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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Rights of indigenous peoples

Report of the Special Rapporteur on the rights of indigenous peoples

Summary

In the present report, prepared pursuant to Human Rights Council resolution 42/20, the Special Rapporteur on the rights of indigenous peoples refers to the activities undertaken since the submission of her last report and highlights examples of positive impacts from the work carried out during the period of her mandate, on the protection of the rights of indigenous peoples.

The Special Rapporteur also considers experiences and lessons learned regarding consultation processes. She concludes with brief reflections on the mandate at the end of her term and some forward-looking recommendations.



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I. Introduction

1. This is the final report of the current Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, to the Human Rights Council. It provides brief information about the activities carried out since the Special Rapporteur last reported to the Council, and highlights some specific examples of positive impacts that the work carried out during the period of her mandate has had on the protection of the rights of indigenous peoples.

2. The Special Rapporteur also briefly summarizes recommendations on the implementation of indigenous peoples' right to consultation and free, prior and informed consent, which draw on her experience of providing technical advice in Latin America and elsewhere. Finally, she provides brief reflections on the mandate at the end of her term, and some forward-looking recommendations.

II. Activities of the Special Rapporteur

3. The Special Rapporteur completed one official country visit, and initiated a second country visit which had to be interrupted due to coronavirus disease (COVID-19) restrictions, since she last reported to the Human Rights Council.

4. From 14 to 24 October 2019, the Special Rapporteur undertook a country visit to the Congo. During her visit, she held meetings in Brazzaville, visited indigenous communities in several parts of Sangha department, and met indigenous representatives from Lékoumou, Pool and Plateaux departments. In her end-of-mission statement, she underlined the importance of the adoption of the national law on the rights of indigenous peoples in 2011, but she remarked that there was a long way to go for its actual implementation.¹

5. As reflected in her report on the country visit to the Congo, among the main challenges she could observe during her visit was the significant discrimination, exclusion and marginalization that indigenous peoples suffered in the country, which affected their access to health services, education, employment and political participation. She also stressed the negative impacts on the rights of indigenous peoples from measures to conserve nature and wildlife, which were taken without their participation and consent. Such measures resulted in deprivation of their own means of subsistence and of their traditional way of life, while making them victims of both violence and prosecution on charges of poaching. In this respect, the Special Rapporteur recommended that the Government design and implement national actions that recognized and strengthened indigenous peoples' culture and traditional livelihoods.²

6. The Special Rapporteur had an official visit scheduled to Denmark and Greenland from 9 to 19 March 2020. Although the country visit was initiated, it had to be interrupted due to COVID-19 restrictions and security concerns. The Special Rapporteur notes that the Government of Denmark and the Government of Greenland have both indicated their desire for the visit to be completed, and she hopes that this can be carried out by her successor as soon as the situation allows. Among the preliminary non-exhaustive topics that will be addressed as part of the country visit are the situation of children and youth, health, self-governance, development and climate change impacts.³

7. In November 2019, the Special Rapporteur, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), and with the support of the Asia Indigenous Peoples Pact and the Tebtebba Foundation, convened a regional consultation with over 100 representatives of indigenous peoples from 12 Asian countries. Among the objectives of the consultation were the exchange of experiences, and dialogue, regarding the current challenges faced by indigenous peoples in the Asian region. In parallel, the Special Rapporteur issued a public call for inputs to develop a report on the situation of the rights of indigenous peoples in Asia, following up on the reports developed

¹ See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25196&LangID=E> and <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25210&LangID=E>.

² A/HRC/45/34/Add.1.

³ See www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/Callforinput_Denmark_Greenland.aspx.

by her predecessors in 2007 and 2013.⁴ The report on Asia, being presented to the Human Rights Council in parallel to the present report, is focused on the topics of lands, territories and resources, human rights defenders, business and human rights, conservation and environmental rights.⁵ Emphasis is also placed on the impact of climate change on the enjoyment of economic, social and cultural rights, and on the critical role played by indigenous peoples in protecting the environment, including through traditional knowledge.

8. During the past year, the Special Rapporteur has issued more than 100 communications to more than 30 countries and to other entities such as private corporations and intergovernmental organizations, in response to information received on alleged violations of the human rights of indigenous peoples. The cases addressed are included in the special procedures' joint communications report, and in the special procedures online communications database.⁶ The Special Rapporteur also issued press releases on urgent cases and on thematic issues of special concern.⁷ She has developed comments on laws and policies regarding indigenous peoples' rights – for example, on the principles on consultation and consent within the law to establish the National Institute of Indigenous Peoples in Mexico, on the elaboration of a law on free, prior and informed consultation in Honduras, on Presidential Provisional Measure No. 870 in Brazil, and on the law amending the management of vacant, fallow and virgin lands in Myanmar,⁸ and has submitted expert testimony and amicus curiae briefs, in relevant court cases, to the African Court on Human and Peoples' Rights and the Constitutional Tribunal of Peru.⁹

9. The Special Rapporteur continued her coordination with other United Nations specialized bodies, and with the regional human rights systems. She also continued to participate in international conferences and meetings of relevance to the rights of indigenous peoples and the environment, such as the international expert group meeting arranged by the Permanent Forum on Indigenous Issues on conservation and the rights of indigenous peoples, held in Nairobi from 23 to 25 January 2019, and the twenty-fifth Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Madrid in December 2019.

10. In November 2019, the Special Rapporteur contributed to an expert group meeting organized by the Permanent Forum on Indigenous Issues on Sustainable Development Goal 16, on access to justice, which took place at Chiang Mai University in Thailand.

11. As is requested in her mandate, the Special Rapporteur has paid particular attention to the rights of indigenous women and girls. She has been involved in the activities relating to the celebration of the twenty-fifth anniversary of the Fourth World Conference on Women: Action for Equality, Development and Peace, which will culminate in a high-level meeting in 2020 with the theme of the realization of gender equality and the empowerment of all women and girls.

III. Impact and achievement, examples from between 2014 and 2020

12. In this section, the Special Rapporteur would like to reflect on some specific examples of positive impact that the work carried out during her mandate has had on the protection of the rights of indigenous peoples. She believes that this can serve as a means of contributing to a better understanding of the levels of engagement that the mandate has had with indigenous peoples, States and other actors, and of the types of human rights issues that she has addressed.

13. The Special Rapporteur has reiterated that, despite progress made at the international, regional and national levels in many countries on legal recognition of the rights of indigenous peoples, important challenges remain. Violence against and criminalization of

⁴ A/HRC/6/15/Add.3 and A/HRC/24/41/Add.3 respectively.

⁵ A/HRC/45/34/Add.3.

⁶ Available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

⁷ See www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Indigenous_People.

⁸ See www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/LegislationAndPolicy.aspx.

⁹ See www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/ExpertTestimony.aspx.

indigenous peoples, particularly when they defend their collective rights to their lands, territories and natural resources, has drastically increased in the last few years.¹⁰ Thus, the Special Rapporteur has focused her efforts, through the communications procedure as well as in her country visits, on addressing these gross human rights violations and calling for prevention, justice and reparation. Her continuing attention to these issues has yielded positive changes.

