The Paris Agreement is the first climate agreement, and one of the first environmental agreements of any kind, to explicitly recognize the relevance of human rights. After acknowledging that climate change is a common concern of humankind, the preamble to the Agreement states:

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.

21. The influence of a human rights perspective can also be seen elsewhere in the Agreement. Most important, the growing recognition of the disastrous effects of climate change on human rights helped to support the decision of the parties to state, in article 2, that the Agreement “aims to strengthen the global response to the threat of climate change ... including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”.

22. In an important sense, the Paris Agreement signifies the recognition by the international community that climate change poses unacceptable threats to the full enjoyment of human rights and that actions to address climate change must comply with human rights obligations. This is a real achievement and, in this respect as in many others, the Paris Agreement is worth celebrating. In another sense, however, Paris is only the beginning. Now comes the difficult work of implementing and strengthening the commitments made there. In that effort, human rights norms will continue to be of fundamental importance.

Human rights obligations relating to climate change

General considerations

33. As the Special Rapporteur has previously explained, States have obligations to protect the enjoyment of human rights from environmental harm (A/HRC/25/53). These obligations encompass climate change. The foreseeable adverse effects of climate change on the enjoyment of human rights give rise to duties of States to take actions to protect against those effects. Human rights obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved.

34. In some respects, the application of these obligations is relatively straightforward. However, the scale of climate change introduces complicating factors. Unlike most environmental harms to human rights that have been considered by human rights bodies, climate change is truly a global challenge. Greenhouse gases emitted anywhere contribute to global warming everywhere. Billions of people contribute to climate change and will experience its effects, and the causal chains linking individual contributions with specific effects may be impossible to discern with certainty.

35. These complications led OHCHR to warn in 2009 that “while climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense”. Specifically, OHCHR stated that it would be “virtually impossible to disentangle the complex causal relationships” linking emissions from a particular country to a specific effect, and noted that “global warming is often one of several contributing factors to climate change-related effects such as hurricanes”. In addition, it stated that the “adverse effects of global

warming are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred” (see A/HRC/10/61, para. 70).

36. These conclusions can be challenged. As scientific knowledge improves and the effects of climate change become larger and more immediate, tracing causal connections between particular contributions and resulting harms becomes less difficult. But whether or not climate change legally violates human rights norms is not the dispositive question. As OHCHR emphasized, even in the absence of such a finding, “human rights obligations provide important protection to the individuals whose rights are affected by climate change” (see A/HRC/10/61, para. 71).

37. Specifically, States have obligations to protect against the infringement of human rights by climate change. This conclusion follows from the nature of their obligations to protect against environmental harm generally. Human rights bodies have made clear that States should protect against foreseeable environmental impairment of human rights whether or not the environmental harm itself violates human rights law, and even whether or not the States directly cause the harm. An illustrative example is a case of the European Court of Human Rights arising from mudslides in the Caucasus that killed several inhabitants of the town of Tyrnauz. The Government did not cause the mudslide, but the Court held that it still had a responsibility to take appropriate steps to safeguard the lives of those within its jurisdiction.

38. Above all, the Court stated, Governments must adopt legal frameworks designed to effectively deter threats to the right to life from natural disasters as well as dangerous human activities. While each State has discretion to choose particular preventive measures and “an impossible or disproportionate burden must not be imposed on the authorities”, the discretion of the State is not unlimited. In reviewing whether a State has met its obligations, the Court indicated that relevant factors include the foreseeability of the threat, whether the State undertook appropriate investigations and studies, and whether it followed its own law. The authorities must respect the right to information, including by providing for a system of advance warnings. Finally, the Court stated that where lives have been lost in circumstances that may engage the responsibility of the State, the State must provide an adequate response to the disaster, to ensure that the legal framework designed to protect the right to life is properly implemented.

39. The reasoning of the European Court in this respect is typical of the approach taken by other regional tribunals and human rights mechanisms. The duty to protect against harmful interference with the enjoyment of human rights is accepted as a pillar of human rights law, and many human rights bodies have applied that duty to such interference occurring as a result of environmental degradation (see A/HRC/25/53, paras. 47-61).

40. Apart from questions of causation and responsibility, the nature of climate change also requires us to consider how human rights norms apply to a global environmental threat. Most human rights bodies that have examined the application of human rights norms to environmental issues have examined harm whose causes and effects are felt within one country. Climate change obviously does not fit within this pattern.

41. A possible response is to treat climate change as a matter of extraterritoriality — that is, to conclude that it implicates the obligation of each State to protect the human rights of those outside, as well as those within, its own jurisdiction. The Special Rapporteur is aware that the question of extraterritorial human rights obligations has been controversial in other contexts. However, he believes that attempting to describe the extraterritorial human rights obligations of every State in relation to climate change would be of limited usefulness even apart from its potential for controversy. In the human rights context, climate change is probably not best understood as a set of simultaneously occurring transboundary harms that should be addressed by each State trying to take into account its individual contribution to the effects of climate change in every other State in the world. The practical obstacles to such an undertaking are daunting, and it is instructive that the international community has not attempted to address climate change in this way.

42. Instead, from the creation of the Intergovernmental Panel on Climate Change in 1988, through the adoption of the United Nations Framework Convention on Climate Change in 1992, to the negotiation of the Paris Agreement in 2015, States have consistently treated climate change as a global problem that requires a global response. This approach not only makes the most practical sense. It is also in accord with, and can be seen as an application of, the duty of international cooperation.

Procedural obligations

50. As the mapping report explains, human rights bodies agree that to protect against environmental harm that impairs the enjoyment of human rights, States have several procedural obligations, including duties: (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to

provide access to remedies for harm. These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm (see A/HRC/25/53, paras. 29-43). They are also supported by provisions in international environmental instruments, including principle 10 of the 1992 Rio Declaration on Environment and Development.

Substantive obligations

65. States have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights (see A/HRC/25/53, paras. 44-57). In principle, the content of the obligations of States to protect against environmental harm depends on the content of their duties with respect to the particular rights threatened by the harm. Nevertheless, despite the variety of rights that may be implicated, human rights bodies have reached similar conclusions.

66. They have made clear that these obligations apply to environmental harm caused by corporations and other private actors as well as by governmental entities. Specifically, in accordance with the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, States are required to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises”, including by “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (see A/HRC/17/31, annex, principle 1). In accordance with the Guiding Principles, States also have an obligation to provide for remedies for human rights abuses caused by corporations, and corporations themselves have a responsibility to respect human rights. These three pillars of the normative framework for business and human rights apply to all environmental human rights abuses, including impairments of human rights in relation to climate change.