14. The Special Rapporteur met with members of indigenous communities in jail for defending their rights to lands and to the exercise of their justice systems, during her country visits to Guatemala and Ecuador.¹¹ That was the case in April 2018, when she visited several indigenous human rights defenders in prison in Guatemala, including Abelino Chub Caal. Mr. Chub Caal was fully acquitted of all charges in April 2019, 11 months after the Special Rapporteur's visit. The attention that the Special Rapporteur drew to his case was an important factor that contributed to securing his acquittal.

15. Another emblematic case of criminalization of indigenous human rights defenders in Guatemala was in 2015. That year, six human rights defenders, including Mayan Kanjobal authorities from Huehuetenango department, opposed to hydroelectric dams on indigenous collective lands, were detained on different charges including kidnapping, belonging to a criminal gang, threats and obstructing justice. They were held in preventive detention for several months. In May 2016, the Special Rapporteur, jointly with other special procedures, sent a communication requesting the Government to clarify the basis for the criminal charges, as well as how the preventive detention complied with fair trial guarantees.¹² On 22 July 2016, High Risk Court A in Guatemala City ordered the immediate release of seven human rights defenders from Huehuetenango, including the six mentioned in the communication. In four of the cases, all charges were dismissed.¹³

16. The Special Rapporteur sent a joint communication regarding a land dispute between an indigenous community and the Chinese sugar cane company Hengfu Sugar in Preah Vihear Province, Cambodia, in September 2018.¹⁴ Subsequently, in June 2019, the Ministry of Land Management, Urban Planning and Construction in Cambodia set up a "measurement team" to measure and demarcate the land of indigenous communities, in support of their collective land title application. However, the land demarcation depends on the resolution of the land dispute. Sugar-related economic land concessions across the country, including in Preah Vihear, have resulted in thousands of people being dispossessed from traditional lands of spiritual significance. Between 2014 and September 2019, 15 indigenous community members and 2 staff members of non-governmental organizations were charged and put under judicial supervision in relation to this land dispute. Community members who have been particularly outspoken and active in this case have expressed concerns about having been targeted. In February 2020, the Hengfu Sugar company reportedly stopped operating.

17. In 2011, the Yanacochoa S.R.L. mining company filed a case against Maxima Acuña de Chaupe, an indigenous Quechua woman in Peru who opposed the mining project and refused to leave her lands. She was charged by the company, which runs an open-pit gold and copper mine in the area, with trespassing on her own lands. Due to her opposition to the mining activities, she suffered several attacks, intimidation, attempted evictions and judicial harassment, in spite of the fact that precautionary measures for her protection had been awarded by the Inter-American Commission on Human Rights in 2014. The Special Rapporteur, together with other special procedure mandate holders, sent a series of communications relating to Ms. Acuña's case between 2014 and 2016. Ms. Acuña was

¹⁰ A/HRC/39/17, para. 4.

¹¹ Visit to Guatemala: A/HRC/39/17/Add.3. The report on the Special Rapporteur's mission to Guatemala was considered as one of the bases for the European Parliament resolution on the situation of human rights in Guatemala (RC-8-2019-0182, para. P) requesting that Guatemala, inter alia, comply with the recommendations of the Special Rapporteur (para. 8). Visit to Ecuador: A/HRC/42/37/Add.1.

¹² GTM 5/2016. This communication, and the other communications from special procedures referred to in the present report, are searchable at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

¹³ See www.frontlinedefenders.org/en/case/environmental-and-indigenous-rights-defenders-huehuetenango-released-0.

¹⁴ KHM 6/2018.

awarded the Goldman Environmental Prize in 2016. On 3 May 2017, the Supreme Court of Peru dismissed the charges against her.¹⁵

18. Sustained follow-up to the cases, cooperation among special procedures and coordination with OHCHR have been important factors in achieving justice for human rights defenders.

19. Within the context of criminalization, the use of antiterrorist legislation in Chile against the Mapuche people has been a continuing concern for the mandate.¹⁶ In October 2017, the Special Rapporteur, together with other special procedure mandate holders and in coordination with the OHCHR Regional Office in Santiago, sent a joint communication and issued a public press release on the use of antiterrorist legislation against the Mapuche, including in the high-profile Luchsinger-Mackay case in which Francisca Linconao, a 61-year-old *machi* (traditional religious authority), was charged together with another 10 Mapuche persons.¹⁷ The intervention had a prompt impact. It was mentioned by the defence during the trial. On 25 October 2017, the Criminal Court of Temuco acquitted the defendants in the case due to the reliance by the prosecution on a witness statement obtained under torture as main evidence.¹⁸ In another case, the accused, who had spent nearly one and a half years in pretrial detention, were released on bail.

20. Many cases of attacks and violence against indigenous peoples and individuals, including violations of the right to life, have been addressed in the course of the Special Rapporteur's mandate. The situation in Río Blanco, and threats against members of the Council of Popular and Indigenous Organizations of Honduras and against Berta Cáceres, were analysed in the Special Rapporteur's report on her visit to Honduras.¹⁹ After the killing of Ms. Cáceres, the Special Rapporteur released a public communiqué condemning the murder and linking it to her work as a human rights defender in relation to the Agua Zarca dam, run by the hydroelectric company Desarrollos Energéticos S.A.²⁰ Conclusions and recommendations in the Special Rapporteur's report and press release were widely quoted by civil society organizations, including by an international expert group in its fact-finding mission report on the murder.²¹ The Special Rapporteur sent several communications to the Government of Honduras and held various meetings with justice authorities in the country to receive information on the case.²² The Special Rapporteur also, together with other special procedure mandate holders, sent communications on the case to financial investors supporting the dam project,²³ and the Special Rapporteur highlighted the case in her reports and speeches to the Human Rights Council and the General Assembly. Several financial investors, including the Netherlands Development Finance Institution (FMO), the Central American Bank for Economic Integration, and Finnfund, subsequently suspended funding for the dam project. In 2018, the Special Rapporteur expressed her concern in a joint press release about the results of the murder trial, stating that those who ordered the killing had not been brought to justice.²⁴ In December 2019, seven men were

¹⁵ PER 1/2016; and see www.business-humanrights.org/es/per%C3%BA-sentencia-de-la-corte-suprema-protoge-los-derechos-a-la-tierra-de-la-familia-de-m%C3%A1xima-acu%C3%B1a-en-caso-contra-minera-yanacocha.

¹⁶ See, for instance, E/CN.4/2004/80/Add.3; A/HRC/15/37/Add.1, para. 165; A/HRC/12/34/Add.6, paras. 57–62; and CHL 1/2011.

¹⁷ CHL 3/2017; and see www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22209&LangID=E.

¹⁸ See www.latercera.com/noticia/caso-luchsinger-dictan-absolucion-11-imputados-decretan-libertad/ and www.eldesconcierto.cl/2018/10/08/caso-luchsinger-mackay-las-recomendaciones-de-la-onu-que-no-considerara-el-fallo-de-la-suprema.

¹⁹ A/HRC/33/42/Add.2.

²⁰ See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=17153&LangID=E.

²¹ See <https://gaipe.net/wp-content/uploads/2017/10/GAYPE-Report-English.pdf>.

²² HND 4/2017, HND 4/2016 and HND 2/2016.

²³ OTH 8/2017 and OTH 9/2017.

²⁴ See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=23994&LangID=E. See also <https://news.un.org/es/story/2018/12/1447371>. For complaints by Desarrollos Energéticos S.A. against the Special Rapporteur's statement, see www.lavanguardia.com/vida/20181208/453435876879/onu-debe-evaluar-juicio-de-berta-caceres-antes-de-respaldarlo-segun-empresa.html.

found guilty of the murder and were convicted, this time including executive staff from Desarrollos Energéticos S.A.