67. In applying their duty to protect against environmental harm that interferes with the enjoyment of human rights, States have discretion to strike a balance between environmental protection and other societal goals, such as economic development and the promotion of other human rights. But the balance struck cannot be unreasonable or result in unjustified, foreseeable infringements of human rights. In examining whether the balance is reasonable, a number of factors may be considered, including whether the level of environmental protection resulted from a decision-making process that satisfies the procedural obligations described above; whether it accords with national and international standards; whether it is not retrogressive; and whether it is non-discriminatory. Finally, States must implement and comply with the standards that they have adopted. The following sections explain how these norms apply to climate change, at the national and at the international levels.

Obligations in relation to vulnerable groups

81. States have an overarching obligation not to discriminate in the application of their environmental laws and policies. In addition, States have heightened duties with respect to members of certain groups that may be particularly vulnerable to environmental harm, including women, children and indigenous peoples (see A/HRC/25/53, paras. 69-78). As the Human Rights Council has stated, the effects of climate change are felt most acutely by those who are already in vulnerable situations. Usually, the most vulnerable have also done the least to contribute to the problem. In this regard, climate change is inherently discriminatory.

82. States acting individually and in cooperation should take steps to protect the most vulnerable from climate change. Procedurally, States should continue to assess the effects of climate change, and of actions taken to mitigate and to adapt to it, on vulnerable communities. They should ensure that those who are in vulnerable situations and who are marginalized are fully informed of the effects of climate actions, that they are able to take part in decision-making processes, that their concerns are taken into account and that they have access to remedies for violations of their rights. Substantively, States should seek to protect the most vulnerable in developing and implementing all climate-related actions.⁴¹ Even if mitigation targets are met, vulnerable communities may still suffer harm as a result of climate change. Indeed, many are already experiencing adverse effects.

83. States have obligations at the national level to take adaptation actions to protect their vulnerable populations from the effects of climate change, and at the international level to cooperate in order to facilitate the protection of vulnerable communities wherever they are located. The rights of the most vulnerable must be respected and protected in all actions, including actions taken to mitigate or adapt to climate change.

Renewable energy projects and efforts to protect forests, while they may be highly desirable as methods of reducing or offsetting greenhouse gas emissions, are not exempt from human rights norms. When such projects are proposed for the territory of indigenous peoples, for example, the projects must accord with the obligations owed to those peoples, including, where applicable, the duties to facilitate their participation in the decision-making process and not to proceed without their free, prior and informed consent (see A/HRC/25/53, para. 78).

84. The Paris Agreement recognizes the importance of respecting the rights of the most vulnerable. Its preamble specifically refers to the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, as well as gender equality, in calling on the parties to respect, promote and consider their respective obligations on human rights when taking action to address climate change. Article 7 of the Agreement emphasizes that, in addition to being country-driven, participatory and fully transparent, adaptation action should be gender-responsive and take into consideration vulnerable groups, communities and ecosystems. To ensure that States satisfy their human rights obligations, they must implement the commitments they have made in relation to the protection of the most vulnerable.

Conclusions and recommendations

85. Bringing human rights to bear on climate change has three principal benefits. First, advocacy grounded in human rights can spur stronger action. From the Male' Declaration to the Paris Agreement, Governments and civil society organizations have successfully argued that strong climate action is necessary to safeguard human rights. These efforts have borne fruit, but they must continue and intensify.

86. Second, human rights norms clarify how States should respond to climate change. As the Paris Agreement recognizes, whenever States take action to address climate change, they should respect, protect and consider their respective obligations on human rights. Complying with human rights obligations not only helps to protect the rights of everyone affected by climate change. As the Human Rights Council has affirmed, it also promotes policy coherence, legitimacy and sustainable outcomes.

87. States have procedural obligations to assess and provide information about the effects of climate change, to ensure that climate decisions are made with the informed participation of the public and to provide for effective remedies for climate-related violations of human rights. They must protect the rights of freedom of expression and association in relation to all climate actions, even when the rights are being exercised in opposition to projects supported by the authorities.

88. Based on the duty of international cooperation, States should fully implement all of the commitments they have made in relation to the Paris Agreement and strengthen their commitments in the future, in order to ensure that global temperatures do not rise to levels that would impair a vast range of human rights. Each State must also adopt a legal and institutional framework that assists those within its jurisdiction to adapt to the unavoidable effects of climate change. In all of these actions, States must take care to protect the rights of the most vulnerable.

89. Third, human rights bodies can inform and improve climate policy by providing forums for issues concerning climate change and human rights that might otherwise be overlooked. The Special Rapporteur encourages the Human Rights Council and other international and national human rights institutions to continue to bring a human rights perspective to the global challenge of climate change.

Q. Special Rapporteur on the rights of persons with disabilities

1. Report of the Special Rapporteur of the Human Rights Council on the rights of persons with disabilities, Catalina Devandas-Aguilar, A/71/314, 9 August 2016⁵⁷

Key components of disability-inclusive policies

...

Non-discrimination

...

30. States need to pay attention to the multiple and intersecting forms of discrimination faced by persons with disabilities. The Convention on the Rights of Persons with Disabilities recognizes the significance of

⁵⁷ See also Report of the Special Rapporteur on the rights of persons with disabilities (theme: the right of persons with disabilities to participate in decision-making), A/HRC/31/62, 12 January 2016.

such forms of discrimination, particularly in relation to women and children with disabilities, since they are at a higher risk of discrimination and exclusion (see subparagraph (p) of the preamble and articles 6 and 7). In the design and implementation of public policies and programmes, States must acknowledge the situation of the most marginalized groups among persons with disabilities, such as women, youth, older persons, indigenous persons, persons with psychosocial disabilities, persons with intellectual disabilities, autistic persons and deaf-blind persons (see, for example, CRPD/C/SVK/CO/1 and CRPD/C/AUS/CO/1). To be inclusive, policies and programmes must respond to the needs of those heterogeneous groups.

Assistive technologies and support services

53. To the maximum extent possible, States should provide support services and assistive devices and technologies under a community-based approach. That means not only providing relevant services in the community where the person lives, but also ensuring the participation of persons with disabilities in decision-making processes and activities related to the design and provision of those services, as well as recognizing and supporting existing social networks and community resources. In that way, community-based services enable the optimal use of local resources, often with more efficient delivery systems than through other measures. When services are not community-based there is either a drive towards segregation, or those needing such services may have difficulty in accessing them. Additionally, when services are designed in a participatory manner and with the communities in mind, their adequacy and adaptability is increased, which results in responses that are sensitive to geographical, social, economic and cultural issues. In the case of indigenous peoples, such community-based services could be used to avoid the risk of assimilation when providing disability-specific services to indigenous persons with disabilities.

R. Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

1. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak, A/HRC/30/40, 8 July 2015

Summary

The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes ... clarifies the scope and content of the right to information throughout the life cycle of hazardous substances and wastes and identifies several challenges that have emerged in realizing this right, as well as potential solutions to these problems. The Special Rapporteur discusses several obligations of States and the responsibilities of business in relation to implementing the right to information on hazardous substances and wastes.

Human rights implications of the right to information on hazardous substances and wastes

22. The right to information is a right in and of itself and one of the rights upon which free and democratic societies depend (see E/CN.4/2000/63, para. 42). The right to information derives from the right to freedom of expression and the right to take part in public affairs stipulated in articles 19 and 25 respectively of the International Covenant on Civil and Political Rights. Similar provisions are also found in several international and regional human rights instruments, as well as in national constitutions and laws. According to the Special Rapporteur on the promotion and protection of the right to freedom of expression, this right encompasses the right of individuals to request and receive information of public interest and information concerning themselves that may affect their individual rights (see A/68/362, para. 19).

23. Concerns have been raised that, in many countries, people lack basic information about and influence over the quality of their drinking water, the air they breathe, the land they live on and the food they eat (see ECE/MP.PP/2014/27/Add.1, para. 16). In this context, better access to information can enable the exercise of economic, social and cultural rights, including the right to the highest attainable standard of physical and mental health, the right to food, the right to safe drinking water and sanitation, and the right to a healthy environment.

27. Meaningful consent relies upon and cannot be achieved without information. Under article 7 of the International Covenant on Civil and Political Rights, people have the right not to be subjected without free

consent to medical or scientific experimentation, which includes human exposure to substances the potential adverse effects of which are unknown. In the context of hazardous substances, lack of information, together with a lack of consent to be exposed to substances and their risks, directly affect this right. Furthermore, protecting the ability of individuals to exercise consent to having hazardous substances enter their bodies is indivisible, interdependent and interrelated to numerous human rights, including, among others, the right to self-determination, human dignity and health, as well as freedom from discrimination (see A/64/272, para. 19, and E/C.12/2000/4, para. 8).

28. Indigenous peoples have the right to give their free, prior and informed consent about the exploitation of resources on their land and about the storage and disposal of hazardous substances in their lands or territories, and other rights that require information about hazardous substances.

29. Access to information is necessary to evaluate the implications of hazardous substances with respect to groups that are at higher risk of harm from hazardous substances. Low-income or minority communities, indigenous peoples and other groups may be disproportionately at risk of adverse impacts owing to higher levels of exposure.

Normative content of the right to information on hazardous substances and wastes

...

Non-discrimination and equality

37. Non-discrimination is a pillar of human rights law. In relation to information, it is essential to ensure that the risks presented by hazardous substances and wastes be made compliant with this principle. Disaggregated and specialized information is required to understand and prevent disproportionate implications and impacts of hazardous substances and wastes on individuals and specific population groups, including different ages, incomes, ethnicities, genders as well as minorities and indigenous peoples. The right to information should be implemented with particular care so that no one is excluded through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or inattention to their particular circumstances.

Implementation of the right to information on hazardous substances and wastes

Obligations of States

48. States are the primary duty-bearers to respect, protect and fulfil human rights, and are bound to take all the steps necessary to ensure the right to information with respect to the adverse impacts of hazardous substances and wastes. States must ensure that related information is available, accessible and functional for everyone. This obligation not only requires States to refrain from interfering with the distribution and the free flow of information but also requires States to provide or make information public with or without request (see general comment No. 34 of the Human Rights Committee on the freedoms of opinion and expression, para. 19).

To identify and inform those at risk of disproportionate impacts

67. In order to protect those most at risk, States must ensure that disaggregated information is available and accessible regarding the risks of hazardous substances to various population groups, such as children or pregnant women. Similarly, the information should be monitored and disaggregated by sex and population group, such as workers in industries with exposure to hazardous substances, low-income communities, indigenous peoples or minorities, or other groups who are at high risk of adverse impacts. In addition, States must ensure information flows effectively to communities at risk to enable them to be aware of risks and options to prevent harm.

Conclusions and Recommendations

...

101. In the light of these observations, the Special Rapporteur offers the following recommendations: ...

(c) To ensure information is functional: ... (iv) States and businesses should publish information in the languages of linguistic minorities and indigenous peoples, and pay special attention in providing information to those most at risk. ...

S. Special Rapporteur on the situation of human rights defenders

1. Report of the Special Rapporteur on the situation of human rights defenders, Environmental human rights defenders, A/71/281, 3 August 2016

Summary

The present report highlights the situation of environmental human rights defenders. In his report, the Special Rapporteur raises alarm about the increasing and intensifying violence against them. He makes recommendations to various stakeholders in order to reverse this worrying trend and to empower and protect those defenders, for the sake of our common environment and sustainable development.

Introduction

1. The present report is dedicated to the heroic activists who have braved the dangers facing them and defended the rights of their communities to a safe and healthy environment, to a future with dignity and respect, and to their traditional land and livelihood. They spoke truth to power, and were murdered in cold blood. This happened in Honduras, where the renowned environmental campaigner Berta Cáceres and her colleague Nelson García from the Civic Council of Popular and Indigenous Organizations of Honduras were slain one after another in March 2016, for having opposed hydroelectric dams in the sacred Gualcarque river basin. The tragedy is common in the Philippines, where indigenous defenders of the Manobo community in Mindanao were murdered in September 2015. Attacks and killings of environmental and indigenous rights defenders in Mato Grosso Do Sul, Brazil, have continued with impunity. In South Africa, prominent defender Sikhosphi Rhadebe was assassinated at his home on 22 March, after reportedly being put on a “hit list” of opponents to mining operations in Xolobeni. These are not isolated cases. On average, three environmental activists were murdered each week in 2015.