21. The Special Rapporteur has also expressed her concern about attacks on indigenous organizations for their work in defending indigenous peoples' human rights. In January 2015, the Confederation of Indigenous Nationalities of Ecuador denounced the unilateral termination by the Government of Ecuador of the 30-year lease on the offices used by the Confederation since 1984. The Confederation considered this decision to be reflective of the increased restrictions on the work of indigenous and civil society organizations in the country. The decision was reversed after the Special Rapporteur addressed a communication to the Government of Ecuador on the situation.²⁵

22. Civil society organizations, and individuals such as lawyers, supporting indigenous peoples' rights, have also been subject to attacks. In December 2016, the Ministry of the Interior in Ecuador sought to shut down the non-governmental organization Acción Ecológica, which advocates for environmental causes and the rights of indigenous peoples. The Special Rapporteur, together with other special procedure mandate holders, sent a communication and issued a public press release expressing concern about the restrictions on freedom of expression and association. Within a matter of days, in January 2017, the country's Ministry of the Environment announced that it had rejected the request of the Ministry of the Interior to shut down the organization.

23. Another issue that has repeatedly been brought to the attention of the Special Rapporteur is violation of the rights of indigenous peoples due to conservation activities. In her report to the General Assembly in 2016, the Special Rapporteur presented recommendations on how indigenous peoples' rights should be better protected in conservation policy and practice.²⁶ She was invited to present her report to the World Conservation Congress, of the International Union for Conservation of Nature – the largest global forum for the adoption of conservation policies, which was held in Hawai'i in September 2016. In a positive development, the Congress adopted several resolutions in line with some of the recommendations in the Special Rapporteur's report, including on the need for safeguarding indigenous lands, territories and resources from unsustainable developments by encouraging governments to work with indigenous peoples in order to create, institute and enforce legal and management regimes for protected areas to enhance accountability and improve governance.²⁷

24. With regard to Thailand, the Special Rapporteur has repeatedly raised concerns over the continuing impact of the violations of the rights of the indigenous Karen peoples in the Kaeng Krachan Forest Complex, ongoing since 2011, by officials of the National Park, Wildlife and Plant Conservation Department, and over the failure to ensure accountability for these violations, which included the enforced disappearance of indigenous human rights defender, Pholachi Rakchongcharoen, known as Billy, who was later found murdered. The Government of Thailand nominated the Kaeng Krachan Forest Complex to be designated as a UNESCO world heritage site, initially in 2011, and reactivated its nomination in respect of the complex in February 2019. That same month, the Special Rapporteur sent a communication to the Government of Thailand, the UNESCO World Heritage Committee and the International Union for Conservation of Nature raising concerns about the alleged violations against the Karen, the lack of consultation, and the failure to seek their free, prior and informed consent, and also about the impact that UNESCO heritage status, if awarded, might have on the Karen communities' land rights and livelihoods.²⁸ In July 2019, at its forty-third session, the World Heritage Committee decided not to award the Kaeng Krachan Forest Complex heritage status and referred the nomination back to the Government of Thailand to "demonstrate that all concerns have been resolved, in full consultation with the local communities".²⁹ The suspects, who were national park officials, were charged with the

²⁵ ECU 1/2015.

²⁶ A/71/229.

²⁷ See, among other resolutions, WCC 2016 Res 088 EN, WCC 2016 Res 075 EN and WCC 2016 Res 030 EN, available from <https://portals.iucn.org/library/resrec/search>.

²⁸ THA 2/2019, OTH 7/2019 and OTH 8/2019.

²⁹ Decision 43 COM 8B.5, available at <https://whc.unesco.org/en/decisions/7360>.

murder of “Billy” by the Department of Special Investigation on 23 December 2019.³⁰ However, on 23 January 2020, the Attorney-General’s Office dropped the murder charges, citing insufficient evidence, and the outcome of the investigation remains uncertain.

25. Successive mandate holders have expressed long-standing concerns regarding the impact of conservation activities on indigenous peoples in Kenya. Since 2017, there has been an escalation of violence in the Embobut Forest: the Kenya Forest Service has repeatedly evicted indigenous Sengwer and burned their homes, and arrested community members. These acts were taking place despite the litigation by the Sengwer challenging the evictions and the issuance of a court injunction to prevent such evictions in the interim. Several Sengwer have been shot by the Kenya Forest Service, including one Sengwer herder who was killed in January 2018.³¹ The European Commission supported a climate change project in the area, which included the Kenya Forest Service among the recipients of funding. The Special Rapporteur, together with other special procedure mandate holders, issued a press release in January 2018 calling for the project to ensure respect for human rights, and within days, the European Commission decided to suspend the project pending an assessment of its human rights compliance.³²

26. The Special Rapporteur sent a communication and issued a press release in July 2019 raising concerns over the Supreme Court order to evict up to 9 million Adivasi across India, as well as over amendments to the Indian Forest Act that would increase the discretionary policing powers of forest officers.³³ In November 2019, indigenous representatives and lawyers from India stated that the action by the mandate holder had undoubtedly increased national debate and had made Adivasi feel supported and that their voice was legitimized. The eviction order remains suspended. The Supreme Court hearing, initially scheduled to take place in July 2019, has been postponed until 2020. In addition, the proposed amendments to the Indian Forest Act were formally withdrawn by the Government in mid-November 2019 following the intensified national debate. There is hope that the Supreme Court will give careful consideration to the rights of indigenous peoples in its final decision on the eviction order. The Special Rapporteur will continue to monitor the situation closely.

27. Human rights impacts of business activities, particularly extractive industries, within or around indigenous peoples’ lands and territories, have also been a continuing concern for successive mandate holders. The Special Rapporteur and her predecessors have addressed this topic during their country visits and through thematic reports, communications and letters, including to business corporations. In February 2019, together with other special procedure mandate holders, the Special Rapporteur sent a communication to the Government of the Philippines and to the Australian-based mining company OceanaGold regarding allegations that the establishment and operation of the gold and copper mine by OceanaGold Corporation had resulted in violations of the human rights of the indigenous peoples and local communities living near Didipio, Nueva Vizcaya Province, including impacts on their livelihoods and overall environmental degradation in the region due to the project.³⁴ The company engaged in dialogue with special procedures over human rights concerns. On 15 October 2019, the company announced publicly that it was suspending its operation of the Didipio mine. The action of the special procedures may have had a role in prompting the company to recognize its human rights responsibilities. Disputes have, however, persisted in 2020, along with allegations that certain activities by the mining company are still being carried out.

28. In other cases, courts have taken into account the Special Rapporteur’s country visit and thematic reports. In regard to Guatemala, some relevant recommendations from the Guatemala country visit report were considered in the Constitutional Court decision on the

³⁰ See www.bangkokpost.com/thailand/general/1822474/former-park-chief-charged-on-6-counts-in-billy-murder-case#cxrecs_s.

³¹ KEN 1/2018 and OTH 1/2018.

³² See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22584&LangID=E.

³³ IND 13/2019.

³⁴ PHL 1/2019 and OTH 2/2019. The company response is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34621>.

San Rafael mine case, which included respect for the self-identification of the Xinka people and the need for adequate consultation.³⁵

29. Dams and large infrastructure projects affecting indigenous peoples' fundamental rights, and often involving forced displacement, have also been a major concern for the mandate holder. Communications on allegations of human rights violations linked to these projects have been sent to several States, and these cases have also been assessed in mission reports. The Special Rapporteur has stressed the need for any development project to fully respect the rights of indigenous peoples as recognized by international human rights standards. Her comments and recommendations in this regard have been considered in court deliberations and decisions that have called for the halting or modification of these projects.

30. In March 2016 the Special Rapporteur undertook a country visit to Brazil. Her preliminary recommendations signalled her concerns over information received about violations of the rights of the Mundurucu indigenous people due to the São Luiz do Tapajós dam project, notably the absence of good faith consultations to obtain their free, prior and informed consent, the failure to demarcate indigenous lands affected by the project, and the inadequate environmental and social impact assessments after political decisions in regard to the dam had been taken.³⁶ In her report to the Human Rights Council on the visit, the Special Rapporteur expressed her satisfaction at having received information that, following her preliminary recommendations, the Ministry of the Environment had suspended the licensing procedure for the dam project, stating that the project was incompatible with indigenous peoples' constitutional rights.³⁷

31. In Cambodia, following a communication from the Special Rapporteur in 2017 on the forced relocation of an indigenous community following the operationalization of a dam in Stung Treng Province,³⁸ the Government subsequently allowed the community to register the non-flooded area as indigenous communal land. The registration is being processed.

32. In December 2017, the Special Rapporteur published a press release, in coordination with the Inter-American Commission on Human Rights, expressing concern about a draft law declaring the building of roads in Ucayali Province, Peru, to be of "national interest and priority", even though they would affect lands of isolated indigenous peoples.³⁹ The draft law had been questioned by a vice-ministry⁴⁰ and other relevant bodies. In spite of the subsequent adoption of the law by the country's Congress, the Government has recognized the need for respect for indigenous peoples' rights within the context of implementation of the law.⁴¹

33. In July 2016, a federal court in Brazil cancelled the environmental permit of a huge-scale Spanish-led tourism project, Cidade Nova Atlântida, on the indigenous lands of the Trembe people. The court quoted the Special Rapporteur's Brazil country visit report in its decision.

34. The Special Rapporteur has reiterated the importance of ensuring indigenous peoples' collective rights to lands, territories and natural resources, while expressing her concern with regard to the number of allegations received about the violation of these

³⁵ A/HRC/39/17/Add.3, paras. 12 (regarding the self-identification of the Xinka), 39, 43 and 103 (b) and (c); and see www.business-humanrights.org/es/guatemala-corte-constitucional-confirma-suspensi%C3%B3n-a-mina-el-escobal-de-tahoe-recursos-y-pide-se-haga-proceso-de-consulta-al-pueblo-xinka. The Special Rapporteur has continued to monitor the implementation of the decision; see GTM 5/2019.

³⁶ A/HRC/33/42/Add.1, paras. 47–54, 63 and 67.

³⁷ *Ibid.*, paras. 53, 68 and 89; and see <https://es.mongabay.com/2016/08/hidroelectrica-sao-luiz-do-tapajos-licencia-ambiental-denegada> and <http://archivo-es.greenpeace.org/espana/Global/espana/2016/report/bosques/Inundando%20Amazonia.pdf>.

³⁸ KHM 2/2017.

³⁹ PER 10/2017.

⁴⁰ Viceministerio de Interculturalidad.

⁴¹ See www.france24.com/es/20190321-peru-carreteras-amazonia-legislacion-ambiental and <https://gestion.pe/economia/gobierno-descarta-construccion-carretera-zona-frontera-ucayali-225880-noticia>.

fundamental rights.⁴² In some cases, States have taken measures to address the recommendations of the mandate holder on this topic.

35. In her country report concerning Paraguay, the Special Rapporteur recommended the titling of the lands of the Che Iro Ara Poty community. The Government finalized the titling of the community's lands after a process that had been lingering for 26 years.⁴³ Positive measures were also adopted by Paraguay in March 2019 with regard to the Ayoreo Totobiegosode, with the titling of part of their traditional territories, as had also been recommended by the Special Rapporteur in the report on her country visit.⁴⁴

36. During an academic visit to Cambodia in October 2018, the Special Rapporteur raised awareness about the need to simplify the communal land titling procedure. She had also sent a communication expressing concerns over the land titling process in 2017.⁴⁵ In Cambodia, the communal land titling procedure is a process through which indigenous communities can secure collective legal ownership over the traditional lands that they occupy, however the registration process is complex, lengthy and costly. In April 2019, for the first time, the Ministry of Land Management, Urban Planning and Construction acknowledged in a public document the need to assess the current communal land titling process and to "identify areas for simplification".

37. As can be seen in the above-mentioned cases, the role of national justice systems in upholding the rights of indigenous peoples is a key factor in protecting those rights. Thematic and country visit reports, communications and press releases have been useful in contributing to the efforts of regional and domestic courts to incorporate international human rights standards on the rights of indigenous peoples in their decisions. Thus, the Special Rapporteur has tried to cooperate with national courts whenever requested and to the extent possible, considering limited means and resources. In this regard, she has provided *amicus curiae* briefs, as in the case of Santa Clara de Uchunya under consideration by the Constitutional Court of Peru, and was invited to provide expert testimony for the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights.⁴⁶

38. The Special Rapporteur has paid particular attention to the rights of indigenous peoples and access to justice. She has observed first-hand the challenges that indigenous peoples face during country visits, and dedicated her thematic report to the Human Rights Council to this issue in September 2019,⁴⁷ noting that indigenous peoples require access to justice both through the ordinary justice system and through their own indigenous justice mechanisms, in order to advance Sustainable Development Goal 16 with its aim of providing access to justice for all. Harmonization between the legal systems and legal pluralism provide an important way forward. During her country visits to Ecuador in 2018⁴⁸ and Timor-Leste in 2019,⁴⁹ the Special Rapporteur was pleased to note that these countries' constitutions recognized indigenous justice and customary justice, respectively. The Special Rapporteur is pleased to learn that following her visit, the Government of Timor-Leste has committed to establishing a judicial system based on legal pluralism and that local community consultations are currently taking place to develop measures for harmonizing the legal systems.

39. While undertaking her country visit to Australia in March 2017, one of the main issues in focus was challenges in ensuring access to justice, illustrated by the stark overrepresentation and poor treatment of indigenous peoples in detention centres. Among the concerns raised by the Special Rapporteur was the lack of adequate legal aid and the funding cuts by the Government for organizations providing Aboriginal and Torres Strait Islander peoples with legal aid. In a positive development, and in part due to the concerns

⁴² A/72/186, paras. 52–56.

⁴³ See www.fapi.org.py/la-relatora-especial-sobre-los-derechos-de-los-pueblos-indigenas-destaca-el-cumplimiento-de-una-de-sus-recomendaciones-a-favor-de-che-iro-ara-poty.

⁴⁴ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15361&LangID=E.

⁴⁵ KHM 6/2017.

⁴⁶ See www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/ExpertTestimony.aspx.

⁴⁷ A/HRC/42/37.

⁴⁸ See A/HRC/42/37/Add.1.

⁴⁹ See A/HRC/42/37/Add.2.

raised publicly by the Special Rapporteur, the Government announced in May 2017 that it would reverse the budget cuts for indigenous legal aid organizations.