Normative framework

7. For the purposes of the present report, the term “environmental human rights defenders” refers to individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. Land and environmental rights are interlinked and are often inseparable. As a result, the two broad categories of defenders advocating for the environment and for land rights are often characterized as “land and environmental rights defenders”, “environmental rights defenders”, or just “environmental activists”. The report defines those defenders through the inclusive term “environmental human rights defenders”, whose

8. Environmental human rights defenders are identified above all by what they do. They are characterized as such through their actions to protect environmental and land rights. Although they may work as journalists, activists or lawyers who expose and oppose environmental destruction or land grabbing, they are often ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as environmental human rights defenders. In many other cases, they are indigenous leaders or community members who defend their traditional lands against the harms of large-scale projects such as mining and dams.

9. Owing to word limitations on documents and the vast literature on the subject, the Special Rapporteur will not delve here into a comprehensive analysis of diverse international human rights norms relevant to the protection of environmental human rights defenders; he will only outline the applicable normative framework. With regard to the sphere of activities of environmental human rights defenders, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights share a common article 1, which refers to the right of self-determination, by virtue of which all peoples freely determine their political status, pursue their economic, social and cultural development, and dispose of their natural wealth and resources. The Declaration [on Human Rights Defenders] recognizes the legitimacy of the defence of environmental rights by acknowledging the “valuable work” of human rights defenders in the elimination of violations, including those resulting from “the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources”.

13. The Special Rapporteur underlines the importance of the right of environmental human rights defenders to participation in the conduct of public affairs and decision-making, enshrined in article 25 (a) of the International Covenant and article 8 of the Declaration. That right is said to include the right to submit to the relevant governmental agencies criticism and proposals for improving their functioning and to draw

attention to any aspect of their work that hinders or impedes the realization of human rights. The Rio Declaration on Environment and Development, as well as other prominent commitments, reaffirmed the importance of public participation.

14. International instruments protecting the rights of specific populations also guarantee their right to participation. The obligation to consult, with the objective of obtaining the free, prior and informed consent of indigenous peoples concerning legislative or administrative measures that may affect them directly, is established in the United Nations Declaration on the Rights of Indigenous Peoples (arts. 18 and 27) and in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO). Furthermore, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides for the right of minorities to participation (arts. 2 and 4).

18. While States are bound by international human rights law, non-State actors are required to respect human rights, including the right to defend environmental and land rights. Transnational corporations and other business enterprises must respect human rights, as set out in the Guiding Principles on Business and Human Rights. The Guiding Principles aim to implement the United Nations “Protect, Respect and Remedy” Framework, which rests on three pillars: the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for access to an effective remedy for victims of business-related human rights abuses (see A/HRC/17/31, para. 6).

19. Furthermore, the Guiding Principles require that companies identify and assess any actual or potential adverse human rights impacts through meaningful consultation with potentially affected groups, as an integral part of their responsibility to respect human rights. Such impact assessments should be carried out not only at the start of a new project, but also throughout the life cycle of the project, prior to any significant changes in the operating context (see A/68/262, para. 44).

20. The Special Rapporteur supports Human Rights Council resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, and believes that such an instrument would be timely. He urges the open-ended intergovernmental working group established pursuant to the resolution to fully consider the heightened risk posed by business activities to environmental human rights defenders in negotiations.

Hostile environment

24. As the global demand for natural resources grows, the environment is becoming a new frontline for human rights and our common future. In many countries around the world, activists and communities are raising their voices to prevent harming our environment and promote alternatives to the planet’s devastation through a more sustainable development. They seek a meaningful and urgent societal dialogue and a world where people can live in prosperity and dignity, and where nature is protected.

27. Despite the complexity of quantifying the whole situation, there have been rapid strides in exposing the true picture of attacks against environmental human rights defenders. One revealing report documented the unprecedented 185 killings of environmental human rights defenders across 16 countries in 2015. The 59 per cent increase from 2014 meant that more than three defenders were murdered, on average, every week in the course of 2015. The sectors of mining and extractive industries (42 killings), agribusiness (20), hydroelectric dams and water rights (15) and logging (15) were major drivers of the murders. According to another report, the largest single group, constituting 45 per cent of the documented 156 defenders killed in 25 countries in 2015, were related to the defence of environmental, land and indigenous peoples’ rights.

28. Both reports, collaborated by numerous others, indicate that the large majority of assassinations occurred in the countries of the global South, especially in Latin America and Asia. This is not to deny serious allegations of abuses of environmental human rights defenders in the global North countries, including harassment and strategic lawsuits against public participation that occur with State complicity, or at least disregard. Killings of environmental human rights defenders amounted to 67 per cent of all reported murders of defenders in Asia and 41 per cent of those reported in Central and South America. In 2014, three quarters of the 116 cases of killings of environmental human rights defenders in 17 countries — on average more than two victims per week — took place in Central and South America, with South-East Asia the second most-affected region. The spike in killings was related to large-scale hydropower projects, where dams were built in countries with weak legal regimes, repressive Governments and rampant corruption, and on lands belonging to indigenous and ethnic minority peoples.

31. Reports also indicate that most individuals and groups facing threats are those who oppose land grabbing, extractive industries, the industrial timber trade and large-scale development projects. Indigenous

communities and ethnic and racial minorities are particularly vulnerable (see A/HRC/24/41 and A/71/291).²⁰ They are the most affected because the resources exploited are usually located in their lands; they lack legal protection while exerting strong and vocal opposition; many indigenous communities do not hold formal title over the land they inhabit; and their access to justice is limited.

37. On the basis of the communications sent in the last five years, one can observe a clear link between violations committed against environmental human rights defenders and the area of their activities. The extractive industry was the sector with the most violations (54 communications), while 37 communications referred to land rights, such as territorial disputes and the right to ancestral lands; 27 communications referred to construction projects such as hydroelectric dams, oil and gas pipelines and aqueducts. Other areas in which environmental human rights defenders faced threats included development policy, fisheries, forced evictions, nuclear power and environmental pollution.

Root causes underlying violations

Exclusion and power imbalance

41. One of the systemic causes of conflicts around environmental rights is the imbalance of power between States, companies and environmental human rights defenders. The increasing conflicts over the environment stem from resource exploitation that fails to address legitimate concerns and demands of local communities. Those communities are extremely vulnerable to exploitation and abuse because they are already marginalized and excluded from decision-making. Power inequality permeates all decision-making processes, from the upstream phases such as the determination of the advisability of a project to the design of the project, and onward to its implementation. In many cases, power inequality is aimed at shrinking space for civic participation in order to muzzle opposition to development projects. It also relates to a poor understanding of communities' specificities and their exclusion. The affected rights holders often live in rural, isolated areas, with little access to government services and the judiciary.

42. Many of these communities, particularly indigenous ones, hold the right to free, prior and informed consent, and all of them have the right to participate fully in consultations around proposed projects that may affect their lands and livelihoods. Despite their recognition in various international, regional and domestic laws, those rights are often not meaningfully implemented, or are simply ignored by companies, with the complicity of Governments. Some Governments strategically choose to deny the rights to peoples that have not been "officially" identified as indigenous. The consultation processes also regularly fail to address power inequalities within communities, leaving isolated such groups as women or ethnic groups owing to one-size-fits-all approaches.

43. Moreover, in many cases, not only do State authorities and companies fail to consult with and obtain the consent of the affected communities, but they also stigmatize dissent and retaliate against critics, instilling mistrust and engendering more conflict in the mid- to long term. The Special Rapporteur heard testimonies that highlight the lack of support by corporations and State authorities for community-based environmental impact assessments and consultations, which could de-escalate potential conflicts.

Commodification and financialization of the environment

47. The intensified competition for natural resources in recent decades has led to multiple social and environmental conflicts all over the world. The recent crisis has exposed the vulnerability of the countries of the global South, which have prioritized resource-based development models to raise their national income. Much of the demand for the resources in those countries comes from countries in the global North. In a globalized world, the quest for economic growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors. What underlie these conflicts are profoundly different approaches to development.

48. Recent reports have pointed to a growing opposition between what could be considered a commodity-based approach, prioritizing economic growth and midterm profits, and rights-based approaches, favouring populations' interests and sustainability.²⁴ Communities protesting against projects that threaten their very livelihood and existence have often faced stigmatization and attacks from States and corporations, which label them "anti-development". Yet, these defenders often seek to preserve natural resources and to ensure a holistic and long-term approach to development where land, water, air and forests are not reduced to mere marketable goods. The commodification and financialization of nature often lead to simplifying the real "value" of the environment, ignoring the social or cultural dimensions and the complex interactions of elements within and between ecosystems.

Groups of environmental human rights defenders at higher risk

53. Environmental human rights defenders are one of the most heterogeneous groups of defenders. The category includes a diverse range of people, profiles and trajectories, from small-scale farmers with no land deeds to environmental lawyers and journalists, from well-organized non-governmental organizations to isolated indigenous communities. In many cases, some of these groups already experience marginalization. In many situations, they do not always have the capacity to challenge decisions in courts or they do not have access to mass media. Their marginalization is also due to the nature of their struggles as human rights defenders. ...

56. Indigenous communities also face multiple forms of aggression and violence. In specific situations, oppression against them is encouraged by institutionalized racism and stigmatization that deny the rights of these communities. Private actors such as agribusinesses and extractive industries as well as law enforcement agencies have been regularly observed to commit violations against environmental human rights defenders from indigenous communities. National development strategies often fail to include specific approaches and processes for indigenous communities that would ensure the conservation of their ancestral lands and recognize their rights to their livelihoods and environment. Linguistic barriers, countless obstacles to accessing basic social services and the imposition of unfavourable models of consultation aggravate the vulnerability of indigenous environmental human rights defenders.

57. In this context, the Special Rapporteur advocates an intersectional approach, embracing the heterogeneity and diversity of environmental human rights defenders and understanding the various root causes and situations exposing them to risks and threats.

Empowering environmental human rights defenders

...

Fostering a safe and enabling environment

Meaningful participation, transparency, and accountability

66. Individuals and communities should have the right to decide on their own priorities for development and to exercise control over their own economic, social and cultural development. In particular, they should be involved in the design, implementation and evaluation of plans and programmes for development that may have a direct effect on them. Meaningful and early participation is not simply a right but also 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.

67. Participation should begin with the involvement of local communities in long-term planning. National action plans on business and human rights, environmental impact assessments and other formal processes should be developed through consultative processes involving broad participation.

68. State and non-State actors should obtain the free, prior and informed consent of indigenous communities affected by activities on lands that they own, occupy or use (ibid.). The Special Rapporteur recognizes that there is an ongoing debate about what constitutes such consent and whether it has been fulfilled in particular cases. The United Nations Declaration on the Rights of Indigenous Peoples provides guidance on the application of this principle to indigenous peoples. However, further discussion and the setting of international standards on the nature and application of this principle to indigenous peoples and other communities is necessary, coupled with a renewed emphasis on its implementation through monitoring and support to environmental human rights defenders.

69. States should address a key challenge that environmental human rights defenders face in exercising their right to participation: the lack of transparency and accountability by State and non-State actors in decision-making. The right of participation requires access to information and defenders often struggle to obtain information about negotiations and agreements between State authorities and companies that affect their land, livelihoods and local environment. Confidentiality clauses in agreements between corporations and State actors can also hinder access to information and should therefore be reviewed.

Legal frameworks

71. In order to build an environment conducive to the defence of rights, States need to review regularly the adequacy of laws, policies, regulations and enforcement measures to ensure that businesses respect human rights and that environmental human rights defenders are protected. In relation to the latter, civil society has

developed a model law for the protection of defenders which provides useful guidance on the features of a comprehensive national protection regime.

72. As mentioned above, one of the root causes of abuses suffered by environmental human rights defenders is the lack of legal recognition of land rights, in particular for indigenous communities and those affected by post-colonialism, conflict and other causes of forced displacement. States should enact laws that recognize the rights of such individuals and communities. Conversely, States need to review and repeal laws that facilitate the exploitation of natural resources, thereby threatening the rights of those affected.

Conclusions and recommendations

...

Recommendations

96. In order to reverse the tide of the worsening situation of environmental human rights defenders, the Special Rapporteur wishes to put forward a set of recommendations to the attention of various stakeholders. He calls on all stakeholders to urgently and publicly adopt a zero-tolerance approach to the killings of and violent acts against environmental human rights defenders, and to immediately launch policies and mechanisms to empower and protect them. He further appeals to all actors to document more systematically information on the situation of environmental human rights defenders at risk, especially in countries of concern, with a view to advocating more actionable and effective measures for their protection.