40. In February 2016, the Special Rapporteur undertook an academic visit to Guatemala to participate in a seminar on violence against women and access to justice. She delivered a keynote speech on access to justice by indigenous women, making reference to the ongoing Sepur Zarco case. In coordination with OHCHR Guatemala, she also attended the court proceedings, to underline the importance of the trial, as the first national court case specifically on violence against indigenous women during the armed conflict, and to show her solidarity with the victims. She expressed her hope that the decision of the court would uphold the rights of the claimants and that just and fair compensation would be provided. The Special Rapporteur also addressed a joint communication to the Government of Guatemala on harassment of the 15 indigenous victims during the proceedings.⁵⁰ On 26 February 2016, the court ruled against the defendants and ordered individual and collective redress for the plaintiffs. The Special Rapporteur issued a joint press release expressing her satisfaction with the court decision and calling for its full implementation.⁵¹

41. In this context, it is also important to emphasize the cooperation with regional human rights courts. In May 2017, the African Court on Human and Peoples' Rights issued a landmark judgment in favour of the Ogiek peoples in Kenya. In the judgment, the Court affirmed the collective rights of the Ogiek to the Mau Forest and made multiple references to the Special Rapporteur's communications and country visit report, and also to provisions in the United Nations Declaration on the Rights of Indigenous Peoples.

42. The Special Rapporteur acted as an expert witness for a case under consideration by the Inter-American Court of Human Rights concerning the Kaliña and Lokono indigenous peoples in Suriname, in February 2015. In her testimony, the Special Rapporteur emphasized the obligations of Suriname to protect indigenous peoples' human rights, specifically the obligation to ensure the effective participation of indigenous peoples in conservation management and their right to restitution for lands incorporated into protected areas without their consent. On 25 November 2015, the Inter-American Court of Human Rights issued its judgment in favour of the Kaliña and Lokono indigenous peoples,⁵² in which it cited the testimony of the Special Rapporteur, providing explicit recognition of the above-mentioned rights in its decision.

43. Recommendations and legal advice for developing domestic laws and other legal and policy instruments that are in line with international human rights law, including on the rights of indigenous peoples, have been developed by the mandate holder. In the report on her country visit to Paraguay, the Special Rapporteur assessed the issue of a potential legal instrument on consultation and free, prior and informed consent. She recommended that discussions on the topic should happen with the full and effective participation of indigenous peoples.⁵³ On 28 December 2018, Presidential Decree No. 1039 was promulgated, which, according to the country's Federation for the Self-Determination of Indigenous Peoples, "reflects the proposal of the country's indigenous organizations and peoples, and was developed through participatory and inter-institutional processes".⁵⁴ The Government of Paraguay has described the adoption of the decree as implementation of the Special Rapporteur's recommendation.⁵⁵

44. In 2016 and 2017, the Special Rapporteur provided technical advice to the Government of Honduras regarding a draft law on prior consultation with indigenous and Afro-Honduran peoples, in which she raised procedural and substantive aspects relating to the development and drafting of the law and consultations thereon. Her recommendations have been an important reference point for indigenous peoples' organizations in Honduras, as well as for various human rights expert bodies and for the work of OHCHR in Honduras

⁵⁰ GTM 2/2016.

⁵¹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17118&LangID=E.

⁵² *Case of the Kaliña and Lokono Peoples v. Suriname*, judgment of 25 November 2015.

⁵³ A/HRC/30/41/Add.1, para. 82.

⁵⁴ See www.ultimahora.com/aprueban-protocolo-consulta-y-consentimiento-libre-pueblos-indigenas-n2788588.html and www.fapi.org.py/consulta-y-consentimiento/.

⁵⁵ See www.mre.gov.py/SimorePlus/Home/DetalleSeguimiento/2069 and www.mre.gov.py/SimorePlus/Home/DetalleSeguimiento/2070.

on monitoring the implementation of indigenous consultations and on free, prior and informed consent. In response to a recent communication from the Special Rapporteur, the Government of Honduras acknowledged the importance of her recommendations and stated that it would seek the technical assistance of OHCHR Honduras in devising a more effective and participatory methodology for consulting with indigenous peoples on the development of a law on consultation.⁵⁶

45. Climate change and its implications for human rights are a mounting concern for the international community, as is reflected in the call by the Human Rights Council to the Special Rapporteur to engage more actively on this issue.⁵⁷ The Special Rapporteur has drawn the attention of policymakers to the impacts of climate change on indigenous peoples, as well as to the contributions that indigenous peoples can make to achieving solutions. In her thematic report to the Human Rights Council in 2017 on climate change and climate funds, the Special Rapporteur called upon donors and funds to respect and support the rights of indigenous peoples as recognized in international human rights law; and to implement policies and safeguards, and ensure their effective dissemination. She also recommended training of staff, especially for staff involved in implementation at the regional and national levels; and the development of more dedicated direct-funding mechanisms to support indigenous peoples' own initiatives regarding climate change and sustainable development. In February 2018, the Green Climate Fund, following public consultations, adopted a policy on the rights of indigenous peoples.⁵⁸

46. The Special Rapporteur has devoted attention to the particular vulnerability of indigenous peoples in isolation and in recent contact, since her report on her country visit to Paraguay in 2014, in which she addressed the situation of Ayoreo living in isolation.⁵⁹ Indigenous organizations and experts have requested the Special Rapporteur to promote this topic at the United Nations and within regional human rights bodies, and to draw the attention of Governments and other relevant actors to the existing OHCHR guidelines.⁶⁰ To this end, the Special Rapporteur has addressed the overall situation of these groups through all the different methods of work available to her, including reports on country visits⁶¹ and communications on particular cases,⁶² and she coordinated a meeting and a report on the topic together with the OHCHR Regional Office for South America and the Inter-American Commission on Human Rights.⁶³ These efforts combined have raised awareness of the human rights situation of indigenous peoples in isolation and in recent contact in the relevant Latin American countries. On 28 December 2019, a court in Loreto, Peru, adopted a decision taking into consideration the OHCHR guidelines and, as a consequence, cancelled the licences of proposed projects which may have affected such indigenous peoples.⁶⁴ A civil society regional working group with a transboundary approach has recently been established, giving a central role to indigenous organizations, as recommended by the Special Rapporteur in her report.⁶⁵

⁵⁶ The response by the Government of Honduras is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35046>.

⁵⁷ See resolution 42/20, para. 2, in which the Council "requests the Special Rapporteur to participate, upon invitation, in relevant international dialogues and policy forums on the consequences that climate change has on indigenous peoples, to undertake thematic research and to develop cooperation dialogue with States, intergovernmental organizations, civil society and other stakeholders on effective and sustainable practices".

⁵⁸ See www.greenclimate.fund/sites/default/files/document/gcf-b19-05.pdf.

⁵⁹ A/HRC/30/41/Add.1, paras. 73–74 and 87–89.

⁶⁰ OHCHR, "Directrices de protección para los pueblos indígenas en aislamiento y en contacto inicial de la región amazónica, el Gran Chaco y la región oriental de Paraguay" (2012).

⁶¹ A/HRC/42/37/Add.1, paras. 65–69.

⁶² See, for instance, ECU 7/2016 and BRA 9/2015.

⁶³ A/HRC/39/17/Add.1.

⁶⁴ Sentence No. -2019-1°JCM-CSJLO-JAVT, Corte Superior de Justicia de Loreto. See also www.servindi.org/actualidad-noticias/22/01/2020/sentencia-historica-para-la-proteccion-de-los-pueblos-indigenas-en.

⁶⁵ A/HRC/39/17/Add.1, paras. 63 and 67; and see <http://landislife.org/wp-content/uploads/2019/10/Land-is-life-25-septiembre-2019.pdf>, <https://es.mongabay.com/2019/11/piaci-indigenas-en-aislamiento-informe-regional-sudamerica> and

IV. Consultation and consent: experiences and recommendations

47. One of the most frequently recurring issues addressed by the Special Rapporteur throughout her mandate has been the implementation of international standards on consultation and free, prior and informed consent. The Special Rapporteur has made numerous observations on this topic as part of her evaluation of individual communications, country visits, technical assistance provided to Governments, public statements, seminars, forums and other public events. The majority of this work has involved the Latin American region, where there have been important debates on the issue as well as about regulatory initiatives and jurisprudence. These developments hold important lessons for indigenous peoples and for States in other regions as regards problems in the application and interpretation of consultation and consent standards in the context of legislative and administrative measures and natural resource development projects affecting indigenous peoples. The Special Rapporteur would like to highlight some of her main observations and conclusions on this issue, made throughout the course of her mandate.

(i) *Foundation, nature and scope of indigenous consultations*

48. One of the first challenges identified by the Special Rapporteur is how States and business actors conceptualize consultation in terms of its regulatory foundations and sources. There has been a clear tendency among States and business sectors to refer only to the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) as the legal source of the duty to consult. By framing indigenous consultation exclusively in the parameters of ILO and its tripartite structure, some States have even addressed the topic from a logic of labour rights or relations. Indigenous consultation must be understood from the standpoint of international human rights law, taking into account the normative and jurisprudential advances in the area of indigenous peoples' human rights since the adoption of the Indigenous and Tribal Peoples Convention in 1989. Therefore, the conceptualization and application of indigenous prior consultation and consent should be based not only on the Indigenous and Tribal Peoples Convention and the guidelines developed by ILO in that regard, but also on a much broader, and subsequent, body of law consisting of various instruments, resolutions, declarations – in particular the United Nations Declaration on the Rights of Indigenous Peoples,⁶⁶ jurisprudence and authoritative interpretations developed by international and regional human rights mechanisms.

49. Another problem observed is the lack of understanding by State and other actors of the nature and characteristics of indigenous consultation. Indigenous consultation and consent represent important safeguards for the substantive rights of indigenous peoples recognized in international human rights instruments. These substantive rights include the rights of participation and self-determination; rights to property, culture, religion and non-discrimination in relation to lands, territories and natural resources, including sacred places and objects; rights to health and physical well-being in relation to a clean and healthy environment; and the right of indigenous peoples to set and pursue their own priorities for development.⁶⁷ Therefore, the starting point for analysing consultation and consent is evaluation of the substantive rights of indigenous peoples that would be at stake, for example in the context of development or investment plans or other measures.⁶⁸

50. Consultations with indigenous peoples need to entail a process based on a new model of relations, dialogue and cooperation between indigenous peoples and States. Indigenous consultations are not equivalent to standard procedures for notice and comment available to the general public, as the latter are not culturally adapted and nor do they adequately address indigenous peoples' specific concerns. Given the historical and political

<https://watanibasocioambiental.org/wp-content/uploads/2019/10/DECLARATORIA-DE-LIMA-11102019.pdf>.

⁶⁶ It is specifically stated in art. 35 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) that “the application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements”.

⁶⁷ A/HRC/24/41, para. 28.

⁶⁸ A/HRC/21/47, para. 84.

context of marginalization and exclusion that indigenous peoples have faced, differentiated consultations that are appropriate to their distinctive characteristics and rights are required.⁶⁹

51. Another problem identified by the Special Rapporteur is the tendency to conceive of consultations with indigenous peoples as mere formalities or procedures to provide information about measures or projects that have previously been designed and approved by State and business actors.

52. According to international standards, indigenous consultations should be prior, and should be conducted in good faith and through indigenous peoples' representative institutions. The element of "prior" means that consultations need to be carried out before the adoption of a measure, the granting of authorizations and permits, or the signing of contracts or other definite commitments by States related to activities or projects, can affect indigenous peoples.⁷⁰

53. In consultation processes, indigenous peoples' representative and decision-making structures, cultures and time frames need to be respected. The Special Rapporteur has emphasized that to ensure the climate of trust, mutual respect and good faith that is necessary in order to develop meaningful consultation processes, the consultation procedures themselves need to be the result of consensus. This also means that States need to try to overcome situations of disadvantage and power imbalance that are faced by indigenous peoples in terms of technical and financial capacity, access to information and political influence.

54. Indigenous consultations should not be understood as a one-time event but as a continuous process that "requires the State to both accept and disseminate information, and entails constant communication between the parties".⁷¹ Regarding extractive projects, consultation and consent may be necessary at different stages – from impact assessments to exploration to production to project closure.⁷²

55. Consultations should be culturally appropriate, and accessible, and should respect the forms of indigenous organization and representation, without coercion or attempts to divide them. Attention should be paid to representative structures that would be consulted in different scenarios, for example in relation to a measure with a nationwide scope, or to a measure or activity that would affect a particular indigenous community, or group of communities or people. In any case, the indigenous representative mechanisms must respond to their own internal processes and be effective in practice.

56. Adequate consultation processes must provide the time and space necessary for indigenous peoples to have full knowledge of the scope, nature and impacts of a proposed measure or activity before its approval, including possible environmental, health and other risks. Essentially, indigenous peoples should also be able to influence the making of decisions that affect their rights, as well as being able to make their own proposals.

57. There has also been a tendency to limit the scope of indigenous consultation to measures that are deemed to have a "direct impact". Consultations should not be limited only to measures that explicitly refer to the rights and interests of indigenous peoples or to development projects whose areas of operation are in indigenous lands or territories without considering the impacts on surrounding indigenous peoples. The criterion of "impact" must be flexible and apply whenever a State decision may affect indigenous peoples in ways not felt by others in society. This includes cases of administrative or legislative measures of general application, if those measures could affect indigenous peoples differently in some way given their specific conditions and rights.⁷³ The process of developing consultation

⁶⁹ "Nota técnica sobre la consulta y el consentimiento libre, previo e informado de los pueblos indígenas en México", February 2019, p. 7; and A/HRC/12/34, para. 42.

⁷⁰ "Nota técnica sobre la consulta y el consentimiento libre, previo e informado de los pueblos indígenas en México", p. 6.

⁷¹ Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname*, judgment of 28 November 2007, para. 133.

⁷² A/HRC/24/41, para. 67.

⁷³ A/HRC/12/34, para. 43; and comments of the Special Rapporteur on the rights of indigenous peoples in relation to the document entitled "Propuesta de gobierno para nueva normativa de consulta y

laws or regulations requires consultation too, as this can also help in identifying consultation scenarios that respond to the realities of indigenous peoples in each country.

(ii) *Impact assessments*

58. In order to ensure reliable information in consultation processes, independent and impartial social, cultural and environmental impact studies that cover the full spectrum of rights that could be affected by a measure or project are required under international standards.⁷⁴ The participation of indigenous peoples themselves in these assessments is essential, in order to identify the said impacts as well as possible alternatives and mitigation measures.⁷⁵ Any proposed legislation on indigenous consultation must state the obligatory nature of these impact assessments, and adequate parameters for carrying them out.

(iii) *Free, prior and informed consent*

59. The main point of debate and disagreement regarding indigenous consultation revolves around the binding nature of its results. Indigenous peoples consider that their will must be respected regarding measures or activities that affect them. State and business sectors consider that this position amounts to a veto power, which they reject from the outset. Reducing the principles of consultation and consent to a debate about the existence of a veto power would amount to losing sight of the spirit and character of these principles which seek to end historical models of decision-making regarding indigenous peoples that have excluded them and threatened their survival as peoples.⁷⁶

60. Under the principles of progressive realization and non-regression of human rights, obtaining free, prior and informed consent should be understood as the objective of consultations and as an obligation in cases of significant impacts on the rights of indigenous peoples. This is evident in international legal developments subsequent to the Indigenous and Tribal Peoples Convention, of 1989 – including in the United Nations Declaration on the Rights of Indigenous Peoples, the jurisprudence of the inter-American human rights system, and the general comments and decisions of treaty-monitoring bodies.⁷⁷

61. It is necessary to move beyond the debate over the existence of a veto in the context of development projects, and instead focus on the international human rights obligations that States must observe at all times. Any restrictions on these rights, such as a decision to proceed without the free, prior and informed consent of an indigenous people, imposes on the State a burden to prove the permissibility of the said restrictions under the international criteria of legality, necessity and proportionality in relation to a valid public purpose.⁷⁸

62. The Special Rapporteur, in common with previous mandate holders, has highlighted the need for review mechanisms through a judicial or other impartial and competent body in order to ensure that any decision by a State entity that does not have the consent of the indigenous peoples affected complies with these criteria and does not affect the physical

participación indígena de conformidad a los artículos 6º y 7º del Convenio N° 169 de la Organización Internacional del Trabajo”, Chile (November 2012), para. 43, available (in Spanish) at <http://unsr.jamesanaya.org/docs/special/2012-11-29-unsr-comentarios-a-propuesta-reglamento-consulta-chile.pdf>.

⁷⁴ A/HRC/31/52 (report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), para. 50; A/HRC/25/53, paras. 29–43; International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 7 (3); Inter-American Court of Human Rights, *Saramaka* case, para. 129; and Inter-American Court of Human Rights, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, judgment of 27 June 2012, para. 206.

⁷⁵ Inter-American Commission on Human Rights, “Indigenous and tribal peoples’ rights over their ancestral lands and natural resources”, OEA/Ser.L/V/II.Doc 56/09, paras. 245, 248 and 267.

⁷⁶ A/HRC/12/34, paras. 48–49.

⁷⁷ See Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples, para. 5; *Poma Poma v. Peru* (CCPR/C/95/D/1457/2006), paras. 7.4 and 7.6; Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 12; and Inter-American Court of Human Rights, *Saramaka* case, paras. 134 and 137.

⁷⁸ For further information, see A/HRC/24/41, paras. 34–36.

and cultural survival of the indigenous peoples concerned. If these requirements are not met, it ought to be concluded that the measure or activity should not proceed without indigenous consent.⁷⁹

63. In cases where indigenous peoples have consented to a measure, or where a measure or project is considered to not bring significant impacts, States must still ensure at all times the protection of the substantive rights of indigenous peoples, in accordance with their international obligations. Consent must be given freely and any agreements arising from this consent must be subject to periodic oversight, evaluation and monitoring processes.⁸⁰

(iv) *On the adoption of legislation*

64. The Special Rapporteur has observed problems in the development of proposed legislation on consultation, and problems in the application of already existing legislation and the execution of consultation processes in general. Many of the problems are associated with the aforementioned issues related to understandings of the scope, purpose and timing as regards undertaking consultations. In many cases, the problem lies in the fact that consultation laws and procedures themselves were not developed with the participation of indigenous peoples.

65. In many countries, the dissatisfaction felt by indigenous peoples with the way that governments have sought to legislate for and/or implement consultation has led them to develop their own autonomous consultation protocols or their own community self-consultation processes. Indigenous peoples consider these initiatives to be expressions of their self-determination that should be respected by actors seeking to carry out activities that could affect them. The Special Rapporteur considers that indigenous consultation protocols and other consultation procedures need to be considered as alternatives to the general pattern of consultation laws so far promoted in the Latin American region.

(v) *Stigmatization and criminalization*

66. Another problematic aspect of the way in which indigenous consultation has been implemented is that in many States, indigenous peoples are perceived as mere interest groups whose goals are contrary to a purportedly superior national interest. The Special Rapporteur has repeatedly expressed her concern over situations of violence, stigmatization and criminalization that indigenous peoples have faced when expressing their opposition to development projects promoted by States or private businesses.⁸¹ States should carry out education and awareness-raising activities for officials and the general public in order to promote understanding of the rights that indigenous peoples seek to vindicate. There is an urgent need for indigenous peoples' interests in maintaining their lands, cultures, self-government and economic subsistence systems to be recognized as being part of the national interest within any democratic and multicultural society.

(vi) *Cross-cutting issues related to indigenous consultation*

67. There are other factors that would contribute to strengthening consultation as a safeguard for indigenous peoples' rights. Cross-cutting actions are needed to improve the promotion and protection of the substantive rights of indigenous peoples to their lands, territories and natural resources, to self-determination, including determining their own development priorities, and to access to justice. The principles of consultation and cooperation established under the United Nations Declaration on the Rights of Indigenous Peoples should guide coordinated actions between indigenous peoples and States to promote necessary legislative, policy and institutional reforms in specific sectors such as natural resource development, energy, infrastructure, tourism, agriculture and other relevant areas.

68. Another important element is the existence of effective judicial, administrative and other mechanisms to ensure that indigenous peoples can enforce their rights, especially in the context of development projects and similar activities. Additionally, legislative, judicial

⁷⁹ Ibid., para. 39.

⁸⁰ A/HRC/24/41, para. 30; and A/HRC/39/62, paras. 42–45.

⁸¹ See A/HRC/39/17.

and other mechanisms are necessary to regulate, supervise and sanction private business and other third-party activities whose activities violate indigenous peoples' rights.

69. Consultation and cooperation should guide the means by which indigenous peoples can participate directly in decision-making related to development policies, laws, plans and programmes. Indigenous peoples' proposals, priorities and concerns regarding development should be duly incorporated in the State development planning before outlining priorities and granting concessions, licences and other authorizations for development activities that could later lead to social conflicts due to lack of consultation.

70. The Special Rapporteur encourages indigenous peoples and States to explore mechanisms for dialogue, consultation and cooperation to promote indigenous development priorities and other human rights. These processes of dialogue, consultation and cooperation must respect the mechanisms and protocols for relations, consultation and decision-making of indigenous peoples.

71. Consultation and free, prior and informed consent must also be understood as an extension of the right of indigenous peoples to self-determination. Therefore, they should be able to decide their own social, cultural, economic and political destinies and ultimately safeguard their rights recognized under the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights sources.

V. Final reflections at the end of the Special Rapporteur's term and forward-looking recommendations

72. The establishment of the mandate of the Special Rapporteur in 2001 was a response by the international community to the reiterated demands of indigenous peoples and to the situation of systematic violation of their individual and collective rights. The mandate has been acknowledged by United Nations Member States as an achievement in building an international framework for the advancement of the rights and aspirations of indigenous peoples.⁸²

73. Since 2007, following the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, Special Rapporteurs on the rights of indigenous peoples have been mandated to promote the Declaration, which has been the legal framework for all their activities, including thematic work, country visits, communications, identification of best practices, cooperative dialogue with all relevant actors, and technical cooperation.

74. Throughout the years of her mandate, the Special Rapporteur has acknowledged progress in the recognition and legal protection of the human rights of indigenous peoples.⁸³ But she would like to stress that the "implementation gap", and the increasing violence against and criminalization of indigenous peoples in many countries around the world, signals the need more than ever for a strong and effective mandate to ensure compliance with international human rights standards in this regard.

75. The mandate holder has tried to respond to this situation not only through communications, country visits and thematic reports, but also by trying to engage Governments and other actors in constructive dialogue, with the aim of making the United Nations Declaration on the Rights of Indigenous Peoples and other relevant human rights standards better understood, protected and realized. Working visits, technical cooperation, and active involvement in multilateral and multi-stakeholder processes have been key activities in this regard.

76. The Special Rapporteur would like to express her appreciation to the numerous Member States that have shown their support for the mandate, have engaged with its work and have implemented relevant recommendations. Nevertheless, she would like to underline that there are still many countries in which the existence of indigenous

⁸² General Assembly resolution 69/2 (outcome document of the World Conference on Indigenous Peoples), para. 5.

⁸³ A/72/186, paras. 25–36, on progress in law and jurisprudence.

peoples is denied, or where they are recognized in such a way that the State does not deem the United Nations Declaration on the Rights of Indigenous Peoples applicable. This creates a void of protection. It is very difficult for the mandate to fulfil its work in these cases, as the States concerned are reluctant even to initiate a dialogue, and neither provide invitations for country visits nor answer communications.

77. The Special Rapporteur would like to reiterate the suggestion made by her predecessor that the Human Rights Council and the overall United Nations human rights system should consider better methods for reviewing countries that decline to cooperate with special procedures.⁸⁴ The mandate holder has tried to develop creative ways to approach these situations. Increasing collaboration with regional and national human rights institutions has proved to be very useful. She has also participated in seminars, conferences and other activities, in all regions, trying to take those opportunities to open a dialogue with the States in question. A proactive approach requires more resources than are available. In this regard, the additional support provided by external funds and institutions has played a valuable role in enhancing the work of the mandate.

78. The Special Rapporteur considers awareness-raising to be crucial to addressing the situation of violation of the rights of indigenous peoples. The Special Rapporteur has tried to engage directly with the different United Nations agencies, bodies and conventions, such as the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, and with other multilateral institutions such as the World Bank and the European Commission, where issues affecting the human rights of indigenous peoples are discussed. This direct interaction has the potential for making the comments, conclusions and recommendations of the mandate holder available to many who are not necessarily familiar with the United Nations human rights system but whose activities have a direct impact on the lives and human rights of indigenous peoples. The Special Rapporteur firmly believes that the operationalization of “Delivering as one” is crucial in ensuring that indigenous peoples’ rights and issues are integrated by the various United Nations bodies and agencies in their programmes at all levels.

79. The dissemination of the work of the mandate through the Internet and social media is also strategically important. The mandate holder has used social media in order to make information about reports, statements and other work available. This interaction, within the limits established by the code of conduct for special procedure mandate holders of the Human Rights Council, is very valuable in terms of promoting the United Nations Declaration on the Rights of Indigenous Peoples, and best practices, and the dissemination of certain issues and situations of concern. Nevertheless, much could still be developed in this area so that the work of the Special Rapporteur can better reach indigenous peoples who need human rights protection.

80. A major challenge for the mandate is adequate follow-up on the implementation of the recommendations contained in thematic and country visit reports, and on the issues raised in communications. Although indigenous peoples themselves, civil society organizations and the United Nations system have an important role to play in this monitoring, better methods for follow-up would reinforce the impact of the mandate in terms of compliance. In this regard, the Special Rapporteur is grateful for the collaboration of the country and regional offices of OHCHR, which continue to follow up at the national level and have developed and disseminated publications and other actions to make the Special Rapporteur’s recommendations available at the national level. Some OHCHR country offices have translated country reports and recommendations into languages understood by indigenous peoples. Member States should also make reports available and distribute them among the relevant authorities, and other parties. To this end, United Nations regional and country offices in general play an important role in disseminating information about the Special Rapporteur’s comments and recommendations in country reports, press releases, country communications and other types of work regarding specific cases or country situations.

⁸⁴ A/68/317, paras. 19 and 84.

81. Taking into account the above-mentioned reflections, the Special Rapporteur would like to provide some brief conclusions and recommendations:

(a) The mandate of the Special Rapporteur on the rights of indigenous peoples continues to play an essential role in promoting the individual and collective rights of indigenous peoples enshrined in international human rights instruments, particularly the United Nations Declaration on the Rights of Indigenous Peoples. Collaboration and coordination with the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples should be sustained and enhanced.

(b) The Special Rapporteur has observed that in spite of progress in the legal recognition of indigenous peoples and in regard to their rights within the legal frameworks of Member States, the situation of the individual and collective human rights of indigenous peoples in all regions of the world remains a serious cause for concern. Therefore, the Special Rapporteur encourages all Member States to support the continuation and best functioning of the mandate.

(c) The Special Rapporteur calls on Member States to increase their support to the United Nations special procedures system, and specifically to this mandate, so that enough human and financial resources are available to adequately carry out its work.

(d) The Special Rapporteur also calls on Member States to develop ways to encourage all countries to cooperate effectively with the mandate holder, and to devise ways and means to better monitor compliance with international human rights standards on the rights of indigenous peoples, particularly in countries where indigenous peoples and their rights and identities are not even recognized and which have not yet accepted country visit requests.

(e) The Special Rapporteur would like to call upon the United Nations system and the regional human rights systems to increase their collaboration with the mandate at all levels in order to mutually reinforce the work relating to particular countries, regions or issues, in furtherance of the promotion and protection of indigenous peoples' rights.

(f) The Special Rapporteur would like to express her gratitude to her predecessors, upon whose solid work she has built her contribution. She would also like to congratulate her successor and expresses her certainty that he will devote all his efforts to promoting the rights of indigenous peoples.

(g) The Special Rapporteur would like to acknowledge the collaboration she has received throughout her term from civil society organizations, academia, the media and other relevant actors. She would like to encourage them to continue engaging with the mandate and helping to disseminate and implement its recommendations. The Special Rapporteur would like to particularly thank the funds and institutions which have provided financial support for the fulfilment of her work and hopes that they will continue to support future mandate holders.

(h) The Special Rapporteur would like to express her gratitude to the dedicated staff supporting her mandate in the Office of the United Nations High Commissioner for Human Rights, and also to her external assistants, for the support they have provided as she has carried out her mandate over the past six years.

(i) Finally, the Special Rapporteur would like to honour and recognize the collaboration of indigenous peoples and their institutions, organizations and communities in the work of the mandate. Any progress achieved on recognition and respect for their rights is mainly due to their unrelenting fight for justice.