102. States should: ...

- (b) Ratify ILO Convention No. 169 and guarantee the right to consultation and participation of indigenous communities in decisions at every stage of a project's life cycle; ...
- (e) Formulate national action plans on business and human rights and ensure that they, as well as environmental impact assessments, are developed in full transparency and with meaningful participation prior to the granting of permission or concessions for the implementation of any business or development project; ...
- (g) Develop protection mechanisms for environmental human rights defenders, taking into account the intersectional dimensions of violations against women defenders, indigenous peoples and rural and marginalized communities. ...

103. United Nations organizations and agencies should:

- (a) Address the legal gaps that heighten risks for environmental human rights defenders, including weak environmental standards and laws protecting the rights of indigenous peoples, their land rights and customary title to territories and resources....

T. Independent Expert on the promotion of a democratic and equitable international order

1. Report of the Independent Expert on the promotion of a democratic and equitable international order on the impact of investor-State-dispute-settlement on a democratic and equitable international order, A/70/285, 5 August 2015

Summary

The present report, the fourth of the Independent Expert to the General Assembly, focuses on the impact of investor-State dispute settlement on a democratic and equitable international order and builds on the forthcoming report to the Human Rights Council on international investment agreements (A/HRC/30/44). The Independent Expert calls on the General Assembly to request from the International Court of Justice an advisory opinion on the priority of the Charter of the United Nations and United Nations human rights conventions over other treaties.

Introduction

1. According to the World Investment Report 2015, growing unease with the current functioning of the global international investment agreement regime, together with today's sustainable development imperative, the greater role of Governments in the economy and the evolution of the investment landscape, has triggered a move towards reforming international investment rule seeking to make it better suited for today's policy challenges. As a result, the regime is going through a period of reflection, review and revision. As is evident from the United Nations Conference on Trade and Development (UNCTAD) World Investment Forum, held in October 2014, from the heated public debate taking place in many countries, and from various

parliamentary hearing processes, including at the regional level, a shared view is emerging on the need for reform of the international investment regime to ensure that it works for all stakeholders. The question is not about whether to reform or not, but about the “what”, “how” and “extent” of such reform.

3. The added value of the report lies in the identification of threats to the democratic and equitable international order posed by international investment agreements that are not anchored in human rights and by investor-State dispute settlement arbitration regimes because they reduce the State’s regulatory space and do not oblige the arbitrators to give priority to human rights treaty norms. It underlines the urgency of crafting future agreements in a way that prevents the abuses of the past and calls for a revamping of the existing 3,200 international investment agreements, more than 1,500 of which are due to expire. The Independent Expert provides a fresh look from an independent perspective that places human rights at its centre and highlights pertinent provisions of the Vienna Convention on the Law of Treaties with a view to the revision or termination of some of these agreements and to the abolishment of investor-State dispute settlement as *contra bonos mores* and incompatible with provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

6. In recent years there has been a growing awareness by States, intergovernmental organizations, non-governmental organizations and religious institutions, that the international investment agreement regime poses grave dangers to the enjoyment of human rights, but no global solution has been devised, possibly because of the complexity of the issues and the power of transnational enterprises and investors, who consistently oppose reform. The unbiased observer will have no problem understanding the two basic ontologies at stake. First is the ontology of the State, which is to legislate in the public interest, adopting laws, regulations and practices for the welfare of the persons living under its jurisdiction, including improvement of labour standards, food security, clean water, medical care, a healthy environment, adequate shelter and the administration of justice by a transparent and accountable system of courts. This ontology is seen by some as a social contract. The second ontology is that of investment, business, enterprise, banking and other free economic activity. By their very nature these activities entail risk-taking, which justifies an expectation of profit. But can there be a guarantee that an investor who speculates or a bank that gives loans without adequate equity will always draw a profit? No, because sometimes investors win, sometimes they lose. What is abnormal is for an investor to demand a guarantee of profit, to create a parallel system of extrajudicial dispute resolution, which often is not independent, transparent, accountable, or even appealable, and to seek to usurp the function of the State and encroach on government regulation of fiscal and budgetary matters in the public interest. The last 25 years have delivered numerous examples of abuse of rights by investors and unconscionable arbitral awards that have not only led to violations of human rights, but have engendered a “regulatory chill” or even a “regulatory freeze”, stopping States from adopting regulations on waste disposal or tobacco control for fear of being sued before investor-State dispute settlement tribunals that protect speculators making risky investments and deny States their regulatory space, imposing instead “austerity measures” on social services. A parallel may be drawn between the bailout of delinquent banks during the financial crisis of 2007-2008, when billions of dollars were paid from the public treasury, and the current practice of rescuing speculative investors when they take risks without insurance. This is tantamount to privatization of profits and the socialization of losses. The mandate-related question concerning obstacles to the realization of a democratic and equitable international order requires acknowledgement of the adverse impacts of international investor agreements and investor-State dispute settlement on human rights.

Paradoxes

7. Over the past 70 years, the United Nations has conducted a magnificent normative orchestra which has put on the world stage not only the Universal Declaration of Human Rights, but legally binding instruments including 10 core human rights treaties and countless declarations and resolutions such as the Declaration on the Establishment of a New International Economic Order, the Declaration on the Right to Development and the United Nations Declaration on the Rights of Indigenous Peoples. The noble task of codification and refining human rights norms continues. ...

9. Paradoxically, States enter into bilateral and multilateral free trade and investment treaties that hinder their compliance with human rights treaty obligations and result in the violation of civil, cultural, economic, political and social rights. Perhaps they follow the siren call of promised growth and employment, but seldom do they realize that investors are there for profit, will resist scrutiny by human rights bodies and reject legally binding obligations. Notwithstanding the foregoing, States are still bound by the International Covenants and must ensure that non-State actors operating in their territories do not violate human rights. States have a

responsibility to protect, particularly with respect to the administration of justice. Article 14 of the International Covenant on Civil and Political Rights requires States to ensure that suits at law are examined by competent and independent tribunals in a regime of transparency and accountability. Paradoxically, States have agreed to the creation of ad hoc investor-State dispute settlement tribunals that are frequently not independent, transparent or accountable. Studies have been published that manifest egregious abuses by specialized law firms in collusion with arbitrators and corporations using this system of “privatized justice” to escape adjudication before public courts under article 14. In the light of well-established and well-functioning domestic legal systems, investor-State dispute settlement offers no added value and yet, vested interests of powerful investors and transnational corporations have rendered it difficult to abolish it.

10. Paradoxically, although States are bound to observe the public participation clause of article 25 of the International Covenant, they negotiate treaties in secret and exclude key stakeholders, including labour unions, consumer unions, health professionals and environmental protection groups. Sometimes, secret treaties are fast-tracked through parliaments so as to avoid public participation. This renders the agreements democratically illegitimate.

11. Are the legally binding obligations of States under human rights treaties then meaningless, just because there is no tribunal competent to impose sanctions on States that violate their responsibility to protect and no enforcement mechanism against investors? Are the legal obligations under human rights treaties inferior to treaty obligations under free trade and investment agreements? Are human rights treaties only a moral fig leaf for globalization?

Core norms and principles

14. All States Members of the United Nations are bound by the Charter, which is akin to a world constitution. Article 103 of the Charter states: “In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” This means that bilateral and multilateral free trade and investment agreements that contain provisions that conflict with the Charter must be revised or terminated, and incompatible provisions must be severed according to the doctrine of severability.¹⁰

15. Pursuant to the cardinal norm of international law *pacta sunt servanda*, enshrined in article 26 of the Vienna Convention on the Law of Treaties, existing treaties must be implemented “in good faith”, and no subsequent treaty can be considered legitimate if it hinders the performance of commitments under existing treaties unless the parties explicitly agree to modify the previous treaties. Inadvertent incompatibilities can be resolved in good faith by interpreting the subsequent treaty in a manner consistent with the prior treaty, applying articles 31 and 32 of the Convention. Pursuant to Article 103 of the Charter, subsequent treaties must in any case conform to the Charter and are invalid if they impede the fulfilment of its purposes and principles, including its human rights provisions. The argument has merit that since most States parties to international investment agreements were already parties to United Nations human rights treaties, including the International Covenants, the principle of *pacta sunt servanda* requires the implementation of these United Nations treaties and the international investment agreements must be interpreted and applied in a manner that does not contravene the Charter or United Nations treaties, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO)....

19. Human rights treaties, general principles of law, customary international law, declarations and resolutions constitute a symbiosis of norms of hard law and soft law, an international *ordre public* essential to achieving a democratic and equitable international order. Together with domestic *ordre public* this legal regime overrides any attempt by investors to subvert the rule of law through international investment agreements that challenge the democratic safeguards of national legislative and judicial bodies.

20. It is consistent with the United Nations mandate to promote stability and cooperation by calling upon States to regulate the activities of investors and transnational enterprises registered or operating within their jurisdiction and to foreclose the threat or use of economic force in any manner inconsistent with the Charter.

Investor-State dispute settlement

21. Investor-State dispute settlement is a rather recent and arbitrary construction, a privatized form of dispute settlement that accompanies many international investment agreements. Rather than litigating before local courts or invoking diplomatic protection, investors rely on three arbitrators who in confidential proceedings decide whether their rights and investment have been violated by a State. Whereas investor-State dispute settlement tribunals can entertain suits by investors against States, they do not entertain suits by States against

investors, for example, when investors violate national laws and regulations, pollute the environment and the water supplies, introduce potentially dangerous genetically modified organisms, etc. A birth defect of investor-State dispute settlement is its “Trojan horse” quality: it was introduced into international investment agreements without full disclosure as to its potentially intrusive application, without the participation of key stakeholders at the time of elaboration and without public referendum, hence lacking democratic legitimacy. Bearing in mind their impacts, Governments have a duty to proactively inform constituents. Not doing so amounts to violating articles 19 and 25 of the International Covenant on Civil and Political Rights. The texts of many international investment agreements have only been obtained through freedom of information suits and Wikileaks revelations.

23. There are multiple reasons to oppose investor-State dispute settlement, based on the necessities of democratic governance, the administration of justice through transparent and accountable courts, the doctrine of State sovereignty and human rights law. It is difficult to justify that investor-State dispute settlement grants foreign investors greater rights than domestic investors, thereby creating unequal competitive conditions. The lack of transparency of investor-State dispute settlement tribunals and concerns about the independence and impartiality of the arbitrators are fundamental problems that cannot be solved by “fixing” existing investor-State dispute settlement mechanisms, by using filters or limiting investors’ access, for example by reducing the scope of the subject-matter. Investor-State dispute settlement creates artificial incentives to gain access to privatized arbitration, exposing host States to considerable legal and financial risks. Indeed, both the remuneration of arbitrators and lawyers’ fees are unconscionably high. Investor-State dispute settlement awards have led States to abandon measures to protect public health and to lower environmental standards. The regulatory chill resulting from the mere existence of the investor-State dispute settlement system has dissuaded, and may in the future dissuade, States from taking measures to respect, protect and fulfil their human rights obligations and thus have a negative impact on the democratic and equitable international order.

27. A report to the General Assembly is too short to lay out the human rights incompatibilities of investor-State dispute settlement, but one may address a few symptomatic problems for which there is no “quick fix”. The list of *contra bonos mores* investor-State dispute settlement awards is long. The present report cannot summarize them, not only because of space limitations, but out of moral vertigo.

Conflict with regional legislation, decisions of human rights tribunals and the constitutional separation of powers

39. In the case involving the Marlin mine run by the Goldcorp company in Guatemala, the Inter-American Commission on Human Rights had found that the mine should be closed because of the dangers to health posed by its operation. Under considerable pressure, however, the recommendation of the Inter-American Court [sic] of Human Rights was withdrawn, although the case continues before the Court [sic] on the basis of failure to secure lack of free, prior and informed consent. In the case of the Mayoc mine in Peru, the Court declared the case admissible but did not order the suspension of operations, notwithstanding the dangers to the health of the indigenous communities in the region. In other mining cases, military forces have been used to suppress public protest, mostly against local indigenous populations.

40. In the ongoing *Chevron v. Ecuador* litigation, investor-State dispute settlement arbitrators have repeatedly ordered the executive branch in Ecuador to prohibit the enforcement of the highest judicial instances of the country. This is tantamount to dismantlement of checks and balances and a violation of article 14 of the International Covenant on Civil and Political Rights. If anything is *contra bonos mores* it is this attack on the rule of law and on the constitutional separation of powers.

Chilling effect

41. In his 2014 report to the General Assembly (A/69/299), the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health noted that States are vulnerable to dispute settlement procedures when they give priority to their obligations under human rights treaties and thereby breach an obligation under an international investment agreement. This was the case when Ethyl Corporation submitted a claim against a public health decision by the Government of Canada to impose a trade ban on a gasoline additive produced by the corporation. Canada chose to bend because of the high cost of arbitration and the danger of an adverse judgement. This illustrates how the mere existence of investor-State dispute settlement can create a chilling effect on States, dissuading them from fulfilling their right to health obligations. Such disputes may also deplete the States’ resources and affect their ability to progressively realize the resource-dependent aspects of the right to health. The fact that international

investment agreements are treated as a “stand-alone legal code” and often do not contain references to the right to health contravenes *ordre public*. Hence, international investment agreements must be interpreted in a manner that does not conflict with human rights law because “the purpose of both development-stimulating investment treaties and human rights laws is to benefit individuals” (A/69/299, paras. 45 and 55).

46. Threats of expensive lawsuits against Governments are becoming more frequent than actual claims. Thus, investor-State dispute settlement has mutated from a corporate shield against allegedly unfair behaviour by States into a tactical weapon to delay, weaken and kill regulation. Specialized law firms actually encourage their multinational clients to scare Governments into submission: “It’s a lobbying tool in the sense that you can go in and say, ‘Ok, if you do this, we will be suing you for compensation.’ It does change behaviour in certain cases”.

Dubious impartiality of investor-State dispute settlement tribunals

47. Critics of investor-State dispute settlement have pointed out that many arbitrators and corporations are “too close for comfort”. A glaring example of the dysfunction of the annulment procedure for conflict of interests is provided by *Vivendi v. Argentina*.

48. Argentina stated that one of the arbitrators, Gabrielle Kaufmann-Kohler, was acting as a member of the Board of Directors and a member of the Corporate Responsibility Committee of the Swiss bank UBS, which was the single largest shareholder in Vivendi. Argentina further argued that Ms. Kaufmann-Kohler was partially remunerated with UBS shares. While Argentina acknowledged that any issues regarding the ability of an arbitrator should be raised without delay during the arbitration proceeding, in this case it was not possible to do so because Argentina only learned about the facts and circumstances affecting her ability to serve as arbitrator in November 2007, after the award judgement of 20 August 2007 had been rendered. While the review committee was critical of the arbitrator’s judgement and agreed with Argentina that the tribunal was not properly constituted and that annulment under article 52 (1) (a) of the Convention on the Settlement of Investment Disputes Between States and Nations of Other States could be supported, it declined to annul the award, holding that (a) the arbitrator’s exercise of independent judgement was not actually impaired; (b) it would be unjust to deny the claimants the benefit of the award owing to the arbitrator’s failures; and (c) the lengthy proceedings should “come to an end”. This case, adjudicated by the International Centre for Settlement of Investment Disputes, illustrates that the International Centre’s rules are insufficient to deal with conflicts of interest.

49. Under the current annulment procedure of the International Centre for Settlement of Investment Disputes, even ill-founded arbitral awards cannot be reversed. A review of the merits is not allowed; review is limited to grounds, such as irregular constitution or corruption of the arbitral tribunal, serious departure from a fundamental rule of procedure, failure to state reasons for the award or a manifest abuse of power. Hence, the International Centre annulment committee may find itself unable to annul or correct an award even after having identified “manifest errors of law”.

51. International investment agreements must undoubtedly be revisited to ensure that they are compatible with modern international law, in particular that they acknowledge the pre-eminence of the Charter of the United Nations pursuant to Article 103. The conclusion is inescapable that while international investment agreements can be reformed in a way that will further human rights and sustainable development, investor-State dispute settlement arbitral tribunals are ontologically and conceptually flawed and fail the test of compatibility with the Charter and human rights norms. Lessons learned over the past decades indicate that “good practices” in investor-State dispute settlement experience are few and far between and that the harm caused by the investor-State dispute settlement system justifies its abolition. A further question arises concerning the criminal responsibility of investors and transnational corporations when their activities cause serious harm to the environment, pollute water supplies, endanger public health, destroy food security or result in mass transfer of populations, for example, in connection with “mega-development” projects, sometimes accompanied by violence and death. International criminal law in this field is gradually emerging. Until now, investor-State dispute settlement has seemed blithely immune to such considerations.

52. The most fundamental argument against investor-State dispute settlement is that it subverts the rule of law so laboriously constructed over the past two hundred years by attempting to privatize justice. The establishment of a parallel system of dispute settlement, which is not transparent, accountable or even independent, cannot be tolerated. Moreover, no injustice is done to investors, because they have valid recourse options and can always rely on a functioning domestic administration of justice and/or on diplomatic protection.

Outlook

53. “Investment arbitration as currently constituted is not a fair, independent, and balanced method for the resolution of disputes between sovereign nations and private investors.”

55. Investor-State dispute settlement could be replaced by any of the following options, or a combination thereof:

- (a) The creation of an international investment court where the judges would be bound not only to take into account, but to give priority to the Charter and the core United Nations human rights treaties; a court that would have competence to examine suits brought by investors against States and by States against investors and that would allow mutual counter-claims. A standing international investment court, it would replace the system of multiple ad hoc arbitral tribunals with a single institutional structure. The court would be established by treaty and could have some institutional relationship with the United Nations, as do the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court. The court could even be incorporated into the United Nations system pursuant to articles 57 and 63 of the Charter as, for instance, a yet-to-be-created world court on human rights or a world court on the environment. The judges would be appointed or elected by States on a permanent basis. Most importantly, the international investment court would have an appeals chamber;
- (b) A State-State dispute settlement mechanism similar to that of WTO. Under this procedure the home State would have discretion over whether to bring a claim and States would decide on the court that should hear the case, for example, the International Court of Justice or ad hoc tribunals with appeal chambers;
- (c) Exclusive reliance on domestic dispute resolution. This option would abolish the right of investors to bring claims against host States in international tribunals and direct them to the jurisdiction of the States where they are operating and making a profit. This is the essence of the Calvo doctrine.

Recommendations

59. In the light of the obstacles to a democratic and equitable international order outlined above, the Independent Expert refers to the Plan of Action he formulated in his report to the Human Rights Council (A/HRC/30/44, sect. VII) and offers further recommendations.

To States

...

64. States should finish the elaboration of and adopt a legally binding convention that covers corporate social responsibilities and strengthens the implementation of the Guiding Principles on Business and Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples.