

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

Compiled and Edited by FERGUS MACKAY

VOLUME
X 2023
2024

**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

X 2023
2024





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





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

No. 7, Ground Floor
Calvary Street
Easter Hills
Subdivision, Central Guisad,
Baguio City 2600
Philippines

Contact us

 ipri@iprights.org
 <https://www.iprights.org>

Find us on social media

 [Indigenous Peoples Rights International](#)
 [@iprightsintl](#)
 [Indigenous Peoples Rights International](#)
 [@IPRightsIntl](#)

Preface

Volume X of the compilation of United Nations human rights treaty bodies' jurisprudence on Indigenous Peoples covers the period of 2023-2024.¹ It also contains the advice of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the observations and recommendations of selected Special Procedures of the Human Rights Council (e.g., Special Rapporteurs, Independent Experts and Working Groups), and a few other mechanisms under the Human Rights Council.

The case law of the various UN Committees is noteworthy. Most of it positively addresses Indigenous Peoples' rights, including in relation to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). For example, consistent with the Committee on Elimination of Discrimination Against Women's (CEDAW) General Recommendation No. 39, the Committee of the Rights of the Child (CRC) decided that it will read the Convention on the Rights of the Child "in the light of the evolutionary interpretation of Indigenous Peoples' rights, in particular, the [UNDRIP], as an authoritative framework for interpreting State party obligations under the Convention concerning Indigenous peoples' rights..."² This further supports EMRIP's conclusion that UNDRIP is "a contextualised elaboration of general human rights principles" and the standards affirmed therein "connect to existing State obligations under international human rights law..."³

The Committee on the Elimination of Racial Discrimination (CERD) maintained its long-standing and consistent practice of adopting detailed observations and recommendations on Indigenous Peoples' rights, including under its early warning and urgent action procedure and in relation to UNDRIP. It also adopted a General Recommendation on discrimination in the right to health, which affirms that Indigenous Peoples' definition of health is "... closely tied to their right to self-determination and supported by the principles of [UNDRIP]"; and that States should refrain from "imposing restrictions on the permanent rights of Indigenous Peoples endangering their self-determination, traditional livelihoods and cultural rights, in accordance with the standards of the UNDRIP."⁴

In addition to emphasizing various substantive obligations, the recommendations adopted by the Human Rights Committee continued to highlight that measures are required to ensure Indigenous Peoples' effective participation in decisions that

¹ Volumes I-VIII (1993-2019), are available at: <https://www.forestpeoples.org/en/work-themes/law-policy/guides-human-rights-mechanisms>; and Volume IX is available at: https://www.iprights.org/images/articles/resources/2023/A%20Compilation%20of%20UN%20Treaty%20Body%20Jurisprudence/COs_UNtreatyBodyJurisprudence_english.pdf

² *M. E. V., S. E. V. and B. I. V. v. Finland*, Communication No. 172/2022, para. 9.12

³ *Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: establishing effective monitoring mechanisms at the national and regional levels for the implementation of the Declaration*, A/HRC/EMRIP/2023/3, para. 8.

⁴ General Recommendation No. 37, CERD/C/GC/37, para. 6 and 51(i) (addressing also and explicitly UNDRIP, arts. 2, 3, 4, 5, 20, 21(2), 23, 24-26, 29 and 31). See also *Maya Q'eqchi' Indigenous Community of Agua Caliente v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs*. IA Court HR, Judgment of 16 May 2023. Ser C No. 488, para. 47 (affirming that the IA Court uses UNDRIP "to interpret conventional provisions").

affect them, which also requires FPIC.⁵ Its decision in *Wunna Nyiyaparli Indigenous People v. Australia* is especially notable. Therein, it recalled that ICCPR, article 27 “enshrine[s] the inalienable right of indigenous peoples to enjoy their traditional territories and that any decision affecting them should be taken with their effective participation,” including FPIC.⁶ Also, the Committee specifically cited UNDRIP, arts. 20, 26(1) and 33 in its decision in *Jovsset Ante Sara v. Norway*.⁷ However, its decision not to address the collective rights issues in *Taylor, Hinemanu Ngaronoa & Wilde v. New Zealand* is disappointing.⁸

The Committee on Economic, Social and Cultural Rights (CESCR) made repeated reference to Article 1 of the Covenant in relation to land and resource rights and observing also that FPIC is a fundamental guarantee derived from the right to self-determination.⁹ It also adopted its first decision on Indigenous Peoples’ rights in a case involving the impact of mining on Sami in Finland. In its decision, the CESCR stressed the cultural importance of traditional economic activities, the fundamental nature of collective rights, and “the inalienable right of Indigenous Peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”¹⁰ Protection of territorial rights “is also a prerequisite for the right to an adequate standard of living of Indigenous Peoples, as they are an important basis for their livelihoods.”¹¹ The CESCR further recalled “that ‘land is also closely linked to the right to self-determination...’” and “there is a ‘growing tendency to recognize more forcefully the right to self-determination as a key principle when it concerns the collective rights’ of Indigenous Peoples.”¹² It concluded that States are required to adopt measures to recognize and protect Indigenous Peoples’ rights to lands, territories and resources traditionally owned, occupied or otherwise used or acquired, quoting part of UNDRIP, art. 26(2) so as to include rights “to own, develop, control and use their communal lands, territories and resources.”¹³ Additionally, States “must ensure the effective participation of Indigenous Peoples in decision-making processes that may affect their way of life, particularly their right to land, based on the principle of their free, prior and informed consent,” referring to UNDRIP, art. 32(2).¹⁴

⁵ E.g., CCPR/C/ECU/CO/7, para. 48(a) (also ensuring that the FPIC law and mechanisms are aligned with the principles of the Covenant, UNDRIP and other international standards).

⁶ *Ailsa Roy & Wunna Nyiyaparli Indigenous People v. Australia*, Communication No. 3585/2019, para. 8.5 – 8.6 (observing, at 8.6, that mechanisms for regularizing Indigenous Peoples’ territorial rights “can legally affect, modify, reduce or extinguish indigenous peoples’ rights on their traditional territories,” it explained that “it is of vital importance that measures that compromise indigenous peoples’ culturally significant territories are taken after a process of effective participation and with the free, prior and informed consent of the community concerned, not to endanger the very survival of the community and its members”).

⁷ Communication No. 3588/2019.

⁸ CCPR/C/138/D/3666/2019 (deciding not to address arguments about discriminatory, disproportionate impacts on Māori as an Indigenous People). Cf. CAT/C/NZL/CO/7, para. 31-2.

⁹ E.g., *J.T., J.P.V. and P.M.V. and ors v. Finland*, Communication Nos. 251/2022, 289/2022, para. 14.4 (the enjoyment of the right to self-determination underlies effective guarantees for the rights of Indigenous Peoples, “and is also considered ‘the fundamental premise of the right to consultation and consent’”).

¹⁰ *d.* 14.2.

¹¹ *Id.* 14.2-14.3.

¹² *Id.* 14.4.

¹³ *Id.* 14.5.

¹⁴ *Id.* 14.4.

CEDAW continued to explicitly acknowledge the various and “multiple forms” of discrimination faced by indigenous women, as did CERD. However, the lack of attention to collective rights in *María Elena Carbajal Cepeda et al v. Peru*, a case involving forced sterilizations,¹⁵ is both a lost opportunity and seemingly contrary to CEDAW’s General Recommendation No. 39, which highlights that “[d]iscrimination against Indigenous women and girls and its effects should be understood in both their individual and collective dimensions.”¹⁶

The Committee on the Rights of Persons with Disabilities and the Committee Against Torture (CAT) both adopted recommendations concerning Indigenous Peoples in seven country reviews each. As it has done previously, CAT cautioned Brazil against forced displacement of Indigenous Peoples, recommending that it “immediately cease forced evictions of indigenous communities from their lands, and guarantee their right to free, prior and informed consent and consultation...”¹⁷

The 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. In a case against Finland involving mining concessions, the CRC read UNDRIP, Article 32(2) as it concerns FPIC into Articles 12 and 30 of the Convention on the Rights of the Child.¹⁸ It also highlighted other treaty bodies’ jurisprudence affirming the relationship between Indigenous Peoples’ cultural rights and rights to lands, territories and resources, observing also that “cultural rights have an intergenerational aspect which is fundamental to the cultural identity, survival, and viability of Indigenous Peoples.”¹⁹ Echoing CERD, CEDAW and regional jurisprudence, it explained that “to ignore the right of Indigenous peoples to use and enjoy land rights and to refrain from taking appropriate measures to ensure respect in practice for their right to offer [FPIC] whenever their rights may be affected by projects carried out in their traditional territories, constitutes a form of discrimination...”²⁰

The Human Rights Council adopted an important resolution on biodiversity and human rights and various of its working groups continued important standard setting processes in relation to the treaties on the right to development and business and human rights. Its Expert Mechanism on the Right to Development published a useful report on the individual and collective dimensions of the right to development, while the EMRIP issued Advice Nos. 16 and 17 concerning the impact of militarization on the rights of Indigenous Peoples and measures to achieve the ends of the UNDRIP, respectively. It also published a lengthy report on its Country Engagement Mission to Australia and a useful report on efforts to implement UNDRIP.

¹⁵ Communication No. 170/2021.

¹⁶ GR39, para. 17. See also A/HRC/57/40, para. 35 (“Collective human rights, as exemplified by self-determination, are integral to the protection of individual rights, as no individual is an island separate from the community. The suppression of collective rights directly impinges upon individual liberties, a situation familiar to members of Indigenous Peoples, as their identities are inextricably linked with their collectives”).

¹⁷ CAT/C/BRA/CO/2, para. 20(c).

¹⁸ *M. E. V., S. E. V. and B. I. V. v. Finland*, Communication No. 172/2022, para. 9.19-9.20.

¹⁹ *Id.* 9.13-9.14 (concluding, at 9.17, that “article 30 of the Convention enshrines the right of Indigenous children to enjoy their traditional territories and that any decision affecting them should be taken with their effective participation”).

²⁰ *Id.* 9.24.

Thirty (30) Special Procedures of the Human Rights Council issued reports that, wholly or partially, address Indigenous Peoples' rights. They often did so with UNDRIP as the primary reference point. For instance, the Working Group on Arbitrary Detention adopted an 'Opinion' concerning several Indigenous leaders in Nicaragua. Referencing UNDRIP, Article 4 (the right to autonomy and self-government), it highlighted the aggravated nature of violations where the persecuted persons are Indigenous authorities defending their lands, the inherent discrimination involved in detaining them for protecting their rights, and the intensified individual and collective nature of the harm experienced in such situations.²¹

Finally, please be aware that the jurisprudence contained in this volume is excerpted from larger treatments of country situations and various thematic reports. 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 most jurisprudence and sources from this period, this compilation may not be comprehensive. We hope that you find it a useful tool that contributes to awareness about and, ultimately, respect for the rights of Indigenous Peoples in practice. Footnotes in the original documents have mostly been omitted herein.

February 2025

²¹ See e.g., *Opinión núm. 30/2024, relativa a Ignacio Celso Lino, Argüello Celso Lino, Donald Andrés Bruno Arcángel y Dionisio Robins Zacarías (Nicaragua)*, A/HRC/WGAD/2024/30, paras. 89, 94, 127.

Contents

| | PAGE |
|---|------|
| I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION | 16 |
| A. Concluding Observations | 17 |
| 1. Kenya, CERD/C/KEN/CO/8-9, 31 December 2024 | 17 |
| 2. Ecuador, CERD/C/ECU/CO/25, 23 December 2024 | 21 |
| 3. Venezuela, CERD/C/VEN/CO/22-24, 18 September 2024 | 28 |
| 4. Mexico, CERD/C/MEX/CO/22-24, 25 June 2024 | 35 |
| 5. Plurinational State of Bolivia, CERD/C/BOL/CO/21-24, 24 January 2024 | 44 |
| 6. South Africa, CERD/C/ZAF/CO/9-11, 27 December 2023 | 54 |
| 7. Vietnam, CERD/C/VNM/CO/15-17, 27 December 2023 | 57 |
| 8. Morocco, CERD/C/MAR/CO/19-21, 21 December 2023 | 59 |
| 9. Namibia, CERD/C/NAM/CO/16-18, 4 October 2023 | 62 |
| 10. Uruguay, CERD/C/URY/CO/24-26, 13 September 2023 | 66 |
| 11. Argentina, CERD/C/ARG/CO/24-26, 24 May 2023 | 68 |
| 12. Niger, CERD/C/NER/CO/22-25, 24 May 2023 | 76 |
| 13. The Philippines, CERD/C/PHL/CO/21-25, 23 May 2023 | 76 |
| 14. Russian Federation, CERD/C/RUS/CO/25-26, 28 April 2023 | 82 |
| B. Follow Up & Early Warning and Urgent Action Procedures | 88 |
| 1. Bangladesh, 13 December 2024 | 88 |
| 2. Canada, 13 December 2024 | 89 |
| 3. Cameroon, 12 December 2024 | 91 |
| 4. Guyana, 13 December 2024 | 92 |
| 5. Canada, 13 December 2024 | 94 |
| 6. Namibia, 13 December 2024 | 96 |
| 7. Canada, 23 August 2024 | 97 |
| 8. USA, 23 August 2024 | 98 |
| 9. Australia, 26 April 2024 | 100 |
| 10. Canada, 26 April 2024 | 101 |
| 11. France, 26 April 2024 | 103 |
| 12. USA, 26 April 2024 | 105 |
| 13. Bangladesh, 8 December 2023 | 106 |
| 14. Canada, 8 December 2023 | 107 |
| 15. Canada, 8 December 2023 | 109 |
| 16. Cameroon, 8 December 2023 | 110 |
| 17. Chile, 8 December 2023 | 112 |

| | |
|--|-----|
| 18. Chile, 8 December 2023 | 113 |
| 19. Guatemala, 8 December 2023 | 114 |
| 20. India, 8 December 2023 | 115 |
| 21. India, 8 December 2023 | 115 |
| 22. Peru, 8 December 2023 | 116 |
| 23. Bangladesh, 31 August 2023 | 117 |
| 24. Cameroon, 31 August 2023 | 119 |
| 25. Costa Rica, 31 August 2023 | 121 |
| 26. Chile, 28 April 2023 | 121 |
| 27. Chile, 28 April 2023 | 122 |
| 28. Costa Rica, 28 April 2023 | 124 |
| 29. Peru, 28 April 2023 | 126 |
| 30. Tanzania, 28 April 2023 | 127 |
| C. General Recommendations | 129 |
| 1. No. 37, Racial discrimination in the enjoyment of the right to health, CERD/C/GC/37, 23 August 2024 | 129 |
| II. HUMAN RIGHTS COMMITTEE | 138 |
| A. Concluding Observations | 139 |
| 1. Ecuador, CCPR/C/ECU/CO/7, 4 December 2024 | 139 |
| 2. France, CCPR/C/FRA/CO/6, 3 December 2024 | 144 |
| 3. India, CCPR/C/IND/CO/4, 2 September 2024 | 146 |
| 4. Suriname, CCPR/C/SUR/CO/4, 28 August 2024 | 150 |
| 5. Honduras, CCPR/C/HND/CO/3, 23 August 2024 | 154 |
| 6. Guyana, CCPR/C/GUY/CO/3, 3 May 2024 | 157 |
| 7. Indonesia, CCPR/C/IDN/CO/2, 3 May 2024 | 160 |
| 8. Namibia, CCPR/C/NAM/CO/3, 3 May 2024 | 163 |
| 9. Chile, CCPR/C/CHL/CO/7, 1 May 2024 | 165 |
| 10. United States of America, CCPR/C/USA/CO/5, 7 December 2023 | 168 |
| 11. Venezuela, CCPR/C/VEN/CO/5, 28 November 2023 | 172 |
| 12. Brazil, CCPR/C/BRA/CO/3, 6 September 2023 | 175 |
| 13. Burundi, CCPR/C/BDI/CO/3, 29 August 2023 | 180 |
| 14. Colombia, CCPR/C/COL/CO/8, 4 September 2023 | 180 |
| 15. Uganda, CCPR/C/UGA/CO/2, 11 September 2023 | 183 |
| 16. Panama, CCPR/C/PAN/CO/4, 12 April 2023 | 183 |
| 17. Peru, CCPR/C/PER/CO/6, 5 April 2023 | 187 |
| B. Views adopted under Optional Protocol I | 192 |
| 1. Jovsset Ante Sara v. Norway, CCPR/C/141/D/3588/2019, 12 Sept. 2024 | 192 |
| 2. Wunna Nyiyaparli Indigenous People v. Australia, CCPR/C/137/D/3585/2019, 13 March 2024 | 201 |
| 3. Taylor, Hinemanu Ngaronoa and Wilde v. New Zealand, CCPR/C/138/D/3666/2019, 22 February 2024 | 214 |

| | |
|--|-----|
| III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS | 223 |
| A. Concluding Observations | 224 |
| 1. Honduras, E/C.12/HND/CO/3, 27 September 2024 | 224 |
| 2. Sweden, E/C.12/SWE/CO/7, 22 March 2024 | 229 |
| 3. Indonesia, E/C.12/IDN/CO/2, 14 March 2024 | 231 |
| 4. Brazil, E/C.12/BRA/CO/3, 15 November 2023 | 236 |
| 5. France, E/C.12/FRA/CO/5, 30 October 2023 | 241 |
| 6. Panama, E/C.12/PAN/CO/3, 31 March 2023 | 242 |
| 7. Cambodia, E/C.12/KHM/CO/2, 27 March 2023 | 246 |
| B. Views adopted under OP | 250 |
| 1. J.T., J.P.V. and P.M.V. and others v. Finland, E/C.12/76/D/251/2022, 8 Oct. 2024 | 250 |
| IV. COMMITTEE ON THE RIGHTS OF THE CHILD | 260 |
| A. Concluding Observations | 261 |
| 1. Argentina, CRC/C/ARG/CO/7, 18 October 2024 | 261 |
| 2. Mexico, CRC/C/MEX/CO/6-7, 8 October 2024 | 263 |
| 3. Namibia, CRC/C/NAM/CO/4-6, 26 June 2024 | 265 |
| 4. Guatemala, CRC/C/GTM/CO/7, 21 June 2024 | 266 |
| 5. Paraguay CRC/C/PRY/CO/4-6, 18 June 2024 | 269 |
| 6. South Africa, CRC/C/ZAF/CO/3-6, 11 March 2024 | 273 |
| 7. Congo, CRC/C/COG/CO/5-6, 1 March 2024 | 273 |
| 8. Russian Federation, CRC/C/RUS/CO/6-7, 1 March 2024 | 275 |
| 9. Finland, CRC/C/FIN/CO/5-6, 15 November 2023 | 276 |
| 10. Sweden, CRC/C/SWE/CO/6-7, 7 March 2023 | 278 |
| 11. Pluricultural State of Bolivia, CRC/C/BOL/CO/5-6, 6 March 2023 | 279 |
| 12. New Zealand, CRC/C/NZL/CO/6, 28 February 2023 | 282 |
| B. General Comments | 288 |
| 1. No. 26 on children's rights and the environment with a special focus on climate change, CRC/C/GC/26, 28 August 2023 | 288 |
| C. Views adopted under OP | 289 |
| 1. M. E. V., S. E. V. and B. I. V. v. Finland, CRC/C/97/D/172/2022, 7 Oct. 2024 | 289 |
| D. OP on the sale of children, child prostitution and child pornography | 299 |
| 1. Panama, CRC/C/OPSC/PAN/CO/1, 11 June 2024 | 299 |
| V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN | 302 |
| A. Concluding Observations | 303 |
| 1. Canada, CEDAW/C/CAN/CO/10, 30 October 2024 | 303 |
| 2. Chile, CEDAW/C/CHL/CO/8, 31 October 2024 | 311 |
| 3. Japan, CEDAW/C/JPN/CO/9, 30 October 2024 | 317 |
| 4. New Zealand, CEDAW/C/NZL/CO/9, 30 October 2024 | 319 |
| 5. Malaysia, CEDAW/C/MYS/CO/6, 6 June 2024 | 323 |
| 6. Rwanda, CEDAW/C/RWA/CO/10, 6 June 2024 | 327 |
| 7. Brazil, CEDAW/C/BRA/CO/8-9, 6 June 2024 | 328 |

| | |
|---|-----|
| 8. Central African Republic, CEDAW/C/CAF/CO/6, 20 February 2024 | 335 |
| 9. Nicaragua, CEDAW/C/NIC/CO/7-10, 14 February 2024 | 336 |
| 10. Jamaica, CEDAW/C/JAM/CO/8, 15 November 2023 | 342 |
| 11. Guatemala, CEDAW/C/GTM/CO/10, 14 November 2023 | 343 |
| 12. Philippines, CEDAW/C/PHL/CO/9, 14 November 2023 | 350 |
| 13. Uruguay, CEDAW/C/URY/CO/10, 14 November 2023 | 355 |
| 14. Bolivarian Republic of Venezuela, CEDAW/C/VEN/CO/9, 31 May 2023 | 357 |
| 15. Norway, CEDAW/C/NOR/CO/10, 2 March 2023 | 362 |
| 16. Costa Rica, CEDAW/C/CRI/CO/8, 2 February 2023 | 364 |
| B. Views adopted under OP I | 369 |
| 1. María Elena Carbajal Cepeda et al v. Peru, CEDAW/C/89/D/170/2021, 25 October 2024 | 369 |
| VI. COMMITTEE AGAINST TORTURE | 382 |
| A. Concluding Observations | 383 |
| 1. Ecuador, CAT/C/ECU/CO/8, 16 August 2024 | 383 |
| 2. Honduras, CAT/C/HND/CO/3, 24 May 2024 | 384 |
| 3. Costa Rica, CAT/C/CRI/CO/3, 19 December 2023 | 385 |
| 4. Denmark, CAT/C/DNK/CO/8, 8 December 2023 | 386 |
| 5. New Zealand, CAT/C/NZL/CO/7, 24 August 2023 | 387 |
| 6. Brazil, CAT/C/BRA/CO/2, 12 June 2023 | 392 |
| 7. Colombia, CAT/C/COL/CO/6, 7 June 2023 | 396 |
| VII. SUB-COMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT | 397 |
| A. Public Reports | 398 |
| 1. Guatemala, CAT/OP/GTM/ROSP/1, 11 September 2024 | 398 |
| 2. Australia, CAT/OP/AUS/ROSP/1, 20 December 2023 | 398 |
| B. General comments | 400 |
| 1. No. 1 on article 4 (places of deprivation of liberty), CAT/OP/GC/1, 4 July 2024 | 400 |
| VIII. COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES | 401 |
| A. Concluding Observations | 402 |
| 1. Denmark, CRPD/C/DNK/CO/2-3, 8 October 2024 | 402 |
| 2. Sweden, CRPD/C/SWE/CO/2-3, 29 April 2024 | 407 |
| 3. Costa Rica, CRPD/C/CRI/CO/2-3, 23 April 2024 | 407 |
| 4. Nicaragua, CRPD/C/NIC/CO/1-3, 22 March 2024 | 408 |
| 5. Paraguay, CRPD/C/PRY/CO/2-3, 17 October 2023 | 411 |
| 6. Peru, CRPD/C/PER/CO/2-3, 29 November 2023 | 414 |
| 7. Argentina, CRPD/C/ARG/CO/2-3, 7 December 2023 | 415 |
| IX. COMMITTEE ON ENFORCED DISAPPEARANCES | 416 |
| 1. Report on requests for urgent action submitted under article 30 of the Convention, CED/C/25/2, 3 November 2023 | 417 |

| | |
|--|-----|
| X. HUMAN RIGHTS COUNCIL | 418 |
| A. Resolutions | 419 |
| 1. Biodiversity and human rights, A/HRC/RES/57/28, 11 October 2024 | 419 |
| 2. Indigenous Peoples, A/HRC/RES/57/15, 11 October 2024 | 421 |
| B. Expert Mechanism on the Rights of Indigenous Peoples | 430 |
| 1. Country Engagement Mission: Australia. Advisory Note, April 2024 | 431 |
| 2. Advice No. 17: Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration, A/HRC/57/62, 2 August 2024 | 440 |
| 3. Advice No. 16: Impact of militarization on the rights of Indigenous Peoples, A/HRC/54/52, 8 August 2023 | 442 |
| 4. Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: establishing effective monitoring mechanisms at the national and regional levels for the implementation of the Declaration, A/HRC/EMRIP/2023/3, 30 May 2023 | 445 |
| C. Expert Mechanism on the Right to Development | 448 |
| 1. Individual and collective dimensions of the right to development, A/HRC/57/40, 12 July 2024 | 448 |
| 2. Annual report, A/HRC/54/41, 28 July 2023 | 455 |
| 3. Duty to cooperate and non-State actors, A/HRC/54/84, 5 July 2023 | 460 |
| D. Working Group on the Right to Development | 463 |
| 1. Draft international covenant on the right to development. Report by the Chair-Rapporteur of the Working Group on the Right to Development, Zamir Akram, A/HRC/54/50, 18 July 2023 | 463 |
| E. Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights | 465 |
| 1. Text of the updated draft legally binding instrument with the textual proposals submitted by States during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, A/HRC/55/59/Add.1, 13 February 2024 | 465 |
| XI. SELECTED SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL | 469 |
| A. Special Rapporteur on the Rights of Indigenous Peoples | 470 |
| 1. Indigenous persons with disabilities, A/HRC/57/47, 22 July 2024 | 470 |
| 2. Mobile Indigenous Peoples, A/79/160, 16 July 2024 | 473 |
| 3. Visit to Denmark and Greenland, A/HRC/54/31/Add.1, 11 September 2023 | 478 |
| 4. Visit to Canada, A/HRC/54/31/Add.2, 24 July 2023 | 483 |
| 5. Green financing, A/HRC/54/31, 21 July 2023 | 488 |
| 6. Tourism and the rights of Indigenous Peoples, A/78/162, 12 July 2023 | 493 |
| B. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living | 497 |
| 1. Towards guiding principles on resettlement: a review and assessment of current laws, policies and practices, A/79/317, 22 August 2024 | 497 |
| 2. Resettlement after evictions and displacement: addressing a human rights crisis, A/HRC/55/53, 25 January 2024 | 500 |

| | |
|---|-----|
| C. Special Rapporteur in the field of cultural rights | 505 |
| 1. Right to participate in science, A/HRC/55/44, 21 February 2024 | 505 |
| 2. Development and cultural rights: the international governance, A/78/213, 21 July 2023 | 509 |
| D. Special Rapporteur on the right to food | 514 |
| 1. Fisheries and the right to food in the context of climate change A/HRC/55/49, 9 January 2024 | 514 |
| E. Special Rapporteur on the right of physical and mental health | 520 |
| 1. Visit to Costa Rica, A/HRC/56/52/Add.2, 29 April 2024 | 520 |
| F. Independent Expert on the enjoyment of all human rights by older persons | 524 |
| 1. Human rights of older persons in the context of climate change-induced disasters, A/78/226, 25 July 2023 | 524 |
| G. Special Rapporteur on the human rights of internally displaced persons | 526 |
| 1. Visit to Mexico, A/HRC/53/35/Add.2, 27 June 2023 | 526 |
| H. Special Rapporteur on freedom of religion or belief | 530 |
| 1. Visit to Sweden, A/HRC/55/47/Add.2, 2 April 2024 | 530 |
| 2. Freedom of religion or belief, from the grass-roots level, A/78/207, 19 July 2023 | 532 |
| 3. Landscape of freedom of religion or belief, A/HRC/52/38, 30 January 2023 | 533 |
| I. Special Rapporteur on contemporary forms of slavery | 535 |
| 1. Visit to Canada, A/HRC/57/46/Add.1, 22 July 2024 | 535 |
| 2. Visit to Costa Rica, A/HRC/54/30/Add.1, 14 July 2023 | 540 |
| J. Working Group on the issue of human rights and transnational corporations and other business enterprises | 543 |
| 1. Visit to Japan, A/HRC/56/55/Add.1, 1 May 2024 | 543 |
| 2. Extractive sector, just transition and human rights, A/78/155, 11 July 2023 | 544 |
| 3. Visit to Argentina, A/HRC/53/24/Add.3, 23 June 2023 | 549 |
| 4. Visit to Liberia, A/HRC/53/24/Add.1, 21 April 2023 | 555 |
| K. Special Rapporteur on extreme poverty and human rights | 557 |
| 1. Breaking the cycle: ending the criminalization of homelessness and poverty, A/HRC/56/61/Add.3, 26 June 2024 | 557 |
| 2. Visit to Ecuador, A/HRC/56/61/Add.2, 2 May 2024 | 558 |
| 3. Visit to Bangladesh, A/HRC/56/61/Add.1, 30 April 2024 | 562 |
| L. Special Rapporteur for the human right to a clean, healthy and sustainable environment | 563 |
| 1. Overview of the implementation of the human right to a clean, healthy and sustainable environment, A/79/270, 2 August 2024 | 563 |
| 2. Visit to Chile, A/HRC/55/43/Add.1, 3 January 2024 | 567 |
| 3. Business, planetary boundaries, and the right to a clean, healthy and sustainable environment, A/HRC/55/43, 2 January 2024 | 571 |
| 4. Visit to Botswana, A/HRC/55/43/Add.2, 29 December 2023 | 574 |
| 5. Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights, A/78/168, 13 July 2023 | 577 |
| 6. Women, girls and the right to a clean, healthy and sustainable environment, A/HRC/52/33, 5 January 2023 | 580 |

| | |
|--|-----|
| M. Special Rapporteur on the Right to Education | 584 |
| 1. Visit to Finland, A/HRC/56/58/Add.1, 30 April 2024 | 584 |
| 2. Role and rights of teachers, A/78/364, 14 September 2023 | 585 |
| 3. Securing the right to education, A/HRC/53/27, 17 May 2023 | 587 |
| N. Special Rapporteur on the promotion and protection of human rights in the context of climate change | 588 |
| 1. Visit to the Philippines, A/HRC/56/46/ADD.2, 9 August 2024 | 588 |
| 2. Visit to Honduras, A/HRC/56/46/Add.1, 30 July 2024 | 594 |
| 3. Promotion and protection of human rights in the context of climate change, A/79/176, 18 July 2024 | 597 |
| 4. Scene-setting report, A/HRC/56/46, 24 July 2024 | 599 |
| 5. Report of the Special Rapporteur, A/78/255, 28 July 2023 | 605 |
| O. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance | 608 |
| 1. Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/79/316, 22 August 2024 | 608 |
| P. Special Rapporteur on the independence of judges and lawyers | 610 |
| 1. Justice is not for sale: the improper influence of economic actors on the judiciary, A/79/362, 20 September 2024 | 610 |
| 2. Reimagining justice: confronting contemporary challenges to the independence of judges and lawyers, A/HRC/53/31, 13 April 2023 | 612 |
| Q. Special Rapporteur on toxics and human rights | 613 |
| 1. Visit to Australia, A/HRC/57/52/Add.2, 18 July 2024 | 613 |
| 2. Gender and hazardous substances, A/79/163, 16 July 2024 | 618 |
| 3. The toxic impacts of some proposed climate change solutions, A/HRC/54/25, 13 July 2023 | 620 |
| 4. Shipping, toxics and human rights, A/78/169, 13 July 2023 | 622 |
| R. Special Rapporteur on the human rights to safe drinking water and sanitation | 623 |
| 1. Visit to Peru. A/HRC/54/32/ADD.2, 26 July 2023 | 623 |
| 2. Fulfilling the human rights of those living in poverty and restoring the health of aquatic ecosystems: two converging challenges, A/HRC/54/32, 20 July 2023 | 630 |
| S. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment | 633 |
| 1. Current issues and good practices in prison management, A/HRC/55/52, 20 February 2024 | 633 |
| T. Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence | 635 |
| 1. Visit to Finland and Sweden, A/HRC/57/50/Add.3, 22 July 2024 | 635 |
| 2. Visit to Colombia, A/HRC/57/50/Add.1, 11 July 2024 | 648 |
| 3. Financing of reparation for victims of serious violations of human rights and humanitarian law, A/78/181, 14 July 2023 | 648 |
| U. Special Rapporteur on trafficking in persons, especially women and children | 649 |
| 1. Visit to Colombia, A/HRC/56/60/Add.1, 20 May 2024 | 649 |
| 2. Visit to Central African Republic, A/HRC/56/60/Add.2, 15 May 2024 | 653 |

| | |
|--|-----|
| V. Special Rapporteur on the sale, sexual exploitation and sexual abuse of children | 654 |
| 1. Visit to the Philippines, A/HRC/55/55/Add.1, 3 January 2024 | 654 |
| W. Independent Expert on human rights and international solidarity | 656 |
| 1. Participation of civil society organizations seeking to express international solidarity through transnational, international and regional networks, A/HRC/56/57, 23 April 2024 | 656 |
| 2. Visit to Costa Rica, A/HRC/53/32/Add.1, 18 May 2023 | 659 |
| 3. Revised draft declaration on human rights and international solidarity, A/HRC/53/32, 2 May 2023 | 661 |
| X. Special Rapporteur on the situation of human rights defenders | 662 |
| 1. Pathways to peace: women human rights defenders in conflict, post-conflict and crisis-affected settings, A/78/131, 7 July 2023 | 662 |
| Y. Working Group on Arbitrary Detention | 663 |
| 1. Opinion No. 30/2024, concerning Ignacio Celso Lino et al (Nicaragua), A/HRC/WGAD/2024/30, 2 October 2024 | 663 |
| 2. Visit to Mexico, A/HRC/57/44/Add.1, 16 July 2024 | 680 |
| 3. Report of the Working Group on Arbitrary Detention, A/HRC/54/51, 31 July 2023 | 681 |
| 4. Opinion No. 14/2023 concerning Gus Kuster, A/HRC/WGAD/2023/14, 11 May 2023 | 682 |
| Z. Special Rapporteur on the situation of human rights in Cambodia | 692 |
| 1. Report on the situation of human rights in Cambodia, A/HRC/57/82, 5 August 2024 | 692 |
| 2. Statement: 'National action plan on indigenous rights among measures needed to improve human rights, says expert', 24 July 2024 | 693 |
| 3. Report on the situation of human rights in Cambodia, A/HRC/54/75, 20 July 2023 | 694 |
| AA. Special Rapporteur on the right to development | 695 |
| 1. Right to development of children and future generations, A/HRC/57/43, 24 July 2024 | 695 |
| 2. Climate justice: loss and damage, A/79/168, 17 July 2024 | 698 |
| 3. Visit to Vietnam, A/HRC/57/43/Add.1, 8 July 2024 | 702 |
| 4. Role of business in realizing the right to development, A/78/160, 12 July 2023 | 703 |
| BB. Working Group on Enforced or Involuntary Disappearances | 705 |
| 1. Enforced disappearances and elections, A/HRC/57/54/Add.4, 21 August 2024 | 705 |
| 2. Visit to Honduras, A/HRC/54/22/Add.2, 9 August 2023 | 706 |
| CC. Special Rapporteur on extrajudicial, summary or arbitrary executions | 707 |
| 1. Visit to Honduras, A/HRC/56/56/Add.1, 24 June 2024 | 707 |
| 2. Protection of the dead, A/HRC/56/56, 25 April 2024 | 711 |
| DD. Special Rapporteur on the situation of human rights in the Russian Federation | 712 |
| 1. Situation of human rights in the Russian Federation, A/HRC/57/59, 13 September 2024 | 712 |
| 2. Situation of human rights in the Russian Federation, A/HRC/54/54, 15 September 2023 | 715 |

• | •

**Committee
on the
Elimination
of Racial
Discrimination**

A. CONCLUDING OBSERVATIONS

1. Kenya, CERD/C/KEN/CO/8-9, 31 December 2024

Concerns and recommendations

Statistics

5. The Committee acknowledges the efforts made to strengthen the Kenya National Bureau of Statistics, including through the implementation of the 2022 Statistical Quality Assurance Framework. It also takes note of the statistics provided by the State party, including those from the 2019 census, on socioeconomic conditions and representation in education, employment, health, housing, access to cultural activities, and public spaces. However, the Committee is concerned that these statistics lack the necessary disaggregation to offer a comprehensive assessment of the enjoyment of rights guaranteed under the Convention across the multiracial, multi-ethnic, multicultural and multireligious Kenyan society. Moreover, the Committee is concerned about reports of challenges in assigning ethnic self-identification codes consistent with the 2019 census in the public sector, resulting in the conflation of Indigenous Peoples with other ethnic communities, which further marginalizes these groups. The Committee is also concerned about the lack of disaggregated statistics on the situation of non-citizens.
6. The Committee recommends that the State party:
 - (a) Intensify efforts under the Strategy for Development Statistics to collect reliable, updated and comprehensive statistics on the demographic composition of the population, ensuring the principle of self-identification. This should include ethnic groups, Indigenous Peoples, and non-citizens, such as migrants, refugees, asylum-seekers and stateless persons;
 - (b) Produce disaggregated statistics on the socioeconomic conditions of ethnic groups, Indigenous Peoples and non-citizens, including their rights to work, social security, housing, water and sanitation, health and education, to provide an empirical basis for evaluating the equal enjoyment of rights under the Convention;
 - (c) Align ethnic self-identification codes with those used in the 2019 census, particularly in the public sector, to enhance data collection accuracy and ensure proper identification of Indigenous Peoples.

Special measures

15. The Committee takes note of measures adopted, such as section 65 (1) (e) of the County Governments Act (2012), which requires the County Public Service Board to ensure that at least 30 per cent of entry-level posts are filled by candidates from non-dominant ethnic communities, as well as the ethnic quota system introduced by the Public Service Commission. It also notes the Equalization Fund established to improve access to public services in marginalized counties. Nonetheless, the Committee is concerned about reports that fewer than half of the counties comply with the 30 per cent recruitment quota, that challenges in achieving equitable ethnic representation in public service persist, and that insufficient allocation of resources for the Equalization Fund are compounded by weak accountability in its

implementation. Furthermore, it is concerned that these measures are limited to certain sectors, and underlines the absence of information on legislation and policy measures that address racial discrimination in the context of efforts to realize other economic, social and cultural rights (arts. 2 and 5).

16. Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in all areas of the Convention, the Committee recommends that the State party:
 - (a) Adopt a national action plan to combat racism, racial discrimination, xenophobia and related intolerance and ensure that the plan includes measures to combat structural racial discrimination;
 - (b) Conduct a comprehensive assessment, in consultation with marginalized ethnic communities, including ... Indigenous Peoples and other relevant stakeholders, to identify the barriers to implementation and evaluate the effectiveness of current special measures;
 - (c) Establish oversight and enforcement mechanisms to ensure consistent application of section 65 (1) (e) of the County Governments Act (2012) and the Public Service quota system, including regular reporting requirements and the imposition of administrative sanctions for non-compliance;
 - (d) Launch or improve the disbursement process and accountability for the Equalization Fund to ensure timely and effective application in marginalized counties;
 - (e) Expand the scope of special measures in line with article 56 of the Constitution, integrating age and disability in addition to gender and ethnicity across all sectors.

Situation of Indigenous Peoples

17. While noting the Forest Conservation and Management Act (2016) and the Indigenous Peoples Planning Framework, the Committee is concerned about:
 - (a) Reports of the eviction, dispossession and displacement of Indigenous Peoples, including the Endorois, Ogiek and Sengwer, involving the use of force and lethal force, as well as the destruction of property and seizure of livestock, without adherence to free, prior and informed consent, and of the failure to apply safeguards under section 152G of the Land Laws (Amendment) Act (2016), in the context of climate change and conservation efforts, compounded by insufficient access to justice, compensation and resettlement;
 - (b) The complex and slow process of registering and demarcating Indigenous Peoples' lands, despite the Community Land Act (2016) (arts. 2 and 5).
18. Recalling its general recommendation No. 23 (1997) on the rights of Indigenous Peoples, the Committee recommends that the State party:
 - (a) In consultation with Indigenous Peoples, adopt legislation on free, prior and informed consent, and establish an effective consultation mechanism that aligns with the principles of the Convention, the United Nations Declaration on the Rights of Indigenous Peoples and other international standards;
 - (b) In consultation with Indigenous Peoples and with their free, prior and informed consent, expedite the delimitation of lands and territories that they have traditionally owned, occupied or used, and grant titles pertaining to such lands, according to customary laws and land-tenure systems, and involve them in the management, exploitation and conservation of the associated natural resources;

- (c) Ensure that Indigenous Peoples are not dispossessed or displaced from their customary lands, territories and resources without their free, prior and informed consent, and guarantee that those affected by climate change and conservation measures are properly consulted and compensated for any damage or loss suffered;
- (d) Improve compensation and resettlement among those affected by evictions, including by enacting the Evictions and Resettlement Bill of 2012.

Land rights and land restitution

19. While noting the Land Laws (Amendment Act) 2016 and the Community Land Act (2016) and the establishment of the National Land Commission, the Committee remains concerned⁴ about the persisting inequality in access to land, particularly for women, and the slow progress achieved in implementing land restitution policies and resolving overlapping claims under formal and customary systems, which continue to fuel inter-ethnic conflicts (arts. 2, 5 and 6).
20. Reiterating its previous recommendation, the Committee urges that the State party:
 - (a) Enhance coordination between formal and customary land-tenure systems to harmonize land governance, particularly in areas prone to land disputes, while ensuring that women's rights are fully respected in both systems;
 - (b) Expedite the resolution and implementation of land claims by the National Land Commission, ensuring restitution or adequate compensation for affected communities;
 - (c) Establish comprehensive land titling and registration systems to secure titles for both individual and communal landowners, transparent mechanisms to resolve overlapping claims between formal and customary land-tenure systems, and measures to address historical land injustices.

Access to justice

29. The Committee is concerned about:
 - (a) Reports on shortcomings in the provision of legal aid and the insufficient geographical coverage and resources available, which prevent full access to justice for victims of racial discrimination;
 - (b) The lack of information on measures adopted to regulate and harmonize the functions, competences and responsibilities of customary law and alternative justice systems with the ordinary justice system;
 - (c) Reports of excessive use of force, arbitrary detention, torture, cruel, inhuman or degrading treatment, extrajudicial executions, and failure to observe due process, against ethnic and ethno-religious groups, as well as against non-citizens, by State law enforcement agents;
 - (d) The absence of detailed information on the implementation status of the Truth, Justice and Reconciliation Commission's recommendations, coupled with the continued delay in operationalizing the Restorative Justice Fund under the Public Finance Management (Reparations for Historical Injustices Fund) Regulations of 2017;
 - (e) The insufficient access to justice and implementation of decisions, compensation and redress for Indigenous Peoples' land rights;

- (f) The slow and limited progress in implementing reparations for historical injustices, particularly concerning land rights violations against the Kipsigis and Talai communities (arts. 2, 5, 6 and 7).
30. 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 recommends that the State party:
- (a) Endow legal aid services with adequate financial and human resources to guarantee the proper functioning of the National Legal Aid Service that operates in all counties, conduct a detailed assessment of the National Legal Aid Plan that expired in 2022 and adopt a new national plan, raise public awareness to ensure that legal aid is effectively available to all, and bring the domestic courts closer to the regions where ethnic minority groups live, including by building the capacity of the court system in rural and hard-to-reach areas;
 - (b) Develop procedures for regularizing and harmonizing the functions, competencies and responsibilities of customary law with the ordinary justice system, ensuring alignment with international human rights law;
 - (c) Conduct prompt, thorough and effective investigations, with an intercultural approach, into cases of violations of the right to life and personal integrity committed by State law enforcement agents, as well as in all cases of excessive use of force and arbitrary detention committed against persons belonging to ethnic and ethno-religious groups, and ensure that those responsible are brought to justice and, if convicted, punished with appropriate penalties;
 - (d) Intensify efforts to ensure the full and effective implementation of all the recommendations of the Truth, Justice and Reconciliation Commission, including expediting the process of making the Restorative Justice Fund fully operational and making public the full report of the Commission;
 - (e) Fully implement African Commission on Human and Peoples' Rights decision No. 276/2003 in the case of Endorois Welfare Council v. Kenya; the African Court on Human and Peoples' Rights judgment in case No. 006/2012 of the African Commission on Human and Peoples' Rights v. Kenya regarding the Ogiek people; and the High Court decision concerning the Sengwer people, ensuring their participation and free, prior and informed consent;
 - (f) Fully implement the recommendations made by the National Land Commission in the case of the Kipsigis and Talai communities.

Paragraphs of particular importance

40. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 18 (a), (b), (c) and (d) (situation of Indigenous Peoples), 10 (legal framework for combating racial discrimination) and 30 (a), (d) and (f) (access to justice) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Follow-up to the present concluding observations

41. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 24 (d) (persons with albinism), 26 (b) and (c) (trafficking in persons) and 30 (e) (access to justice) above.

2. Ecuador, CERD/C/ECU/CO/25, 23 December 2024

B. Positive aspects

...

5. The Committee further welcomes the following legislative, institutional and policy measures taken by the State party: ... (c) The adoption of the Protocol for the Application of Intercultural Dialogue in the Judiciary and the Guide on Coordination and Cooperation Mechanisms between Indigenous Justice Authorities and Ordinary Justice in Interjurisdictional Proceedings, through Resolution No. 53 of the Council of the Judiciary, in 2023....

C. Concerns and recommendations

Statistics

6. The Committee notes the statistical data from the 2022 census presented by the State party during the dialogue, according to which the population is composed as follows: 77.46 per cent mestizos, 7.68 per cent Indigenous.... It regrets, however, that the lack of disaggregated data does not allow for a comprehensive assessment of the living conditions of groups who have historically faced discrimination and the extent to which they are able to exercise their rights. In addition, the Committee is concerned about reports that there were institutional, methodological and technical shortcomings in the 2022 census, especially with regard to the self-identification and participation of Indigenous Peoples, people of African descent and Montubio people, which compromised the quality and representativeness of the information collected....
7. The Committee encourages the State party to strengthen the collection of complete and meticulous demographic statistics, ensuring the application of the principle of self-identification, the collection of socioeconomic data disaggregated by race, colour, descent and ethnicity and the incorporation of human rights indicators, with a view to assessing the enjoyment of the rights enshrined in the Convention. To this end, it urges the State party to review the self-identification categories in consultation with Indigenous Peoples, people of African descent, Montubio people and civil society organizations, to ensure the collection of accurate and representative statistical data that will enable the State party to develop appropriate public policies and programmes for the segments of the population that are vulnerable to racial discrimination and to assess the implementation of the Convention in relation to the different groups that make up society. In addition, it recommends that the State party continue the audits of the 2022 census and that it implement in a timely manner the recommendations stemming from them.

Legislative framework for eliminating racial discrimination

8. The Committee notes the provisions of the 2008 Constitution, which enshrine the principles of equality and non-discrimination and the collective rights of Indigenous Peoples, people of African descent and Montubio people. However, it is concerned about the lack of specific legislation to address racial discrimination and ensure the effective implementation of recognized collective rights. It also regrets the limited enforcement of Constitutional Court decisions concerning provisions of the Convention (arts. 1 and 2).
9. The Committee recommends that the State party: ... (b) In consultation with Indigenous Peoples, people of African descent and Montubio people, enact legislation and adopt regulations that clearly codify the collective rights of

communities, nationalities and peoples and establish clear mechanisms for their justiciability....

National Council for the Equality of Peoples and Nationalities

10. The Committee notes the establishment of the National Council for the Equality of Peoples and Nationalities. However, it is concerned about reports of design shortcomings, particularly with regard to the effective direct representation of Indigenous Peoples, people of African descent and Montubio people, respect for the National Council's autonomy and the lack of processes for joint decision-making in keeping with the principles of plurinationality and interculturality. The Committee is also concerned about the reported institutional and operational weaknesses and insufficient financial, human and technical resources that hinder the effective fulfilment of the National Council's mandate (arts. 1 and 2).
11. The Committee recommends that the State party:
 - (a) In consultation with Indigenous Peoples, people of African descent and Montubio people, strengthen the representation and participation mechanisms in the National Council for the Equality of Peoples and Nationalities, guarantee respect for the National Council's autonomy and put in place processes for joint decision-making, in accordance with the principles of plurinationality and interculturality;
 - (b) Strengthen the financial, human and technical capacities of the National Council for the Equality of Peoples and Nationalities so that it can effectively implement its mandate with regard to the design of public policies aimed at combating racism and structural discrimination.

Structural discrimination against peoples and nationalities

16. The Committee notes the State party's efforts to combat structural discrimination, including through the "Whole Life" National Development Plan (2017–2021) and the National Agenda for Equality of Peoples and Nationalities. However, it remains concerned about persistent economic inequality, high poverty levels, social exclusion and the barriers faced by Indigenous Peoples, people of African descent and Montubio people in obtaining access to employment, healthcare and decent living conditions (arts. 2 and 5).
17. Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party:
 - (a) Intensify efforts to eradicate institutional and structural discrimination against Indigenous Peoples, people of African descent and Montubio people through specific affirmative action measures and the effective implementation of public policies adapted to their needs and aimed at eliminating inequality and improving socioeconomic indicators;
 - (b) Adopt a comprehensive national policy to combat racial discrimination, including the adoption of a national plan against racism and discrimination, with the effective participation of Indigenous Peoples, people of African descent and Montubio people, through the National Council for the Equality of Peoples and Nationalities;
 - (c) Ensure that Indigenous Peoples, people of African descent and Montubio people have access to the labour market without discrimination and that they

enjoy, both in law and in practice, fair and satisfactory working conditions and access to social security;

- (d) Ensure the accessibility, availability, acceptability and quality of healthcare services, taking into special consideration the needs, traditions and cultural specificities of Indigenous Peoples, people of African descent and Montubio people, especially women, girls and adolescent girls.

Right to consultation and free, prior and informed consent

- 18. The Committee reiterates its concern about reports that the authorities have granted licences for extractive and business projects on the lands and territories of Indigenous Peoples, people of African descent and Montubio people without systematically consulting them to obtain their free, prior and informed consent (arts. 2 and 5).
- 19. The Committee reiterates its previous recommendations on the right to consultation and free, prior and informed consent and urges the State party to:
 - (a) In consultation with Indigenous Peoples, people of African descent and Montubio people, draft and enact a law and binding protocols that clearly define the requirements for prior consultation and representation of these peoples, guaranteeing full respect for their right to free, prior and informed consent in decisions that affect them;
 - (b) Ensure that prior consultations are carried out systematically and in keeping with international standards to obtain the free, prior and informed consent of Indigenous Peoples, people of African descent and Montubio people before licences are granted for natural resource exploitation and business activities on the lands and territories that they have traditionally owned, occupied or used.

Impact of extractive projects and other business activities

- 20. The Committee remains concerned about the impact of natural resource exploitation projects such as mining, agribusiness and logging, which harm the environment, including soil degradation and water pollution, and exacerbate the vulnerability of local communities, especially Indigenous Peoples, people of African descent and Montubio people. Reports of a lack of comprehensive environmental impact assessments and appropriate consultation procedures to obtain free, prior and informed consent with regard to mining projects, such as those in Curipampa-El Domo, La Plata, Mirador, Rio Blanco and San Carlos Panantza, are of particular concern. In addition, the Committee is concerned about reports of a lack of security of land tenure and displacement in the context of extractive projects and business activities, such as the cases of the companies Fruta del Norte and Energy & Palma. It is also concerned about reports of the deployment of the armed forces and the use of force in the implementation of Executive Decree No. 754 and about reports that human rights defenders are being criminalized and harassed in the context of extractive projects and business activities (arts. 2 and 5).
- 21. The Committee reiterates its previous recommendations and urges the State party to:
 - (a) Ensure that companies operating in its jurisdiction conduct human rights due diligence to prevent the rights of Indigenous Peoples, people of African descent and Montubio people from being infringed and that they respect judicial decisions handed down in relation to their activities;
 - (b) Ensure that impartial, independent entities conduct studies and assessments of the social, environmental, cultural and human rights impacts of natural

resource development and exploitation projects before granting licences for such activities;

- (c) Ensure that the collective rights of Indigenous Peoples, people of African descent and Montubio people to own, use, develop and exercise full control over their lands, territories and resources, in line with international standards, are protected against external actors that exploit natural resources;
- (d) Strengthen measures to protect water resources, including surface, ground and transboundary waters, from the impacts of extractive and agribusiness activities to protect the livelihoods and right to health of communities living downstream;
- (e) Guarantee the right to free, prior and informed consent, thereby ensuring that the Indigenous Peoples, Montubio people and people of African descent affected by extractive projects and business activities are consulted, that they receive compensation for damage or losses suffered and that they enjoy the benefits of such activities;
- (f) Cease the deployment of the armed forces and the use of force in the context of extractive projects and business activities;
- (g) Take measures to ensure that all reports of harassment, intimidation and reprisals committed by law enforcement personnel and members of the armed forces are investigated in a prompt, thorough and impartial manner and that perpetrators are brought to justice.

Political participation

- 22. The Committee is concerned that, despite the measures adopted, such as the amendment of the Code of Democracy, the political participation and representation of persons belonging to nationalities and peoples, in particular Indigenous, Afrodescendent and Montubio women, remains limited (arts. 2 and 5).
- 23. The Committee recommends that the State party take effective steps to ensure the full participation of Indigenous Peoples, people of African descent and Montubio people, in particular women belonging to those groups, in public affairs, in both decision-making positions and representative institutions, and at all levels of government.

Right to participation in public affairs

- 24. The Committee notes the establishment of a committee to implement the people's will with regard to the Yasuní-ITT initiative. However, it is concerned about reports that there have been difficulties in fully implementing the result of the August 2023 referendum on oil drilling in Block 43-ITT. It is also concerned about reports of social conflict in the catchment area of Block 43-ITT (Ishpingo, Tiputini and Tambococha), the exclusion of representatives of the affected Indigenous communities from the Yasuní-ITT committee and challenges in protecting the rights of Indigenous Peoples in voluntary isolation or a situation of initial contact (arts. 2 and 5).
- 25. The Committee recommends that the State party:
 - (a) Take all measures necessary to fully implement the result of the referendum on the prohibition of oil drilling in the Yasuní National Park with the aim of protecting the rights of Indigenous Peoples, especially Indigenous Peoples in voluntary isolation or a situation of initial contact;

- (b) Ensure the effective participation of representatives of Indigenous Peoples, particularly peoples of the Waorani nationality, in the implementation of the results of the referendum and in the committee to implement the people's will with regard to the Yasuní-ITT initiative;
- (c) Urgently strengthen measures to protect the rights of Indigenous Peoples in voluntary isolation or a situation of initial contact from the impact of oil drilling, through the conduct of human rights due diligence and the awarding of reparation measures for any harm caused.

Right to education

28. The Committee is concerned about the persistent inequality in access to education for Indigenous, Afrodescendent and Montubio children and adolescents, despite the fact that the Secretariat of Bilingual Intercultural Education and Ethno-Education enjoys formal autonomy, and about the high dropout rates among these groups (arts. 2 and 5).
29. The Committee recommends that the State party:
- (a) Strengthen the autonomy of the Secretariat of Bilingual Intercultural Education and Ethno-Education and provide it with the financial, human and technical resources necessary to guarantee culturally and linguistically appropriate education adapted to the needs of Indigenous Peoples, people of African descent and Montubio people;
 - (b) Redouble its efforts to reduce the gaps in access to and retention in the education system by taking measures to increase enrolment in primary and secondary education in areas with the largest Indigenous, Afrodescendent and Montubio populations and by expanding the availability of preschool education, particularly in rural areas;
 - (c) Adopt the measures necessary to ensure that policies on ethno-education and intercultural education promote and preserve the cultural identity of Indigenous Peoples, people of African descent and Montubio people;
 - (d) Guarantee high quality education with an intercultural perspective for Indigenous, Afrodescendent and Montubio children and adolescents and take steps to improve education infrastructure by ensuring access to drinking water, sanitation, electricity and the Internet.

Indigenous languages

30. While the Committee notes the adoption of the Ten-Year Plan for the Revitalization and Promotion of the Use of the Languages of the Nationalities of Ecuador, it is concerned about reports that several Indigenous languages are in danger of disappearing or have already been declared extinct (arts. 2 and 5).
31. The Committee recommends that the State party guarantee the revitalization and protection of Indigenous languages by ensuring the practical implementation of the Ten-Year Plan through the allocation of sufficient resources, regular monitoring of progress and the effective participation of Indigenous Peoples.

Access to justice

34. The Committee remains concerned about the challenges that Indigenous Peoples, people of African descent and Montubio people continue to face in obtaining access to justice. It is particularly concerned about:

- (a) The lack of an appropriate intercultural perspective within the judicial and prison systems, reports of the limited availability of interpreters, legal counsel and justice operators with knowledge of Indigenous cultures and languages, and the lack of differentiated measures for Indigenous Peoples and people of African descent who are deprived of their liberty;
 - (b) The limited progress made in adopting the bill on the implementation of Indigenous justice, as well as the measures taken to recognize and respect the Indigenous justice system in accordance with international human rights law;
 - (c) Allegations of excessive use of force, arbitrary detention, torture and cruel, inhuman or degrading treatment, extrajudicial execution and failure to observe due process in relation to Indigenous, Afrodescendent and Montubio persons, as well as migrants, including in the context of the state of emergency;
 - (d) Allegations of differentiated treatment and lack of judicial independence, transparency, due diligence and intercultural relevance in the investigation and resolution of cases related to the rights of Indigenous Peoples, people of African descent and Montubio people (arts. 2 and 6).
35. Taking into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:
- (a) Adopt appropriate and effective measures to ensure that all victims of racial discrimination have access to effective legal remedies and adequate reparation and that they are not subjected to reprisals for reporting the acts;
 - (b) Redouble its efforts to incorporate an intercultural perspective into the justice system, increase the accessibility and availability of interpreters and legal counsel with knowledge of Indigenous languages and cultures and take differentiated measures for Indigenous persons and people of African descent who are deprived of their liberty;
 - (c) Ensure the prompt adoption of the organic act on the implementation of Indigenous justice, guaranteeing that its main purpose is to regulate and harmonize the functions, powers and responsibilities of the justice system of Indigenous Peoples with those of the ordinary justice system, as well as respect for international human rights law;
 - (d) Conduct prompt, thorough and effective investigations, with an intercultural perspective, into violations of the right to life and integrity of the person committed by law enforcement officials or non-State armed groups and all cases of excessive use of force and arbitrary detention committed against Indigenous Peoples, people of African descent, Montubio people and migrants and ensure that the perpetrators are prosecuted and, if convicted, punished with appropriate penalties;
 - (e) Step up the training of law enforcement officials, prosecutors, lawyers, legal counsel, judges and justice officials to ensure that they can properly review and effectively investigate all cases of racial discrimination, in particular cases relating to businesses' failure to conduct human rights due diligence, and run campaigns to raise rights holders' awareness of their rights, the remedies available and the legal framework providing protection against racial discrimination.

Racial profiling and use of force by law enforcement officials

36. The Committee notes the information provided by the State party regarding the legislative framework governing law enforcement. However, it is concerned about reports that the police's power to stop and search individuals is used disproportionately on Afrodescendent and Indigenous persons, especially young men and adolescent boys. It is also concerned about excessive and lethal use of force, the lack of accountability for the perpetrators, the lack of sufficient support for the families of victims and, according to the 2023 Prison Census, the overrepresentation of persons of African descent in prisons (arts. 2, 5 and 6).
37. In the light of its general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the Committee recommends that the State party:
- (a) Take effective measures to ensure that stop-and-search powers are used in a lawful, non-arbitrary and non-discriminatory manner, on the basis of reasonable suspicion and subject to rigorous oversight and review mechanisms;
 - (b) Adopt legislative and other measures explicitly prohibiting racial profiling and take appropriate steps to prevent racial profiling practices by police officers, immigration agents and other public officials;
 - (c) Establish an independent complaint mechanism for the purpose of conducting investigations into all allegations of racial profiling, stop-and-search and excessive use of force, facilitate reporting by victims and ensure that perpetrators are prosecuted and punished with appropriate penalties and that victims have access to effective remedies and adequate reparations;
 - (d) Provide appropriate continuous human rights training to law enforcement officials, in accordance with the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

Human rights defenders

38. The Committee notes the measures taken by the State party to formulate a public policy on the protection of human rights defenders. However, it remains concerned about reports of threats, attacks, murder, arbitrary detention, prosecution and abuse of judicial proceedings against these persons, particularly persons defending the rights of Indigenous Peoples, people of African descent and Montubio people in the context of natural resource exploitation projects and business activities in their territories (arts. 2, 5 and 6).
39. The Committee recommends that the State party:
- (a) Adopt a policy and programme for the protection of human rights defenders ensuring that broad and sufficient consultations are conducted with representatives of Indigenous Peoples, people of African descent, Montubio people and other relevant social partners during the design, implementation and monitoring process;
 - (b) Conduct prompt, thorough and impartial investigations into all allegations of attacks, reprisals, intimidation, threats and arbitrary recourse to judicial proceedings against human rights defenders, in particular against defenders of the rights of Indigenous Peoples, people of African descent and Montubio people.

Consultation with civil society organizations

44. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, and with organizations representing Indigenous Peoples, people of African descent and Montubio people in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

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 7 (statistics), 13 (hate crimes and racial discrimination), 17 (b) (structural discrimination against peoples and nationalities) and 39 (human rights defenders) and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement these recommendations.

Follow-up to concluding observations

47. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 35 (d) (access to justice) and 37 (a) (racial profiling) above.

3. Venezuela, CERD/C/VEN/CO/22-24, 18 September 2024

Concerns and recommendations

Data collection

8. While the Committee notes the State party's claim that the coronavirus disease (COVID-19) pandemic prevented it from carrying out the fifteenth national population and housing census, it is concerned about the fact that the last census was conducted in 2011 and that no effective and transparent data collection mechanisms have been designed to provide the State party with reliable and up-to-date information on the demographic composition of the population. The Committee is also concerned about the lack of disaggregated data and socioeconomic indicators that would make it possible to assess the realization and enjoyment of rights under the Convention by Indigenous Peoples....
9. The Committee urges the State party to continue its efforts to carry out the fifteenth population and housing census in order to collect reliable, up-to-date and complete information on the demographic composition of the Venezuelan population. The Committee also recommends that the State party design effective mechanisms for the systematic collection of data in order to generate statistics and socioeconomic indicators disaggregated by ethnicity, gender, age, region, and urban and rural areas, including the most remote areas, so that it can develop appropriate public policies and programmes for the sectors of the population that are subjected to racial discrimination and assess the implementation of the Convention in relation to the different groups that make up society. The Committee encourages the State party, with the broad and active participation of Indigenous Peoples ... to review the categories used for self-identification in order to ensure that information on all the ethnic groups in the State party is collected.

Structural discrimination

14. The Committee recognizes the efforts made and measures taken by the State party to combat racial discrimination against Indigenous Peoples and people of African descent, including the second and third socialist plans for the economic and social development of the nation. However, it finds it regrettable that it has received no information on the outcome of the implementation of these plans. It is also concerned to note that both Indigenous Peoples and people of African descent continue to be victims of structural discrimination, as reflected in the levels of poverty and social exclusion that they face and in the disproportionate impact that the socioeconomic crisis has had on their enjoyment of economic, social and cultural rights (arts. 2 and 5).
15. The Committee recommends that the State party:
 - a) Step up its efforts to eliminate institutional and structural discrimination against Indigenous Peoples and people of African descent by taking affirmative action to eliminate the structural discrimination that they continue to face;
 - b) Ensure that the plans and public policies adopted to eliminate racial discrimination and other intersectional forms of discrimination are effectively implemented, taking into account inequality gaps and the specific needs of Indigenous People and people of African descent in order to achieve a marked reduction in poverty and levels of inequality that affect them;
 - c) Ensure that Indigenous Peoples and people of African descent are consulted about, and take part in, the design and implementation of social programmes intended to benefit them;
 - d) Give consideration to the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

Situation of Indigenous Peoples

16. While noting the efforts made by the State party for the benefit of Indigenous Peoples, the Committee is concerned about the high rates of school dropout and the lack of qualified teachers in schools, especially in areas largely inhabited by Indigenous Peoples. It is also concerned about the restrictions that Indigenous Peoples face in accessing quality and culturally appropriate health services and the challenges that they face in entering the labour market (arts. 2 and 5).
17. The Committee recommends that the State party step up its efforts to:
 - a) Guarantee the availability, accessibility, acceptability and quality of education for Indigenous boys and girls, including by promoting initial and in-service training for teachers in order to strengthen intercultural bilingual education;
 - b) Reduce school dropout and school-year repetition rates among Indigenous boys and girls;
 - c) Ensure the accessibility, availability, acceptability and quality of health-care services, paying particular attention to the needs, traditions and cultural specificities of Indigenous Peoples, especially those of Indigenous women;
 - d) Ensure that Indigenous Peoples have access to the labour market, without discrimination, and that they benefit from fair and satisfactory working conditions, both in law and in practice.

Demarcation of Indigenous lands

18. While the Committee takes note of the mechanisms established by the State party to demarcate Indigenous lands and territories, it is concerned about the slowness of processes for demarcating and titling Indigenous lands and about the fact that these processes have been at a standstill since 2016, partly because the regional demarcation commissions and the national commission are not functioning properly. The Committee is concerned about reports that the process of titling the land of the Sanemá and Ye'kwana peoples of the Cauca Basin, which began in 2002, has still not been resolved, despite the fact that the relevant legal requirements have been met. The Committee is concerned about the fact that the failure to demarcate and title Indigenous lands has often been a contributory factor in attacks and illegal invasions by non-Indigenous persons, giving rise to serious conflicts and violence over access to land and natural resources (arts. 2 and 5).
19. The Committee recommends that the State party:
- a) Continue its efforts to demarcate and title Indigenous territories in order to guarantee the protection of the rights of Indigenous Peoples to own, use, develop and exercise control over their lands, territories and resources, in full security, including by implementing the Indigenous Peoples and Communities Act and ensuring the proper functioning of the National Commission on the Demarcation of the Habitat and Lands of Indigenous Peoples and Communities and the regional commissions;
 - b) Expedite the granting of pending titles and the implementation of pending demarcation procedures, including the procedure for demarcating the lands of the Ye'kwana and Sanemá Indigenous Peoples of the Cauca Basin;
 - c) Ensure that the collective rights of Indigenous Peoples with respect to their lands and territories are legally recognized and protected, in accordance with international standards.

Prior consultation

20. The Committee takes note of the statement made by the delegation during the dialogue to the effect that the State party is in the process of drawing up a protocol on free, prior and informed consultation. However, the Committee is concerned to have received reports that legislative or administrative measures that may affect the effective exercise of the rights of Indigenous peoples have been adopted without adequate consultation to obtain their free, prior and informed consent. In particular, it is concerned that extractive projects and activities affecting the lands, territories and resources of Indigenous peoples are carried out without respect for their right to prior consultation and without any social or environmental impact studies being carried out (arts. 2 and 5). 21. The Committee recommends that the State party:
- a) Expedite the development and adoption of a protocol on free, prior and informed consultation with Indigenous Peoples in order to guarantee their right to be consulted with a view to obtaining their free, prior and informed consent to any legislative or administrative measure that may affect their rights;
 - b) Ensure that this protocol is developed in consultation with Indigenous Peoples and that it respects international standards and takes into account the cultural characteristics and traditions of each people, including those related to decision-making;
 - c) Guarantee due respect for the right of Indigenous Peoples to be consulted with a view to obtaining their free, prior and informed consent to extractive activities

and projects that may affect their territories and natural resources, ensuring that such consultations are conducted in a timely, routine and transparent manner with due representation of the affected peoples;

- d) Ensure that, as part of prior consultation processes, impartial independent bodies carry out human rights impact studies that cover the potential social, environmental and cultural effects of economic development and natural resource exploitation projects in Indigenous territories with a view to protecting the traditional ways of life and livelihoods of Indigenous Peoples.

Impact of mining on the territories of Indigenous Peoples

22. The Committee is seriously concerned about the negative impact of mining on natural resources located within the lands and territories of Indigenous Peoples, which affects their livelihoods and ways of life. This situation has increased the exposure of Indigenous Peoples and communities to the food crisis, forced displacement and health problems. In this regard, the Committee is seriously concerned about the impact of the national strategic development zone known as Arco Minero del Orinoco, which has resulted in Indigenous territories being militarized and military operations being conducted in these territories without due prior consultation with the affected peoples. The Committee is seriously concerned about human rights abuses and violations perpetrated against Indigenous Peoples by both State actors, including members of the National Armed Forces, and non-State armed groups (arts. 2 and 5).

23. The Committee urges the State party to:

- a) Define, in consultation with all Indigenous Peoples whose territories and resources are affected, appropriate measures to ensure the protection of their lands, territories and resources so that they can be secure in the enjoyment of their own means of subsistence and development;
- b) Take appropriate measures to prevent the forced displacement of Indigenous Peoples from territories that they have traditionally occupied and owned and to mitigate and compensate them for damages or losses caused by activities carried out in their territories;
- c) Refrain from deploying military forces and carrying out military operations in Indigenous territories without having previously consulted Indigenous Peoples with a view to obtaining their free, prior and informed consent and, in the event that the use of military forces is absolutely necessary, establish effective accountability mechanisms for possible human rights violations;
- d) Thoroughly, impartially and effectively investigate all allegations of abuse and violence committed by military forces or non-State armed groups against Indigenous Peoples and, in particular, against Indigenous women.

Political participation of Indigenous Peoples

26. The Committee is concerned about reports that the political participation of Indigenous Peoples has been restricted by the State party. The Committee is concerned about the suspension by the Electoral Chamber of the Supreme Court of Justice of three Indigenous deputies in the state of Amazonas prior to the conclusion of the electoral litigation proceedings initiated against them, preventing them from holding the positions for which they were elected. The Committee is also concerned to note the adoption, in 2020, of the special regulations on the election of Indigenous representatives to the National Assembly, which, according to the

information received, restrict the right of Indigenous Peoples to direct and secret voting (arts. 2 and 5).

27. The Committee recommends that the State party guarantee the full exercise of the political rights of Indigenous Peoples, in particular the right to participate in elections, to vote and to stand for election on the basis of universal and equal suffrage, to take part in government as well as in the conduct of public affairs at any level and to have equal access to public service. The Committee recommends that the State party conclude the contentious electoral proceedings initiated against the three suspended Indigenous deputies, guaranteeing respect for due process guarantees and granting the respective reparation measures. The Committee urges the State party to repeal all legal provisions that restrict the right to political participation of Indigenous Peoples, including those contained in the special regulations on the election of Indigenous representatives to the National Assembly of 2020.

Multiple and intersecting forms of racial discrimination

30. The Committee is concerned about the multiple and intersectional forms of discrimination faced by Indigenous women and women of African descent, particularly in connection with their access to employment, education and health services, especially their access to information and services related to sexual and reproductive health (arts. 1, 2 and 5).
31. In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee urges the State party to:
 - a) Step up its efforts to combat the multiple and intersectional forms of discrimination to which Indigenous women and women of African descent are subjected, including by mainstreaming gender across all policies and strategies on racial discrimination;
 - b) Take steps to ensure that Indigenous women and women of African descent have access to education, employment and health care, taking into account cultural and linguistic differences;
 - c) Ensure that Indigenous women and women of African descent have access to culturally appropriate sexual and reproductive health services, and take the necessary steps to distinguish between the prohibition and criminalization of abortion with a view to initiating a constitutional reform process to repeal the criminalization of abortion.

Violence against Indigenous women and women of African descent

32. The Committee is concerned about the high rates of violence affecting Indigenous women and women of African descent. The Committee is particularly concerned about allegations of sexual violence against Indigenous women and girls, as well as allegations of their being trafficked for the purposes of economic and sexual exploitation, particularly in mining areas in the states of Amazonas, Bolívar and Zulia, where armed and non-State criminal organizations reportedly operate (arts. 2, 5 and 6).
33. The Committee recommends that the State party:
 - a) Strengthen the measures taken to prevent gender-based violence against Indigenous women and girls and women and girls of African descent;
 - b) Thoroughly investigate all cases of gender-based violence, including cases of sexual violence and exploitation committed against them, and ensure that the perpetrators are duly punished;

- c) Ensure that Indigenous women and women of African descent subjected to gender-based violence, violence or sexual exploitation have effective access to justice and effective and culturally appropriate protection mechanisms, as well as reparation measures.

Access to justice

36. The Committee is concerned about the challenges that Indigenous Peoples and people of African descent continue to face in obtaining access to justice. It is particularly concerned about the following:

- a) The lack of information about the number of complaints of racial discrimination, which could be a sign that cases of racial discrimination remain unreported, owing in part to the low level of trust that victims of racial discrimination have in the relevant authorities;
- b) The lack of an appropriate intercultural perspective within the judicial and prison systems, the limited availability of interpreters, legal counsel and justice operators with knowledge of Indigenous cultures and languages, and the lack of differentiated measures for Indigenous Peoples and people of African descent who are deprived of their liberty;
- c) The limited progress made towards the adoption of the law on special Indigenous courts, as well as the measures taken to recognize and respect the Indigenous justice system in accordance with international human rights law;
- d) Allegations of excessive use of force, arbitrary detention, torture and cruel, inhuman or degrading treatment, and due process violations against members of Indigenous Peoples, particularly acts committed against members of the Yukpa Indigenous People;
- a) Allegations about the lack of transparency, diligence and intercultural relevance of investigations into acts committed against Indigenous Peoples, particularly the case of the murder of four Yanomami Indigenous persons on 20 March 2022 in Parima B (Amazonas state) (art. 2 and 6).

37. Taking into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:

- a) Take appropriate and effective measures to ensure that all victims of racial discrimination have access to effective legal remedies and adequate reparation, and establish a system for collecting disaggregated data on cases of racial discrimination, including information on measures taken in connection with the administration of justice;
- b) Redouble its efforts to incorporate an intercultural perspective into the justice and prison system in order to, inter alia, increase the accessibility and availability of interpreters and legal counsel with knowledge of Indigenous languages and cultures and account for the cultural and religious practices of Indigenous persons and people of African descent who are deprived of their liberty;
- c) Ensure the prompt adoption of the law on special Indigenous courts, guaranteeing that its main purpose is to regulate and harmonize the functions, powers and responsibilities of the justice system of the Indigenous Peoples with those of the ordinary justice system and international human rights law;
- d) Conduct prompt, thorough and effective investigations, with an intercultural perspective, into violations of the right to life and integrity of the person

committed by law enforcement officers or non-State armed groups and all cases of excessive use of force and arbitrary detention committed against Indigenous Peoples or people of African descent, and ensure that the perpetrators are prosecuted and, if convicted, punished with appropriate penalties;

- e) Ensure that Indigenous persons and people of African descent who are victims of the excessive use of force, arbitrary detention or other human rights violations by law enforcement officers, including members of the armed forces, have access to effective remedies and adequate compensation and are not subjected to reprisals for reporting such acts;
- f) Step up the training of law enforcement officials, prosecutors, lawyers, legal counsel, judges and justice officials to ensure that they can properly review and effectively investigate cases of racial discrimination, and run campaigns to raise rights holders' awareness of their rights, the remedies available and the legal framework providing protection against racial discrimination.

Situation of human rights defenders

38. The Committee is seriously concerned about allegations that human rights defenders, including leaders and defenders of the rights of Indigenous Peoples ... are being subjected to acts of violence, threats and attacks on their lives. In particular, it is concerned that criminal proceedings are sometimes used improperly to persecute defenders of the rights of Indigenous Peoples and their territories (arts. 2, 5 and 6).

39. The Committee recommends that the State party:

- a) Put an immediate end to the persecution of human rights defenders, including leaders and defenders of the rights of Indigenous Peoples ... and prevent all acts of violence, threats and attacks on their lives and physical integrity;
- b) In consultation with human rights defenders, leaders and members of Indigenous ... design and adopt laws, special measures and effective protection strategies for the benefit of human rights defenders, taking into account cultural, regional and gender differences that may affect Indigenous Peoples...;
- c) Conduct thorough, impartial and effective investigations into all reports of attacks on the lives, physical integrity or freedom of Indigenous leaders and defenders of the rights of Indigenous Peoples ... as well as all reports of violence, threats, harassment, intimidation, bullying and defamation targeting such persons;
- d) Avoid using criminal law to arbitrarily persecute defenders of the rights of Indigenous Peoples....

Combating racial stereotypes

40. The Committee is concerned that, despite the efforts made by the State party, racial stereotypes are still entrenched in Venezuelan society. The Committee finds it regrettable that it has not received specific information on how the history, culture and contributions of Indigenous Peoples and people of African descent have been included in the curricula of the public education system (art. 7).

41. The Committee recommends that the State party:

- a) Develop and implement, in consultation with Indigenous Peoples and people of African descent, guidelines to combat the propagation of racial stereotypes and carry out campaigns to raise the general public's awareness of the negative effects of racial discrimination;

- b) Ensure that school curricula, at both the primary and secondary levels, cover the history and culture of the Indigenous Peoples and people of African descent and their contributions to the construction of the State party.

Follow-up to the present concluding observations

49. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 7 (a) and (c) (cooperation with civil society and human rights defenders), 17 (b) (situation of the Indigenous Peoples) and 21 (a) (prior consultation).

4. Mexico, CERD/C/MEX/CO/22-24, 25 June 2024

B. Positive aspects

...

- 4. The Committee also welcomes the legislative, institutional and public policy measures taken by the State party:
 - a) The adoption, in 2022, of the Federal Act for the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities; ...
 - b) The formal establishment, in February 2024, of the National Council of Indigenous Peoples as a mechanism for the participation of Indigenous Peoples; ...
 - (f) The Special Programme for Indigenous and Afro-Mexican Peoples 2021–2024;
 - (g) The Programme for the Holistic Well-Being of Indigenous Peoples and the Indigenous Education Support Programme, for 2021 and 2019, respectively.

Concerns and recommendations Statistics

- 6. While the Committee expresses its appreciation to the State party for providing some statistics during the dialogue, it regrets that these statistics are not sufficiently complete to allow for an assessment of the progress made with respect to the living conditions of and enjoyment of rights by historical victims of discrimination, in particular Indigenous Peoples and people of African descent. The Committee is also concerned that the variables on ethnic and racial composition are not systematically incorporated into all relevant surveys at the federal and state levels, in particular those concerning the judicial system, and that, in some cases, these variables do not allow for the accurate identification of all individuals who continue to be victims of discrimination on the grounds of race, colour, descent or national or ethnic origin.
- 7. The Committee encourages the State party to redouble its efforts to compile complete and accurate statistics on the demographic composition of the population, based on the principle of self-identification, and to establish socioeconomic indicators disaggregated by race, colour, descent and national or ethnic origin that will enable it to accurately and periodically assess the progress made in ensuring that all groups enjoy the rights enshrined in the Convention on an equal footing and without discrimination. The Committee also recommends that the State party use the statistics compiled as a basis for formulating its policies on combating racial discrimination. Lastly, the Committee recommends that the State party ensure that ethnic and racial variables are systematically included in official surveys and censuses conducted at the federal and state levels, including those concerning the judicial system.

Institutions

10. The Committee acknowledges the State party's recent efforts to strengthen the National Council for the Prevention of Discrimination by, as was mentioned during the dialogue, revising its statute and increasing its budget. The Committee welcomes the appointment of the President of the National Council for the Prevention of Discrimination who, for the first time, is an Indigenous woman. However, the Committee is concerned about the limited number of complaints relating to racial discrimination that have been received and handled by the Council, which could be owing to the lack of awareness and trust in this institution among victims of racial discrimination. The Committee regrets that it has not received detailed information on the effectiveness of the public policies adopted by the Council to combat racial discrimination. It also regrets that, to date, not all federative entities have an institution for the prevention of discrimination (art. 2).
11. The Committee reiterates its previous recommendation⁴ and urges the State party to:
 - a) Continue its efforts to ensure that the National Council for the Prevention of Discrimination has adequate human, financial and technical resources to effectively fulfil its mandate;
 - b) Strengthen the institutional capacity of the National Council for the Prevention of Discrimination and ensure adequate representation of Indigenous Peoples and people of African descent so that the institution can build trust and effectively handle complaints relating to racial discrimination;
 - c) Formulate a comprehensive national policy on combating racial discrimination that includes the adoption of a national plan against racism and discrimination, with the effective participation of Indigenous Peoples, people of African descent and other minority groups that continue to face racial discrimination, doing so through the National Council for the Prevention of Discrimination as the entity responsible for developing and promoting policies for the prevention and elimination of discrimination....

Racial hatred and incitement to racial discrimination

12. The Committee regrets that, despite its repeated recommendations and the orders of the Supreme Court in decision No. 805/2018 of 30 January 2019, the State party has not yet incorporated the actions described in article 4 of the Convention into its criminal legislation. Furthermore, the Committee is concerned about reports of the dissemination of messages of discrimination and racial hatred targeting Indigenous Peoples, people of African descent or migrants, including, in some cases, by public figures (art. 4).
13. The Committee reiterates its previous recommendations⁵ and recalls its general recommendations No. 15 (1993) on article 4 of the Convention and No. 7 (1985) relating to the implementation of article 4 of the Convention, which state that all provisions of article 4 of the Convention are of a mandatory character and highlight the preventive aspects of article 4 to deter racism and racial discrimination. ...

Constitutional amendment concerning the rights of Indigenous Peoples and people of African descent

14. The Committee takes note of the information provided by the delegation on the progress made with regard to the adoption of the constitutional amendment to ensure the recognition of Indigenous Peoples and people of African descent as

subjects of public law and fully guarantee their rights. However, the Committee is concerned that, according to the information received, although this amendment was the subject of a prior consultation process, the final document submitted by the executive branch to Congress on 5 February 2024 does not adequately reflect the proposals made by Indigenous Peoples, in particular with regard to the right to self-determination and collective rights over their land, territories and natural resources (arts. 2 and 5).

15. The Committee recommends that the State party accelerate the process of adopting the constitutional amendment to fully guarantee the rights of Indigenous Peoples and people of African descent, recognizing them as subjects of public law. The Committee urges the State party to ensure that the proposals made by Indigenous Peoples, in particular with regard to their right to self-determination and their rights over land, territories and resources, including their collective rights, are adequately reflected in the provisions of the constitutional amendment, in compliance with international standards, especially those contained in the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Committee also refers the State party to its general recommendations No. 21 (1996) on the right to self-determination and No. 23 (1997) on the rights of Indigenous Peoples.

Structural discrimination against Indigenous Peoples

16. The Committee remains concerned about the structural discrimination that Indigenous Peoples continue to face in the State party, which is reflected in the high levels of poverty affecting them and the negative impact this has on the enjoyment of their economic, social and cultural rights. It is particularly concerned about: (a) The high rates of illiteracy and low levels of educational attainment among Indigenous Peoples, including children and adolescents; (b) The challenges faced by members of Indigenous Peoples in gaining access to the labour market and the fact that they continue to be frequent victims of economic exploitation, especially Indigenous women domestic workers, who are also at greater risk of falling victim to sexual abuse and exploitation; (c) The lack of effective access to intercultural health services that take into account the cultural diversity of the population (arts. 2 and 5).
17. The Committee recommends that the State party strengthen its efforts to:
 - a) Take concrete action to significantly reduce the high levels of poverty and inequality affecting members of Indigenous Peoples and adopt the necessary special measures, including affirmative action, to eliminate structural discrimination against Indigenous Peoples;
 - b) Guarantee the availability, accessibility, acceptability and quality of education for Indigenous children through the development of intercultural educational plans that cover the history and culture of Indigenous Peoples and meet the objective of promoting and preserving the cultural identity of Indigenous Peoples, thereby reducing their illiteracy rates;
 - c) Ensure that Indigenous Peoples have access to the labour market, without discrimination, and that they benefit from fair and satisfactory working conditions, both in law and in practice, including remuneration that makes it possible to attain decent living conditions for them and their families and access to social security, in particular in the case of Indigenous women domestic workers;

- d) Establish effective mechanisms for reporting all forms of abuse and exploitation, including sexual exploitation, taking into account the specific challenges faced by Indigenous Peoples, in particular Indigenous women domestic workers;
- e) Ensure the accessibility, availability, acceptability and quality of healthcare services, taking into special consideration the needs, traditions and cultural specificities of Indigenous Peoples, especially those of Indigenous women;
- f) Conduct a comprehensive evaluation of the implementation of the Programme for the Holistic Well-Being of Indigenous Peoples and the Indigenous Education Support Programme, paying due attention to the challenges faced specifically by Indigenous Peoples and the persistent gaps that exist between them and the rest of the population, with a view to taking the necessary corrective measures to ensure the effective enjoyment of their rights without discrimination.

Free, prior and informed consent

18. The Committee takes note of the information provided regarding the extension of the right to free, prior and informed consultation and the adoption process for the General Act on the Consultation of Indigenous and Afro-Mexican Peoples and Communities. However, the Committee is concerned that there is still no adequate legal framework for conducting consultation processes to obtain the free, prior and informed consent of Indigenous Peoples. It is seriously concerned about reports that the consultation processes conducted to obtain their free, prior and informed consent have failed to comply with minimum international standards, in the sense that they:

- a) did not provide adequate, sufficient and timely information on the potential impact that the measures to be adopted or the development and natural resource exploitation projects would have on the rights of Indigenous Peoples,
- b) failed to respect the way in which the affected Indigenous communities were organized and (c) involved the use of pressure and harassment to obtain the consent of the affected Indigenous communities (arts. 2 and 5).

19. The Committee urges the State party to:

- a) Accelerate the process of adopting the draft General Act on the Consultation of Indigenous and Afro-Mexican Peoples and Communities in order to guarantee those communities' right to be consulted on any legislative or administrative measure that could affect their rights, including those related to decision-making, with a view to obtaining their free, prior and informed consent in a way that also takes into account the cultural characteristics and traditions of each community;
- b) Guarantee due respect for the right of Indigenous Peoples to be consulted with a view to obtaining their free, prior and informed consent regarding economic, industrial, energy, infrastructure and natural resource exploitation projects that may have an impact on their territories and natural resources, ensuring that such consultations are conducted in a timely, systematic and transparent manner, with representatives selected by the affected communities.

Impact of development and investment projects

20. The Committee is concerned about the reports on the impact that development and investment projects are having on the territories and resources traditionally occupied by Indigenous Peoples, which has a particular negative impact on their livelihoods and ways of life. The Committee is seriously concerned that some investment and natural resource exploitation projects, such as the Maya

train project, are continuing despite the concerns and opposition expressed by the affected Indigenous communities. In some cases, investment projects have continued despite court rulings ordering the companies to leave the land, repair the environmental damage and provide compensation to the affected communities (arts. 2 and 5).

21. The Committee recalls that respect for human rights and the elimination of racial discrimination are a crucial part of sustainable economic development and that both the State and the private sector play a fundamental part in this regard. Accordingly, the Committee recommends that the State party:
 - a) Ensure that impartial independent bodies carry out human rights impact studies that cover the potential social, environmental and cultural effects of economic development and natural resource exploitation projects in the territories of Indigenous Peoples, with the aim of protecting the traditional ways of life and livelihoods of these Peoples;
 - b) Ensure that companies operating in the State party carry out human rights due diligence in order to prevent human rights abuses against Indigenous Peoples and that those companies comply with judicial decisions relating to their activities that order the protection of the rights of Indigenous Peoples;
 - c) Determine, in consultation with the Indigenous Peoples whose territories and resources are affected, the mitigation measures to be put in place, the compensation for damages or losses suffered to be provided and the share in the benefits to be gained from such activities.

Militarization

22. The Committee is concerned about the negative impact that the militarization of civilian tasks has on the rights of Indigenous Peoples, people of African descent and migrants. The Committee is also concerned about the active participation of military forces in tasks connected to the implementation of investment projects such as the Maya train project, including construction work, which has led to the perpetration of forms of abuse and violence against Indigenous individuals who have been recruited to assist with such tasks, in addition to sexual violence against Indigenous women (arts. 2 and 5).
23. The Committee recommends that the State party:
 - a) Address the problems arising from the involvement of military forces in civilian tasks, including the implementation of economic development and natural resource exploitation projects in which civilians, especially Indigenous Peoples, are involved;
 - b) Thoroughly, impartially and effectively investigate all allegations of abuse and violence committed by military forces against Indigenous Peoples, people of African descent and migrants, and, in particular, against Indigenous women.

Internal displacement

24. The Committee is concerned about the internal displacement caused by violence, land conflicts and the effects of climate change, which has a disproportionate impact on members of Indigenous Peoples. The Committee notes that, during her recent visit to the State party, the Special Rapporteur on the human rights of internally displaced persons found that, for Indigenous Peoples, internal displacement has meant the loss of their social and cultural identity and the link with their ancestral lands and territories (arts. 2 and 5).

25. The Committee recommends that the State party adopt a national policy for the prevention of the causes of internal displacement that includes the perspective of displaced Indigenous Peoples and follows an intercultural approach, with a view to guaranteeing their protection at all stages of displacement, in particular the enhanced protection of their rights relating to the link to their ancestral lands. The Committee also recommends that the State party expedite the adoption of the draft General Act on Internal Displacement.

Lands, territories and resources of Indigenous Peoples

26. While the Committee takes note of the explanations provided by the delegation regarding the different forms of land ownership, it is concerned that the rights of Indigenous Peoples to the lands, territories and resources traditionally occupied by them have not yet been fully recognized and protected. The Committee is concerned about the persistence of long-running land conflicts that affect Indigenous Peoples and lead to acts of violence against them (arts. 2 and 5).
27. The Committee recommends that the State party adopt the necessary measures to ensure and protect the rights of Indigenous Peoples to own, use, develop and exercise full control over their lands, territories and resources, including by way of the legal recognition and protection of their collective rights over their lands and territories, in line with international standards.

Multiple and intersecting forms of racial discrimination

32. The Committee is concerned by the multiple forms of discrimination faced by Indigenous women and women of African descent, in particular with regard to access to employment, education and health, especially sexual and reproductive health information and services. In addition, the Committee remains concerned about the high rates of violence against Indigenous women and women of African descent (arts. 1, 2 and 5).
33. In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee urges the State party to:
- a) Intensify its efforts to combat the multiple forms of discrimination to which Indigenous women and women of African descent are subjected, including by mainstreaming gender across all policies and strategies on racial discrimination;
 - b) Take steps to ensure that Indigenous women and women of African descent have access to education, employment and health care, taking into account cultural and linguistic differences;
 - c) Take steps to prevent gender-based violence, in particular forced sterilizations, against Indigenous women and women of African descent and thoroughly investigate all cases of such violence, including forced sterilizations, ensuring that those responsible are appropriately punished and guaranteeing victims' access to justice and effective and culturally appropriate protection mechanisms.

Political participation

34. The Committee is concerned that the participation and representation of Indigenous Peoples and people of African descent in the political life of the State party remains limited, in particular in the case of Indigenous women and women of African descent (art. 5).
35. The Committee recommends that the State party take effective steps to ensure the full participation of Indigenous Peoples and people of African descent, in

particular women belonging to those groups, in public affairs, in both decision-making positions and representative institutions, and at all levels of federal and state government.

Situation of human rights defenders

36. The Committee takes note of the information provided by the State party regarding the strengthening of the National Protection Mechanism for Human Rights Defenders and Journalists. Nevertheless, the Committee remains seriously concerned that human rights defenders, including leaders and defenders of the rights of Indigenous Peoples, people of African descent and migrants, are subjected to acts of violence, threats and attacks on their lives (arts. 2 and 5).
37. The Committee recommends that the State party:
- a) Conduct thorough, impartial and effective investigations into all reports of attacks on the lives, physical integrity or freedom of human rights defenders, in addition to acts of violence, threats, harassment, intimidation, bullying and defamation committed against Indigenous leaders and defenders of the rights of Indigenous Peoples and people of African descent;
 - b) Redouble its efforts to, in consultation with the individuals affected, develop effective protection strategies, taking into account cultural, regional and gender differences and providing adequate human, technical and financial resources for their implementation;
 - c) Take effective and timely steps to prevent bullying, harassment, disparagement and the criminalization of human rights defenders, in particular Indigenous leaders and rights defenders, through, inter alia, information and awareness-raising campaigns focusing on the fundamental work that they perform, with a view to fostering an environment of tolerance that enables them to carry out their activities free from any intimidation, threats and reprisals.

Community radio stations

38. The Committee is concerned that community radio stations continue to be subject to persecution, which significantly limits Indigenous Peoples' rights to freedom of expression and cultural rights. The Committee is seriously concerned that community communicators belonging to Indigenous Peoples face attacks for denouncing human rights violations or opposing projects that have an impact on their territories. In this connection, the Committee expresses its concern regarding the murder of Samir Flores Soberanes (arts. 2 and 5).
39. The Committee urges the State party to:
- a) Conduct thorough investigations into all attempts on the lives and harassment or persecution of journalists and community communicators, in particular those defending the rights of Indigenous Peoples, and prosecute and duly punish those responsible. In that connection, the Committee encourages the State party to expedite the investigation into the murder of Samir Flores Soberanes;
 - b) Continue its efforts to ensure that Indigenous community radio stations have the resources necessary for their proper functioning, given the fundamental role they play in the transmission of Indigenous knowledge, culture and traditions.

Access to justice

48. The Committee takes note of the efforts made by the State party to improve access to justice for Indigenous Peoples and people of African descent, including through

the development of protocols for adjudicating from an intercultural perspective. Nonetheless, the Committee remains concerned about:

- a) The small number of complaints of racial discrimination, which could be an indicator that cases of racial discrimination remain unreported, owing in part to the low level of trust that victims of racial discrimination have in the relevant authorities;
- b) The lack of an adequate intercultural perspective within the judicial system and the limited availability of interpreters and advocates with knowledge of Indigenous cultures and languages;
- c) The lack of information on the steps taken to recognize and respect the Indigenous justice system, in line with international human rights law;
- d) The allegations concerning the lack of transparency in the implementation of the justice plans aimed at providing redress for violations of the rights of Indigenous Peoples, which has led to conflicts within some Indigenous communities (arts. 2 and 6).

49. Taking into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:

- a) Adopt appropriate and effective measures to ensure that all victims of racial discrimination have access to effective legal remedies and adequate reparations;
- b) Establish a system to collect disaggregated data on cases of racial discrimination, including on actions taken in the administration of justice;
- c) Redouble its efforts to integrate an intercultural perspective into the justice system, increase the accessibility and availability of interpreters and advocates with knowledge of Indigenous languages and cultures and strengthen coordination and cooperation between the ordinary justice system and the Indigenous justice system;
- d) Ensure transparency in the implementation of the justice plans adopted to provide redress for violations of Indigenous Peoples' rights;
- e) Step up the training of law enforcement officials, prosecutors, lawyers, advocates, judges and judicial system professionals in order to enable them to properly review and effectively investigate cases of racial discrimination, and run campaigns to raise rights holders' awareness of their rights, the remedies available and the legal framework providing protection against racial discrimination.

Use of mandatory pretrial detention

50. The Committee notes with concern that the State party has established a list of offences for which the use of pretrial detention is mandatory, without taking into account the special circumstances of each case. The Committee is concerned about reports that the use of this practice has had a disproportionate impact on Indigenous Peoples, especially Indigenous women, and people of African descent. The Committee regrets not having received statistical information, disaggregated by sex and by the grounds of discrimination prohibited under article 1 of the Convention, concerning persons deprived of their liberty (arts. 5 and 6).

51. The Committee urges the State party to eliminate mandatory pretrial detention both in law and in practice, take the necessary measures to ensure respect for all fundamental legal safeguards of due process for Indigenous Peoples, especially

Indigenous women, and people of African descent and guarantee that pretrial detention is used only as an exceptional measure and for a limited period of time. The Committee recommends that the State party collect and provide data on pretrial detainees and convicted individuals, disaggregated by sex, age and ethnic group, and provide data on the mandatory pretrial detention period in its next periodic report. The Committee refers the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

Racial profiling

52. The Committee welcomes the ruling issued by the Supreme Court on 18 May 2022, which declared the migration review procedure provided for in the Migration Act to be unconstitutional. However, the Committee regrets that racial profiling has not yet been expressly prohibited in the State party and is concerned that it remains a widespread practice. Furthermore, the Committee is seriously concerned about reports that the State party maintains migration checkpoints within its territory, which are operated by agents of the National Institute of Migration and members of the National Guard, who, in practice, include members of the armed forces, and that, in most cases, the individuals subjected to this type of check are people of African descent, black people, brown people or Indigenous Peoples, including Indigenous Mexicans and Afro-Mexicans. It is also concerned that these migration checks have led to human rights violations such as torture, excessive use of force and illegal deportations (arts. 2 and 6).
53. Recalling its general recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the Committee recommends that the State party:
- a) Include in its legislation a prohibition of racial profiling and ensure that the police and other law enforcement officials are provided with clear guidelines aimed at preventing racial profiling during police and migration checks;
 - b) Establish an effective mechanism to regularly collect and monitor disaggregated data on practices and complaints relating to racial profiling, racial discrimination and instances of racist violence by law enforcement officials, including in the context of migration identity checks;
 - c) Effectively and expeditiously investigate all incidents of racial profiling, racist abuse, ill-treatment and excessive use of force by law enforcement officials, including the agents of the National Institute of Migration and members of the National Guard, and ensure that those responsible are prosecuted and, if convicted, receive appropriate penalties;
 - d) Ensure that the victims of excessive use of force or racial profiling by law enforcement officials have access to effective remedies and adequate compensation and face no retaliation for reporting such acts;
 - a) Take effective measures to prevent the excessive use of force, ill-treatment and abuse of authority by the police against Indigenous Peoples, people of African descent and people with black or brown skin, including by ensuring that appropriate human rights training is provided to law enforcement officials throughout the country, in accordance with the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

Combating racial stereotypes

54. The Committee is concerned that racial stereotypes remain deeply ingrained in Mexican society. The Committee regrets that it has not received specific information on how the history, culture and contributions of Indigenous Peoples and people of African descent have been included in the public education system (art. 7).
55. Taking into account the importance of education in combating prejudices that lead to racial discrimination and promoting understanding, tolerance and friendship among all groups of society, as established in article 7 of the Convention, the Committee recommends that the State party:
 - a) Develop and implement, in consultation with Indigenous Peoples and people of African descent, guidelines to combat structural and institutional racism at the federal and state levels, in addition to public awareness campaigns on the negative effects of racial discrimination;
 - b) Ensure that federal and state educational authorities include the history and culture of Indigenous Peoples and people of African descent and their contribution to the construction of the Mexican State in school curricula at both the primary and secondary levels.

Follow-up to the present concluding observations

62. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 39 (a) (community radio stations)...

5. Plurinational State of Bolivia, CERD/C/BOL/CO/21-24, 24 January 2024

5. The Committee also welcomes the following legislative measures taken by the State party:
 - (a) Act No. 937 of 2017 declaring the National Day for the Languages and Cultures of the Indigenous, Original and Campesino Nations and Peoples...; (d) Act No. 450 of 2013 on the protection of highly vulnerable Indigenous and original nations and peoples; ... (i) Act No. 073 of 2010 (the Jurisdiction Demarcation Act), which regulates the matters included in the scope of the Indigenous, original and campesino justice system and other constitutionally recognized justice systems.

Statistics and socioeconomic indicators

7. The Committee acknowledges the State party's efforts to collect demographic and socioeconomic data through self-identification in the 2012 population and housing census. However, it notes with concern reports that this practice is not carried out in a systematic and rigorous manner. The Committee is concerned about the limitations affecting the collection of comprehensive data, the management of information systems and the updating and maintenance of databases, as these make it difficult to generate statistics and socioeconomic indicators on the Afro-Bolivian people and the migrant, refugee, asylum-seeking and stateless population. In addition, the Committee notes with concern that the criterion of self-identification is not systematically included in all administrative registers, official statistical instruments and complaint forms for acts of racism and discrimination. Despite the explanation provided by the State party's delegation, the Committee is concerned about the methodological shortcomings reported in the incorporation of the self-identification variable and in the training of survey takers for the 2024 population and housing census (arts. 1 and 2).

8. Recalling the guidelines for reporting by States parties under the Convention³ and reiterating that a lack of comprehensive statistics limits the State party's ability to recognize the disparities and structural discrimination that underpin and perpetuate racial discrimination and inequality and prevents it from assessing how all sectors of the population exercise their rights under the Convention, the Committee recommends that the State party:
 - (a) Ensure that all survey, planning and statistical instruments, including the 2024 population and housing census, and official administrative registers and complaint forms for acts of racism and other forms of discrimination systematically collect comprehensive information on the principle of self-identification, as well as indicators of political and socioeconomic participation, disaggregated by race, colour, descent, national or ethnic origin, or any other relevant criteria, for the purpose of monitoring the implementation of the Convention, formulating evidence-based public policies and designing special measures for specific population groups....

Status of the Convention in the domestic legal order

9. The Committee notes the applicability of the Convention in the domestic legal order of the State party and the case law of the Plurinational Constitutional Court invoking some of the provisions of the Convention (Plurinational Constitutional Decisions No. 0426/2012, No. 0540/2012, No. 1487/2012, No. 0014/2013-L and No. 0897/2013). However, it regrets the lack of specific information on the applicability of the provisions of the Convention in all four types of autonomous entity, namely departments, regions, municipalities and Indigenous, original and campesino communities (arts. 1 and 6).
10. The Committee recommends that the State party:
 - (a) Adopt all measures necessary to promote the application of the provisions of the Convention in all four types of autonomous entity, namely departments, regions, municipalities and Indigenous, original and campesino communities, including through training programmes for judges, prosecutors, lawyers, law enforcement officials, members of the Plurinational Legislative Assembly and other actors responsible for its application, and through information campaigns on the provisions of the Convention for rights holders, to ensure that its provisions are applied and invoked when appropriate by the national courts and other relevant forums;
 - (b) Raise public awareness of the communications procedure provided for in article 14 of the Convention, which establishes the competence of the Committee to receive and consider individual complaints;
 - (c) Include in its next periodic report specific examples of case law in which the provisions of the Convention have been applied by the four constitutionally recognized types of autonomous entity and other relevant forums;
 - (d) Consider establishing new forms of technical cooperation with the Office of the United Nations High Commissioner for Human Rights for the effective application of the provisions of the Convention and other human rights instruments in all four types of autonomous entity, namely departments, regions, municipalities and Indigenous, original and campesino communities.

Legislative measures to combat racism and all forms of discrimination

11. The Committee is concerned that the Act on the Elimination of Racism and All Forms of Discrimination (Act No. 045/2010) does not expressly and clearly define and prohibit direct and indirect discrimination in both the public and private spheres. ... (arts. 2 and 6).
12. 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 reiterates that the absence or small number of complaints, prosecutions and sentences for acts of racial discrimination does not signify a lack of racial discrimination, but rather is a factual indicator of the existence and extent of racial discrimination in the justice system. The Committee recommends that the State party take all measures necessary to ensure the enforcement of legal provisions to combat racism and all forms of discrimination. To this end, the Committee recommends that the State party:
 - (a) Amend Act No. 045/2010 so that it expressly and clearly defines and prohibits direct and indirect discrimination in both the public and private spheres, and consider reversing the burden of proof in all civil and administrative law cases concerning racial discrimination; ...
 - (d) Redouble its efforts to conduct public awareness-raising campaigns that are culturally appropriate and delivered in Indigenous languages on the existence of legal provisions and complaint mechanisms intended to combat racism and all forms of discrimination, and encourage victims of such crimes to file complaints;
 - (e) Provide in its next periodic report updated statistics on all administrative, constitutional and criminal complaints filed with law enforcement bodies in the four types of autonomous entity, the investigations launched and their results and the protection and reparation measures granted to victims, with information disaggregated by, inter alia, the ethnic or national origin and the gender of the victims, in order to identify the most affected population groups...

Forms of multiple and intersectional discrimination

17. The Committee reiterates its concern about the limited application, in practice, of the principle of non-discrimination, and about the persistence of socioeconomic, racial and gender disparities in the State party.⁵ The Committee is concerned about the limited impact of actions aimed at preventing and combating the multiple and intersectional forms of discrimination faced by women, children and adolescents, older persons, persons with disabilities, and lesbian, gay, bisexual, transgender and intersex persons who belong to ethnic groups or who are migrants. The Committee notes with concern the reports of barriers preventing these groups from exercising their civil, political, economic, social and cultural rights, in particular their right of access to education, employment and health care and to the enjoyment of an adequate standard of living (arts. 1, 2 and 5).
18. The Committee recommends that the State party take all measures necessary to combat the multiple and intersectional forms of discrimination faced by women, children and adolescents, older persons, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons belonging to Indigenous, original and campesino nations and peoples and the Afro-Bolivian population or who are migrants, refugees, asylum-seekers or stateless persons, among others,

by including ethnic and gender perspectives and taking into account factors such as age, type of disability and reasonable accommodation, whether they live in an urban or rural area and sexual orientation and gender identity in all legislative, administrative and public policy measures aimed at combating all forms of racial discrimination.

Programmes and plans for Indigenous, original and campesino nations and peoples

21. While it notes the creation of the Development Fund for Indigenous, Original and Campesino Peoples, the Committee regrets the lack of information on the tangible results and impact of its implementation on the strengthening of health, education and sanitation systems, and on the resources allocated for its implementation (arts. 2 and 5).
22. The Committee recommends that the State party adopt all measures necessary to ensure the effective implementation of the Development Fund for Indigenous, Original and Campesino Peoples, and of the programmes to promote their development within the framework of the Economic and Social Development Plan 2021–2025, ensuring the effective allocation of financial, human and technical resources to that end, and that it include in its next periodic report data on the tangible results and impact of these measures.

Racist hate speech and hate crimes

27. Reiterating its previous concluding observations, the Committee expresses its concern about the increasing use and normalization of racist speech and violence in the State party, including in the media, the Internet and social networking platforms, and discriminatory statements made by public officials and politicians. The Committee is also concerned about allegations of racist violence during the 2019 post-election crisis by organized groups, which allegedly resulted in clashes and deaths, and about the fact that only partial progress has been made in investigating those acts, dispensing justice and granting reparations. The Committee shares the concerns of the Human Rights Committee and the Committee against Torture about racist violence in the State party (art. 4).
28. Recalling its general recommendations No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party: (a) Take the measures necessary to prevent, condemn and combat racist hate speech against Indigenous, original and campesino nations and peoples, the AfroBolivian people, migrants, asylum-seekers and refugees, including on the Internet and social networking platforms, and by public officials and politicians; (b) Step up its efforts to curb the spread of racist hate speech in the media and on the Internet and social networking platforms in close cooperation with the providers of these services and the communities most affected by racist hate speech....

Excessive use of force and racial profiling

29. The Committee is concerned about the various allegations received regarding the excessive use of force by law enforcement officials against members of ethnic groups who were participating in peaceful protests in the context of the 2019 post-election crisis. The Committee is also concerned about the continued use of racial

profiling by police officers and other law enforcement officials, which particularly affects Indigenous persons, Afro-Bolivians, migrants, asylum-seekers and refugees (arts. 2, 4, 5 and 6).

30. Recalling its general recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the Committee recommends that the State party:
- (a) Take all measures necessary to ensure the exercise of the right to peaceful assembly without any discrimination on the grounds of race, colour, descent or national or ethnic origin;
 - (b) Adopt legislation that explicitly prohibits the use of racial profiling by law enforcement officials, and take the measures necessary to prevent and eradicate the practice of racial profiling, including through ongoing training of law enforcement personnel;
 - (c) Adopt and implement continuous training programmes for law enforcement officials on the use of force in accordance with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement;
 - (d) Ensure that all cases of police and institutional violence, and violence resulting from racial profiling, are investigated, that those responsible are punished and that adequate reparations are provided to victims and their families.

Right to consultation and free, prior and informed consent

31. The Committee notes with concern that the current regulatory framework on prior consultation is sectoral, fragmented and does not uphold international and regional standards on the right to consultation and free, prior and informed consent of the Indigenous, original and campesino nations and peoples and the Afro-Bolivian people. It is also concerned about allegations regarding the granting of licences for mining activities, hydrocarbon production and the carrying out of infrastructure projects, which have the potential to contaminate soil and to affect the traditional livelihoods of these peoples, without systematically holding consultations in order to obtain the free, prior and informed consent of the affected communities. The Committee expresses its concern about the alleged violation of the constitutional right to prior consultation in the Ayllu Acre Antequera community (arts. 2 and 5).
32. The Committee recommends that the State party:
- (a) In consultation with the Indigenous, original and campesino nations and peoples and the Afro-Bolivian people, and taking into account their cultural characteristics, ways and customs, develop and implement an effective, appropriate and legally binding national law and related protocols, which should include clear requirements as to the form that consultations should take and the representation of affected communities, to ensure full respect for their right to be consulted and to obtain their free, prior and informed consent in relation to all decisions that may affect them, and consider requesting technical support from the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council to this end;
 - (b) Adopt the administrative measures necessary to ensure that prior consultations are carried out in a systematic and transparent manner in order to obtain the free, prior and informed consent of Indigenous, original and campesino nations and

peoples and the Afro-Bolivian people in relation to all decisions that may affect them, in particular before prospecting and mining exploration programmes or activities are undertaken and before licences are granted for infrastructure or mining, gas or oil production projects in the lands and territories that they have traditionally owned, occupied or used;

- (c) Systematically conduct, as part of the prior consultation process, independent studies on the social, environmental and human rights impact of largescale investments or natural resource exploitation projects on affected communities, and publish the results of such studies;
- (d) wEnsure, in practice, that the Indigenous, original and campesino nations and peoples and the Afro-Bolivian people affected by economic activities and the exploitation of natural resources in their territories are consulted, receive compensation for any damage or loss, and gain tangible benefits from such activities.

Indigenous and original nations and peoples in a highly vulnerable situation

33. While it notes the measures adopted in this connection, the Committee expresses concern about the limited implementation of legislative measures and protection plans for Indigenous and original nations and peoples in a highly vulnerable situation, in particular Indigenous Peoples in voluntary isolation and in an initial-contact situation. The Committee is also concerned that, despite the establishment of comprehensive protection zones for these peoples, infrastructure development and natural resource exploitation projects, and the encroachment by third parties on their lands to carry out logging, fishing, hunting and mining activities, continue to threaten their health and their physical and cultural survival. The Committee is also concerned about allegations of violations of the rights of the Tsimane Indigenous People of Yacuma (arts. 2 and 5).

34. The Committee recommends that the State party:

- (a) Redouble its efforts to apply Act No. 450 of 2013 and its implementing regulations, respecting and upholding “the principle of no contact” and the right to self-determination, with a view to designing and implementing territorial and health action plans and protocols, and contingency protocols in situations of contact, particularly in the Oriente, Chaco and Bolivian Amazon regions, and ensure the effective enforcement of the Criminal Code provisions applicable to this matter;
- (b) Ensure the allocation of sufficient financial, human and technical resources to the General Directorate for the Protection of Indigenous and Original Nations and Peoples so that it can carry out its mandate effectively, and accelerate the implementation of the comprehensive monitoring system for Indigenous and original nations and peoples in a highly vulnerable situation;
- (c) Effectively implement the action plan for the protection of the Tsimane Indigenous People of Yacuma, respecting their cultural characteristics, ways and customs, and ensure that effective measures are taken to protect and grant titles for their land and to guarantee their physical and cultural survival.

Right to self-determination and self-governance

35. The Committee is concerned about reports that Indigenous and original communities are facing obstacles to obtaining autonomous status, and the slowness of related proceedings. The Committee is also concerned about reports that the State party’s institutional framework is ill-suited to granting autonomous status to Indigenous,

original and campesino communities, which has an impact on self-governance decisions and on the provision of resources by the central Government (arts. 2 and 5).

36. The Committee recommends that the State party take all measures necessary to facilitate the attainment of autonomous status for Indigenous communities, including by adapting the State's institutional and administrative framework to guarantee, in practice, the rights to self-determination and self-governance of Indigenous communities, and ensure the allocation of sufficient financial, human and technical resources to that end.

Right to collective titling of lands and territories

37. While it notes the measures adopted in this connection, the Committee is concerned about reports of limited progress and pending processes in relation to the demarcation, registration and titling of the lands and territories of Indigenous, original and campesino nations and peoples. It is also concerned about the adverse impact caused by the expansion of extractive and agricultural activities in these territories, despite the measures adopted (arts. 2 and 5).
38. The Committee recommends that the State party accelerate recognition, demarcation, registration and titling processes in order to provide Indigenous, original and campesino nations and peoples with legal certainty regarding the territories, lands and natural resources traditionally occupied and used by these peoples, guaranteeing the allocation of sufficient financial, human and technical resources to the National Agrarian Reform Institute.

Cultural rights

39. The Committee is concerned that the limited protection and demarcation of the ancestral lands and territories of Indigenous, original and campesino nations and peoples undermines the exercise of their cultural rights. It is also concerned about the reported shortcomings in the protection and promotion of the rights and cultural heritage of the Afro-Bolivian people (arts. 2 and 5).
40. The Committee recommends that the State party:
- (a) Take all the measures necessary to enable Indigenous, original and campesino nations and peoples to preserve, develop, express and share their identity, history, culture, languages, traditions and customs and to maintain their spiritual relationship with their lands, territories and resources;
 - (b) Adopt all the measures necessary to encourage the promotion, preservation, expression and dissemination of the cultural identity and historical legacy of the Afro-Bolivian people.

Right to education

41. While it welcomes the results achieved in reducing illiteracy, the Committee expresses its concern about the reported high dropout rates in secondary schools, especially in rural and outlying areas, affecting mostly Indigenous and Afro-Bolivian students. The Committee is also concerned about the persistence of discriminatory stereotypes and prejudices in the education sector, this being the sector where the highest percentage of complaints of racism and discrimination was recorded in 2022. The Committee is also concerned about the limited implementation of intra- and intercultural education, particularly for the Afro-Bolivian people (arts. 2 and 5).
42. The Committee recommends that the State party:

- (a) Take all measures necessary to effectively combat racist stereotypes, attitudes and harassment and discriminatory prejudices in the education sector and ensure that educational institutions and their staff do not reproduce these stereotypes;
- (b) Take the measures necessary to reduce school dropout rates, particularly in secondary schools, in order to ensure the retention and development of Indigenous and Afro-Bolivian students in remote and isolated areas;
- (c) Take the measures necessary to ensure the integration and effective implementation of intra- and intercultural education in all regions and departments of the State, paying special attention to Afro-Bolivian people residing outside the Department of La Paz.

Right to health

43. The Committee notes with concern the reported structural deficiencies of Act No. 1152 of 2019 on the unified health system, which affect Indigenous and Afro-Bolivian persons living in rural and remote areas and which have been compounded in the context of the coronavirus disease (COVID-19) pandemic. It is also concerned about the reportedly insufficient resources allocated for the effective implementation of the Intercultural Community Family Health Policy (arts. 2 and 5).
44. The Committee recommends that the State party:
- (a) Take all measures necessary to strengthen the unified health system and to ensure the accessibility, availability, quality and cultural acceptability of health services for members of Indigenous, original and campesino nations and peoples and the Afro-Bolivian people, guaranteeing the allocation of sufficient financial, human and technical resources to that end;
 - (b) Redouble its efforts to implement the Intercultural Community Family Health Policy in an inclusive manner with all social sectors involved.

Sexual and reproductive rights

45. The Committee expresses its concern about the reported high incidence of maternal mortality, obstetric violence and teenage pregnancy, which particularly affects Indigenous and Afro-Bolivian women living in rural and isolated areas (arts. 2, 5 and 6).
46. The Committee recommends that the State party:
- (a) Take all measures necessary to reduce the incidence of maternal mortality among Indigenous and Afro-Bolivian women;
 - (b) Ensure that all women, particularly Indigenous and Afro-Bolivian women, have access to family planning services and contraceptive drugs and can benefit from effective measures to help reduce teenage pregnancy, in consultation with representatives of the Afro-Bolivian people and Indigenous, original and campesino nations and peoples;
 - (c) Take effective measures to ensure that anti-racism and human rights training is dispensed to all medical and health care staff involved in delivering sexual and reproductive health services to Afro-Bolivian and Indigenous women, including women with disabilities and lesbian, bisexual, transgender and intersex women, ensuring the inclusion of gender perspectives therein and accountability and reparations for any form of obstetric violence.

Situation of Indigenous, Afro-Bolivian and migrant women

47. While it notes the measures adopted by the State party in this connection, the Committee notes with concern the multiple forms of discrimination based on race, colour, ethnic, national or regional origin, language, age, disability and gender faced by Afro-Bolivian, Indigenous and migrant women in all areas of social, political, economic and cultural life (arts. 2, 5 and 6).
48. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party:
- (a) Redouble its efforts within the framework of the Plurinational Policy for Decolonization and Dismantling the Patriarchy to eliminate deep-rooted gender and racial stereotypes with a view to changing patriarchal and discriminatory attitudes and promoting the equal sharing of family responsibilities between men and women;
 - (b) Take all measures necessary to promote the full access of women, in particular Afro-Bolivian, Indigenous and migrant women, to employment, social security, health care and services, education, land and income-generating activities, among others;
 - (c) Redouble its efforts to implement the Act on political harassment and violence against women, ensuring, in practice, the prevention of cases of political harassment and violence against Afro-Bolivian and Indigenous women, the investigation of such cases and the application of protection measures for the victims.

Access to and administration of justice

51. While it notes that the State party is in the process of reforming the judicial system, the Committee expresses its concern about the reported long-standing structural problems in the system for the administration of justice, such as the lack of judicial independence, insufficient budget and limited geographical coverage, which hinder access to and the delivery of justice for marginalized and disadvantaged ethnic groups who are the targets of acts of racism and discrimination. The Committee is also concerned about the fact that judicial services, including translation, interpretation and cultural expertise, are seldom accessible in Indigenous languages, which disproportionately affects Indigenous and Afro-Bolivian persons, particularly women, during judicial proceedings. The Committee shares the concerns of the Human Rights Committee and the Committee against Torture regarding the independence and administration of the justice system (arts. 5 and 6).
52. The Committee recommends that the State party:
- (a) Accelerate the process of reforming the judicial system, ensuring and protecting the full autonomy, independence and impartiality of judges and prosecutors and guaranteeing that they can carry out their work free from undue pressure and interference, in accordance with the Basic Principles on the Independence of the Judiciary, and ensure that they are in a position to protect victims of racial discrimination;
 - (b) Ensure that the coverage of the justice system extends to the entire territory of the State party, in particular remote and isolated areas, guaranteeing the availability of translation and interpretation services in Indigenous languages and cultural and intercultural expertise, and ensure the allocation of sufficient financial, human and technical resources for its proper functioning;

- (c) Ensure that the Plurinational Public Defence Service has sufficient financial, human and technical resources to carry out its mandate in an effective and timely manner throughout the country;
- (d) Continue to implement the recommendations and decisions adopted by various international and regional human rights mechanisms regarding the reform of the system for the administration of justice, in particular the recommendations made by the Human Rights Committee, the Committee against Torture, the Interdisciplinary Group of Independent Experts of the Inter-American Commission on Human Rights and the Special Rapporteur on the independence of judges and lawyers during his visit to the Plurinational State of Bolivia.

Traditional Indigenous justice

53. The Committee reiterates its concern about the fact that the Jurisdiction Demarcation Act (Act No. 073) of 2010 is not in line with the Constitution or the Convention. It also regrets the lack of updated information on specific mechanisms to ensure coordination and effective cooperation between the Indigenous and the ordinary justice systems. The Committee is also concerned about allegations that the ordinary justice system does not, in practice, recognize the procedures of the Indigenous justice system, despite the Constitution's according them the same rank, and that the Indigenous justice system does not offer effective remedies (arts. 5 and 6).
54. The Committee recommends that the State party:
- (a) Review and amend Act No. 073 of 2010 (the Jurisdiction Demarcation Act) to bring it into line with the Constitution and apply, in law and in practice, the principle of hierarchical equality of the Indigenous and the ordinary justice systems, expanding the scope of the Indigenous justice system to cover personal, material and territorial matters;
 - (b) Establish specific mechanisms to ensure coordination and cooperation between the Indigenous and the ordinary justice systems, respecting the principle of hierarchical equality, and ensure that anti-racism, anti-discrimination and human rights training is dispensed to all officials in the justice system;
 - (c) Ensure the allocation of sufficient financial, human and technical resources to the Indigenous, original and campesino justice system so that it can effectively carry out its mandate.

Combating racial prejudice and intolerance

57. While it acknowledges the measures taken by the State party to combat racial prejudice and intolerance, the Committee reiterates its concern¹³ about the lack of application, in practice, of the principle of non-discrimination and of effective measures to address the structural racism, stereotypes, prejudices and racial tensions that are entrenched in Bolivian society, which hinders intercultural acceptance and the building of a pluralistic society (arts. 2, 5 and 7).
58. The Committee recommends that the State party:
- (a) In consultation with representatives of Indigenous, original and campesino nations and peoples, the Afro-Bolivian people and organizations concerned with defending the rights of migrants, design and implement guidelines to combat structural and institutional racism and entrenched stereotypes and prejudices based on race, colour, gender and national, regional or ethnic origin, among

others, at the national, departmental and municipal levels, and campaigns to raise public awareness of the negative effects of racial discrimination;

- (b) Create, through the departmental committees against racism and all forms of discrimination, spaces and mechanisms for broad and open intercultural dialogue for Bolivian society as a whole, ensuring the participation of representatives of Indigenous, original and campesino nations and peoples, the Afro-Bolivian people and organizations concerned with defending the rights of migrants, with the aim of fostering tolerance and mutual understanding of the diversity of the different peoples and nations of the State party.

Human rights defenders

59. The Committee is concerned about allegations of acts of reprisals, intimidation, threats and improper use of judicial proceedings against human rights defenders, in particular leaders and members of Indigenous, original and campesino nations and peoples, in the context of defending their rights in the face of major investment and natural resource exploitation projects in their territories and lands (arts. 2, 5 and 6).
60. The Committee recommends that the State party:
 - (a) Investigate all attacks and complaints of reprisals, intimidation, threats and disproportionate use of criminal proceedings against human rights defenders, in particular against leaders and members of Indigenous, original and campesino nations and peoples, the Afro-Bolivian people and the migrant population who defend their rights;
 - (b) Adopt a policy and programme for the protection of human rights defenders that ensures broad and adequate consultation with all stakeholders during the design, implementation and monitoring process;
 - (c) Review and amend article 232 bis of the Criminal Code on trespassing in mining areas in order to eliminate any disproportionate restrictions that may result in the prosecution of environmental rights defenders, in particular those who defend their rights in the face of large-scale economic development projects in their territories.

Paragraphs of particular importance

67. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12 (legislative measures to combat racism and all forms of discrimination), 22 (programmes and plans for Indigenous, original and campesino nations and peoples), 50 (situation of migrants, refugees and asylum-seekers) and 52 (access to justice) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

6. South Africa, CERD/C/ZAF/CO/9-11, 27 December 2023

Statistics

4. The Committee takes note of the information on the demographic composition of the State party's population and of the disaggregated statistics on the socioeconomic situation of different ethnic groups. Nevertheless, the Committee expresses its concerns about the lack of comprehensive and disaggregated statistics on Indigenous Peoples ... which limits the Committee's ability to properly assess the situation of such groups, including their socioeconomic status and any progress

achieved by implementing targeted policies and programmes. The Committee remains concerned by the fact that Indigenous Peoples are not recognized as a distinct category for the purposes of data collection (arts. 1 and 5).

5. Recalling its general recommendation No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention, and its guidelines for reporting under the Convention, the Committee recommends that the State party collect reliable, updated and comprehensive statistics on the demographic composition of the population, in full respect of the principle of self-identification, particularly on Indigenous Peoples ... together with socioeconomic indicators, disaggregated by gender and age, and languages spoken, concerning access to education, employment, health care and housing with a view to creating an empirical basis for assessing the equal enjoyment of the rights enshrined in the Convention. The Committee also recommends that the State party consider the possibility of including Indigenous Peoples as a separate category, in full respect of the principle of self-identification, in its next census.

Special measures

18. The Committee notes the information provided by the State party on the implementation of special measures to address the inequalities from the apartheid era.... However, the Committee regrets the lack of detailed information on the conduct of impact assessments of the special measures implemented, including in employment, education and sports. The Committee also remains concerned about the lack of information on the impact of special measures on Indigenous Peoples (arts. 1 and 2).
19. Recalling its previous recommendation⁵ and its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party:
 - (a) Establish monitoring and evaluation mechanisms to conduct regular impact assessments of the special measures implemented to address inequalities, while ensuring the participation and consultation of affected groups, and to obtain information on the effectiveness of special measures;
 - (b) Collect detailed qualitative and quantitative data on the impact of the special measures implemented, including in education, employment and sports, on affected groups, particularly Indigenous Peoples, and include those in its next periodic report.

Indigenous Peoples

30. The Committee notes the information provided by the State party about the organization of public consultations with a view to re-enact the Traditional and Khoi-San Leadership Act (No. 3 of 2019) in compliance with a recent decision of the Constitutional Court. However, the Committee is concerned about the:
 - (a) Lack of information on measures to combat discrimination against Indigenous Peoples who are facing extreme poverty and marginalization, as well as restrictions on land redistribution;
 - (b) Lack of detailed information on how the principle of free, prior and informed consent of Indigenous Peoples in the development of legislation and other measures affecting their rights is guaranteed in law and in practice;
 - (c) Lack of information on measures to implement the recommendations of the

South African Human Rights Commission following its investigative hearings on the rights of Indigenous Peoples in 2004 and 2016 (arts. 1 and 5).

31. Recalling its previous recommendation, the United Nations Declaration on the Rights of Indigenous Peoples and its general recommendation No. 23 (1997) on the rights of Indigenous Peoples, the Committee recommends that the State party:
 - (a) Adopt measures to ensure effective and meaningful consultation of Indigenous Peoples on any legislative or administrative measures that may affect their land, territories or resources with a view to obtaining their free, prior and informed consent, including in relation to the re-enactment process of the Traditional and Khoi-San Leadership Act;
 - (b) Adopt effective measures to ensure that Indigenous Peoples enjoy, on an equal footing, all rights under the Convention, including by implementing the recommendations made by the South African Human Rights Commission following its investigative hearings on the rights of Indigenous Peoples in 2004 and 2016.

Harmful practices

32. The Committee notes the information provided by the State party on various awareness-raising campaigns to combat harmful practices against women and girls, such as *ukuthwala*, that are tantamount to child or forced marriage and that mainly affect women and girls belonging to marginalized ethnic groups and Indigenous Peoples. However, the Committee is concerned about reports that women and girls belonging to marginalized ethnic groups, including Indigenous Peoples, are still victims of *ukuthwala*, particularly in rural and remote areas. Furthermore, the Committee notes the information on the work of the South African Law Reform Commission on criminalizing *ukuthwala*, however, it regrets the delay in developing and adopting legislation to criminalize these harmful practices (arts. 2 and 5).
33. Recalling its previous recommendation and its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party:
 - (a) Expedite the adoption of legislation that criminalizes harmful practices against women and girls, such as *ukuthwala*;
 - (b) Adopt effective measures to protect women and girls, particularly those living in rural and remote areas, from harmful practices and ensure their access to remedies;
 - (c) Implement the relevant recommendations contained in the concluding observations of the Committee on the Elimination of Discrimination against Women adopted in 2021.

Marginalization of older persons

36. The Committee notes the legislative framework on older persons, particularly the Social Assistance Act (No. 13 of 2004) and the Older Persons Act (No. 13 of 2006), and other measures to address inequalities resulting from the apartheid era faced by older persons belonging to marginalized ethnic groups, particularly ... Indigenous Peoples. However, the Committee is concerned about reports that older persons face intersecting forms of discrimination based on their race, colour, descent, national or ethnic origin and age, are marginalized and live in extreme poverty. It also notes that services provided to older persons are disparate and insufficiently funded (arts. 1 and 5).

37. The Committee recommends that the State party adopt measures to strengthen the support provided to older persons to address intersecting forms of discrimination faced by older persons belonging to marginalized ethnic groups and allocate sufficient human and financial resources to departments in charge of providing services.

7. Vietnam, CERD/C/VNM/CO/15-17, 27 December 2023

Death penalty

12. The Committee welcomes the information provided by the State party on steps taken to limit the scope of the death penalty, including the reduction of the number of offences under the Criminal Code to which the death penalty may be applied. The Committee nevertheless remains concerned that the State party maintains the death penalty for broad and vaguely formulated offences under the Criminal Code, for which people working on the rights of ethnic minorities, Indigenous Peoples and non-citizens are often convicted, including article 109 on activities against the people's government. The Committee is also concerned that the State party does not disclose official data on the death penalty, including on the number of individuals on death row and those executed. Decisions on sentencing published on the Supreme People's Court e-portal nevertheless indicate that a disproportionate number of individuals belonging to ethnic minority groups are convicted and sentenced to death (arts. 2, 5 and 6).
13. With reference to 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 the relevant recommendations of the Human Rights Committee, the Committee recommends that the State party:
- (a) Review and amend laws and policies leading to ethnic disparities in criminal convictions and sentences;
 - (b) Apply a moratorium on the death penalty with a view to abolish it;
 - (c) Collect and publish statistics on the number of individuals sentenced to death, on death row and executed, disaggregated by ethnicity and national origin.

Racial profiling and excessive use of force

16. The Committee is concerned about reports of persistent racial profiling, torture, ill-treatment, deaths in custody, abuse of authority and excessive use of force by law enforcement officials against individuals and groups at risk of racial discrimination, as well as those working on the rights of ethnic minorities, Indigenous Peoples and non-citizens, during the investigation led by the Ministry of Public Security following the attacks on the commune police stations in Dak Lak Province on 11 June 2023.

Civic space

20. The Committee is concerned that various laws and decrees maintained by the State party have been interpreted and applied so as to have the effect of intimidating or restricting the rights of those working on the rights of ethnic minorities, Indigenous Peoples and non-citizens, including human rights defenders, lawyers and journalists. In particular, the Committee is concerned by chapter XIII (offences against national security) of the Criminal Code, as well as article 117 thereof on information designed to oppose the State and article 331 thereof on abusing democratic freedoms. The Committee is also concerned about the Law on the Press, including article 9

thereof on offending the nation or causing division, and article 13 thereof on abuse of freedom of the press, as well as the Law on Cybersecurity (No. 24/2018/QH14), including article 8 thereof on publishing defamatory information and article 16 thereof on propaganda against the State (arts. 2 and 5).

21. Noting the commitment of the State party to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating racial discrimination, the Committee recommends that the State party review and amend the Criminal Code, the Law on the Press and the Law on Cybersecurity with a view to guaranteeing that provisions are not so broad and vague as to allow for discriminatory and arbitrary interpretation or application that would intimidate or restrict the rights of, and intimidate those working on the rights of, ethnic minorities, Indigenous Peoples and non-citizens, including human rights defenders, lawyers and journalists.
22. The Committee is concerned by the disproportionate number of individuals belonging to ethnic minority groups charged and convicted under articles 109, 113 and 229 of the Law on Counter-Terrorism (No. 28/2013/QH13) in relation to offences classified as “terrorist”, defined as acts aimed to “oppose the people’s government” or to “cause panic”, including the 81 Montagnards involved in the attacks of 11 June 2023, who were charged and convicted under article 113 of the Criminal Code in relation to terrorism to oppose the people’s government (art. 4).
23. The Committee recommends that the State party amend article 3 of the Law on Counter-Terrorism, as well as other relevant laws and regulations, in order to ensure a sufficiently narrow definition of “terrorism” that prohibits specific acts and prevents interpretation and application that constitutes profiling or discrimination on the grounds of race, colour, descent, nationality, ethnicity or ethno-religious identity.
24. The Committee is deeply concerned about reports that people working on the rights of ethnic minorities, Indigenous Peoples and non-citizens, as well as leaders of ethno-religious associations, are systematically targeted using violence, intimidation, surveillance, harassment, threats and reprisals as a consequence of their work. The Committee is particularly concerned by reports of reprisals for cooperating or attempting to cooperate with the United Nations, its representatives and mechanisms in the field of human rights, including the cases of two Montagnards, Y Khiu Niê and Y Sî Êban, who attempted to travel to a conference on freedom of religion and belief in 2022, as well as the cases of two Khmers-Krom youths, Duong Khai and Thach Cuong, who were detained by police on three separate occasions between 2021 and 2022, after having translated and disseminated copies of the International Covenant on Civil and Political Rights and the United Nations Declaration on the Rights of Indigenous Peoples (art. 5).
25. The Committee urges the State party to guarantee the rights of persons working on the rights of ethnic minorities, Indigenous Peoples and non-citizens and to end the systematic practice of violence, intimidation, surveillance, harassment, threats and reprisals. The Committee recommends that the State party take steps to reinforce trust in its official institutions by conducting effective, thorough and impartial investigations into all reported incidents and by prosecuting and, where convicted, punishing perpetrators with appropriate penalties.

Situation of Indigenous Peoples

34. The Committee is concerned that, despite its previous recommendation⁶ to respect and protect the existence and cultural identity of all ethnic groups, in line with the principle of self-identification, the State party has been reluctant to engage in open

and inclusive discussions on the recognition of Indigenous Peoples, including the Khmers-Krom and Montagnards, in line with the United Nations Declaration on the Rights of Indigenous Peoples. Moreover, while noting the ongoing drafting process of the amended Land Law, the Committee is concerned that, in accordance with the present Land Law (No. 45/2013/QH13) and relevant decrees, communities, including those of Indigenous Peoples, are only notified 15 days in advance that their land has been acquired and are subject to relocation, without compliance with the principle of free, prior and informed consent or consultation throughout the development of resettlement plans (arts. 2 and 5).

35. The Committee recommends that the State party recognize Indigenous Peoples in accordance with the principle of self-identification and ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization. The Committee also recommends that the State party carry out public consultations, ensuring the participation of individuals belonging to ethnic minority groups that self-identify as Indigenous, throughout the drafting process of the amended Land Law and guarantee, in law and in practice, the rights of Indigenous Peoples to free, prior and informed consent, adequate compensation and consultation throughout the development of resettlement plans.

8. Morocco, CERD/C/MAR/CO/19-21, 21 December 2023

4. The Committee further welcomes the following legislative, institutional and policy measures taken by the State party: (a) Adoption of Organic Act No. 26-16 of 12 September 2019, setting out the process for making Tamazight an official language and the procedures for its integration into education and priority areas of public life....

Racist hate speech

17. The Committee takes note of the information provided by the State party on the various measures taken to prevent and combat hate speech, including initiatives at the international level. It is nevertheless concerned about reports of increasing racial and xenophobic hate speech, including on the Internet and social media, particularly towards migrants, refugees and asylum-seekers, especially those from sub-Saharan countries, and towards black Moroccans and the Amazigh. It is also concerned about the absence of data disaggregated by ethnic origin, without which it is impossible to fully know the extent of the problem of racist and xenophobic hate speech (arts. 2 and 4).

Combating racial discrimination; special measures

21. The Committee takes note of the measures taken by the State party to prevent and combat racial discrimination. It appreciates efforts made by the State party to reduce poverty and ensure access to basic social services for all, such as the National Human Development Initiative, the Tayssir programme in the area of education and the Awrach programmes concerning access to the labour market. Furthermore, the Committee notes that, according to the delegation of the State party, since Moroccan society has been a mixture of many components for centuries, it is difficult to establish that racial differences or disparities exist in Morocco. However, the Committee notes with concern that some communities, in particular the Amazigh [and] Saharans ... face situations of racial discrimination, including indirect discrimination, which limits the full enjoyment of their rights on an equal footing and without discrimination. The Committee is also concerned about the

lack of information on special measures taken by the State party to address racial discrimination, including indirect discrimination, faced by those groups (arts. 1, 2 and 5).

22. In the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party adopt the necessary special measures or affirmative action measures aimed at eliminating the racial discrimination faced by the above-mentioned groups, including indirect discrimination, and all obstacles preventing them from fully enjoying their rights on an equal footing, in accordance with articles 1(4), 2(2) and 5 of the Convention. It recalls that, in line with the above-mentioned general recommendation, States parties are responsible for ensuring that these special measures are applied throughout their territory and are designed and implemented following consultation with the communities concerned and with their active participation.

The Amazigh

23. While noting the measures taken by the State party to improve the living conditions of the population, such as the Programme to Reduce Territorial and Social Disparities in Rural Areas for the period 2017 to 2023, the Committee is concerned about:
- (a) The lack of statistics regarding representation of the Amazigh, in particular Amazigh women, in political life, especially in decision-making positions;
 - (b) Poverty, which particularly affects regions inhabited primarily by the Amazigh, and the persistence of racial discrimination against them, including in access to employment, education and health services, especially when they do not express themselves in Arabic;
 - (c) Information on cases of demarcation and dispossession of Amazigh collective lands without adequate consultation with the communities concerned, in the context of development projects or extraction of natural resources, which disproportionately affect Amazigh women, and in particular Soulaliyat women, who have allegedly been victims of forced displacement and have not received compensation;
 - (d) Allegations of police repression of demonstrations organized by Amazigh activists and human rights defenders, including against dispossession of their lands (art. 5).
24. The Committee recommends that the State party take the necessary measures to ensure that the Amazigh can fully enjoy their rights on an equal footing and without discrimination, and specifically:
- (a) Take steps to collect data disaggregated by sex and age on the participation of members of ethnic groups in political and public life and step up efforts to increase their participation in these areas, in particular for women belonging to these groups, and especially in decision-making positions;
 - (b) Redouble its efforts to combat the poverty affecting the Amazigh and to guarantee the Amazigh access to employment, education and health services without discrimination;
 - (c) Protect the Amazigh, in particular Soulaliyat women, from land dispossession and forced displacement, return confiscated land or agree upon adequate compensation, ensure effective access to justice for victims and hold effective and meaningful consultations with the Amazigh before authorizing any development or natural resource exploitation project that may have an impact on their lands;

- (d) Investigate all cases of excessive use of force by law enforcement officers against Amazigh activists, human rights defenders and demonstrators, and ensure that the perpetrators are prosecuted and, if found guilty, appropriately punished, and that the victims and their families receive adequate reparation;
- (e) Take steps towards the adoption of specific legislation on the promotion and protection of human rights defenders, including those involved in the fight against racial discrimination, and on the rights of the groups most exposed to this type of discrimination.

The Tamazight language

25. While noting that Tamazight has been recognized in the Constitution as an official language of the State party, the Committee is concerned about the insufficient teaching of this language in schools, the limited availability of Tamazight-language broadcasts in the audiovisual media, the difficulties encountered by the Amazigh in using their language in legal proceedings and, in some cases, in registering Amazigh given names for their children, and the still limited use of the Tamazight language in official documents (art. 5).
26. Recalling its previous concluding observations,⁸ the Committee recommends that the State party step up its efforts to implement the provisions of the Constitution and Organic Act No. 26-16 on the official status of the Tamazight language, and specifically:
 - (a) Increase the teaching of the Tamazight language at all levels of education, including preschool, and increase the number of teachers adequately trained to teach the language;
 - (b) Increase the presence of the Tamazight language and Amazigh culture in the audiovisual media;
 - (c) Review the legal framework, in particular Act No. 38-15 on the organization of the judiciary, in the light of the Constitution and Organic Act No. 26-16, which make Arabic and the Tamazight language the official languages of the State party, to ensure that the Tamazight language is used on an equal footing with Arabic in the courts, including in defence speeches to the court and judgments;
 - (d) Ensure that civil registrars fully respect normative provisions relating to the right of all citizens to choose and register their children's given names, including Amazigh first names;
 - (e) Redouble efforts to ensure the effective use of the Tamazight language in official documents, as provided for in Organic Act No. 26-16, and, in this connection, revise Act No. 04-20 on electronic national identity cards, the provisions of which contain no references to the use of the Tamazight language or alphabet or to Organic Act No. 26-16.

Human rights education to combat prejudice and intolerance

41. The Committee takes note of various measures taken by the State party to provide training in human rights and promote tolerance, equality and non-discrimination, such as the updating of school textbooks to promote diversity and harmonious coexistence, as well as the implementation of the project to support the promotion of tolerance, civic-mindedness and citizenship and the prevention of high-risk behaviours. However, the Committee regrets the lack of detailed information on training relating to the Convention and the fight against racial discrimination, racism and xenophobia in school curricula and vocational training programmes.

It remains concerned about the persistence of racist and xenophobic speech and stereotypes aimed at members of certain communities, in particular the Amazigh [and] Saharans ... including on the Internet and social media, but also in sport, in particular in football. It also regrets the lack of sufficient information on the inclusion of the history and culture of the above-mentioned groups in textbooks and curricula at all levels... (art. 7).

42. Recalling its previous concluding observations,¹⁴ the Committee reiterates its recommendation that the State party continue its efforts to raise public awareness and knowledge of the importance of cultural diversity, understanding and tolerance. It also recommends that the State party step up its efforts regarding human rights education by ensuring that the fight against racial discrimination, racism and xenophobia, as well as the history and culture of the above-mentioned groups, are included in curricula at all school levels and that all teachers receive training on these topics. ...

Follow-up to the present concluding observations

48. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 14 (a) and (b) (national plans relating to human rights and the fight against discrimination) and 26 (a) and (b) (Tamazight language), above.

Paragraphs of particular importance

49. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 18 (racist hate speech) [and] 20 (Saharans)....

9. Namibia, CERD/C/NAM/CO/16-18, 4 October 2023

Equal participation in public and political affairs

18. The Committee is concerned about the underrepresentation of certain ethnic groups in public and political affairs, in particular the San, Ovaherero and Ovambo people. The Committee regrets the lack of updated information from the State party on the representation of the various ethnic groups. The Committee is also concerned that groups that self-identify as Indigenous communities are not represented by traditional authorities chosen in accordance with the will of the community in question. Moreover, the Committee is concerned about barriers to the equal participation of members of such groups in public and political affairs, including:
- (a) Prejudices or stereotypes regarding candidates or parties, compounded by the low level of representation of the ethnic groups to which they belong;
 - (b) Threats and intimidation by politicians and public officials against communities regarding development projects, including those affected by the development of hydrogen projects;
 - (c) The lack of guarantees, both in law and in practice, for communities to participate in decision-making processes, and the lack of consultations with affected communities regarding development or mining projects with a view to obtaining their free, prior and informed consent....

19. The Committee recommends that the State party provide information on the representation of the various ethnic groups in decision-making bodies or in high-ranking positions, including statistics on the number of persons from each of the groups protected under article 1 of the Convention at each of the levels of government. In addition, the Committee recommends that the State party take measures to promote equal participation in public and political affairs, including:
- (a) Taking special measures, in accordance with articles 1(4) and 2(2) of the Convention, based on statistics to improve representation at all levels of government, including, where necessary, the introduction of reserved seats;
 - (b) Condemning the use of threats and intimidation by politicians and public officials against communities affected by development projects;
 - (c) Adopting laws and policies to guarantee the participation of affected communities in decision-making and consultations with a view to obtaining their free, prior and informed consent;
 - (d) Reviewing the process of appointment of traditional authorities in consultation with communities that are unrepresented or that contest their appointed representative.

Equal enjoyment of economic and social rights

20. The Committee is deeply concerned that, according to the recent data on multidimensional poverty provided by the Namibia Statistics Agency, poverty levels among members of the Khoisan and Otjiherero language groups are double those of communities whose main language is European. While the Committee recognizes the efforts of the State party to address the residual inequalities from the former eras of colonialism and apartheid, the Committee regrets the lack of information on the outcomes of the measures taken. The Committee is also concerned that the State party's development policies and programmes, including the basic social grant scheme, do not effectively address the socioeconomic disparities across all ethnic groups or adequately take into consideration the adverse impact of intersecting forms of discrimination on the enjoyment of economic and social rights, including with regard to income and wealth disparities, adequate housing and health (art. 5).
21. Recalling the requirement under the Convention that inequalities in the enjoyment of rights be addressed, the Committee recommends that the State party:
- (a) Consolidate and continue to collect statistics concerning the enjoyment of all economic and social rights, disaggregated by ethnic group or language commonly spoken, including Indigenous communities, using consistent indicators and group descriptions to allow comparable assessments of the impact of and progress made in the implementation of special measures to eliminate disparities; (b) Encourage the Namibia Statistics Agency to continue to provide data on multidimensional poverty, disaggregated by ethnic or language group;
 - (c) Ensure that, in subsequent programmes and policies, including the forthcoming sixth national development plan, a gender-sensitive approach is adopted in combating intersecting forms of discrimination that constitute barriers to the equal enjoyment of economic and social rights by women in different ethnic groups;
 - (d) Where persistent inequalities are identified – such as in the enjoyment of the rights to be free from poverty, to adequate housing, to equal quality of health

and adequate health care, and to a healthy environment – take additional measures, including special measures, on the basis of data and consultations with affected communities in accordance with general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

Land reform and resettlement

22. While noting that an estimated 3 million hectares of land have been redistributed to Black farmers, the Committee regrets the lack of information provided by the State party to demonstrate the positive outcomes of the policies on land reform and resettlement, including data to show that this land has not been disproportionately allocated to privileged individuals or ethnic groups. The Committee also regrets the lack of information provided by the State party on plans to implement the resolutions adopted during the Second National Land Conference, held in 2018. The Committee is concerned about illegal fencing of communal land, which disproportionately affects Indigenous Peoples in the Omusati, Ohangwena, Oshikoto, Omaheke and Otjozondjupa Regions, and the lack of effective judicial remedies for victims of this practice (art. 5).
23. The Committee recommends that the State party:
- (a) Collect data on the allocation of the estimated 3 million hectares of land redistributed to Black farmers, disaggregated by geographical location and by ethnic group or, alternatively, language group;
 - (b) Take measures to implement the resolutions adopted during the Second National Land Conference, in particular those aimed at combating corruption within the decision-making land boards and instituting clear procedures to facilitate the reclamation and restitution of ancestral lands and territories, and facilitate further consultations where necessary with regard to the other resolutions, including those on the issues of expropriation of foreign-owned agricultural land, environmental and cultural impact assessments, the role of traditional courts in land disputes, and performance assessments of farms;
 - (c) Take measures to ensure prompt and effective remedies, including the application of sanctions by the courts as a means of deterring illegal fencing and ensuring that victims are adequately compensated, in keeping with the obligation of the State party to provide remedies and guarantees of non-repetition for rights violations resulting from lack of effective legal protection.

Equal access to quality education

24. The Committee notes the efforts of the State party to expand equal access to quality education, including the financial support provided to students and learners from San, Ovatie and Ovatjimba communities through the Division of Marginalized Communities. However, the Committee is concerned that the State party has not taken measures to address the root causes of the disparate levels of access to quality education, including discrimination on the basis of race, colour, ethnicity or language. In particular, the Committee is concerned by the disproportionately high dropout rates among persons with albinism and among the San, Ovatie and Ovatjimba people. Furthermore, the Committee is concerned about reports of harassment of San, Ovatie and Ovatjimba students by teachers who belong to a different ethnic group or speak a different language (art. 5).
25. The Committee recommends that the State party strengthen its efforts to ensure equal access to quality and inclusive education, with a view to decreasing school dropout rates, including by:

- (a) Facilitating a safe environment for San, Ovatie and Ovatjimba children to remain in school by providing transportation and financial aid for uniforms and schools materials;
- (b) Providing financial assistance to San, Ovatie and Ovatjimba children to continue their secondary and post-secondary education;
- (c) Employing teachers and educators from communities that commonly speak the same language as the students and learners; ...
- (e) Including education on human rights, in particular with regard to racial discrimination, in school curricula for all students;
- (f) Conducting awareness-raising campaigns within communities on the importance of education for children with albinism and for San, Ovatie and Ovatjimba children.

Reparations for historical injustices

30. The Committee shares the concerns expressed by a group of special procedure mandate holders, in a joint communication dated 23 February 2023,⁵ regarding the alleged failure of the State party to ensure the right of the Ovaherero and Nama peoples, including women and girls, to meaningful participation, through self-elected representatives, in the negotiations on the recognition of the genocide committed against those communities in the former German South-West Africa colony between 1904 and 1908, which led to the issuance in 2021 of a joint declaration between the State party and Germany. The Committee notes the ongoing planning by the State party to commemorate the genocide, including through the designation of a commemorative day, the establishment of a museum and the designation of heritage sites. The Committee also shares the concerns of the special procedure mandate holders on the qualified recognition of the genocide committed between 1904 and 1908. While the Committee notes the information provided by the State party during the dialogue that the joint declaration affords funds for reparations that are distinct from development aid, the Committee is concerned that the joint declaration does not explicitly provide for this distinction. The Committee notes that follow-up negotiations on interpretation of the addendum are continuing (arts. 2, 5 and 6).

31. The Committee urges the State party to:

- (a) Guarantee the right of the Ovaherero and Nama peoples, including women and girls, to meaningful participation, through self-elected representatives, in the ongoing follow-up negotiations related to the recognition and redress of the 1904-1908 genocide, and in the design and implementation of the plans to commemorate the genocide;
- (b) Take steps to guarantee that aggrieved communities are directly involved in negotiations and are present to receive an agreed-upon apology;
- (c) Establish memorials, with the participation of all affected groups, acknowledging the sexual and physical violence, and exploitative relationships and marriages, to which Ovaherero and Nama women and girls were subjected during the colonial era;
- (d) Proceed with the follow-up negotiations with a view to obtaining, in addition to the acknowledgement and apology contained in the joint declaration issued in 2021, guarantees of restitution, compensation and rehabilitation, including the return of human remains and recognition of the decimation of cultures;

- (e) Take steps to begin a new round of negotiations, with the full involvement of all affected communities, to establish additional memorials recognizing historical injustices, including enslavement, forced labour, and the imposition of apartheid during the illegal occupation by South Africa of Namibia and those who suffered and died fighting against apartheid;
- (f) Establish guarantees of non-repetition concerning the types of violations of human rights that gave licence to the historical injustices of colonialism, apartheid and genocide.

10. Uruguay, CERD/C/URY/CO/24-26. 13 September 2023

Statistics and socioeconomic indicators

7. The Committee takes note of efforts to include the ethno-racial variable in the compilation of official data, particularly in the record-keeping of the National Institute of Statistics, the national census and the continuous household survey. However, the Committee notes with concern that this practice is not routinely followed in all institutions and that the variable is not included in all official administrative records. The Committee regrets that the State party's report does not contain complete statistics on socioeconomic indicators of persons belonging to Indigenous Peoples and other minority groups. The Committee reiterates that the lack of complete statistics limits the State party's capacity to recognize the disparities and structural racism that sustain and perpetuate racial discrimination, inequality and inequity, and prevents it from evaluating the way in which all segments of the population exercise their rights under the Convention (art. 2).
8. Recalling the reporting guidelines for States parties and reiterating its previous recommendation, the Committee recommends that the State party:
 - (a) Redouble its efforts to compile complete and accurate statistics on the demographic composition of the population, based on the principle of self-identification, and socioeconomic indicators disaggregated by race, colour, ancestry and national or ethnic origin, with a particular focus on the population of African descent and Indigenous Peoples, ensuring that all State institutions at the national, departmental and municipal levels collect information on ethnicity and race in all their official administrative reports....
18. Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State party: (a) Formulate a comprehensive national policy on combating racial discrimination that includes a comprehensive national plan against racism and discrimination, with indicators to facilitate rigorous monitoring and targets for improving the socioeconomic situation and reducing inequality, and guarantee the meaningful and effective participation of people of African descent, Indigenous Peoples submit public reports containing such information on a regular basis....

Indigenous Peoples

29. The Committee reiterates¹⁰ its concern about the persistent invisibility of Indigenous Peoples and the racial discrimination against them, which is manifested in stereotypes and prejudices. The Committee is also concerned about the reference to Indigenous Peoples as a "non-visible minority" in the State party, which is not conducive to the recognition of those Peoples and violates the Convention and the United Nations Declaration on the Rights of Indigenous Peoples, particularly their rights

to self-determination (art. 3) and to determine their own identity or membership in accordance with their customs and traditions (art. 33) (arts. 2, 5 and 7).

30. Taking into account its general recommendation No. 23 (1997) on the rights of Indigenous Peoples, the Committee recommends that the State party: (a) Take all necessary measures, in consultation with Indigenous Peoples' organizations, to recognize and give greater visibility to Indigenous Peoples in the State party; (b) Adopt effective measures, in consultation with Indigenous Peoples' organizations, to combat stereotypes about Indigenous Peoples by promoting recognition of their cultural identity and preserving their culture; (c) Define and implement, in consultation with Indigenous Peoples' organizations, affirmative action measures to ensure that Indigenous Peoples enjoy all the rights recognized in article 5 of the Convention without discrimination of any kind; (d) Give further consideration to ratifying the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), and consider enlisting the technical support of the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council to this end.

Administration of justice and persons deprived of their liberty

33. The Committee is concerned by reports that, owing to the limited availability of public defenders in the State party's regions, fundamental legal safeguards for persons deprived of their liberty, particularly legal aid, are not always guaranteed. The Committee is also concerned by reports of the overrepresentation of racial and ethnic minorities, particularly people of African descent and Indigenous Peoples, in prisons. In this regard, the Committee regrets that the State party is unable to provide official data in this area owing to the failure to systematize information in registers of persons deprived of their liberty according to the ethno-racial variable. The Committee also notes with concern reports that conditions for the reintegration and rehabilitation of persons deprived of their liberty belonging to racial and ethnic minorities are insufficient despite their overrepresentation in prisons (art. 6).
34. Taking into account its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party: (a) Ensure that all fundamental legal safeguards for persons deprived of their liberty, particularly legal aid, are respected, and take all necessary measures to strengthen the public defence system by allocating adequate financial, human and technical resources to enable it to carry out its functions in an independent, timely and appropriate manner throughout the State party; (b) Organize information campaigns on the right to and availability of public defence services in various contexts and among the most disadvantaged and marginalized ethnic or racial groups...

Combating racial stereotypes

35. The Committee takes note of the measures taken by the State party. However, the Committee reiterates its previous concerns regarding the lack of effective and far-reaching measures to combat the structural racism and racial stereotypes that are still entrenched in Uruguayan society, and the absence of reparation measures to address their historical legacy. The Committee is also concerned that the history, culture and contributions of people of African descent and Indigenous Peoples are not effectively and accurately taught in the public education system (art. 7).
36. Recalling the importance of education in combating prejudices that lead to racial discrimination and in promoting understanding, tolerance and friendship

among all groups in society, in accordance with article 7 of the Convention, and the importance of intensifying the fight against structural racism lurking within all institutions of society, the Committee recommends that the State party:

- (a) Develop and implement, in consultation with Afrodescendent and Indigenous communities, guidelines to combat structural and institutional racism at the national, departmental and municipal levels, as well as public awareness campaigns on the negative effects of racial discrimination;
- (b) Establish mechanisms for dialogue with representatives of Indigenous Peoples and Afrodescendent communities that lead to the establishment of institutions dedicated to the study and development of wide-ranging proposals and initiatives for providing reparations for historical injustices;
- (c) Review the relevant legislation and ensure that national and departmental education authorities include the history and contributions to nation-building of people of African descent and Indigenous Peoples in primary and secondary school curricula.

11. Argentina, CERD/C/ARG/CO/24-26, 24 May 2023

Positive aspects

3. The Committee welcomes the following legislative, policy and institutional measures taken by the State party: ... (h) Establishment of the Indigenous Peoples' Interministerial Board in 2017.

Concerns and recommendations

Data collection

4. The Committee notes the introduction of a question allowing for ethnic and racial self-identification by members of Indigenous Peoples and Afrodescendent communities in the 2022 eleventh national housing, household and population census, the forthcoming dissemination of the final results of that census and the implementation of the "I Recognize Myself" campaign prior to the census. However, it is concerned about the fact that, despite the State party's efforts, ethnic and racial self-identification has not yet been systematically introduced into the data-collection systems of all public institutions at all levels of government, which limits the potential for generating reliable data and indicators on the needs of all ethnic and racial population groups. The Committee regrets the lack of disaggregated statistics and socioeconomic indicators for use in assessing the living conditions of Indigenous [persons] ... and in assessing the progress made with regard to the realization and enjoyment of their rights under the Convention (art. 2).
5. In accordance with its general recommendation No. 4 (1973) concerning reporting by States parties, which calls for the provision of information on the demographic composition of the population, and the Committee's previous concluding observations,⁴ the Committee recommends that the State party promote the systematic collection of data, including on ethnic and racial origin, by public institutions at all levels of government. It also requests the State party to provide reliable, updated and comprehensive data on the demographic composition of the population in its next report, as well as human rights and socioeconomic indicators disaggregated by ethnicity, gender, age, province and urban/rural area, in particular on Indigenous Peoples....

Institutional framework

12. The Committee appreciates the work done by the National Institute to Combat Discrimination, Xenophobia and Racism on, for example, the preparation of the National Discrimination Map on a regular basis and the establishment of the Commission for the Historical Recognition of the Afro-Argentine Community in 2020. It also notes the work of the National Institute of Indigenous Affairs, including the Community Strengthening Programme and the mediation of conflicts between communities and other social actors. Nevertheless, the Committee remains concerned about: ... (b) The lack of information on the full and systematic participation of Indigenous persons in the National Institute of Indigenous Affairs, including in the position of president, the Council on Indigenous Participation and the Indigenous Peoples' Advisory and Participatory Council; the limited presence of the National Institute of Indigenous Affairs in the provinces and remote areas of the country where Indigenous persons live; and the fact that the Institute has not been allocated sufficient human, technical and financial resources to carry out all aspects of its mandate, in particular the surveying of lands and territories traditionally occupied by Indigenous Peoples (art. 2).
13. In accordance with its previous concluding observations, the Committee urges the State party to: ... (b) Take the measures necessary to ensure the full and effective participation of Indigenous Peoples, Afrodescendent communities, other minorities and migrants in the institutions that represent them or that work to combat racial discrimination, including the National Institute to Combat Discrimination, Xenophobia and Racism and the National Institute of Indigenous Affairs, and provide the National Institute of Indigenous Affairs with sufficient human, technical and financial resources to fulfil all aspects of its mandate, in particular the surveying of lands and territories traditionally occupied by Indigenous Peoples.

Racist hate crimes and hate speech

18. The Committee notes the measures taken to address hate speech, including the establishment of a group for conducting research into the culture of hatred in 2020, a research and action network against hate speech in 2022 and a media and social network watchdog. However, it is concerned by reports of increasing hate speech and xenophobia directed against historically vulnerable populations, in particular members of Indigenous Peoples... (art.4).
19. The Committee recommends that the State party: (a) Take the measures necessary to prevent, condemn and combat racial hate speech against members of Indigenous Peoples, persons of African descent, migrants, asylum-seekers and refugees, including on the Internet and social media platforms and by public officials and national and provincial authorities; (b) Step up its efforts to curb the spread of racist hate speech on the Internet and social media platforms in close cooperation with these services and the communities most affected by racist hate speech....

Structural discrimination

20. The Committee appreciates the State party's recognition of the existence of structural racism, which mainly affects members of Indigenous Peoples.... It also takes note of the measures adopted in the economic and social spheres to combat the poverty and inequality that affect these historically vulnerable groups and the adoption of some special or affirmative measures in respect of these communities. However, it remains concerned about continuing structural discrimination and racism against,

and the invisibility of, members of Indigenous Peoples ... which are reflected in high levels of poverty and social exclusion, particularly in rural and remote areas. It is also concerned about the impact of structural discrimination and racism on the effective enjoyment of the rights established in article 5 of the Convention, mainly the right to participate in government and in the conduct of public affairs, and economic, social and cultural rights, in particular access to employment and the right to food, health and education (arts. 2 and 5).

21. In accordance with its previous concluding observations, and in the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee recommends that the State Party adopt the necessary special or affirmative measures, at all levels of government, to eliminate the structural discrimination faced by members of Indigenous Peoples.... The Committee recalls that, in accordance with the aforementioned general recommendation, federal authorities are responsible for designing a framework for the consistent application of special measures in all parts of the State party and that these measures should be designed and implemented on the basis of prior consultation with, and the active participation of, affected communities. Moreover, the Committee recommends that the State party:
- (a) Redouble its efforts to reduce the high levels of inequality and poverty affecting members of Indigenous Peoples, persons of African descent and non-nationals;
 - (b) Adopt effective measures to ensure the full participation of members of Indigenous Peoples and persons of African descent in public affairs and public administration at the federal, provincial and local levels and to promote their participation in decision-making positions in the public and private sectors;
 - (c) Take additional measures to combat racial discrimination in the workplace, in particular when it is directed against Indigenous persons, persons of African descent and migrants, and to improve access to the formal sector of the economy for people belonging to these groups;
 - (d) Ensure that the measures adopted to combat hunger have a tangible impact on Indigenous persons, persons of African descent and migrants, including through the reduction of child malnutrition, which particularly affects members of Indigenous Peoples;
 - (e) Step up its efforts to ensure equal access to high-quality and culturally appropriate health services for members of Indigenous Peoples ... and to reduce maternal and infant mortality in Indigenous communities;
 - (f) Adopt additional measures to combat racial discrimination in the education sector, particularly against Indigenous and Afrodescendent persons and migrants, and to ensure the availability, accessibility and high quality of education at all levels for children in these communities, including through the strengthening of intercultural bilingual education for Indigenous communities.

Racial profiling

22. The Committee is concerned about the continued use of racial profiling by police officers and other law enforcement officials, which particularly affects members of Indigenous Peoples ... and which leads, in many cases, to police violence and, in some cases, to the death of the victims. It regrets the lack of information on laws at the federal and provincial levels that explicitly prohibit racial profiling. The Committee is also concerned by information according to which the State party has not fully complied with the judgment of 31 August 2020 of the Inter-American Court

of Human Rights in the case of *Acosta Martínez et al. v. Argentina*, in which the Court ordered, among other measures, that the State party should organize training on the discriminatory nature of racial profiling in the application of police powers of arrest and on the negative impact that it has on persons of African descent and should implement a mechanism for registering complaints from persons who claim to have been arbitrarily detained on the basis of racial profiling (arts. 2, 4 and 5).

23. In the light of its general recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials, the Committee recommends that the State party adopt legislation that expressly prohibits racial profiling by law enforcement officials at the federal and provincial levels. The Committee also recommends that the State party take the necessary measures to prevent and eradicate racial profiling, in particular by providing ongoing training for law enforcement officials at all levels of government that takes the aforementioned general recommendation into account, facilitating the reporting and recording of cases of racial profiling, and investigating and punishing those responsible. The Committee also recommends that the State party step up its efforts to fully comply with the judgment of the Inter-American Court of Human Rights in the case of *Acosta Martínez et al. v. Argentina*.

Excessive use of force by law enforcement officials

24. The Committee notes the measures taken to address cases of police and institutional violence, including the work undertaken by the National Directorate of Policies to Combat Institutional Violence of the Secretariat for Human Rights and training activities on the use of force for law enforcement officials. However, the Committee is concerned by numerous allegations of police violence, including some incidents resulting in the death of the victim, which disproportionately involve members of Indigenous Peoples.... It is also concerned by reports that victims or their families often encounter barriers to access to justice, including discrimination, and that, as a result, perpetrators often go unpunished. Moreover, the Committee is concerned about the unavailability of harmonized reliable statistics, disaggregated by ethnicity of the victim, at the federal and provincial levels that would make it possible to ascertain the extent of this kind of violence (arts. 2 and 4–6).
25. The Committee recommends that the State party adopt the necessary measures at the federal and provincial levels to prevent acts of police and institutional violence, including by expediting the adoption of the bill on a comprehensive approach to institutional violence by police officials in the security and prison services and conducting ongoing training programmes for law enforcement officials on the use of force in accordance with international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. It also recommends that the State party ensure that all cases of police and institutional violence are investigated, that those responsible are punished and that adequate reparations are provided to victims and their families. Lastly, the Committee recommends the establishment of a registration system, at the federal and provincial levels, to generate harmonized reliable statistics, disaggregated, inter alia, by the ethnic origin, nationality and gender of the victims.

Freedom of peaceful assembly and human rights defenders

26. The Committee is concerned by reports of an increasing number of provincial legislative measures and initiatives that unduly restrict the right to peaceful assembly of minorities, in particular Indigenous Peoples, such as Decree No. 91/23 in Salta Province and a legislative initiative in Jujuy Province to reform the provincial constitution in order to place restrictions on social protest. It is also concerned by various allegations regarding the excessive use of force by law enforcement officials and members of private security companies against members of ethnic minorities, in particular against Indigenous Peoples who are protesting in defence of their rights. The Committee remains concerned by allegations of reprisals, intimidation, threats and the disproportionate use of criminal proceedings against leaders and members of Indigenous Peoples ... defending their rights, as well as against human rights defenders advocating for the rights of these groups. It is also concerned by allegations of speeches, including by high-level provincial officials, stigmatizing the Mapuche People and their leaders as a group associated with terrorism (art. 5).
27. The Committee recommends that the State party take all measures necessary to ensure the exercise of the right to peaceful assembly without any discrimination on the grounds of race, colour, descent or ascendance or national or ethnic origin, including at the provincial level. It also recommends investigating allegations of the excessive use of force during peaceful protests and reprisals, intimidation, threats and the disproportionate use of criminal proceedings against leaders and members of Indigenous Peoples ... defending their rights and against human rights defenders advocating for the rights of these groups. Moreover, the Committee recommends that appropriate measures be taken to combat the stigmatization of, and prejudice against, leaders and members of the Mapuche people seeking to defend their rights.

Consultation and free, prior and informed consent

28. The Committee notes the efforts undertaken by the State party in this regard, including the establishment of the Unit for Community Strengthening and Free, Prior and Informed Consultation under the National Institute of Indigenous Affairs in 2021 and the legislative measures taken and mechanisms established at the provincial level in relation to prior consultation. However, it remains concerned about the lack of regulations governing consultation procedures for obtaining the free, prior and informed consent of Indigenous Peoples and the lack of effective mechanisms for carrying out such consultations. The Committee is also concerned by allegations concerning the negative impact of extractive activities and infrastructure, tourism and agro-industrial projects on the territories, resources and traditional ways of life of Indigenous Peoples (arts. 2 and 5).
29. In accordance with its previous concluding observations, the Committee urges the State party to adopt a national law regulating consultation procedures for obtaining the free, prior and informed consent of Indigenous Peoples, to establish appropriate mechanisms for carrying out such consultations and to ensure the effective participation of Indigenous Peoples in the development of the aforementioned law and consultation mechanisms. It also recommends ensuring that federal and provincial legislative or administrative measures and all infrastructure and natural resource development projects that may affect Indigenous Peoples are subject to consultation with these communities with a view to obtaining their free, prior and informed consent. It also recommends ensuring that Indigenous Peoples effectively participate in the development of the national action plan on business and human

rights, that this plan reflects the importance of protecting and respecting the rights of Indigenous Peoples in the context of business activities and that effective, accessible mechanisms are in place to remedy any harm that may be caused to these communities by such activities.

Community ownership and evictions of Indigenous Peoples

30. The Committee remains concerned about the lack of adequate regulations safeguarding the communal ownership of lands traditionally occupied by Indigenous Peoples, notwithstanding the provisions of article 75 (17) of the State party's Constitution and the measures ordered by the Inter-American Court of Human Rights in its judgment of 6 February 2020 in the *case of Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. While the Committee notes the steps taken to complete the territorial survey or demarcation process provided for in Act No. 26160, it remains concerned about the limited progress made in carrying out the survey and the absence of a mechanism for the titling of lands ancestrally occupied by Indigenous Peoples. It does, however, acknowledge that some provinces have taken steps to this end, according to the State party's delegation. Moreover, while the Committee welcomes the fact that the Inter-American Court of Human Rights has approved the partial agreement reached between the communities of the Lhaka Honhat Association, it is concerned that important measures ordered by the Court, including the adoption of legislative and/or other measures to provide legal certainty for Indigenous communal property rights, have not yet been implemented. It is also concerned by information regarding the approval of a bill by the Chamber of Deputies of Mendoza Province on 29 March 2023 in which it is stated that "the Mapuche should not be considered Argentine native peoples under the terms of article 75 (17) of the national Constitution and international treaties" (art. 5).
31. In accordance with its previous concluding observations, the Committee urges the State party to adopt the necessary legislative and administrative measures to uphold the Indigenous communal property rights and to establish effective mechanisms for the titling of lands ancestrally occupied by Indigenous Peoples at the federal and provincial levels. It also recommends that the State party redouble its efforts to implement Act No. 26160 and to ensure the prompt completion of the survey of Indigenous territories, including by increasing the human, technical and financial resources allocated to the National Institute of Indigenous Affairs and the National Programme on the Territorial Survey of Indigenous Communities. It also recommends stepping up efforts aimed at fully complying with the measures ordered by the Inter-American Court of Human Rights in the Lhaka Honhat case. Similarly, it urges the State party to adopt the measures necessary to ensure that the rights enshrined in the Convention are fully upheld for all Indigenous Peoples in the State party, including the Mapuche People, at all levels of government, including at the provincial level.
32. The Committee remains particularly concerned about the fact that, despite the entry into force of Act No. 26160 and its extensions, which established a moratorium on the eviction of Indigenous Peoples, such evictions continue to be carried out. It is also concerned by the various allegations it has received concerning police violence against Indigenous communities in the context of such evictions and during protests against them, including cases of violence involving the Mapuche community Lafken Winkul Mapu in Villa Mascardi, which resulted in the death of Rafael Nahuel on 25 November 2017; the Cheru Tempa Guarani community in Salta

in July 2020; the Tusca Pacha community of the Kolla People in Jujuy in October 2020; and the communities of Pueblo de Tolombón and El Mollar in Tucumán in August 2021 and February 2022, respectively. The Committee is also concerned by reports of violence directed against Indigenous communities by armed gangs, particularly in the provinces of Santiago del Estero and Río Negro (art. 5).

33. In accordance with its previous concluding observations,¹¹ the Committee urges the State party to take all measures necessary to ensure that Act No. 26160 and its extensions, which prohibit evictions, are fully and effectively implemented throughout the national territory. It also recommends that the State party redouble its efforts to investigate police violence in the context of such evictions and of protests against them, as well as violence committed by armed gangs, to punish those responsible, to provide adequate reparations to the victims and to prevent acts of violence from being committed by public officials and by non-State actors and to ensure that Indigenous Peoples are protected from such acts.

Situation of Indigenous women, women of African descent and migrant women

34. The Committee welcomes the establishment of the Ministry for Women, Gender and Diversity in December 2019 and the adoption of Act No. 27610 on Access to Voluntary Interruption of Pregnancy and Decree No. 476/21, which allows persons to identify as non-binary on official identity documents. However, despite the State party's efforts, the Committee remains concerned about the fact that Indigenous women ... continue to face multiple forms of discrimination in all areas of social, political, economic and cultural life. It is particularly concerned by various reports of abuse and sexual violence suffered by Indigenous women and girls at the hands of Creole men ("chineo"), particularly in the north of the country, including against the women and girls of the Wichí People in Salta. It is also concerned by allegations concerning the detention by security forces of seven Indigenous women and six children from the Mapuche community Lafken Winkul Mapu in Villa Mascardi, Río Negro Province, on 4 October 2022, all of whom were reportedly held incommunicado for at least 72 hours in the context of a raid and violent eviction and four of whom are reportedly still being detained (arts. 2, 5 and 6).
35. In accordance with its previous concluding observations, and in the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party step up its efforts to combat the multiple forms of discrimination faced by Indigenous, Afrodescendent and migrant women by mainstreaming a gender perspective into all policies and strategies for combating racial discrimination at the federal and provincial levels. It also recommends that the State party adopt the measures necessary to prevent the perpetration of sexual abuse and sexual violence against Indigenous, Afrodescendent and migrant women and girls, taking into account the intersectional dimension of this type of violence and the need to develop culturally relevant policies with the participation of the women and communities affected. The State party should also investigate cases of violence against these women and girls, punish those responsible and provide adequate reparations to the victims, including women and girls of the Wichí People in Salta. Moreover, the Committee recommends that the State party adopt measures to prevent the criminalization of Indigenous women who are defending their rights, to ensure that they have effective access to justice and to uphold their fundamental rights and due process guarantees.

Complaints of racial discrimination and complaints concerning access to justice

38. The Committee notes that, according to the 2019 National Discrimination Map published by the National Institute to Combat Discrimination, Xenophobia and Racism, 72 per cent of the surveyed population reported having experienced discrimination – an increase from 65 per cent in 2013 – and 93 per cent perceive that there is a high or moderately high level of discrimination in Argentina. Of the people surveyed, 64 per cent of those belonging to an Indigenous group... Almost 60 per cent of the persons surveyed did not know that it was possible to file a legal complaint concerning discrimination and only 3 per cent had filed such a complaint in the past. In this regard, the Committee regrets the lack of detailed information on complaints regarding acts of racial discrimination, hate speech, racist violence and related crimes lodged with judicial or other national and provincial institutions and on the outcome of the investigations carried out, the sanctions imposed and the reparations granted to the victims. The Committee notes the proposed amendments to the anti-discrimination legislation that would place the burden of proof on those accused of discrimination but regrets that they have not yet been adopted. The Committee is also concerned by reports of racist attitudes and racial discrimination in the judicial system and reports of a lack of interpreters, bilingual public defenders and specialists in the traditional justice systems of Indigenous Peoples and a lack of training for law enforcement officers, public defenders, lawyers, judges and judicial officials on Indigenous customary law (arts. 5 and 6).
39. The Committee recalls that the absence of complaints does not necessarily mean that racial discrimination does not exist but rather may indicate a lack of awareness of the remedies available, a lack of will on the part of the authorities to prosecute perpetrators, a lack of trust in the justice system or a fear of reprisals on the part of victims. The Committee recommends that the State party: ... (e) Prevent, identify and sanction racist attitudes and racial discrimination in the judicial system, increase the number of interpreters and specialists in the traditional justice systems of Indigenous Peoples and promote training programmes for law enforcement officials, public defenders, lawyers, judges and judicial officials on Indigenous customary law....

Education and other measures to combat racial prejudice and intolerance and to address the legacy of the past

42. The Committee notes the context provided by the State party's delegation with regard to the politically motivated effort made in the past to wipe out the country's Afrodescendent and Indigenous populations and to erase their history and with regard to the subsequent denial of the existence of these communities and the attempts to render them invisible. It also notes the fact that the State party has taken various measures to reverse this systemic and structural process, which is deeply rooted in Argentine society, through education, cultural activities and oversight. ... (arts. 2, 5 and 7).
43. Recalling the importance of education in combating prejudices that lead to racial discrimination and in promoting understanding, tolerance and friendship among all groups in society, in accordance with article 7 of the Convention, and the importance of intensifying the fight against the structural racism lurking within all institutions of society, the Committee recommends that the State party:
- (a) Develop and implement, in consultation with Afrodescendent and Indigenous communities, guidelines for combating structural and institutional racism at the federal and provincial levels;

- (b) Adopt laws at the federal and provincial levels that provide for mandatory training for all civil servants on racism, racial discrimination and racist speech and violence in the same vein as the Micaela Act (No. 27499) and the Lucio Act, which provide for mandatory training on gender and gender-based violence and on children's rights and violence against children and adolescents, respectively;
- (c) Establish mechanisms for dialogue with representatives of Indigenous Peoples and Afrodescendent communities with a view to the establishment of institutions dedicated to the study and development of wide-ranging proposals and initiatives aimed at providing reparations for historical injustices....

Follow-up to the present concluding observations

50. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 11 (a) (Office of the Ombudsperson and Office of the Ombudsperson for Audiovisual Communication Services), 15 (b) (national plans on human rights and non-discrimination) and 33 (community ownership and evictions of Indigenous Peoples) herein.

Paragraphs of particular importance

51. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 23 (racial profiling), 29 (consultation and free, prior and informed consent) and 35 (situation of Indigenous women, women of African descent and migrant women) herein and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

12. Niger, CERD/C/NER/CO/22-25, 24 May 2023

Discrimination against ethnic minorities and Indigenous communities

16. The Committee notes that the State party does not recognize the existence of Indigenous Peoples on its territory (the Tuareg, Toubou and Fula). Despite the State party's efforts, certain ethnic minorities, particularly nomadic populations, continue to face challenges in enjoying their rights, including their economic, social and cultural rights (arts. 2 and 5).
17. Recalling the recommendation made in its previous concluding observations, the Committee recommends that the State party continue to take appropriate measures to ensure the fulfilment of the economic, social and cultural rights of ethnic minorities, including the adoption of a national strategy on the situation of these groups, particularly nomadic populations and those who identify as Indigenous Peoples (the Tuareg, Toubou and Fula).

13. The Philippines, CERD/C/PHL/CO/21-25, 23 May 2023

Concerns and recommendations

Statistics

5. The Committee notes the statistics submitted by the State party, which provide the total population of Indigenous Peoples disaggregated by geographic location. However, the Committee regrets the lack of comprehensive and reliable publicly available statistics on the demographic composition of the population and data on socioeconomic indicators, disaggregated by geographic location, sex, gender, age

and ethnic or national origin, including on non-citizens such as migrants, refugees, asylum-seekers, stateless persons and internally displaced persons, which limits the Committee's capacity to evaluate how different groups living in the State party exercise their rights under the Convention (arts. 1, 2 and 5).

6. Recalling its reporting guidelines, the Committee recommends that the State party establish a system to systematically collect comprehensive data, based on the principle of self-identification, on socioeconomic indicators, disaggregated by geographic location, sex, gender, age and ethnic or national origin, including on noncitizens, to enable the Committee to better evaluate how different groups living in the State party exercise their rights under the Convention. The Committee invites the State party to make these statistics publicly available and to include them in its next periodic report.

Criminalization of racist hate speech and hate crimes

11. The Committee is deeply concerned by reports of hate speech, hate crimes and incitement to racial hatred by public and government officials, including statements made calling for the bombing of Indigenous Peoples and the rape of women belonging to ethnoreligious minority groups. The Committee is concerned that the domestic law of the State party does not contain provisions that expressly declare racist hate speech and hate crimes offences punishable by law in accordance with article 4 of the Convention. In particular, the Committee is concerned by the information provided by the State party that racist hate speech is criminalized under the vague provisions prohibiting defamation under the Revised Penal Code and the Cybercrime Prevention Act 2012, which have been broadly interpreted so as to criminalize statements made by individuals exercising their freedom of speech, including those advocating their rights under the Convention, and have in turn silenced further expression (arts. 4, 6 and 7).
12. Recalling its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention, No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech, and recalling the recommendation of the Human Rights Committee that the State party decriminalize defamation, the Committee recommends that the State party: (a) Review its legal framework to explicitly declare hate speech and hate crimes offences punishable by law, criminalizing racist hate speech only in the most serious of cases, when proven beyond reasonable doubt, and governed by the principles of legality, proportionality and necessity...

Lands, territories and resources of Indigenous Peoples

13. The Committee notes the protection afforded under legislative provisions, including the Indigenous Peoples' Rights Act of 1997. However, the Committee is concerned about:
 - a) Extractive and development projects being carried out on lands owned or traditionally used by Indigenous Peoples, particularly in Mindanao, Negros island, Luzon island and Quezon Province and following Executive Order No. 130 of 2021, by which the mining moratorium was lifted, without their free, prior and informed consent;
 - b) The lack of legal certainty and of timely and effective mechanisms to ensure the protection of the rights of Indigenous Peoples and guarantees with regard to the titling, delimitation, demarcation and restitution of lands and territories traditionally occupied by Indigenous Peoples;

- c) Barriers to access to justice faced by Indigenous Peoples, including as a result of their geographic remoteness, linguistic barriers, and lack of understanding or awareness of laws and judicial processes, which limit their ability to access effective remedies, including fair and just compensation for the lands, territories and resources that they own or have traditionally used that have been confiscated, occupied, depleted or damaged (arts. 5 and 6).
14. The Committee recommends that the State party:
- a) Ensure that Indigenous Peoples are consulted on projects or legislative or administrative measures that affect the land and natural resources that they own or have traditionally used, with a view to obtaining their free, prior and informed consent;
 - b) Implement existing legislation, including the Indigenous Peoples' Rights Act of 1997, and provide in a timely manner the necessary legal recognition in accordance with international standards to guarantee the protection of Indigenous Peoples' right to own, use, develop and exercise full control over their lands, territories and resources;
 - c) Adopt appropriate procedures, in coordination with judicial and agricultural authorities and other relevant institutions, to facilitate the reclamation and restitution of ancestral lands and territories;
 - d) Address barriers to access to justice, including those resulting from geographic remoteness, linguistic barriers, and lack of understanding or awareness of laws and judicial processes, and guarantee the availability of legal aid and alternative dispute resolution in accordance with the rights, customs, traditions and cultures of the individuals and communities affected;
 - e) Ensure access to effective remedies, with an emphasis on restitution, for Indigenous Peoples with regard to their lands, territories and resources, and in situations in which such remedy is considered by a court of law to be materially impossible, provide just and fair compensation and adequate and culturally appropriate relocation options for the Indigenous Peoples affected;
 - f) In accordance with the Guiding Principles on Business and Human Rights, strengthen the framework of policies and their implementation with a view to preventing business entities from engaging in activities that adversely affect the rights of Indigenous Peoples, among other groups.

Situation of ethnic, ethno-religious and ethno-linguistic minority groups and Indigenous Peoples in the context of armed conflict

15. While noting the establishment of the Bangsamoro Autonomous Region in Muslim Mindanao, the Committee remains concerned by the persistent violent clashes between security forces and non-State armed forces, which disproportionately affect ethnic, ethnoreligious and ethno-linguistic minority groups and Indigenous Peoples, particularly in the regions of Mindanao and Negros island. The Committee is deeply concerned by the reports of serious human rights violations faced by these communities, including unlawful killings, abductions, enforced displacement, attacks and destruction of property, including schools. While noting the measures taken by the State party to address the basic needs of the communities inhabiting the regions affected by conflict and facing poverty, including through the Barangay Development Programme, the Committee notes with concern those communities' continued lack of access to basic social services and the harassment, intimidation, attacks and killings of community leaders expressing their basic needs and of community service providers (art. 5).

16. The Committee recommends that the State party:
- a) Ensure prompt, thorough, independent and impartial investigations, including by the Ombudsman, of all human rights violations committed by State officials in the context of security operations, while guaranteeing effectiveness through the provision of adequate human, technical and financial resources and of reparations and psychological, material and other support to victims and their families, taking into consideration their customs, culture and traditions;
 - b) Take the measures necessary to ensure access to basic services for those living in areas affected by conflict, and, to this end, eliminate the practice of harassment, intimidation, attacks and killings of community leaders expressing their basic needs and of community service providers, in particular teachers and health-care providers;
 - c) Prioritize reconciliation and transitional justice processes, ensuring the meaningful participation of ethnic, ethno-religious and ethno-linguistic minority groups and Indigenous Peoples in the reconstruction of their communities, while guaranteeing accountability for human rights violations perpetrated by all armed forces;
 - d) Ensure a human rights-based and gender-sensitive approach to all measures taken in relation to the communities in regions affected by conflict, including by implementing the recommendations made by the Human Rights Committee, the Committee against Torture and special procedures.

Situation of internally displaced persons

17. While noting the mitigation and response measures taken by the State party, including those under Memorandum Circular No. 34 of 2020 on the implementation of an Indigenous Peoples' community-driven development programme, and the Transitory Family Support Packages, the Committee is concerned that the State party has not taken sufficient preventive measures, in view of the fact that individuals and communities, in particular those belonging to ethno-religious minority groups in Mindanao, continue to face a significant risk of displacement resulting from conflict, natural disasters and climate change-related disasters and forced displacement in the context of large-scale extractive and development projects. Furthermore, while noting the various measures taken by the State party to address the basic needs of internally displaced persons, including shelter assistance, cash-for-work and food-for-work programmes, the Committee remains concerned that durable solutions to ensure that internally displaced persons enjoy their rights guaranteed under article 5 of the Convention have yet to be found (art. 5).
18. The Committee recommends that the State party:
- a) Take steps to adopt legislation for the protection of the rights of internally displaced persons, including those in the Bangsamoro Autonomous Region in Muslim Mindanao;
 - b) Undertake impact assessments on a systematic basis and fulfil its obligation to ensure that consultations are held with Indigenous Peoples, before authorizing investment or development projects that could negatively affect their rights to the land and resources that they own or have traditionally used, with a view to obtaining their free, prior and informed consent;
 - c) Take all the steps necessary to prevent individuals and communities, in particular those belonging to ethnic minority groups and Indigenous communities, from becoming the victims of forced displacement, and when such displacement

cannot be avoided, ensure that the individuals and communities affected are provided with alternative adequate housing and compensation;

- d) Guarantee that all internally displaced persons have access to basic services, including through the allocation of sufficient financial and technical resources, while ensuring that a human rights-based and gender-sensitive approach is adopted in all policies and programmes taken to address the situation of internally displaced persons.

Complaints of racial discrimination and access to justice

21. The Committee notes the measures taken by the State party to ensure access to justice, including the training of lawyers and judges. The Committee also notes Republic Act No. 11691, the Judicial Marshals Act, on the establishment of the Office of the Judiciary Marshals to investigate intimidation, harassment, attacks and killings perpetrated against judges, lawyers and other court personnel. The Committee regrets the lack of detailed information provided, including the numbers, types and outcomes, on cases or complaints involving direct or indirect racial discrimination on all the grounds provided for in article 1 of the Convention, including those brought by individuals belonging to ethnic minority groups or Indigenous communities (art. 6).
22. The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recalls that an absence of cases or complaints relating to racial discrimination does not mean that there is an absence of racial discrimination in the State party, but rather that there may be a lack of awareness of the remedies available, barriers to access to justice, fear of reprisals or unwillingness on the part of authorities to investigate or prosecute perpetrators of such acts. The Committee recommends that the State party:
 - a) Conduct training for police officers, prosecutors and other law enforcement officials on the identification and registration of incidents of racial discrimination;
 - b) Conduct public education campaigns to encourage the reporting of racial discrimination and to raise awareness of available remedies;
 - c) Take effective measures to protect judges and lawyers from all forms of harassment, intimidation and attacks and investigate all reported incidents;
 - d) Guarantee the effectiveness of the Office of the Judiciary Marshals and ensure that it has sufficient human, technical and financial resources;
 - e) Establish a mechanism for collecting and publicizing statistics and information on cases and complaints of racial discrimination submitted to the national courts and other relevant authorities, including on the findings and on reparations provided to the victims.

Human rights defenders and civil society involvement

23. The Committee is deeply concerned by the enforced disappearance and killings of, and the constant acts of violence, threats, intimidation, harassment and reprisals against, human rights defenders and leaders of Indigenous, ethno-religious and ethno-linguistic communities. In particular, the Committee is deeply concerned by the reports of "redtagging", including the killing of 9 and arrest of 17 Indigenous Tumandok leaders in a joint military and police operation on 30 December 2020 following accusations of their affiliation with the New People's Army. Additionally, the Committee is concerned that the vague provisions of the Anti-Terrorism Act of 2020 may be interpreted for the purposes of judicial harassment, a practice which

may in turn compound criminal profiling of ethnic minority groups and Indigenous Peoples. While noting the establishment, under Administrative Order No. 35 of 2012, of the Inter-agency Committee on Extralegal Killings, Enforced Disappearance, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Person, the Committee is concerned by the low number of investigations conducted, the delay in the investigation processes and the lack of information provided on the outcomes and on the prosecutions brought in connection with the crimes. The Committee regrets that it received just one submission from civil society (arts. 5 and 6).

24. The Committee recommends that the State party:

- a) Take measures for and in consultation with the individuals and communities concerned, their families and those with whom they associate to protect them from enforced disappearance, killings and acts of violence, threats, intimidation, harassment and reprisals, particularly in the case of journalists and lawyers;
- b) Ensure that all allegations of such acts are investigated promptly, thoroughly, impartially and effectively, that those responsible are prosecuted and duly punished, and that the victims or their families are provided with full reparation;
- c) Review the Anti-Terrorism Act of 2020 in consultation with relevant stakeholders, including the Commission on Human Rights and civil society organizations;
- d) Organize information and awareness-raising campaigns on the crucial work done by human rights defenders, with a view to creating a climate of tolerance in which they can perform their work free from all forms of intimidation, threats and reprisals;
- e) Prevent judicial harassment by including modules on the principles of legal certainty, predictability and proportionality in training for law enforcement officers, prosecutors and judicial officials;
- b) Expedite the enactment of a bill on the protection of human rights defenders, and consult with the Commission on Human Rights and civil society organizations to that end.

Declaration under article 14 of the Convention

29. While recognizing the functions and powers of the Commission on Human Rights, which include the competence to investigate violations of civil and political rights, the Committee notes with concern that violations of other rights enshrined in the Convention may fall beyond the scope of this mandate, including those concerning the economic, social and cultural rights of individuals and communities belonging to ethnic minority groups and Indigenous Peoples. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

14. Russian Federation, CERD/C/RUS/CO/25-26, 28 April 2023

Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party: ... (b) Government decision no. 16 of 19 January 2019, which expands social benefits to extended family members of indigenous peoples....

Concerns and recommendations

Application of the Convention in the context of armed conflict

4. In light of the ongoing armed conflict in Ukraine initiated by the State party on 24 February 2022, the Committee recalls that, in situations of armed conflicts and hostilities, the applicability of international humanitarian law does not preclude the application of international human rights law, including the Convention, which operates independently. Reiterating the principle of territorial integrity of all Members States of the United Nations, as guaranteed under the Charter of the United Nations and General Assembly resolutions 68/262 and ES-11/4 on the territorial integrity of Ukraine, the Committee recalls that the State Party's obligations under the Convention apply not only on the territory of the State Party, but also to all other territories over which the State Party exercises effective control. Regretting the refusal of the delegation to provide any information concerning the ongoing armed conflict during the dialogue, the Committee is deeply concerned about:

...

- (c) Reports of forced mobilization and conscription, both within the territory of the State party as well as on other territories under its effective control, which disproportionately affect members of ethnic minorities, including indigenous peoples....
5. The Committee recommends that the State party: ... (d) End the practice of forced mobilization and conscription both within the territory of the State party as well as on other territories under its effective control, in so far as it disproportionately affects members of ethnic minority groups including indigenous peoples.

Statistics

6. The Committee takes note of the statistics provided by the delegation during the dialogue on the demographic composition of its population in light of the national population census conducted in 2021. Nevertheless, the Committee is concerned about the lack of information on the socioeconomic situation of ethnic minority groups, including Roma and indigenous peoples, as well as of non-citizens, such as migrants, refugees, asylum seekers and stateless persons, limiting the Committee's ability to properly assess the situation of such groups, including their socioeconomic status and any progress achieved by implementing targeted policies and programs (arts. 1 and 5).
7. Recalling its guidelines for reporting under the Convention, the Committee recommends that the State party produce disaggregated statistics on the socioeconomic situation of different ethnic groups, including the Roma and indigenous peoples, as well as on non-citizens, such as refugees, asylum seekers, migrants and stateless persons, and on their access to education, employment, health care and housing and their representation in public and political life, where applicable, with a view to creating an empirical basis for assessing the equal enjoyment of the rights enshrined in the Convention.

Complaints of racial discrimination

12. The Committee takes note of the information provided by the State party on convictions handed down under provisions of the Criminal Code and the Code of Administrative Offences for acts of racial discrimination between 2017 and 2022. Nevertheless, the Committee is concerned about the lack of detailed and disaggregated statistics on complaints in relation to racial discrimination filed with national courts and other relevant institutions, as well as on investigations, prosecutions, convictions, and sanctions relating to cases of discrimination, particularly on grounds of race or ethnic origin (art. 6).
13. Reiterating its previous recommendation⁷ and 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 recommends that the State party:
 - a) Collect detailed information and statistics on the number and types of complaints of racial discrimination, on the number of investigations, prosecutions and convictions, and on compensation provided to victims, disaggregated by age, gender, ethnic and national origin of the victims, and include those in its next periodic report;
 - b) Conduct training programmes for police officers, prosecutors and other law enforcement officials on the identification and registration of incidents of racial discrimination;
 - c) Undertake public education campaigns on the rights enshrined in the Convention and on how to file complaints of racial discrimination, particularly among Roma communities, indigenous peoples, stateless persons and migrant workers.

Racist hate speech and hate crimes

14. The Committee notes the information on the domestic legal framework to combat incitement to racial hatred, particularly under article 282 of the Criminal Code, and that racist motives are considered an aggravating circumstance for specific crimes. However, the Committee is concerned about: (a) The spread of hate crimes, racist hate speech, the dissemination of negative stereotypes against ethnic minorities, Roma communities, indigenous peoples ... including in the State-owned radio, television, press as well as on the Internet....
15. Recalling its general recommendations No. 7 (1985) relating to the implementation of article 4 of the Convention, No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:
 - a) Develop a system for filing complaints on hate crimes and hate speech while ensuring its accessibility and availability to those vulnerable to racist hate crimes and hate speech, such as members of ethnic minorities, indigenous peoples, Roma communities, migrants and people of African descent, and take effective measures to encourage the reporting of racist hate speech and hate crimes, including through awareness-raising campaigns;
 - b) Strengthen its efforts to combat the spread of racist hate speech over the media, Internet and in social media in close cooperation with Internet service providers, media outlets and social media platforms as well as members of groups vulnerable to racist hate speech;

- c) Firmly condemn any form of hate speech and distance itself from racist hate speech expressed by politicians and public figures, including members of parliament and religious leaders, and ensure that such acts are investigated and adequately punished;
- d) Assess and strengthen its data collection system on complaints of racist hate speech and racially motivated crimes, on prosecutions, on convictions and on penalties imposed for such acts in accordance with article 4 of the Convention and include relevant statistics in its next periodic report.

Civic space

18. The Committee remains concerned about the utilization of laws in the State party, particularly Federal Law No. 129-FZ dated 20 May 2015 (Law on Undesirable Activities of Foreign and International Non-Governmental Organisations) and Federal Law No. 121-FZ dated 20 July 2012 (Foreign Agents Law) and its amendments, to arbitrarily silence human rights defenders and civil society organizations, in particular those working on the rights of ethnic minorities, Roma communities, indigenous peoples, migrants and stateless persons. The Committee is particularly concerned about the recent amendments to the Foreign Agents Law which allow for labelling civil society organizations, activists and human rights defenders under broad and vague concepts, imposing undue registration and reporting requirements, establishing broad governmental oversight powers over the activities of such organizations and restricts access to funding. ...
19. The Committee recommends that the State party review its legislative framework, particularly the Foreign Agents Law and the Law on Undesirable Activities of Foreign and International Non-Governmental Organisations, to ensure an open space for the operation of civil society organizations and human rights defenders, including those working on the rights of ethnic minorities, Roma, indigenous peoples, and non-citizens, without fear of reprisals. It also recommends that the State party conduct effective, thorough, and impartial investigations into all reported cases of intimidation and harassment of, and threats and reprisals against, human rights defenders, journalists, lawyers, activists, and members of civil society organizations.
20. The Committee is concerned that the overly broad and vague definition of “extremist activity” included in the legislative framework on countering extremism, particularly Federal Law No. 114-FZ dated 25 July 2002 (Law on Combating Extremist Activities) and provisions of the Criminal Code, including articles 280 and 282, not only seriously endangers the legitimate exercise of rights to freedom of expression and association, but also allows for targeted applications against the operations and activities of civil society organizations, journalists and human rights defenders, in particular those working on the rights of ethnic minorities, Roma, indigenous peoples, migrants and stateless persons. The Committee is also concerned about information that the State Duma is considering a Bill to amend provisions of the Law on 62-FZ, of 5 June 2002 (Law on Citizenship of the Russian Federation) which may be used as a means of reprisal against human rights defenders, journalists and members of civil society organizations by revoking their citizenship due to alleged involvement in “extremist activity” as understood in the Law on Combating Extremist Activities and articles 280 and 282 of the Criminal Code (art. 5).
21. Recalling its previous recommendation, the Committee recommends that the State party review the Law on Combating Extremist Activities and articles 280 and 282 of the Criminal Code with a view to establish a precise definition of “extremist activity”

in line with article 4 of the Convention. The Committee also recommends that the State party ensure that the legislative framework on countering extremism is not used to intimidate, harass, arrest, detain or prosecute journalists, human rights defenders or representatives and employees of civil society organizations, including those working on the rights of ethnic minorities, Roma, indigenous peoples, and non-citizens, for exercising their right to freedom of opinion and expression and their right to freedom of association. It further recommends that the State party employ a human rights-based approach while considering amendments to the Law on Citizenship of the Russian Federation and avoid revoking citizenship as repressive or retaliatory measures against human rights defenders, members of civil society organizations, activists, lawyers and journalists for carrying out their activities.

Convention rights of residents of Crimea and the City of Sevastopol, temporarily occupied by the Russian Federation

[...]

23. Regretting the refusal of the delegation to provide information during the dialogue and reiterating the Committee's position on the legal status of Crimea under international law and the fundamental importance of the principle of territorial integrity of all Members States of the United Nations, the Committee is deeply concerned about:
 - a) Reports on numerous and serious human rights violations against members of ethnic minority groups and indigenous peoples in Crimea, in particular abductions, enforced disappearances, arbitrary detention, ill-treatment and the forcible transfer or deportation of inhabitants from these territories to the Russian Federation and the lack of information on measures taken to investigate such allegations and to provide victims with redress and support;
 - b) Reports on the destruction of and damage to Crimean Tatar cultural heritage, including tombstones, monuments and shrines, and the lack of information on investigations carried out into such allegations as well as on other measures to protect from such vandalism;
 - c) Reports on the barriers on using and studying in the Ukrainian and Crimean Tatar languages;
 - d) Reported restrictions on the Crimean Tatar's representative institutions and their political rights, such as the dissolution of the Mejlis and the prosecution and persecution of its members;
 - e) Reports that human rights defenders, activists, lawyers and journalists have increasingly become targets of politically motivated charges and prosecution, intimidation, surveillance, harassment, threats, reprisals and assassinations, as a consequence of their work;
 - f) Reports on the forced mobilization and conscription of members of Crimean Tatars and indigenous peoples in the ongoing armed conflict in Ukraine (arts. 2 and 5).
24. Recalling its previous recommendation,⁹ the Committee recommends that the State party:
 - a) Conduct effective, thorough and impartial investigations into allegations of violations of human rights committed against members of ethnic minority groups and indigenous peoples in Crimea, prosecute those responsible, and appropriately punish those convicted;

- b) Effectively investigate reports on the destruction of and damage to Crimean Tatar cultural heritage and adopt measures to prevent and protect from such acts;
- c) Adopt and implement measures to ensure the availability of education at all levels in the mother tongue of ethnic groups and indigenous peoples in Crimea;
- d) Adopt measures to ensure and respect the exercise of political rights by Crimean Tatars and the operation of their representative institutions, in particular by reinstating the Mejlis;
- e) Carry out effective, thorough and impartial investigations into all reported cases of arbitrary detention and prosecution, intimidation and harassment of, and threats and reprisals against community leaders, human rights defenders, activists, lawyers and journalists and to adopt and implement measures to ensure that they are able to carry out their work effectively and without fear of reprisals;
- f) End the practice of forced mobilization and conscription of members of Crimean Tatars and indigenous peoples in Crimea in the ongoing armed conflict with Ukraine.

Indigenous peoples

29. The Committee takes note of the adoption of Decision No. 16 of 19 January 2019, which expands social benefits to extended family members of indigenous peoples. Nevertheless, the Committee is concerned about:

- a) The fact that only 47 out of the approximately 190 groups of indigenous peoples are officially recognized as such due to the narrow definition of indigenous peoples in the legal framework which provides for a numerical ceiling of 50,000 individuals, beyond which self-identified indigenous groups are not be classified as indigenous and thus prevented from enjoying legal protection of their lands, resources and livelihoods;
- b) The State party has not established any territory of traditional resource use with federal status since the adoption of the Federal Law No. 49-FZ of 2001 (Law on Territories of Traditional Nature Use of Small Indigenous Peoples of the North, Siberia and the Far East), which is limiting the protection of indigenous peoples with regard to their land and territorial rights;
- c) The insufficient federal legislation and policy frameworks on free, prior and informed consent of indigenous peoples, and reports on the inadequacies of consultation processes with indigenous peoples on the development of legislation and other measures affecting their rights, on issuing permits to economic and development projects on their lands, and before lands are expropriated;
- d) The impact of and irreparable damage caused by economic, industrial, and natural resource development projects, including mining projects, particularly regarding pollution and climate change, on indigenous peoples' right to use and enjoy their traditionally owned lands and natural resources, including their right to food and the right to a clean, healthy, and sustainable environment;
- e) Reports on excessive bureaucracy and restrictive regulations for indigenous fisheries, while prioritizing and facilitating commercial fisheries;
- f) The reportedly high rate of suicide and self-harm among indigenous youth (art. 5).

30. Recalling its previous recommendations, the United Nations Declaration on the Rights of Indigenous Peoples, and its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:
- a) Review the legislative framework with a view to amend the definition of indigenous people by repealing the requirement of numerical ceiling to be officially recognized as indigenous peoples and ensure full and effective legal protection of all indigenous peoples' cultural, territorial and political rights;
 - b) Adopt legislative and operational measures on regional and federal level to ensure meaningful and effective consultation with indigenous peoples on any projects or legislative or administrative measures that may affect their land, territories and resources, with a view to obtaining their free, prior and informed consent;
 - c) Establish territory of traditional resource use with federal status in accordance with the Law on Territories of Traditional Nature Use of Small Indigenous Peoples of the North, Siberia and the Far East;
 - d) Conduct timely and systematic environmental and human rights impact assessments and effective and meaningful consultations with indigenous peoples before authorizing any economic, industrial, and natural resource development projects that may affect their land, territories and resources and continuously monitor such projects after authorization;
 - e) Adopt measures to prevent, mitigate and redress the impact of economic, industrial, and natural resource development projects, as well as pollution and climate change, on the lands, territories and resources of indigenous peoples with a view to protecting their customs and traditional ways of life, and the right to a clean, healthy, and sustainable environment;
 - f) Review the legal and policy frameworks on fishing, with the aim of facilitating indigenous peoples' access and repealing any discriminatory restrictions on indigenous fisheries;
 - g) Adopt measures to increase the availability and accessibility of quality mental health services to indigenous peoples and to tackle and address the root causes of the prevalence of the high incidents of suicide and to provide individuals and groups who are at risk of suicide with effective prevention programmes and support services.

Other recommendations

Ratification of other treaties

37. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Domestic Workers Convention, 2011 (No. 189) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization. ...

B. EARLY WARNING/URGENT ACTION AND FOLLOW UP PROCEDURES

1. Bangladesh, 13 December 2024

I write to you in relation to the Committee's letters of 31 August and 8 December 2023 regarding the information received under its early warning and urgent action procedure regarding the situation of Indigenous peoples in Chittagong Hill Tracts of Bangladesh.

The Committee thanks the State party for its response to the letters and the information provided regarding measures taken to protect and develop the unique local culture and tradition of the small ethnic populations, tribes, and communities. The Committee notes the information that the Small Ethnic Communities Cultural Institutions Act of 2010 aims at preserving and promoting the cultural heritage, language, religious practices, and traditional lifestyle of all ethnic communities in the hill districts and the plains. It also notes the information that the State party is promoting sustainable infrastructure development and the socio-economic well-being of the Chittagong Hill Tracts region.

The Committee also takes note of the information provided by the State party that activities of the Law Enforcing Agencies of the three hill districts, where the majority of Bangladesh ethnic minorities live, are regularly monitored and that military personnel deployed in the region are sensitized about human rights and the consequences they may face in case of any human rights violation or abuse. The Committee also notes the information on the commitment of the State party to ensure adequate protection of the rights of ethnic minorities to own, develop, and control their land, territories, and resources and that a Commission responsible for resolving land disputes has been established.

The Committee notes the information that, under Section 64 of the Hill District Council Acts, no land shall be leased out, settled with, purchased, sold out, or transferred without the prior approval of the concerned Hill District Council. It takes note of the information that ethnic communities living in the Chittagong Hill Tracts region enjoy the right to permanent residence by holding a permanent resident certificate so that only these communities can buy and sell their properties. Furthermore, the Committee takes note of the information that consultation mechanisms have been established through the three different Hill District Council Acts, aiming to ensure that the ethnic minority people are consulted on projects and legislative or administrative measures that affect their land and natural resources.

The Committee also notes the information provided by the State party that the Chairmen of the three Hill District Councils and two-thirds of the members of each of the Councils must be elected from ethnic minority communities. It notes the information that after consultation with the concerned ethnic minority people, the Hill District Councils design and implement development projects. It also notes the information that health services are provided through community clinics and mobile medical teams under the Councils' supervision. Moreover, the Committee notes the information that since 2017, the State party has provided the children of five minority groups with free textbooks and teaching materials written in their languages.

The Committee takes note of information on the State party's stated commitment to the implementation of the Chittagong Hill Tracts Peace Accord of 1997, and information on the State party's view that progress has been made in different aspects of the Accord, such as the withdrawal of military camps, the rehabilitation of internally displaced persons, and the establishment of the Ministry of Chittagong Hill Tracts Affairs, of the

Chittagong Hill Tracts Regional Council, and of the three Hill District Councils. Moreover, the Committee notes that the State party is committed to solving issues related to the implementation of the Accord and that an inter-ministerial committee continuously assesses its implementation progress and reports to the Peace Treaty Monitoring Committee for further action.

In accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on measures adopted to investigate allegations of human rights violations against Indigenous peoples in the Chittagong Hill Tract region and to ensure that Indigenous peoples have access to effective legal remedies and reparations for human rights violations as part of its periodic report, overdue since 11 July 2002. In particular, the Committee requests information on steps taken to review the “Armed Forces policy to counter the insurgency movement by the people in CHT” and address the allegedly gross and systematic human rights violations against Indigenous peoples by the military troops and other paramilitary forces, and further and updated information on the measures to ensure that Indigenous peoples enjoy economic, social and cultural rights, without discrimination of any kind, in accordance with international treaties and standards.

2. Canada, 13 December 2024

I write to you in relation to the Committee’s letter of 8 December 2023 regarding the information received under its early warning and urgent action procedure in relation to the allegations on the impacts of Line 5 crude oil pipeline on the rights of Indigenous peoples in Canada and in the United States of America.

The Committee thanks the State party for its response to the letter and for the information provided. The Committee notes the information that Line 5 falls under the provisions of the 1977 Canada-U.S. Transit Pipelines Treaty (hereinafter the 1977 Treaty). It notes the information that the State party invoked the dispute settlement mechanism of the 1977 Treaty twice, first on October 4, 2021, concerning the segment in the Straits of Mackinac (the State of Michigan), and again on August 29, 2022, concerning the segment that crosses the Bad River Band of the Lake Superior Chippewa Tribe’s Reservation (in Wisconsin), and that diplomatic negotiation are still ongoing with the aim of reaching a mutually acceptable solution whereby the concerns of Indigenous peoples in Wisconsin and Michigan are addressed, while also respecting Canada’s rights under the 1977 Treaty.

The Committee also notes the information provided on the State party’s support to the proposals by Enbridge, the transnational corporation registered in Canada operating Line 5, to build a replacement segment of Line 5 outside and around the Bad River Band’s Reservation in Wisconsin and to place the Line 5 segment currently resting on the lakebed Straits of Mackinac within a tunnel bored underneath the Straits. The Committee further notes the information that the proposed projects fall under the jurisdiction of the United States of America and thus its regulatory framework applies concerning the permission and environmental impact assessment processes, as well as, concerning the respect of the rights of Indigenous peoples, particularly in relation to obtaining their free, prior, and informed consent. It notes the information provided that the permitting and environmental impact assessment processes are ongoing in the United States of America, including by the Pipelines and Hazardous Materials Safety Administration (PHMSA) and the review by the United States Army Corps of Engineers. Lastly, it notes the information that permitting and environmental impact assessment processes allow for participation in the consultation process to all interested parties.

The Committee also notes the information that the State party is not a party in the two cases against Enbridge in the United States of America concerning Line 5, notwithstanding the submission of amicus curiae in these cases. It also takes note of the information that the State party takes no position on United States domestic law as it relates to any of these proceedings pertaining to Line 5.

The Committee also notes the information that the State party takes no position regarding measures taken by Enbridge to engage with Indigenous peoples in Michigan and Wisconsin regarding the two proposed projects and that the domestic regulatory and environmental assessment processes provide opportunities for the engagement by relevant stakeholders.

Regarding the 12 kilometres segment of Line in the territories of the State party, the Committee notes the information on the legislative framework on safety and environmental standards, as well as the oversight and investigation mandate of the Canada Energy Regulator (CER) to ensure the protection of the environment in accordance with its commitments to achieving reconciliation with Indigenous peoples and implementing the UN Declaration on the Rights of Indigenous Peoples.

The Committee further notes the information on the Great Lakes Water Quality Agreement of 1972 and its Protocol between Canada and the United States of America that aim at ensuring binational consultation and cooperation to restore, protect and enhance the water quality and ecological health of the Great Lakes, while including Tribal, First Nations, and Métis governments to achieve the objectives of the Agreement.

Notwithstanding the information provided, the Committee regrets the lack of information on some of the allegations and concerns set out in the Committee's letter of 8 December 2023, particularly: (a) that continued operations of Line 5 and the risk of an oil spill could cause a disproportionate harm to the Anishinaabe Indigenous Peoples, to their way of life and to the right to their lands, resources, culture, health, and could also cause their forced displacement; (b) that, by supporting Enbridge's continued operation of Line 5, the State party enables discriminatory practices and poses foreseeable risks to the Anishinaabe people's rights; (c) the reported lack of consultations with affected Indigenous communities and lack of respect of the principle of free, prior and informed consent of these communities with regard to Line 5 pipeline; and (d) measures to decommission Line 5 in accordance with the recommendations of the UN Permanent Forum on Indigenous and the UN Special Rapporteur on the rights of Indigenous Peoples.

In this regard and in accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee kindly requests that the State party provide updated and detailed information on the impacts of Line 5 crude oil pipeline on the rights of Indigenous peoples as part of its combined twenty-fourth and twenty-fifth periodic reports, overdue since November 2021.

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

3. Cameroon, 13 December 2024

I write to you in relation to the Committee's letters of 31 August and 8 December 2023 regarding the consideration of information received under its early warning and urgent action procedure, related to the situation of Bagyeli Indigenous Peoples in the Océan department in Cameroon. The Committee thanks the State party for its response to the letters and takes note of the information provided, according to which:

- Customary communities, including the Bagyeli, who were already peacefully occupying or exploiting national estate domain lands, on 5 August 1974, may continue to occupy or use them, and may also, at their request, obtain land titles;
- Decree no. 76-165 of 27 April 1976 establishes the conditions for obtaining land titles, including for customary communities such as the Bagyeli, and sets up a simple and inexpensive registration procedure;
- Once in possession of the land title, customary communities can assert their ownership rights;
- The provisional concession of unoccupied or unexploited areas of the national domain is only granted for development projects that fall within the economic, social or cultural options of the State of Cameroon, and cannot in principle exceed five years;
- Before forwarding the dossier to the advisory committee, the Estates Department is obliged to obtain all relevant opinions, including those of the local communities, opportunity at which these communities may express their consent or opposition to the proposed measure;
- The advisory committee, chaired by a sub-prefect and comprising, among others, the chief and two notables of the village or community where the land concerned by the concession is located, issues a reasoned opinion on the application and also selects the lands that are essential for the village communities;
- The advisory committee only formulates its opinion after one or more inspection visits to the site are made and after consultations with local residents;
- Pursuant to article 30 of Law no. 2006/022 of 26 December 2006, when the execution of an administrative act, such as the act granting a concession, is likely to cause irreparable harm and provided that the contested decision does not concern public order, public safety or public tranquillity, the president of the administrative court may, on request, order a suspension of the execution of the act;
- The land referred to in the Committee's letter is part of the unoccupied or unexploited national estate domain and the State of Cameroon, as custodian of the estate domain, has granted a provisional concession to the company Cameroun Vert S.A. for an oil palm plantation project, in line with the economic, social or cultural options of the State of Cameroon;
- The application for the concession was examined by the advisory committee which, after visiting the site and holding consultations, issued a favourable opinion; the advisory committee did not consider the land to be essential to a community; Bagyeli chiefs and notables took part in the work of the advisory committee.

While taking note of the replies provided by the State party, the Committee regrets that it has not received sufficient information on all allegations included in its letters of 31 August and 8 December 2023, in particular those according to which: (a) the concession to Cameroun Vert S.A. was granted without the free, prior and informed consent of all affected Bagyeli communities, in compliance with applicable national law and international standards; (b) Bagyeli communities that have sought a legal interim relief through the suspension of the "degazettement" of forest lands, in November 2021,

as well as of decree N° 2022/112 of 7 March 2022, in November 2022, have been left with no judicial effective recourse to prevent the ongoing destruction of their forest areas; and (c) the traditional or customary ownership of the lands by Indigenous Peoples, including the Bagyeli, is not adequately recognized, respected or protected under Cameroonian legal framework, as it only permits the registration of customary land which is considered to be “developed” and the registration of lands which were already under customary use in 1974, which is very difficult to demonstrate for the Bagyeli, given the rotational agricultural practices of the Bagyeli.

In this regard, the Committee recalls the recommendations made to the State Party in paragraphs 26 and 27 of its concluding observations of April 2022 (CERD/C/CMR/CO/22-23), in particular to: (a) accelerate the review of the legislative framework for land ownership to ensure the protection of the right of indigenous peoples to own, use, develop and control their lands, territories and resources; (b) adopt measures to ensure consultation with indigenous peoples on any projects or legislative or administrative measures that may affect their lands, territories and resources and with a view to obtaining their free, prior and informed consent; and (c) take measures to ensure access by indigenous peoples to effective remedies and provide them with just and fair compensation for the lands, territories and resources that they have traditionally owned or used and which have been confiscated, occupied or used without their free, prior and informed consent.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on the situation of Bagyeli Indigenous Peoples in the Océan department, as part of its twenty-fourth to twenty-seventh periodic reports, which are due on 24 June 2025. In particular, the Committee requests updated information on steps taken to effectively protect their rights from any adverse impact from the concession granted to Cameroun Vert S.A, including measures adopted or envisaged to revoke the concession that affect the lands, territories or resources of the Bagyeli Indigenous Peoples until free, prior and informed consent is granted by these Indigenous Peoples following the full and adequate discharge of the duty to consult.

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

4. Guyana, 13 December 2023

I write to you in relation to the Committee’s letters¹ regarding the information received under its early warning and urgent action procedure related to the situation of the Akawaio indigenous villages of Tassarene and Kangaruma, the Wapichan people and the Chinese Landing Carib indigenous community.

The Committee thanks the State party for its engagement with the Committee and its responses. Regarding the Tassarene and Kangaruma villages, the Committee notes the information received from the State party on the demarcation process and that both villages received titles in July 2022. The Committee also takes note of the information on the engagement between the village councils and the Guyana Geology and Mines Commission regarding illegal operations and unauthorized mining activities on the lands of both villages. It also notes the information that, as of 2022, there were 262 active mining properties in Tassarene and 123 active mining properties in Kangaruma.

Regarding the mining project on Marudi Mountain and its impact on the Wapichan indigenous people, the Committee notes the information provided by the State party

that the mining exploration and prospecting activities started in the 1930s by several mining companies and that the Marudi Mountain is not titled indigenous land. It also notes the information that a mining company, Romanex (Vanessa Ventures) acquired the project in 1998, which engaged and developed partnerships with the village council of the Deep South Rupununi and surrounding communities, allowing small-scale mining on Mazoa Hill. The Committee also takes note of the information that the Ministry of Natural Resources conducted 11 consultations between December 2020 and August 2023 considering the agreement reached to regulate small-scale mining among Guyana Geology and Mines Commission, mining companies and Rupununi Miners Association. It further notes the information that the South Rupunini District Council refused to engage in the consultations of the agreement on regulating small-scale mining, and that the Rupununi Miners Association Cooperative Society Limited was established to represent the interests of miners and residents who were supportive of small-scale mining operations in Marudi Mountain.

Regarding the Environmental and Social Impact Assessment (ESIA) of the mining project on Marudi Mountain, the Committee takes note of the information provided by the State party on the conduct of two ESIA's in 2003 and 2018. It also notes the information that interagency consultations were conducted with primary stakeholders that included non-governmental organizations, such as the Amerindian People's Association and the Guyanese Organization of Indigenous Peoples. The Committee further takes note of the information provided by the State party on the implementation of safe environmental mining regulations and practices at the mining operations at the Marudi Mountain as well as on the monitoring role by the Guyana Geology and Mines Commission of the mining activities to ensure compliance with domestic environmental regulations.

Regarding the granting of the medium-scale mining concession to Mr. W. Vieira in the titled lands of the Chinese Landing Carib indigenous community, the Committee takes note of the information that the Inter-American Commission on Human Rights (IACHR) issued Resolution 41/2023, dated 21 June 2023, through which it granted precautionary measures in favour of the indigenous community. It further notes the information on the decision by the State party, in August 2023, to temporarily halt all mining activities and the information regarding the establishment of a multisectoral governmental fact-finding team to assess and investigate social and environmental issues related to the mining operations. The Committee also takes note of the information provided by the State party on the review of the police records of the Santa Cruz police outpost and the Acquero police station between 2017 and 2022 which revealed that there was no complaint submitted regarding threats against residents of the Chinese Landing indigenous community by miners and by members of the Guyanese police force.

The Committee takes note of the information that, in accordance with Article 142 of the Constitution, Article 57 of the Amerindian Act of 2006 and the State Lands Act (1972) Cap. 62:01, the domestic legal framework grants protection for occupational rights of miners and mining companies, including if mining concessions were granted before recognizing legal title of Indigenous communities to their lands, territories or resources.

The Committee notes the information on judicial and non-judicial remedies, such as the human rights commissioners and the Amerindian land title grievance redress mechanism, and the availability of legal aid. It further notes the information that the appeal submitted by the Chinese Landing village council is being considered by the Appeal Court.

The Committee takes note of the information on the consultation process with Indigenous communities regarding mining activities on their lands, in accordance with

Section 48 of the Amerindian Act of 2006, as well as the criteria to address Amerindian land titling claims. It also notes the information that the review of the Amerindian Act started with the consultation of the 242 Indigenous communities in the State party.

In accordance with Article 9(1) of the Convention and Article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on the mining projects on Marudi Mountain and its impact on Wapichan indigenous peoples as well as on the situation of the Chinese Landing Carib indigenous community in light of the medium-scale mining concession over their titled lands as part of its reply to the list of issues prior to submission of the fifteenth and sixteenth periodic reports, overdue since November 2021. In addition to the information already provided, the Committee requests detailed and updated information on: (a) measures taken to investigate allegations of human rights violations and abuses, including threats and violence, against residents of the Chinese Landing indigenous community by miners and by members of the Guyanese law enforcement; (b) the review process of the Amerindian Act of 2006 to ensure meaningful and effective consultation with Indigenous communities on any projects or legislative or administrative measures that may affect their land, territories and resources, with a view to obtaining their free, prior and informed consent; and (c) measures taken to conduct environmental and human rights impact assessments and effective and meaningful consultations with Indigenous communities before authorizing any economic, industrial or natural resource development projects that may affect their titled or untitled land, territories and resources.

Allow me, Excellency, to thank you for the information provided to date and to reiterate the wish of the Committee to continue to engage in a constructive dialogue with Guyana, with a view to ensuring the effective implementation of the Convention.

5. Canada, 13 December 2024

I write to you in relation to the Committee's letter of 29 April 2022 regarding the information received under its early warning and urgent action procedure related to the situation of the Secwepemc and Wet'suwet'en Indigenous communities in relation to the Trans Mountain Pipeline and the Coastal Gas Link Pipeline projects in the Province of British Columbia.

The Committee thanks the State party for its response to the letter and for the information provided. The Committee notes the information on reinitiating the consultation process with 129 Indigenous communities potentially impacted by the Trans Mountain Pipeline Expansion project. It also notes the information on the provision of funding to support their participation in the consultation process and that these consultations are recorded and documented in the Crown Consultation and Accommodation Report. It notes the information on the development of eight accommodation measures to address key concerns on the rights of Indigenous communities that were raised during the consultation process.

The Committee takes note of the position of the State party that it was impossible to reach an agreement on all issues, despite the aim of the consultations at finding common ground and seeking agreement. Lastly, it notes the information provided by the State party that the Province of British Columbia also consulted with all potentially impacted coastal Indigenous Nations to recommend new or amended conditions to the provincial environmental assessment certificate for the Trans Mountain Pipeline project. The Committee takes note of the information on the establishment in 2017 of

the Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion and Existing Pipeline to provide advice to regulators and monitor the project with regards to safety and environmental protection. It also takes note of the information on the implementation of the Indigenous Monitoring Program, which allows for monitors belonging to Indigenous communities to work with officials from the Canada Energy Regulator (CER) to complete compliance verification activities related to the Trans Mountain Pipeline project.

Regarding the Coastal Gas Link Pipeline, the Committee takes note of the information provided by the State party on the consultation carried out by the Province of British Columbia with potentially impacted Indigenous communities, which resulted in design changes for the project and imposing 32 legally binding conditions as part of its environmental assessment certificate. The Committee notes the information that the Province of British Columbia negotiated pipeline benefit agreements with 17 Indigenous groups and that Coastal GasLink also concluded separate benefit agreements with 20 Indigenous groups. It also notes the information that in 2022, 16 Indigenous groups along the pipeline route signed further equity agreements to allow these groups a shared ownership option in the Coastal GasLink Pipeline project upon its completion.

The Committee takes note of the information that some Wet'suwet'en Hereditary Chiefs oppose the Coastal GasLink project. The Committee also notes the information on the Memorandum of Understanding that was signed in May 2020 between the Government of Canada, the Province of British Columbia, and the Wet'suwet'en Hereditary Chiefs to continue the engagement and consultations to reach substantive agreements and clarification on Wet'suwet'en rights and title, including governance. It notes the information that the Memorandum of Understanding outlines areas of jurisdiction that will need to be addressed and that the consultations are ongoing.

The Committee also notes the information on the injunctions issued by the Supreme Court of British Columbia to prevent interference in the construction of the Trans Mountain Pipeline and the Coastal Gas Link Pipeline projects. It also notes information that law enforcement, including the Royal Canadian Mounted Police (RCMP) and its Community-Industry Response Group (C-IRG), are accordingly authorized to arrest and remove persons who have or are found to be breaching the terms of the respective orders. The Committee notes the information that the C-IRG arrested members of the Tiny House Warriors for breaching the injunction and that, as of November 2023, a total of 83 arrests were recorded in relation to the Coastal GasLink project, including ten detainees belonging to the Wet'suwet'en Indigenous community, who were arrested on traditional territories of the Wet'suwet'en Nation. The Committee notes the information that of these ten arrests, three activists belonging to the Wet'suwet'en Indigenous community were removed from the traditional territories of the Wet'suwet'en Nation as there was no facility properly equipped to accommodate their needs while in custody awaiting appearance before the Court. Lastly, the Committee takes note of the information that, in March 2023, the Civilian Review and Complaints Commission for the RCMP initiated an investigation into the activities and operations of the C-IRG.

The Committee takes note of the information provided that federal, provincial, and territorial governments have a constitutional duty to consult Indigenous peoples to protect rights of Indigenous peoples. It also notes the information on the United Nations Declaration on the Rights of Indigenous Peoples Act, which came into force in June 2021, and its Action Plan that includes 181 specific measures to uphold and advance the human rights of Indigenous peoples and address injustices, prejudice, violence, systemic racism and discrimination. It also notes the information that, under measure

32 of the Action Plan, efforts are envisaged to develop guidance on engaging in good faith with Indigenous peoples on natural resources projects in line with Article 32 of the UN Declaration on the Rights of Indigenous Peoples to consult and obtain their free, prior and informed consent, prior to the approval of any project affecting their lands or territories and other resources. It also notes the information on measures 66 and 68 of the Action Plan to develop coordinated approaches to the implementation of the right to participate in decision-making related to legislative, policy and program initiatives as well as to the consultation process with Indigenous peoples.

Notwithstanding the information provided, the Committee regrets the lack of detailed information on some of the allegations and concerns set out in the Committee's letter of 29 April 2022 and its Decision 1 (100), particularly regarding: (a) measures envisaged to cease the construction of the Trans Mountain Pipeline and the Coastal Gas Link pipeline, until free, prior and informed consent is obtained from all affected Indigenous communities of the Secwepemc people and the Wet'suwet'en people; (b) measures envisaged to cease the forced eviction of Secwepemc and Wet'suwet'en peoples; and (c) measures envisaged to prevent and to effectively investigate all reported cases of use of excessive force, arbitrary detention, intimidation and harassment of, and threats against, human rights defenders and protesters, in particular those belonging to the Secwepemc and Wet'suwet'en peoples, by the RCMP, C-IRG, and private security firms.

In this regard and in accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on the situation of the Secwepemc and Wet'suwet'en Indigenous communities in relation to the Trans Mountain Pipeline and the Coastal Gas Link Pipeline projects as part of its combined twenty-fourth and twenty-fifth periodic reports, overdue since November 2021.

Allow me, Excellency, to thank the State Party for the information provided so far and to reiterate the wish of the Committee to continue to engage in a constructive dialogue with Canada, with a view to ensuring the effective implementation of the Convention.

6. Namibia, 13 December 2024

I write to inform you that the Committee on the Elimination of Racial Discrimination ("the Committee") received information under its early warning and urgent action procedure in relation to the planned extension of the seaport in Lüderitz and its impacts on the rights of the Nama and Ovaherero ethnic groups. According to the information received:

- The Government of Namibia approved the extension of the Robert Harbour quay wall in Lüderitz as part of developing a green hydrogen facility, which would impact the site of the former Shark Island concentration camp where crimes, including genocide, were committed against Nama and Ovaherero ethnic groups in the former German South West Africa colony between 1904 and 1908;
- The abovementioned site, is considered a key site with deep historical significance, particularly to the Nama and Ovaherero ethnic groups, and the planned expansion would lead to long-term detrimental impacts on the narration of Namibian history through the erasure of a key site of genocide;
- The planned seaport expansion will entail underwater dredging, where the bodies of former camp inmates were thrown, and building over unmarked sites of graves of former camp inmates, which according to archaeological and archival research, are scattered across the outskirts of Lüderitz;

- Notwithstanding the conduct of the environmental impact assessment process, there has been no consultation with the Nama and Ovaherero ethnic groups regarding the planned port expansion on the site of the former Shark Island concentration camp in Lüderitz where their ancestors were subjected to genocide between 1904 and 1908; and
- The Nama and Ovaherero ethnic groups continue to face the legacies of their exclusion and marginalization that commenced under German rule in Namibia and face discrimination in accessing health care and education as well as limited participation and representation in public life.

The Committee is concerned that the allegations regarding the seaport expansion project, if verified, would infringe rights of the Nama and Ovaherero ethnic groups protected under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Specifically, the Committee is concerned about the reported lack of effective and meaningful consultation with the Nama and Ovaherero ethnic groups in commemorating the genocide as well as designating and recognizing historical and heritage sites. Furthermore, the Committee is concerned about the alleged lack of an impact assessment study of the project on this historical site.

In this regard, the Committee recalls its previous concluding observations concerning Namibia (CERD/C/NAM/CO/16-18, paras. 30 and 31).

In accordance with Article 9 (1) of the Convention and Article 65 of its Rules of procedure, the Committee requests the State party to provide information on the abovementioned allegations, particularly the project to expand the seaport in Lüderitz and action taken to protect the rights of the Nama and Ovaherero ethnic groups, by 31 March 2025.

7. Canada, 23 August 2024

I write to you in relation to the Committee's letter of 2 December 2022 regarding the information received under its early warning and urgent action procedure regarding the allegations on the lack of consultation with First Nations in relation to the allocation of COVID-19 relief funds in the provinces of Alberta and Saskatchewan and the process of drafting and preparing of the distinctions-based Indigenous health legislation.

The Committee thanks the State party for its response to the letter and for the information provided. The Committee notes the information on the allocation of Can\$ 2.1 billion to the Indigenous Community Support Fund to provide funding directly to First Nations on-reserve, self-governed and modern Treaty First Nations, Inuit communities, Métis organizations, as well as urban and off-reserve Indigenous organizations and communities, through direct allocations and needs-based requests. It also notes the information on the COVID-19 Public Health Funding and the access of First Nations communities in Alberta and Saskatchewan to deliver public health services in response to the pandemic. The Committee takes note of the information on the role of the Indigenous Services Canada to cooperate with partners and communities to mitigate the impacts of COVID-19 as well as on the establishment of the COVID-19 Vaccine Planning Working Group with federal, provincial territorial and Indigenous participation to coordinate the administration of vaccines for First Nations, Inuit and Métis communities.

The Committee also notes the information on the adoption of the UN Declaration Act in June 2021 and its Action Plan in June 2023 to ensure the respect and implementation of the United Nations Declaration of the Rights of Indigenous

Peoples. It takes note of the information on the federal commitment under the Action Plans, including to support initiatives for increasing First Nations control over service delivery and ensuring that health services are high quality and culturally safe; to support the improvement of health equity for Inuit and the advancement of Inuit self-determination over health services; and to continue working with Métis government and representative institutions to realize Métis specific equal access to health services and to ensure that the Métis Vision for Health informs the co-development of the distinctions-based Indigenous health legislation.

The Committee also notes that over 40 First Nations, Inuit, Métis and intersectional groups accepted to engage within their communities in this initiative. It notes that a summary report, publicly released, included the inputs received from Indigenous peoples about the state of Indigenous health and the vision of Indigenous peoples to improve access to high quality, culturally relevant and safe health services. It notes that the process of preparing the summary report was guided by a national coanalysis working group, composed of members of an Elders Advisory Circle, youth representatives and representatives from partner organizations. It also notes the establishment of 14 distinctions-based co-development tables to foster a collaborative approach. The Committee also notes the publication of a “Key Element” document in August 2023 that included measures to address issues during the previous phases and seeking feedback of First Nations, Inuit, Métis and provinces and territories.

The Committee takes note of the State party’s stated commitment to respect treaties and treaty relations with First Nations and that the drafting and preparing of the distinctions-based Indigenous health legislation is not intended to undermine existing Aboriginal or treaty rights that are guaranteed under section 35 of the Constitution Act, 1982.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party provide updated and detailed information on the process of drafting and preparing of the distinctions-based Indigenous health legislation as part of its combined twenty-fourth and twenty-fifth periodic reports that are overdue since November 2021. In particular, the Committee requests updated information on effective and meaningful consultations with Indigenous peoples on any legislative or administrative measures that may affect the effective exercise of their rights, specifically the drafting and preparation of the distinctions-based Indigenous health legislation, in accordance with international standards and the treaties concluded with Indigenous Peoples. Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Canada, with a view to ensuring the effective implementation of the Convention.

8. United States of America 23 August 2024

I write to inform you that the Committee on the Elimination of Racial Discrimination (“the Committee”) received updated information under its early warning and urgent action procedure related to the situation of Indigenous San Carlos Apache Tribe in the State of Arizona. According to the information received:

- The Indigenous Western Apache Tribes, including the San Carlos Tribe, inhabited the Oak Flat for centuries and have religious and cultural ties with it, particularly it is considered as the central location of the Apache creation and is a physical manifestation of the spirit world. The Indigenous Apache Tribes hold ceremonies integral to their Apache identity at the Oak Flat. The Oak Flat is also a place to

gather medicines and ceremonial items, as well as to seek and obtain peace and personal cleansing, according to the Apache religion, beliefs and traditions;

- An attempt to authorize land exchange for the benefit of a mining project failed due to the objection of the representatives of the Indigenous San Carlos Apache Tribe before the House and Senate committees;
- In December 2014, the U.S. Congress approved the land transfer under the adoption of §3003 of the National Defense Authorization Act for 2015 (“NDAA”) without carrying out consultations with the Indigenous San Carlos Apache Tribe. §3003 of the NDAA authorizes the United States Department of Agriculture (“USDA”) to convey 2,422 acres of Tonto National Forest, which includes Oak Flat, to Resolution Copper Mining, LLC, in exchange for territories owned by the mining company. The legislation requires the USDA to engage in consultations with the Indigenous San Carlos Apache Tribe to find mutually acceptable measures to address their concerns and to minimize the adverse effects on them resulting from mining and related activities;
- **§3003 of the National Defense Authorization Act stipulates that the land transfer shall occur within 60 days following the publication of the environmental impact assessment study by the United States Department of Agriculture;**
- the United States Department of Agriculture published the environmental impact assessment study on 15 January 2021, which was withdrawn on 1 March 2021, and the consultation was reinitiated and is still ongoing;
- 19 of the 22 American Indian tribes in Arizona are opposing the mining project, with the backing of the Inter-Tribal Council of Arizona and the National Congress of American Indians;
- The planned mining project would apply the “block cave mining” technique that will irreparably damage Oak Flat, causing irreversible harm to the territory and will prevent the full and free exercise of Apache traditional religion, prevent the harvesting of cultural foods and medicines, and prevent their access to sites.

The Committee is concerned that the allegations regarding the mining project, if verified, would infringe indigenous peoples’ rights protected under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Specifically, the Committee is concerned about the reported adverse impact of the mining project on the Indigenous San Carlos Apache Tribe way of life and their rights to practise and revitalize their religion, cultural traditions and customs as well as their right to own, develop, control and use their communal lands, territories and resources. The Committee is also concerned about the reported lack of consultations with the Indigenous San Carlos Apache Tribe to obtain their free, prior and informed consent regarding their ancestral lands in light of the adoption of §3003 of the National Defense Authorization Act for 2015 (“NDAA”).

The Committee recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples and its previous concluding observations concerning the United States of America (CERD/C/USA/CO/10-12, paras. 45, 46, 49 and 50). Accordingly, the Committee would like to request the State party to provide information on the above allegations as well as on the measures taken to:

- Protect, promote and respect the respect the distinct culture, religion, history, and way of life of the Indigenous San Carlos Apache Tribe;
- Ensure that Indigenous San Carlos Apache Tribe can exercise their rights to practise and revitalize their cultural traditions, religion and customs related to Oak Flat;

- Recognize and protect the rights of Indigenous San Carlos Apache to own, develop, control and use their communal lands, territories and resources;
- Ensure effective and meaningful consultation with Indigenous San Carlos Apache Tribe on any projects or legislative or administrative measures that may affect their land, territories and resources, with a view to obtaining their free, prior and informed consent.

In accordance with Article 9 (1) of the Convention and Article 65 of its Rules of procedure, the Committee requests the State party to provide information on the abovementioned allegations and the situation of Indigenous San Carlos Apache Tribe by 11 November 2024.

9. Australia, 26 April 2024

I write to you in relation to the Committee's letter of 29 August 2022 and to inform you that it has considered additional information received under its early warning and urgent action procedure relating to developments on aboriginal cultural heritage legislation in Western Australia and its impact on the human rights of Aboriginal peoples.

The Committee welcomes the repeal of Western Australian Aboriginal Cultural Heritage Act of 2021 on 15 November 2023. However, according to the information before the Committee, the Western Australian Government took the decision to reinstate, with some amendments, the former Aboriginal Heritage Act of 1972, without consultation with, or consent by, Aboriginal Peoples. According to the information received:

- Landowners can again apply under section 18 of the Act of 1972 for consent to use the land for a purpose that is likely to damage or alter Aboriginal cultural heritage, and that such consent is ultimately being assessed and granted by the Minister for Aboriginal Affairs who has full discretion to decide whether to allow the detrimental impact of significant cultural heritage;
- Since the commencement of the amended 1972 Act on 15 November 2023, 13 landowners have been given consent with conditions under section 18 to use the land for a purpose that is likely to damage or alter Aboriginal cultural heritage, one of those landowners being Rio Tinto, the company that destroyed 46,000-year-old heritage sites at Juukan Gorge;
- Another mining company, Equinox Resources, has also applied for a section 18 consent for the Hamersley Iron Ore Project without first consulting with Traditional Owners, who are concerned it will impact two significant heritage sites;
- There is a new obligation on landholders with a section 18 consent to notify the Minister for Aboriginal Affairs of any 'new information about an Aboriginal site on the land the subject of the consent', and in the event of new information being provided, the Minister may confirm, amend, or revoke and re-issue the consent, having regard to the 'general interest of the community';
- There is a right for both landowners and a native title party to apply to the State Administrative Tribunal for review of decisions made under section 18. However, the amended 1972 Act gives the Premier rights to intervene and 'call in' an application which is considered to raise issues of 'State or regional importance', i.e. the Premier will determine the application, removing the right to be heard by the Tribunal. The Premier has a broad discretion in making a decision to approve applications that might damage and destruct Aboriginal cultural heritage sites under this new provision;

- A section 18 consent is taken to have been given to the owner of lands within the Marandoo area, thereby reinstating the effect of the Aboriginal Heritage (Marandoo) Act 1992 which was repealed in 2023. As a result, the landowner, Rio Tinto, is again given permission to damage and destroy Aboriginal cultural heritage within the Marandoo area, which is of high concern given allegations that Rio Tinto allowed hundreds of Aboriginal cultural artefacts from the area to be thrown away at a rubbish dump in the 1990s, which the Traditional Owners were not informed about for decades;
- In the past, the Act of 1972 did not prevent the damage and destruction of sacred sites and other cultural heritage of Aboriginal peoples, such as the Juukan Gorge rock shelters;
- None of the 463 mining-related applications made since 2010 under the Act of 1972 were rejected. The Committee is deeply concerned about the allegations of lack of consultation and the failure to seek free, prior and informed consent of Aboriginal peoples for the restoration on 15 November 2023 of the Aboriginal Heritage Act of 1972 and that the current legislative framework in Western Australia does not adequately protect the cultural heritage of Aboriginal peoples.

Therefore, the Committee is concerned that the allegations received may amount to a breach of the State party's obligations enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and in this regard recalls its previous concluding observations in which it recommended the State party to ensure that the principle of free, prior and informed consent is incorporated into pertinent legislation and fully implemented in practice as well as to respect and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (CERD/C/AUS/CO/18-20, para. 22).

The Committee further recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights and interests of Indigenous Peoples are taken without their informed consent.

10. Canada, 26 April 2024

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to actions by Canadian state institutions, Canadian astronomical bodies and Canadian corporations involved in supporting the Thirty Meter Telescope (TMT) project in Hawaii, affecting the rights of indigenous peoples, the Native Hawaiians.

According to the information received:

- The TMT, a major development project, is planned to be constructed on Mauna Kea Mountain, a sacred site of immense religious, spiritual, and cultural importance for Native Hawaiians, without their free, prior and informed consent;
- Environmental impact assessments have acknowledged the substantial and adverse impact of previous astronomical projects on cultural resources and practices as well as on archaeological sites and human burials in Mauna Kea, among other harms, including the destruction of ahu (shrines) in preparation for the building of the TMT, occurred in 2015 and 2019;
- The Canadian federal government plays an essential role in the TMT project through direct funding, in-kind contributions and through Canadian state agencies, such as the National Research Council (NRC) and the Canada Foundation for Innovation;

- The NRC is directly involved in the development and construction of the TMT through its NRC Herzberg Astronomy and Astrophysics Research Centre;
- Canadian astronomical associations have an important role in the TMT project, in particular the Association of Canadian Universities for Research in Astronomy (ACURA) and the Canadian Astronomical Society (CASCA), which have created a joint committee (CASCA/ACURA TMT Advisory Committee or CATAC) to coordinate Canadian governance of the project;
- Private Canadian for-profit corporations are also directly involved in key aspects of the TMT project, such as Dynamic Structures, which was reportedly granted the bulk of the funding issued by the Canadian government for the TMT's massive domed enclosure, and ABB Canada, whose Space and Defense Systems section is the main industrial subcontractor for the optical systems associated with the TMT project;
- In November 2021, CATAC released a statement indicating that unless the TMT project has consent from the Native Hawaiians, Canada's astronomical community cannot support its construction on Mauna Kea, but to date it has not withdrawn its support for the project, despite lack of free, prior and informed consent by Native Hawaiians;
- Although construction of the TMT on Mauna Kea has been temporarily adjourned due to mass opposition, this construction may potentially restart at any time.

The Committee is concerned about the adverse impact and irreparable harm that the financing and support provided by the State party, Canadian astronomical societies and Canadian corporations for the construction of the TMT could have on the human rights of Native Hawaiians, particularly to their way of life and to the right to their lands, resources and culture. It is also concerned that, by supporting the TMT project, the State party enables discriminatory practices and poses foreseeable risks to the rights of Native Hawaiians, particularly in light of the lack of their free, prior and informed consent regarding their ancestral lands and the Mauna Kea Mountain. In this regard, the Committee is concerned that the allegations received may amount to a breach of the State party's obligations enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The Committee recalls its previous concluding observations in which it recommended the State party "to 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" and "to ensure access to justice through judicial and non-judicial remedies for violations of rights of persons by transnational corporations registered in Canada, operating abroad" (CERD/C/CAN/CO/19-20, para. 14; CERD/C/CAN/CO/21-23, para. 22).

The Committee further recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights and interests of Indigenous Peoples are taken without their informed consent and to ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs.

In light of the above, and in accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the Committee requests the State party to provide information on the abovementioned allegations and to submit its response by 26 June 2024.

The Committee wishes to bring to the attention of the State party that it has also sent a letter to the United States of America on this matter. The Committee further encourages

the State party to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples, which is mandated by the Human Rights Council (resolution A/HRC/RES/33/25, paragraph 2) to provide States with technical advice on the rights of Indigenous Peoples and facilitate dialogue between States, indigenous peoples and/or the private sector.

The Committee would like to request the State party to submit its overdue combined twenty-fourth and twenty-fifth periodic reports.

11. France, 26 April 2024 (Unoff. Transl.)

I am writing to inform you that the Committee has reviewed, as part of its early warning and emergency response procedure, information received regarding the impact of the West Guiana Power Plant (CEOG) project on the Kali'na indigenous people in French Guiana.

According to the information received:

- The construction of the CEOG by the private company Hydrogène de France (HDF) involves the deforestation of 78 hectares of a forest of major cultural importance for the Kali'na people of the village of Prosperité, on which their livelihoods depend, as it is in this forest that they practice their traditional activities of hunting, fishing, harvesting and agriculture;
- The land granted by the National Forestry Office for the project is located in areas over which the Kali'na people have had collective use rights since 2020 and over which they are awaiting a real transfer of land on the basis of an agreement between the French government and indigenous organizations signed on April 21, 2017;
- The Kali'na people and their traditional authorities are not opposed to the CEOG project as such, but to its location, and they have actively mobilized to prevent its construction due to its negative impact on their traditional way of life, livelihoods as well as on the ecosystem, forest, water resources, flora and fauna;
- Construction of the project began in August 2019 without any consultation and without the free, prior and informed consent of the Kali'na people;
- On July 16, 2021, CEOG regularized an agreement with the Prosperity Village Association, which represents the Kali'na Peoples of Prosperity, entitled "Mutual Commitment for a Partnership Agreement between CEOG and the Prosperity Village", under which CEOG explicitly committed to recognize and honor the rights, customs and culture of the Kali'na people of the Prosperity Village, recognizing their right to free, prior and informed consent;
- CEOG has started construction of the project, clearing several dozen hectares of forest in violation of its contractual commitment of July 16, 2021, to respect the principle of free, prior and informed consent of the Kali'na people;
- Several legal complaints filed against the CEOG project by the village of Prosperity and other associations have been rejected without its impact on the human rights of the Kali'na people being duly considered;
- The government The French government decided to intensify the presence of law enforcement and military personnel of the Gendarmerie in the area, including in the village of Prosperité, which has resulted in cases of excessive use of force against peaceful protesters of the Kali'na people; detentions, prosecutions and criminal convictions against leaders and members of the Kali'na people, including minors; the invasion of the privacy of the inhabitants of the village due to the

recurrent overflight of the village by observation drones of the Gendarmerie; and the confiscation of hunting tools, hindering the subsistence hunting activities of the Kali'na people.

The Committee is concerned about these allegations, in particular the alleged lack of free, prior and informed consultation and consent of the Kali'na people prior to the approval of the CEOG project, as well as the negative impact of the project on the lands, resources and traditional way of life of the Kali'na people. The Committee is also concerned about allegations of excessive use of force by law enforcement agencies, detention, prosecution and criminal convictions of Kali'na leaders and members, invasion of their privacy, and lack of effective access to justice by the Kali'na people for the protection of their rights in relation to the CEOG project.

Accordingly, the Committee is concerned that the allegations received may constitute a breach of the State party's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and a violation of the rights of indigenous peoples protected by the Convention. In this regard, the Committee recalls its previous concluding observations in which it recommended that the State party ensure that indigenous peoples are consulted prior to the approval of any project affecting the use of their lands or territories and other resources, with a view to obtaining their free, prior and informed consent; take the necessary measures to guarantee the right of indigenous peoples to own and use their lands, territories and resources, including through the necessary legal recognition and protection; and to recognize the collective rights of indigenous peoples, in particular their right to ancestral lands and the resources they traditionally use (CERD/C/FRA/CO/22-23, para. 14).

The Committee further recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decision directly affecting their rights and interests as indigenous peoples is taken without their informed consent; to provide indigenous peoples with an environment conducive to sustainable economic and social development; that is compatible with their cultural characteristics; to recognize and protect their rights to own, develop, control and use their lands, resources and communal territories and, where they have been deprived of lands and territories that have traditionally belonged to them or, otherwise, that they inhabited or used without their free and informed consent, to take measures to return those lands and territories to them.

In the light of the above, and in accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide information on the above-mentioned allegations and to submit its response by 26 June 2024. In particular, the Committee wishes to receive information on the measures taken to protect the human rights of the Kali'na people and to ensure the right to consultation and free, prior and informed consent of the Kali'na people affected by the CEOG project, as well as on the measures adopted or envisaged to change the location or suspend the CEOG project until the free consent, prior and informed information is obtained from the Indigenous peoples affected by this project, and to fully and adequately discharge the duty to consult. The Committee further encourages the State party to consider collaborating with the United Nations Expert Mechanism on the Rights of Indigenous Peoples, which is mandated by the Human Rights Council to provide technical advice to States on the rights of indigenous peoples and to facilitate dialogue among States, indigenous peoples and/or private sector entities (resolution A/HRC/RES/33/25, paragraph 2).

12. USA, 26 April 2024

I write to inform you that the Committee considered additional information received under its early warning and urgent action procedure regarding the construction of the Thirty Meter Telescope in Hawaii, and its impact on the rights of Indigenous Peoples, the Native Hawaiians. In this regard, the Committee refers to its letter of 10 May 2019 and the reply by the State party of 10 July 2019 relating to the same matter.

According to the information received, although construction of the TMT was temporarily adjourned due to broad opposition to the project by Native Hawaiians and other relevant stakeholders, the construction of the TMT on Indigenous Peoples' sacred site of Mauna Kea Mountain, may potentially restart at any time and still without their free, prior and informed consent.

The Committee remains concerned about continuous allegations of lack of adequate consultation and the failure to seek free, prior and informed consent of Indigenous Peoples in Hawaii regarding their ancestral lands in the Mauna Kea Mountain. The Committee is still concerned about the adverse impact and the irreparable harm that the construction of the TMT could have on the rights of Native Hawaiians, particularly to their way of life and to the right to their lands and resources. In this regards, the Committee is concerned that the allegations received may amount to a breach of the State party's obligations enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and a failure of ensuring that Indigenous Peoples can exercise their rights to practise and revitalize their cultural traditions and customs, and to protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources.

The Committee recalls its previous concluding observations in which it recommended that the State party guarantee, in law and in practice, the principle of free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, and the right of Indigenous Peoples to be consulted on any legislative or administrative measure that may affect their rights; as well as to take measures to effectively protect the rights of Indigenous Peoples from any adverse impact of infrastructure projects, and specifically address the situations that the Committee has considered under its early warning and urgent action procedure (CERD/C/USA/CO/10-12, para. 50).

The Committee further recalls its General Recommendation No. 23 (1997) on the rights of Indigenous Peoples, in which it calls upon States parties to ensure that no decisions directly relating to the rights and interests of Indigenous Peoples are taken without their informed consent, and to ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs.

In light of the above, and in accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the State party may provide information on the abovementioned allegations by 26 June 2024, including updated information on the measures taken to ensure the right to consultation and free, prior and informed consent to the Indigenous Peoples affected by the TMT project as well as on the measures adopted to consider suspending such project until free, prior and informed consent is obtained from Native Hawaiian Indigenous Peoples, following the full and adequate discharge of the duty to consult.

Recalling also its previous letter of 10 May 2019, the Committee encourages the State party to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples, which is mandated by the Human Rights Council (resolution A/

HRC/RES/33/25, paragraph 2) to provide States with technical advice on the rights of Indigenous Peoples and facilitate dialogue between States, indigenous peoples and/or the private sector.

13. Bangladesh, 8 December 2023

I write to you in relation to the Committee's letter of 31 August 2023 regarding the consideration of information received under its early warning and urgent action procedure, related to the situation of indigenous peoples in Chittagong Hill Tracts of Bangladesh.

In the abovementioned letter, the Committee expressed concern about the allegations received regarding the situation of indigenous people in Chittagong Hill Tracts (CHT) of Bangladesh, in particular of systematic and pervasive racial discrimination, which had reportedly been exacerbated by the deployment of the Army and paramilitary forces in the region. The Committee had also been apprised of a reported lack of legal recognition of the right of indigenous peoples to own, use, develop and control the lands, territories and resources traditionally used by them. In addition, indigenous peoples in the region also reportedly face severe challenges and inequalities in the enjoyment of economic, social, and cultural rights, in particular the right to education and the right to health.

The Committee notes with regret that the State party has not responded to the abovementioned letter and remains concerned that the allegations received may amount to a breach of the principle of non-discrimination and the State party's duty to recognize and protect the rights of the Indigenous Peoples to own, develop, control and use their traditional and communal lands, territories and resources.

The Committee recalls that in its previous concluding observations (CERD/C/304/Add.118, para. 9), it addressed the situation of the indigenous peoples in CHT, including concerns about reports of human rights violations by security forces present in CHT affecting the tribal population, as well as reports of arbitrary arrests and detentions, and ill-treatment. The Committee recommended that the State party implement effective measures to guarantee all Bangladeshis, without distinction based on race, colour, descent, or national or ethnic origin, the right to security of person and protection from the State against violence or bodily harm.

In accordance with Article 9 (1) of the International Convention on the Elimination of Racial Discrimination and Article 65 of its Rules of Procedure, the Committee reiterates its request to the State party to provide information on the following:

- a) The measures adopted to promptly and thoroughly investigate allegations of human rights violations against indigenous peoples in the Chittagong Hills Tracts and to ensure that indigenous people have access to effective legal remedies and reparations for human rights violations committed against them;
- b) The steps taken to review the "Armed Forces policy to counter the insurgency movement by the people in CHT" and address the allegedly gross and systematic human rights violations against indigenous people by the military troops and other paramilitary forces;
- c) The measures adopted to ensure adequate protection of the rights of indigenous peoples to own, use, develop and control their lands, territories, and resources and measures to ensure that the free, prior and informed consent is obtained from indigenous peoples concerned for any project affecting them;
- d) The mechanisms put in place to ensure that indigenous peoples are consulted on projects, legislative or administrative measures that affect the land and natural resources that they own or have traditionally occupied;

- e) The measures to ensure that indigenous peoples enjoy economic, social, and cultural rights, in particular the right to education and the right to health, without discrimination of any kind;
- f) The implementation of the Chittagong Peace accord of 1997.

The Committee requests the State party to submit its response by 15 March 2024 and would like once more to request the State party to submit its overdue 12th periodic report under the Convention as a matter of urgency.

14. Canada, 8 December 2023

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to the impact of Line 5 crude oil pipeline, on the rights of Indigenous Peoples in Canada and in the United States of America.

According to the information received:

- The continued operation of the 70 years old Line 5 pipeline, owned and operated by Enbridge, a Canadian corporation, poses a foreseeable risk of a catastrophic oil spill and threatens vital natural and cultural resources, thus disproportionately and discriminatorily endangering the culture, health, and lands of dozens of Indigenous communities in Canada and the U.S.;
- There are several documented failures and previous spill history of Line 5, which reportedly has spilled over 1 million gallons of oil over 33 incidents since 1953;
- In 2020, the pipeline was damaged so severely that a court in Michigan ordered Enbridge to temporarily shut it down;
- Natural changes in the surrounding landscape exacerbates the fragility of the pipeline such as the rapid and significant erosion of the Bad River and its migration towards the pipeline, which a Wisconsin court considered “an actual risk of significant rupture” in November 2022 and in June 2023, ordered Enbridge to establish a more stringent shutdown and purge protocol to address the risk from the ongoing erosion;
- The ongoing operation of Line 5 contributes to significant climate-induced harm to the Great Lakes and the natural resources vital to Indigenous Peoples, such as the Anishinaabe communities surrounding these lakes in Canada and the U.S.;
- In some areas, Enbridge is operating the pipeline without legal permission to cross tribal and state lands, and in June 2023 a Wisconsin court ordered Enbridge to decommission the stretch of the pipeline on the Bad River Band’s property, but gave Enbridge up to three years to reroute the pipeline primarily due to Canada’s assertion that such a measure would cause economic harm;
- In November 2020, the State of Michigan terminated the easement that allowed Enbridge to operate in the Straits of Mackinac based on threats to the environment and to Indigenous Peoples, but litigation over the matter is pending before courts;
- Despite the opposition of Indigenous communities to the continued operation of Line 5, orders by courts calling for Enbridge to decommission the pipeline on the Bad River Band Reservation, and the state of Michigan terminating the easement to operate in the Straits, Enbridge has continued its operations in total disregard of the right to free, prior, and informed consent of affected Indigenous Peoples;
- Affected Indigenous communities have not provided their free, prior, and informed consent for a project proposed by Enbridge to build a tunnel beneath the Straits to house a replacement pipeline, instead of decommissioning Line 5;

- The U.S. Environmental Protection Agency (EPA), environmental organizations, and tribal groups have raised substantial concerns regarding the environmental impact of the proposed replacement pipeline;
- Affected Indigenous Peoples from both sides of the border have been excluded from the ongoing negotiations between Canada and the U.S. regarding Line 5, despite their requests to participate.

The information received also alleges that the State party has failed to properly regulate Enbridge to ensure that its Line 5 operations respect Indigenous Peoples rights. It is further alleged that the State party continues to actively advocate for the operation of Line 5 despite the opposition of affected Indigenous communities and the recommendations made by the UN Permanent Forum on Indigenous Peoples and the Special Rapporteur on Indigenous Peoples to decommission Line 5. Reportedly, the State party has expressed support to the continued operation of Line 5, including by invoking its 1977 Transit Pipeline Treaty with the United States for diplomatic negotiations as well as before U.S. courts, arguing that the court must delay ordering decommissioning and defer to the negotiations under the Treaty. Moreover, according to the allegations received, the State party has acted against the opposition of Indigenous groups and excluded Indigenous communities from the design of its policy in relation to Line 5 and from participation in the transnational negotiations over the fate of the pipeline.

The allegations received by the Committee may amount to a breach of the State party's obligations to respect and protect Indigenous Peoples' rights enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In particular, the Committee is concerned that continued operations of Line 5 and the risk of an oil spill could cause a disproportionate harm to the Anishinaabe Indigenous Peoples, to their way of life and to the right to their lands, resources, culture, health, and could also cause their forced displacement. It is also concerned that, by supporting Enbridge's continued operation of Line 5, the State party enables discriminatory practices and poses foreseeable risks to the Anishinaabe People's rights. It is further concerned at the reported lack of consultations with affected Indigenous communities and lack of respect of the principle of free, prior and informed consent of these communities with regard to Line 5 pipeline.

The Committee notes that, in April 2023, the UN Permanent Forum on Indigenous Peoples called upon "Canada to re-examine its support for the Enbridge Line 5 oil pipeline, which jeopardizes the Great Lakes in the United States" as it "presents a real and credible threat to the treaty protected fishing rights of Indigenous Peoples in the United States and Canada" and recommended "that Canada and the United States decommission Line 5". Similarly, in its visit report of July 2023, the UN Special Rapporteur on the rights of Indigenous Peoples considered that the "transportation of crude oil and liquid natural gas by Canadian-owned Enbridge is creating the risk of a catastrophic oil spill that could contaminate the lands and waters of Indigenous Peoples on both sides of the border" and recommended that Canada cease the operation of Line 5 pipeline, until the free, prior and informed consent of the Indigenous Peoples affected is secured.

Furthermore, the Committee recalls its previous concluding observations in which it recommended the State party "to 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" and "to ensure access to justice through judicial and non-judicial remedies for violations of rights of persons by transnational corporations registered in Canada, operating abroad" (CERD/C/CAN/CO/19-20, para. 14; CERD/C/

CAN/CO/21-23, para. 22). The Committee also recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to the rights and interests of Indigenous Peoples are taken without their informed consent.

In light of the above, and in accordance with Article 9(1) of the Convention and Article 65 of its Rules of Procedure, the Committee requests the State party to provide information on the abovementioned allegations and to submit its response by 15 March 2024.

15. Canada, 8 December 2023

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to the murder of Indigenous women in the province of Manitoba, Canada, in 2022.

According to the information received:

- In December 2022, the police of Winnipeg in the province of Manitoba laid criminal charges against the alleged murderer of four Indigenous women during 2022;
- In June 2022, police concluded that the remains of two of the victims are located at the Prairie Green landfill, a privately run landfill in Winnipeg;
- Police have maintained that searching the Prairie Green landfill for remains would not be feasible since the women's remains are thought to have been placed in the landfill in May 2022, after which further debris and wet construction clay was deposited, and due to the potential for poisonous gases to be released from decomposing waste and asbestos;
- The feasibility study to evaluate whether the remains could be recovered from the Prairie Green landfill, requested by the Assembly of Manitoba Chiefs (AMC) and other Indigenous organizations and released in May 2023, concluded that there are risks of exposure to toxic chemicals and asbestos, but that these could be mitigated with the use of training and personal protective equipment ("PPE"), and did not identify any extraordinary circumstances or requirements for the search;
- Despite the outcome of the feasibility study, the government of Manitoba stated in July 2023 that it would not fund the search of the Prairie Green landfill and the federal government of Canada has not committed to authorizing the search;
- The refusal by Canadian authorities to undertake the search denies the dignity and dehumanizes the victims solely because they are Indigenous women, and denies their families closure, the right to mourn their loved ones and to bury their bodies with dignity;
- The failure by Canadian authorities to fully investigate the deaths of the victims, undermining the criminal case against their alleged murderer and increasing the chances that it will not be properly prosecuted and that their deaths will not be fully remedied for them, for their families, or for society, perpetuates the documented crisis of missing and murdered Indigenous women in Canada.

The allegations received by the Committee may amount to a breach of the State party's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), in particular the rights of the victims and their families to equal treatment before the tribunals, the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual as well as the right to ensure effective remedies.

The Committee is aware that in its visit report of July 2023, the UN Special Rapporteur on the rights of Indigenous Peoples noted that “despite the findings of the Royal Commission on Aboriginal Peoples (published in 1996), the Truth and Reconciliation Commission into Missing and Murdered Indigenous Women and Girls (published in 2015), and the National Inquiry (published in 2019), the number of missing and murdered Indigenous women and girls continues to increase”, and recommended the Government of Canada “to develop a joint action plan to advance implementation of the National Inquiry’s 231 calls to justice, along with a comprehensive and coordinated national violence prevention strategy for Indigenous women and girls.”

Furthermore, the Committee recalls that in its previous concluding observations, it expressed concern at the lack of an independent mechanism in the State party to re-examine cases where there is evidence of inadequate or biased investigations, and at the failure to build transparent and accountable relationships with survivors, families and stakeholders, and recommended that the State party take immediate action to end violence against indigenous women and girls, provide support and access to equal services for survivors, and enact a national action plan on violence against women, with special provisions to end the high rates of violence against indigenous women and girls (CERD/C/CAN/CO/21-23, para. 38 and 24/a).

In light of the above, and in accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the Committee requests the State party to provide information on the abovementioned allegations and to submit its response by 15 March 2024.

16. Cameroon, 8 December 2023

I write to you in relation to the Committee’s letter of 31 August 2023 regarding the consideration of information received under its early warning and urgent action procedure, related to the situation of Bagyeli Indigenous Peoples in the Océan department in Cameroon.

In the abovementioned letter, the Committee expressed concern about the allegations received, including that:

- The provisional concession to Cameroun Vert S.A. (CamVert) for the development of an oil palm plantation overlaps with the customary forest lands of the Bagyeli Indigenous Peoples;
- The rapid deforestation of the traditionally owned Bagyeli lands and the planting of oil palms in the concession area, would amount in effect to their dispossession, and potentially forced displacement, from areas they have traditionally owned and used, and on which their livelihoods and culture depend;
- The concession has been granted without their free, prior and informed consent, without just or equitable compensation, and without complying with applicable national law and international standards;
- The concession creates risks of serious and irreparable harm to the Bagyeli communities, who risk permanent loss of their lands, culture and livelihoods if the concession proceeds as planned;
- The concession has been granted despite ongoing legal claims introduced by six Bagyeli communities in November 2021 and in November 2022;
- Bagyeli communities that have sought a legal interim relief have been left with no judicial effective recourse to prevent the ongoing destruction of their forest areas;
- The traditional or customary ownership of the lands by Indigenous Peoples, including the Bagyeli, is not adequately recognized, respected or protected under

Cameroonian legal framework, and as a result the vast majority of their customary lands remain unregistered and are considered to be under the guardianship of the State, which may allocate them for other uses without any acknowledgement of customary ownership.

The Committee notes with regret that the State party has not responded to the abovementioned letter and remains concerned that the allegations received may amount to a breach of the State party's obligation to recognize and protect the rights of the Bagyeli Indigenous Peoples to own, develop, control and use their traditional and communal lands, territories and resources.

The Committee would like to recall that it has previously addressed the situation of the Bagyeli Indigenous Peoples, including long-term leases of forest lands over Bagyeli ancestral lands, without consultation and free, prior and informed consent from these Indigenous Peoples.

In this regard, the Committee recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples and its concluding observations of 2010 (CERD/C/CMR/CO/15-18, para. 18) and of 2014 (CERD/C/CMR/CO/19-21, para. 16), in which it addressed the issue of Indigenous Peoples' land rights.

It further recalls its concerns expressed and recommendations made to the State Party in paragraphs 26 and 27 of its concluding observations of April 2022 (CERD/C/CMR/CO/22-23), in particular to: (a) accelerate the review of the legislative framework for land ownership to ensure the protection of the right of indigenous peoples to own, use, develop and control their lands, territories and resources; (b) adopt measures to ensure consultation with indigenous peoples on any projects or legislative or administrative measures that may affect their lands, territories and resources and with a view to obtaining their free, prior and informed consent; and (c) take measures to ensure access by indigenous peoples to effective remedies and provide them with just and fair compensation for the lands, territories and resources that they have traditionally owned or used and which have been confiscated, occupied or used without their free, prior and informed consent.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to receive a response to the above allegations by 15 March 2024. In particular, the Committee requests the State party to provide information on the measures taken to:

- a) Suspend or revoke the oil-palm concession to CamVert that affect the lands, territories or resources of the Bagyeli Indigenous Peoples until free, prior and informed consent is granted by these Indigenous Peoples following the full and adequate discharge of the duty to consult;
- b) Refrain from granting oil-palm concessions within the traditional lands of Indigenous Peoples, whether titled or not, without obtaining the free, prior and informed consent of the affected Indigenous Peoples;
- c) Ensure that Indigenous Peoples have access to effective and prompt judicial and other remedies to seek protection for their rights;
- d) Review the legislative framework on land ownership and compensation, to ensure the protection of the right of indigenous peoples to own, use, develop and control their lands, territories and resources; to incorporate the principle of free, prior and informed consent in domestic legislation, with indigenous peoples' participation; and to fully and adequately guarantee the right to consultation of indigenous peoples.

17. Chile, 8 December 2023 (Unoff. Transl.)

I have the honour to refer to your note verbale of 22 September 2023 in response to the Committee's letter of 28 April 2023 concerning the situation of the Diaguita indigenous people in the region of Coquimbo, Chile.

The Committee appreciates and takes note of the information provided by its Government, according to which:

- In 2014, within the framework of the road project "Improvement of Route 5 section La SerenaVallenar", the presence of the archaeological site "El Olivar" was confirmed, which corresponds to an indigenous cemetery whose extension has not yet been defined, located in the city of La Serena;
- In view of the fact that the works of the project required intervention at the site, work on the road route was suspended in compliance with the provisions of Law No. 17,288 on National Monuments and an archaeological characterization was requested;
- Based on the results of the archaeological characterization, and with the authorization of the National Monuments Council, an archaeological rescue stage was carried out in two of the funerary areas between 2015 and 2017;
- After the visit carried out in December 2021 by members of the Council of National Monuments, it was found that, although the conditions of the deposit of archaeological materials in Santiago were adequate, it was close to its maximum capacity, so the possession of the collections obtained from the site "El Olivar" was assigned to the Archaeological Museum of La Serena to receive 100% of the materials from the excavations;
- In June 2017, the National Monuments Council ordered the closure of the defined archaeological areas and approved certain measures for their protection and security, such as routine perimeter maintenance and 24-hour surveillance;
- It was necessary to modify the concession contract for the road project for reasons of public interest and urgency, incorporating, on the part of the concessionaire company, the preparation of a Definitive Engineering Project that allows the integrity of the archaeological remains of the "El Olivar" site to be safeguarded, and the establishment of road mitigation measures, as well as the protection and conservation of the site;
- The Engineering Project, approved by the Council of National Monuments, consists of the construction of a roadway on which the structural package of the pavement will rest, allowing the dissipation of the burdens of use and construction of the road, and provides access for community visits, as well as a space for future scientific research. in addition to contemplating the construction of a pedestrian walkway, a plan for the closure and monitoring of the archaeological site, and a plan for the monitoring and behavior of the embankment to be installed;
- Indigenous communities are authorized to meet at the site, both in the Ceremonial Circle located outside the archaeological site and in the southern sector of the vicinity of the sheltered funeral areas, for which they must submit a formal request for authorization to enter and perform rituals, which would have been accepted without exception;
- In May 2018, the Diaguita National Council, which brings together a group of organizations and traditional authorities of the Diaguita indigenous people, denounced the violation of the rights recognized in Law No. 19,253 on the Protection, Promotion and Development of Indigenous People, and in ILO Convention 169,

requesting the opening of a dialogue table between the Diaguita People and the regional government;

- The Territorial Board of the “El Olivar” site has been set up, with representatives of Diaguita organizations and the competent intersectoral public bodies, with the aim of generating a proposal for a management plan and enhancement of the archaeological site;
- At the Roundtable, the organizations have raised their concerns regarding the safeguarding of indigenous cemeteries; the non-execution of the road project at that site; the destination and condition of the salvaged property; the request for the return of extracted materials; the demand for participation and management of the archaeological site;
- The Council of National Monuments has reported the existence of an “area of verified archaeological sensitivity”, pending the definition of the polygon or area of influence of the aforementioned site, which would allow it to be granted the status of Historical Monument and formally recognized within the urban planning instruments.

In the light of the above-mentioned information, the Committee calls upon the State party to expedite the measures aimed at granting the status of Historical Monument to the site “El Olivar”. It also calls upon the State party to address the allegations of members of the Diaguita people that they are unable to carry out ceremonies or rituals on a communal or individual basis at the site, nor to administer the site in order to protect and conserve it.

18. Chile, 8 December 2023 (Unoff. Transl.)

I have the honour to refer to the Committee’s letter of 28 April 2023, in the framework of its early warning and urgent action procedure.

In the aforementioned letter, the Committee expressed concern about the allegations received regarding the implementation of a commercial project (supermarket) in the sacred and ceremonial sites of the Mapuche community Marta Cayulef (in the commune of Pucón), damaging the native forest, natural resources, sacred cemeteries and ancestral objects of the community, works that were allegedly initiated without consultation or the consent of the community and that are being carried out on land on which the aforementioned community holds “Titles of Mercy” granted in 1908 by the State Party. The letter also referred to allegations that the protests organised by the community in rejection of the execution of the works, including those held on 9 August and 8 October 2021, had been repressed by the Carabineros with tear gas and pepper spray, resulting in several people being injured, including women and children, and one indigenous person seriously injured. In addition, the construction of a motocross track, warehouses and warehouses for the supermarket was initiated without the relevant authorizations from the State party’s authorities, which also affected or destroyed other sacred sites and places of the community; and on March 13, 2023, machinery (backhoes) would have entered again, with police protection, to one of the community’s cemeteries.

The Committee notes with regret that the State party has not replied to the above-mentioned letter and remains concerned that the allegations received may constitute a violation of the rights of indigenous persons and peoples, as enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination.

The Committee recalls that the situation of indigenous peoples in the State party was addressed in its concluding observations of December 2021 (CERD/C/CHL/

CO/22-23, paras. 20, 21, 28 and 29), in particular with regard to the excessive use of force by the Carabineros against members of Mapuche communities; the ineffectiveness or absence of consultations with indigenous peoples on issues affecting their rights; and the desecration of sacred sites of indigenous peoples, expressing deep concern for the situation of the Marta Cayulef community in Pucón.

In this context, the Committee regrets the continuing allegations of desecration of the sacred and ceremonial sites of the Marta Cayulef Mapuche community, including sacred cemeteries and ancestral objects of the community; and that, to date, according to the information received, the State party has not taken effective measures for the protection of these sites or for consultations with the affected indigenous peoples, with a view to obtaining their free, prior and informed consent.

In the light of the above, and its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee reiterates the recommendations made to the State party in its 2022 concluding observations (CERD/C/CHL/CO/22-23, paras. 20, 21, 28 and 29), in particular: ensure that the actions of law enforcement officials are in full compliance with human rights obligations and refrain from violence against indigenous communities; formulate, in consultation with the Mapuche people, public policies that promote intercultural dialogue and foster peace in conflict zones; ensure that indigenous peoples are consulted before authorizing any project that may adversely affect their rights to the land and resources they own or have traditionally used, with a view to obtaining their free, prior and informed consent, in accordance with relevant international instruments; Provide effective and sufficient remedies to protect indigenous peoples' rights to their ancestral lands and resources.

The Committee reiterates its call on the State party, in compliance with the above-mentioned recommendations, to take immediate measures to address the above-mentioned allegations and to prevent further desecration and to effectively protect the sacred and ceremonial sites of the Mapuche community of Marta Cayulef.

19. Guatemala, 8 December 2023

I have the honour to refer to the Committee's letter of 2 December 2022, in the framework of its early warning and urgent action procedure.

In the aforementioned letter, the Committee expressed concern over the allegations received regarding various cases of forced evictions and violence against Q'eqch'i and Poqomochí indigenous communities by the National Civil Police and members of the riot police in the departments of Alta and Baja Verapaz and Izabal; the increase in cases of land-related violence against these indigenous communities by armed individuals; the increase in criminal proceedings against indigenous people defending their lands and rights; and the increase in defamation and hate speech by private actors against indigenous individuals and communities.

The Committee notes with regret that the State party has not replied to the above-mentioned letter and remains concerned that the allegations received may constitute a violation of the rights of indigenous persons and peoples as enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination. In this regard, the Committee reminds the State party of its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls in particular upon States parties to recognize and protect the rights of indigenous peoples to own, exploit, control and use their lands, territories and communal resources.

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

In this context, the Committee reiterates its call on the State party to take all necessary measures to address the above-mentioned allegations; to protect the rights of the aforementioned indigenous communities; investigate, prosecute, and impose appropriate sanctions on any person who may be responsible for the alleged violations; and to prevent such events, if they have occurred, from being repeated.

20. India, 8 December 2023

I write to you in relation to the Committee's letter of 29 April 2022 regarding the information received under its early warning and urgent action procedure, related to the situation of Particularly Vulnerable Tribal Groups (PVTGs) in Andaman and Nicobar Islands.

In the abovementioned letter, the Committee expressed concern about the allegations received regarding the development of two mega projects in the Andaman and Nicobar Islands – the “Holistic Development of Great Nicobar Island” and the “Sustainable Development of Little Andaman Island Vision Document” – which reportedly would have a harmful impact on five PVTGs that inhabit Andaman and Nicobar Islands (Great Andamanese, Jarawas, Onges, Shompens and Sentinelese). It was further alleged that these projects violate the existing laws and policies of the State party that protect PVTGs and their habitats.

The Committee notes with regret that the State party has not responded to the abovementioned letter and remains concerned that the allegations received may amount to a breach of the principle of non-discrimination and the State party's obligation to protect the rights of particularly vulnerable individuals and communities in accordance with the International Convention on the Elimination of all forms of racial discrimination (ICERD), such as the PVTGs of Andaman and Nicobar Islands.

In this context, the Committee reiterates its call on the State party to adopt all necessary measures to address the allegations mentioned above and to protect the rights of the PVTGs in Andaman and Nicobar Islands.

21. India, 8 December 2023

I write to you in relation to the Committee's letter of 29 April 2022 regarding the information received under its early warning and urgent action procedure, related to the situation of Chakma and Hajong communities in Arunachal Pradesh State in India.

In the abovementioned letter, the Committee expressed concern about the allegations received according to which authorities of Arunachal Pradesh State have been taking different measures aimed at relocating Chakmas and Hajongs communities outside the State. The information received also indicated that in 1996, the Supreme Court of India declared the Chakmas and Hajongs as citizens and directed the Government of India

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

The Committee notes with regret that the State party has not responded to the abovementioned letter and remains concerned that the allegations received may amount to a breach of the prohibition of discrimination based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life, enshrined in the International Convention on the Elimination of all forms of racial discrimination (ICERD). In particular, the Committee regrets that the State party has not provided information on the steps taken to prevent and halt any measures directed at relocating the Chakma and Hajong communities; the measures adopted to prevent and combat racial profiling or racial discrimination against the persons belonging to the Chakma and Hajong communities; and on the implementation of the judgements of the Supreme Court of India in the cases *National Human Rights Commission v. State of Arunachal Pradesh and Another*, 1996 SCC (1) 742 and *Committee for C.R. of C.A.P. & Ors vs State of Arunachal Pradesh & Ors* [Writ Petition (Civil) No.510 of 2007].

In this context, the Committee reiterates its call on the State party to adopt all necessary measures to address the allegations mentioned above and to protect the persons belonging to the Chakma and Hajong communities from forced relocations and against racial profiling and racial discrimination.

22. Peru, 8 December 2023

The Committee thanks the State party for submitting a response to its letter of 28 April 2023 regarding the situation of the Kichwa and Kakataibo indigenous peoples regarding the establishment of the Cordillera Azul National Park and the implementation of the “Reducing Emissions from Deforestation and Forest Degradation” (REDD+) project in their territories.

The Committee takes note of the information provided, in particular on the legal framework for the establishment of Natural Protected Areas and the legal framework and measures taken to protect indigenous peoples in voluntary isolation or initial contact. The Committee also takes note of the State party’s explanations of the legal provisions established for the implementation of consultation processes with the local population concerned, including peasant and native communities, with regard to the creation of a Natural Protected Area. In this regard, it also takes note of the judgment of 3 April 2023 of the Bellavista Mixed Court of the High Court of Justice of San Martín, which ordered measures to carry out the consultation process and facilitate access to the affected communities living in the Cordillera Azul National Park to participate in conservation activities in their territories. This sentence is currently on appeal to the court of second instance. Likewise, the Committee takes note of the explanations on the management of Natural Protected Areas, as well as on the establishment of the project “Reducing Emissions from Deforestation and Forest Degradation (REDD+)”. However, the Committee regrets that the information provided does not contain specific information on how the consultation processes have been carried out with respect to

the indigenous peoples affected by the creation of the Cordillera Azul National Park and how they have been informed and participated in the environmental and social impact assessments that have been carried out. The Committee further regrets that no information has been provided on the effective participation of indigenous peoples in the management and implementation of the REDD+ project.

The Committee wishes to reiterate to the State party its previous recommendations (CERD/C/PER/CO/22-23), in particular with regard to the protection of indigenous peoples' rights to their lands, territories and resources. The Committee recommends that the State party ensure the protection of the rights of indigenous peoples to own, use, develop and control their lands, territories and resources in full security, including through the necessary recognition and legal protection in accordance with international standards. Further encourages the State party to ensure that indigenous peoples are consulted on all administrative and legislative measures that may affect their rights, with a view to obtaining their free, prior and informed consent, taking into account the traditions and cultural characteristics of each people, and that such consultations are carried out in a systematic and unavoidable manner, in a timely and reasonable time, providing sufficient and appropriate information to the indigenous peoples consulted.

The Committee recommends that the State party strengthen its efforts to ensure the protection and physical and cultural survival of indigenous peoples who are in voluntary isolation or in a situation of initial contact.

The Committee requests the State party to provide updated and detailed information in its forthcoming 24th and 25th reports combined in a single document, which was due on 29 October 2022, on the measures taken to address concerns regarding the impact of the establishment of the Cordillera Azul National Park and the implementation of the "Reducing Emissions from Deforestation and Forest Degradation" (REDD+) project on indigenous peoples Kichwa and Kakataibo, in particular on the processes of prior consultation and the participation of these peoples in decision-making regarding measures and projects that concern them.

23. Bangladesh, 31 August 2023

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to the situation of indigenous peoples in Chittagong Hill Tracts of Bangladesh.

The information received claims that indigenous people in Chittagong Hill Tracts (CHT) of Bangladesh have been subject to systematic and pervasive racial discrimination, which has been exacerbated by the deployment of the Army and paramilitary forces in the region. Military troops and other paramilitary forces have been deployed under the policy of counterinsurgency and are allegedly responsible for gross and systematic human rights violations against indigenous peoples. Reportedly, the "Armed Forces policy to counter the insurgency movement by the people in CHT" provides extensive and large unfettered powers to the armed forces, both the Bangladesh Army and paramilitary, putting indigenous peoples at risk.

According to the information received, the right of indigenous peoples to own, use, develop and control the lands, territories and resources traditionally occupied by them is not legally recognized. A policy to promote the establishment of large numbers of non-indigenous peoples in the region taking over indigenous peoples' lands for tourism projects has also been implemented in the region. Discrimination against indigenous peoples in CHT is also related to land grabbing for economic development

projects, including tourism projects, without the free, prior, and informed consent of indigenous peoples. The participation and consultation of indigenous peoples in the implementation of large development projects is very limited.

Reportedly, the militarization, the transfer of Bengali Muslims and the settlement of the non-indigenous population in the region are seriously affecting the rights of indigenous peoples, particularly their rights over land and natural resources.

Allegedly, indigenous peoples in the region also face challenges and inequalities in the enjoyment of economic, social, and cultural rights, in particular the right to education and the right to health. There is a lack of qualified indigenous teachers, materials, supplies, infrastructure, and equipment in the region. The number of children out-of-school remains very high and only a few indigenous peoples from the CHT attend and complete secondary education.

Regarding the right to health, a large part of the population in the region does not have access to basic health care and indigenous peoples face specific health problems, for example, malaria, tuberculosis, and drug addiction for which they do not have access to adequate treatment.

The Committee would like to recall that in its previous concluding observations (CERD/C/304/Add.118, para. 9), it addressed the situation of the indigenous peoples in CHT, including concerns about reports of human rights violations by security forces present in CHT affecting the tribal population, as well as reports of arbitrary arrests and detentions, and ill-treatment. The Committee recommended that the State party implement effective measures to guarantee to all Bangladeshis, without distinction based on race, colour, descent, or national or ethnic origin, the right to security of person and protection by the State against violence or bodily harm.

In reference to the information received and in accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the Committee would like to request the State party to provide information on measures taken to address the concerns mentioned above. In particular, the Committee requests the State party to provide information on:

- a) The measures adopted to promptly and thoroughly investigate allegations of human rights violations against indigenous peoples in the Chittagong Hills Tracts and to ensure that indigenous people have access to effective legal remedies and reparations for human rights violations committed against them;
- b) The steps taken to review the “Armed Forces policy to counter the insurgency movement by the people in CHT” and address the allegedly gross and systematic human rights violations against indigenous people by the military troops and other paramilitary forces;
- c) The measures adopted to ensure adequate protection of the rights of indigenous peoples to own, use, develop and control their lands, territories, and resources and measures to ensure that the free, prior and informed consent is obtained from indigenous peoples concerned for any project affecting them;
- d) The mechanisms put in place to ensure that indigenous peoples are consulted on projects, legislative or administrative measures that affect the land and natural resources that they own or have traditionally occupied;
- e) The measures to ensure that indigenous peoples enjoy economic, social, and cultural rights, in particular the right to education and the right to health, without discrimination of any kind;

f) The implementation of the Chittagong Peace accord of 1997.

The Committee requests the State party to submit its response by 3 November 2023 and would like to encourage the Government of Bangladesh to submit at its earliest convenience its twelfth periodic report, which is overdue since 11 July 2002.

24. Cameroon, 31 August 2023

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to the situation of Bagyeli Indigenous Peoples in the Océan department in Cameroon. According to the information received:

- By decree N° 2022/112 of 7 March 2022, the Cameroonian government granted a provisional concession to Cameroun Vert S.A. (CamVert) for the establishment of an oil palm plantation, under which it has granted a space of 39,923.0107 hectares for the development of an oil palm plantation;
- Under the attributing decree, CamVert has a priority to obtain two further parcels for the expansion of its activities which, if exercised, would bring the total area of the concession to approximately 60,000 hectares;
- A substantial portion of the concession area overlaps with the customary forest lands of the Bagyeli Indigenous Peoples, who live on and use these lands;
- The rapid deforestation of the traditionally owned Bagyeli lands and the planting of oil palms in the concession area which has already started, amount in effect to their dispossession, and potentially forced displacement, from areas they have traditionally owned and used, and on which their livelihoods and culture depend;
- The concession has been granted without acknowledging these rights, without their free, prior and informed consent, without just or equitable compensation, and without complying with applicable national law and international standards;
- The concession, which is being rapidly developed, creates risks of serious and irreparable harm to the Bagyeli communities, who risk permanent loss of their lands, culture and livelihoods if the concession proceeds as planned;
- The concession has been granted despite ongoing legal claims introduced by six Bagyeli communities: (i) in November 2021 against the “degazettement” decision adopted in November 2019, of forest lands which were legally protected (“gazetted”) since 2005 from deforestation or conversion to an oil palm concession; and (ii) in November 2022 against decree N° 2022/112;
- Bagyeli communities that have sought a legal interim relief through the suspension of the “degazettement” as well as of decree N° 2022/112 of 7 March 2022 have been left with no judicial effective recourse to prevent the ongoing destruction of their forest areas;
- The traditional or customary ownership of the lands by Indigenous Peoples, including the Bagyeli, is not adequately recognized, respected or protected under Cameroonian legal framework, in particular the 1974 land law, because of the following factors: it only permits the registration of customary land which is considered to be “developed”; it provides very limited options for collective land titling; it only permits the registration of lands which were already under customary use in 1974, which is very difficult to demonstrate, given to the rotations agriculture practices of the Bagyeili; and, the procedure required to register customary lands is complex and expensive;
- As a result of these factors, the vast majority of customary lands of the Bagyeili remain unregistered and are considered to be under the guardianship of the

State, which may allocate them for other uses without any acknowledgement of customary ownership;

- The current laws on customary ownership of land are particularly discriminatory against forest Indigenous Peoples due to the legal impossibility for them to register their collective ownership of “undeveloped” forest lands.

The allegations reviewed by the Committee, if verified, would amount to a breach of the State party duty to recognize and protect the rights of the Bagyeli Indigenous Peoples to own, develop, control and use their traditional and communal lands, territories and resources.

The Committee would like to recall that it has previously addressed the situation of the Bagyeli Indigenous Peoples, including long-term leases of forest lands over Bagyeli ancestral lands, without consultation and free, prior and informed consent from these Indigenous Peoples.

In this regard, the Committee recalls its General Recommendation No. 23 (1997) on the rights of indigenous peoples and its concluding observations of 2010 (CERD/C/CMR/CO/15-18, para. 18) and of 2014 (CERD/C/CMR/CO/19-21, para. 16), in which it addressed the issue of Indigenous Peoples’ land rights.

It further recalls its concerns expressed and recommendations made to the State Party in paragraphs 26 and 27 of its concluding observations of April 2022 (CERD/C/CMR/CO/22-23), in particular to: (a) accelerate the review of the legislative framework for land ownership to ensure the protection of the right of indigenous peoples to own, use, develop and control their lands, territories and resources; (b) adopt measures to ensure consultation with indigenous peoples on any projects or legislative or administrative measures that may affect their lands, territories and resources and with a view to obtaining their free, prior and informed consent; and (c) take measures to ensure access by indigenous peoples to effective remedies and provide them with just and fair compensation for the lands, territories and resources that they have traditionally owned or used and which have been confiscated, occupied or used without their free, prior and informed consent.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to receive a response to the above allegations by 3 November 2023. In particular, the Committee requests the State party to provide information on the measures taken to:

- a) Suspend or revoke the oil-palm concession to CamVert that affect the lands, territories or resources of the Bagyeli Indigenous Peoples until free, prior and informed consent is granted by these Indigenous Peoples following the full and adequate discharge of the duty to consult;
- b) Refrain from granting oil-palm concessions within the traditional lands of Indigenous Peoples, whether titled or not, without obtaining the free, prior and informed consent of the affected Indigenous Peoples;
- c) Ensure that Indigenous Peoples have access to effective and prompt judicial and other remedies to seek protection for their rights;
- d) Review the legislative framework on land ownership and compensation, to ensure the protection of the right of indigenous peoples to own, use, develop and control their lands, territories and resources; to incorporate the principle of free, prior and informed consent in domestic legislation, with indigenous peoples’ participation; and to fully and adequately guarantee the right to consultation of indigenous peoples.

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

25. Costa Rica, 31 August 2023 (Unoff. Transl)

I have the honour to refer to your note verbale of 17 July 2023 in response to the Committee's letter of 28 April 2023 concerning the lack of security of tenure of the traditional lands of the Teribe (Brörán) and Bribiri indigenous peoples in the indigenous territories of Térraba, and Salitre, in Costa Rica.

The Committee takes note of the information provided by your Government regarding the allegations set out in the Committee's letter, inter alia:

- The establishment of the Inter-institutional Technical Committee for Addressing Indigenous Affairs and the meetings convened in February 2023 by the President of the Republic of Costa Rica, within the framework of these tables;
- to present the Government's proposals to advance solutions related to the process of returning lands to Indigenous Peoples through legal channels and to avoid de facto land recoveries;
- The creation of the National Compensation Fund for the Recovery of Indigenous Territories, on February 17, 2023;
- The creation of the Operational Security Plan in the indigenous territories of Térraba, Salitre, Ujarrás, Cabagra, Curré, Boruca and China Kichá, in November 2022, which aims to develop operational police actions to protect human life and property rights and prevent any other criminal act in these indigenous territories;
- The development of the Judiciary's draft policy on access to justice for indigenous peoples, which is currently being finalized and would be submitted to indigenous peoples for consultation. The Committee also notes that, according to the information provided by the Government, the incidents of violence in the indigenous territories of the canton of Buenos Aires de Puntarenas, including Térraba and Salitre, they have reportedly decreased considerably since the first "on-site" visit carried out by the Inter-institutional Technical Table for the Attention of Indigenous Affairs in August 2022.

In the light of the above-mentioned information, the Committee would like to receive additional and updated information on the impact of the measures taken by your Government, in particular with regard to the progress made in securing the right of Indigenous Peoples to land tenure and the recovery of their lands.

It would also like more details on the results of the investigations into cases of violence against the Teribe and Bribri Indigenous Peoples and their leaders. The Committee wishes to inform his Government that the above-mentioned issues will be addressed in the context of the consideration of its combined 23rd to 24th periodic report, which had been delayed since 4 January 2018. The Committee therefore urges the State party to submit its overdue reports without further delay.

26. Chile, 28 April 2023 (Unoff. Transl.)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination considered information received within the framework of its early warning and urgent action procedure concerning the situation of the Diaguita indigenous people in the region of Coquimbo, Chile.

According to the information received:

- In July 2015, while the road linking the commune of La Serena with Vallenar was being built, habitation and funerary vestiges of the Diaguita culture, called “El Olivar Settlement”, were found;
- This settlement is of particular importance to the Diaguita people, since human remains of their ancestors have been found there, as well as cultural property of the Diaguita people;
- The Diaguita people may not carry out community or individual activities at the “El Olivar Settlement” site, such as ceremonies or rituals, nor may they administer the site to protect and conserve it;
- On October 7, 2020, members of the Diaguita people petitioned the National Monuments Council to grant the status of Historical Monument to the “El Olivar Settlement”, invoking Article 10 of Law No. 17,288 on National Monuments of Chile, in order to protect the Settlement and safeguard it both from the road under construction and from future development projects;
- The above-mentioned request, as well as communications from members of the Diaguita people sent to the competent authorities of the State party, have remained unanswered or answered evasively and without concrete solutions;
- The State party’s authorities have not taken the necessary measures to protect the “El Olivar Settlement”, which is said to be in total abandonment.

The Committee is concerned that the situation described above, if confirmed, is not in conformity with the State party’s obligations under the Convention, in particular article 5 (d) (vii) on the right to freedom of thought, conscience and religion, and that it does not take into account general recommendation No. 23 (2007) on the rights of indigenous peoples. In particular the call upon States parties to recognize and respect the culture, history and way of life of indigenous peoples as a factor in enriching the cultural identity of the State and to ensure its preservation; and to ensure that indigenous communities are able to exercise their right to practice and revive their cultural traditions and customs.

The Committee also recalls that, in its concluding observations of November 2021 (CERD/C/CHL/CO/22-23, para. 28), it expressed deep concern about the desecration of indigenous peoples’ sacred sites in the State party.

In the light of the above, and pursuant to article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee will be grateful if the State party could provide information on the above-mentioned allegations by 21 July 2023.

27. Chile, 28 April 2023 (Unoff. Transl.)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination considered information received within the framework of its early warning and urgent action procedure concerning the situation of the Mapuche community “Marta Cayulef” in the commune of Pucón, Chile.

According to the information received:

- In April 2021, companies of the “Eltit” holding company began works related to the implementation of a commercial project (supermarket) in the sacred and ceremonial sites of the Mapuche community “Marta Cayulef” (in the commune of Pucón), damaging the native forest, natural resources, sacred cemeteries and ancestral objects of the community;

- The works in question were initiated without consultation or consent of the community and are being carried out on land on which the community has “Titles of Mercy” granted in 1908 by the State party;
- Since 2021, members of the Marta Cayulef community have held various protests in rejection of the execution of the works on their traditional lands, which were repressed by the Carabineros with tear gas and pepper spray, including those that took place on August 9 and October 8, 2021, resulting in several people being injured, including women and children, and one indigenous person seriously injured;
- Work was reportedly initiated to build a motocross track, warehouses and warehouses for the supermarket without the relevant authorizations from the State party’s authorities, which also affected or destroyed other sacred sites and places of the community;
- On March 13, 2023, machinery (backhoes) hired by the holding company “Eltit” and protected by the police reportedly entered one of the community’s cemeteries again.

The Committee is aware of the joint communication signed by several UN special procedures (AL CHL 10/2021) of 26 November 2021, which addressed at that time some of the allegations identified in the preceding paragraphs. The Committee is also aware of the State party’s note of response of 26 January 2022 to the above-mentioned communication from the special procedures, in which it provides some information on the events of August and October 2021, as well as general information on the consultation processes with indigenous peoples.

The Committee recalls that the situation of indigenous peoples in the State party was addressed in its concluding observations of 2021 (CERD/C/CHL/CO/22-23, paras. 20, 21, 28 and 29), in particular with regard to the excessive use of force by the Carabineros against members of Mapuche communities; the ineffectiveness or absence of consultations with indigenous peoples on issues affecting their rights; and the desecration of sacred sites of indigenous peoples, expressing deep concern for the situation of the Marta Cayulef community in Pucón. In this context, the Committee regrets the continuing allegations of desecration of the sacred and ceremonial sites of the Mapuche “Marta Cayulef” community, including sacred cemeteries and ancestral objects of the community; and that, to date, the State party has not taken effective measures for the protection of such sites or for consultations with the affected indigenous peoples, with a view to obtaining their free, prior and informed consent.

In the light of the above, and its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee reiterates the recommendations made to the State party in its 2022 concluding observations (CERD/C/CHL/CO/22-23, paras. 20, 21, 28 and 29), in particular: ensure that the actions of law enforcement officials are in full compliance with human rights obligations and refrain from violence against indigenous communities; formulate, in consultation with the Mapuche people, public policies that promote intercultural dialogue and foster peace in conflict zones; ensure that indigenous peoples are consulted before authorizing any project that may adversely affect their rights to the land and resources they own or have traditionally used, with a view to obtaining their free, prior and informed consent, in accordance with relevant international instruments; Provide effective and sufficient remedies to protect indigenous peoples’ rights to their ancestral lands and resources. The Committee calls upon the State party, in compliance with the above-mentioned recommendations, to take immediate measures to prevent further desecration and to effectively protect the sacred and ceremonial sites of the Mapuche community “Marta Cayulef”.

The Committee's present comment on the subject matter of this communication will be included in its next annual report. However, pursuant to article 9 (1) of the Convention and rule 65 of its rules of procedure, if the State party wishes to provide additional information in this regard, it may submit it to the Committee by 21 July 2023.

28. Costa Rica, 28 April 2023

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination considered information received in the framework of its early warning and urgent action procedure relating to the lack of security of tenure over the traditional lands of the Teribe (Brörán) indigenous peoples in the indigenous territory of Térraba and Bribiri in the indigenous territory of Salitre, and its consequences, including violence against these communities and their leaders, as well as the absence of effective judicial remedies to protect their rights.

According to the information received:

- The State party's authorities have not taken sufficiently effective measures to protect the legally recognized territories of the Teribe indigenous peoples in Térraba and Bribiri in Salitre against illegal and massive occupations by non-indigenous persons;
- The lack of effective protection measures by the State party of the legally recognized territories of the Teribe and Bribiri indigenous peoples has reportedly resulted in an increase in violence in recent years against these peoples, their leaders and members, not only in number but also in severity, mainly by illegal invaders of their lands, which includes crimes such as: murder of their leaders, as is the case of Sergio Rojas, a Bribri indigenous leader murdered in 2019, and Jehry Rivera Rivera, of the Brörán people, murdered in 2020; frustrated homicides, such as the case of Minor Ortiz Delgado of the Bribri people; threats against its leaders and members, including through social networks, such as the case of Pablo Sibar Sibar, Brörán's indigenous leader; burning of their homes and property; among other crimes;
- The State party has not taken timely and effective measures to punish all those responsible for the violence and threats against the Teribe and Bribiri indigenous peoples, their leaders and members, many of which have not been punished;
- Victims of violence and their families face continuous obstacles to access to justice, including: difficulties in reporting; inadequate investigations; inadequate protection measures for victims and witnesses; ineffective implementation of precautionary measure 321-12 of April 30, 2015 granted by the Inter-American Commission on Human Rights, for the benefit of the members of the Teribe indigenous people and the Bribri indigenous people, which was decided prior to the murders of Sergio Rojas and Jehry Rivera, who were also beneficiaries of said precautionary measure;
- There would be an increase in racist and stigmatizing discourse against indigenous peoples, their leaders and members, including through social networks, in particular against peoples who seek to defend their traditional lands, as is the case of the Teribe and Bribiri communities;
- The State party's authorities have failed to effectively investigate and punish in a timely manner cases of racist and stigmatizing hate speech against indigenous peoples, including the Teribe and Bribiri peoples.

The Committee notes the joint communication signed by several UN Special Procedures (ALCRI/2020) of 29 May 2020 and the press release of the Special Rapporteur

on the situation of human rights defenders dated 8 June 2020, endorsed by the Special Rapporteur on the rights of indigenous peoples, which addressed at that time some of the allegations indicated in the previous paragraphs.

The Committee is also aware of the note of reply provided by the State party to the above-mentioned communication from the special procedures, dated 27 July 2020, which provides information on: the measures taken to implement the National Plan for the Recovery of Indigenous Lands; the actions taken to comply with the aforementioned precautionary measure of the Inter-American Commission on Human Rights; protection measures for indigenous peoples and individuals at risk for the defense of their rights, including in the cases of Minor Ortiz Delgado and Pablo Sibar Sibar; the ongoing investigations into the murders of Sergio Rojas and Yehry Rivera. In addition, in its response, the State party emphasizes that it has not seen the need to take additional or special measures to protect the rights of human rights defenders, given the high degree of general protection of these individuals or organizations, including the Law on the Protection of Victims, Witnesses and Other Persons Involved in Criminal Proceedings.

The Committee recalls that the situation of the Teribe and Bribri indigenous peoples, including the illegal occupation of their traditional lands by non-indigenous peoples, the violence against these communities and their leaders, and the lack of effective remedies to guarantee them access to justice – was addressed with concern both in its letters to the State party under the 2013 early warning and urgent action procedure² and in its 2015 concluding observations (CERD/C/CRI/CO/19-22, paras. 21, 22, 27 and 28). In this context, the Committee regrets the continuing allegations of acts of violence and intimidation against these communities and their leaders, as well as the lack of effective prosecution and sanctions against those responsible for the illegal occupation of their lands and violence against the Teribe and Bribri indigenous peoples.

The Committee takes note of the measures taken by the State party with regard to the recovery of the lands of the Teribe and Bribri peoples and the actions taken to investigate and punish those responsible for violence against members of these communities, including the recent conviction in the case of the murder of Mr. Yehry Rivera. Despite this, it shares the concerns expressed by the Special Rapporteur on the rights of Indigenous Peoples in his report on his visit to Costa Rica in December 2021,³ in particular regarding: violations of indigenous peoples' rights to their lands, territories and natural resources and the procedural obstacles and limited results of the National Plan for the Recovery of Indigenous Lands and the Development Institute Rural (paras. 30-40 and 91); and the lack of adequate and culturally relevant protection measures in the face of the various attacks against indigenous leaders and human rights defenders (paras. 47 to 50, 52 and 53).

In the light of the above, the Committee reiterates its recommendations made to the State party in its 2015 concluding observations (CERD/C/CRI/CO/19-22, paras. 21, 22, 27 and 28), including: to strengthen efforts to guarantee indigenous peoples' right to tenure; take decisive steps to seek solutions in which indigenous peoples can recover their lands within their territories, including in cases of occupation and confrontations or threats linked to the conflict generated by this situation, through administrative and judicial actions that include eviction and prosecution of those responsible. The Committee also reiterates its call in its letter dated 30 August 2013 urging the State party to conduct a thorough investigation into the events that occurred against the Teribe and Bribri indigenous peoples and to punish those responsible. The Committee also calls upon the State party to follow up on the relevant recommendations made by

the Special Rapporteur on the rights of indigenous peoples in his above-mentioned report, in particular those related to the right to land and territories (para. 96) and the protection of indigenous human rights defenders (para. 98).

The Committee's present observation on the subject matter of this communication will be included in its next annual report. However, under rule 9 (1) of the Convention and rule 65 of its rules of procedure, should the State party wish to provide additional information on this situation and the above-mentioned allegations, it may make it available to the Committee by 21 July 2023.

29. Peru, 28 April 2023

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination (CERD), within the framework of its early warning and urgent action procedure, considered the situation of the Kichwa indigenous peoples who are being affected by the establishment of a protected area and a carbon reduction offset project on their territories.

The Committee has received information on the impact of the establishment of the Cordillera Azul National Park and the creation of the carbon offset project "Reducing Emissions from Deforestation and Forest Degradation" (REDD+) on the territories traditionally occupied by twenty-eight communities of the Kichwa indigenous people and the Kakataibo indigenous people in voluntary isolation. According to the information received, the Cordillera Azul National Park was created in 2001 without an adequate process of prior consultation with a view to obtaining the free, prior and informed consent of the affected indigenous peoples. In addition, the slow process of recognition of indigenous communities as "native communities" has not allowed them to obtain adequate and timely protection of their territories and natural resources. The establishment of the Park has imposed restrictions on the use and access of Kichwa communities to their traditionally occupied territories. Some of these restrictions are the requirement of permits to enter the protected area, limitations on traditional activities such as hunting, fishing, gathering food and medicinal plants, or restrictions on visiting places of spiritual importance. This situation has had a negative impact on the livelihoods and food security of affected indigenous peoples and has affected the transmission of traditional ecological knowledge. The Committee has also received allegations of cases of intimidation, threats and attacks against human rights defenders belonging to the Kichwa indigenous people.

Similarly, according to the information received by the Committee, the State party has implemented the Project on Reducing Emissions from Deforestation and Forest Degradation (REDD+), which consists of the granting of carbon credits to companies in order to protect forests and facilitate the implementation of greenhouse gas reduction practices in the forestry sector. This REDD+ project in the Cordillera Azul National Park has been implemented since 2008, however, the communities of Kichwa indigenous peoples whose lands are located in the Park were not consulted regarding the implementation of this project. Likewise, according to the information received, there is a lack of information and transparency on the management of the implemented projects derived from REDD+. It has also been pointed out the lack of participation and representation of the affected indigenous peoples' communities in the body in charge of managing the Project, the Centre for Conservation, Research and Management of Natural Areas – Cordillera Azul.

Pursuant to article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide updated and detailed information on the

measures taken to address the above-mentioned concerns by 21 July 2023. In particular, the Committee requests the State party to provide information on:

- a) The measures taken to assess the social and environmental impact of the establishment of the Cordillera Azul National Park and the above-mentioned REDD+ Project on the affected Kichwa and Kakataibo indigenous peoples' communities;
- b) Concrete measures taken to protect the physical and cultural survival of the Kakataibo people who are in voluntary isolation;
- c) The mechanisms put in place to ensure that indigenous peoples whose territories and natural resources have been or may be affected by the creation of the Park and the implementation of the REDD+ project are duly consulted with a view to obtaining free, prior and informed consent;
- d) Specific measures taken to protect traditional ways of life and subsistence, as well as the ancestral and cultural value of the indigenous territories affected by the Cordillera Azul National Park;
- e) The measures taken to ensure the effective participation of affected indigenous peoples in the management and implementation of the REDD+ project and to define their sharing of the benefits derived from it;
- f) Measures to prevent and investigate acts of harassment, intimidation, reprisals and violence against Kichwa leaders and defenders of the rights of the Kichwa indigenous peoples.

30. Tanzania, 28 April 2023

I write to inform you that the Committee considered information received under its early warning and urgent action procedure, related to the situation of Maasai Indigenous Peoples in Ngorongoro and Loliondo areas in Tanzania.

According to the information received:

- The plans of the State party to enlarge safari tourism and game reserve areas for trophy hunting in northern Tanzania would result in the forced displacement of close to 150,000 Maasai from their traditional lands in the Ngorongoro Conservation Area (NCA) and Loliondo;
- These plans have been designed without consultation and without the free, prior and informed consent of the affected Maasai communities;
- Maasai communities do not participate in any meaningful way in the overall management of the NCA;
- Despite the provisions to safeguard and promote the Maasai included in the 1975 Ngorongoro Conservation Area Act, their rights have been disproportionately impaired and curtailed over time, including the prohibition to grow crops and the drastic reduction of grazing areas and access to water sources;
- Basic social services have been suspended or cut off in these areas allegedly as a way to coerce the Maasai to leave;
- Maasai communities and individuals have been victims of excessive use of force by law enforcement officials during operations to forcibly uproot them from their ancestral lands; their livestock have been killed or impounded by security forces and their properties burned by rangers of the Serengeti National Park and the NCA assisted by anti-riot police;

- Maasai peoples are victims of increasing racist speech, including in social media, by non-State actors as well as by some public authorities of the State party;
- Maasai communities and individuals are subject to intimidation, criminalization, arbitrary detention and cruel or inhumane treatment by authorities of the State party when they protest to protect their traditional lands against the acts and omissions of the State party in the Ngorongoro and Loliondo areas;
- There are not effective judicial remedies in the State party to ensure access to justice for Maasai Indigenous Peoples seeking to defend their traditional lands.

The Committee is aware that various UN special procedures have sent several communications to the State party raising concerns over allegations of forced evictions, attacks, intimidation and harassment of Maasai Indigenous Peoples in Tanzania, the latest of which is dated 9 February 2022 (AL TZA 3/2021). The Committee is also aware of the reply by the State party to this last letter, dated 8 April 2022.

The Committee takes note of the information provided by the State party to the special procedures in its letter of 8 April 2022, among other refuting allegations of arbitrary arrests and forceful evictions. However, the Committee is concerned that, even after the reply of the State party of last April, several international and regional human rights mechanisms have received more allegations concerning further situations of excessive use of force against Maasai by law enforcement officials in the context of an operation to demarcate a new game reserve in Maasai traditional lands in Loliondo. Such allegations led, for instance, to an urgent call by the African Commission on Human and Peoples' Rights, dated 13 June 2022,¹ and a press release by several UN special procedures, dated 15 June 2022.

Furthermore, the Committee recalls that it has previously addressed the situation of the Maasai, including allegations of forcible evictions, intimidation and arbitrary arrests, and the lack of measures to ensure their effective participation in decisions affecting them and their free, prior and informed consent for projects carried out in their lands, both in its last concluding observations and under its early warning and urgent action procedure.

The Committee is deeply concerned that, despite its previous calls as well as those of the UN special procedures and the African Commission on Human and Peoples' Rights, the situation of the Maasai has worsened and that the alleged forced evictions, excessive use of force, intimidation, arbitrary arrests lack of consultation and free prior and informed consent, and lack of adequate remedies to ensure access to justice, may amount to the violation of article 5 of the Convention.

In this regard, the Committee recalls its recommendations made in paragraphs 14 and 15 of its previous concluding observations (CERD/C/TZA/CO/16) as well as paragraph 5 of its General Recommendation No. 23 (1997) on the rights of indigenous peoples.

In light of the above, the Committee requests the State party to immediately halt plans for relocation and forcible evictions of Maasai communities from their traditional lands in Loliondo and the Ngorongoro Conservation Area; to begin consultations with affected Maasai communities in order to obtain their free and informed consent prior to the approval of any project affecting their traditional lands; to take measures to effectively protect Maasai communities against reported acts of excessive use of force, intimidation, arbitrary arrests and discrimination and racist speech; and to follow the requests made by the African Commission on Human and Peoples' Rights on 13 June 2022 and by the UN special procedures on 15 June 2022.

The present Committee's final observations on this matter will be included in its next annual report. Nevertheless, by virtue of article 9 (1) of the Convention and article 65 of its

rules of procedure, in case the State party would like to provide additional information on this situation, it can be submitted to the Committee by 21 July 2023.

Finally, the Committee requests the State party to submit the overdue seventeenth and eighteenth combined periodic report as a matter of urgency and to include information on the situation of the Maasai Indigenous Peoples, in particular the matters addressed in the present letter.

C. GENERAL RECOMMENDATIONS

1. Racial discrimination in the enjoyment of the right to health, CERD/C/GC/37, 23 August 2024

Normative framework

A. The right to equality and freedom from racial discrimination in the enjoyment of the right to health

5. Articles 1 (1) and 5 (e)(iv) provide everyone with the right to be free from all forms of racial discrimination and the right to equality in the enjoyment of the right to public health, medical care, social security and social services. Every person belonging to ethnic groups and minorities, such as ... Indigenous Peoples ... has the right to health irrespective of age, religion and belief, health status, disability, migratory status, class, socioeconomic status, sex, sexual orientation, gender identity, gender expression, sex characteristics, or substance abuse.
6. Under the ICERD, health is understood as “the highest attainable standard of physical and mental health”, increasingly viewed through an ecocentric lens. This perspective resonates with Indigenous Peoples’ definition of health, which includes individual and collective dimensions and integrates spirituality, traditional medicine, biodiversity, and interconnectedness, closely tied to their right to self-determination and supported by the principles of the Universal [sic] Declaration on the Rights of Indigenous Peoples (UNDRIP). The right to health extends “not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health (...) the participation of the population in all health-related decision-making at the community, national and international levels.”. This holistic approach aligns with the text of Article 5(e)(iv): ‘public health’ focuses on prevention and control of disease and injury, the improvement of underlying and other determinants of health, and the quality of interaction between authorities, health-related professionals and the population. ‘Medical care’ integrates the right to timely and appropriate health goods and services and includes palliative, curative and rehabilitative health. ‘Social security and social services’, inextricably linked to societal efforts to improve the determinants of health, are strategic rights in eliminating racial discrimination in health.

1. Prohibition of all forms of racial discrimination

Direct, indirect and structural racial discrimination

7. The ICERD prohibits direct and indirect discrimination. This includes laws, policies or practices that disproportionately disadvantage by acts or omissions or have an unjustifiable disparate impact upon racial or ethnic groups or fail to secure ‘adequate

advancement' for disadvantaged racial or ethnic groups to ensure equal enjoyment of the right (article 1(4)). The status of the prohibition of racial discrimination in international law imposes strict scrutiny in assessing the proportionality of the effect of any distinction, exclusion or restriction in the enjoyment of the right to health. A distinction based on the grounds of race, colour, descent, or national or ethnic origin nullifying the exercise of the right to health whether in law or practice is disproportionate to any legitimate aim, and constitutes a violation of ICERD.

8. Discriminatory criteria, such as those based on race-based disease stereotyping, even if not explicitly stated in laws, are still used as a basis for decision-making. Discriminatory practices, such as those based on misrepresentation of traditional health practices, disadvantage individuals or groups protected under the ICERD.

...

Intersectional discrimination and inequalities

12. The prohibition of racial discrimination includes intersectionality as “a concept and theoretical framework that provides recognition of the complex ways in which social identities overlap and create compounding experiences of discrimination and concurrent forms of oppression” on the grounds of race, colour, descent or national or ethnic origin and other grounds, such as age, religion and belief, health status, disability, migratory status, socioeconomic status, sex, sexual orientation, gender identity, gender expression or sex characteristics. For example, barriers in reproductive health care have a cumulative effect on Indigenous women and girls, women and girls of African descent, women and girls belonging to ethnic minorities, castes and gender diverse persons; particularly affected among those groups are adolescents and those who are socioeconomically disadvantaged or live in rural areas. Evidence shows that indigenous young persons and young persons of African descent living in poverty or vulnerable conditions are more likely to be arrested and prosecuted for drug-related offenses.

...

B. Prevention and protection against vulnerabilities and inequalities in key determinants of health

19. Freedom from racial discrimination and structural inequalities in key determinants of health includes freedom from disproportionate exposure to vulnerability and health-harming conditions, the right to equal protection of the necessary material and psychosocial conditions, the right to be equally protected against private actors' harming practices and the right to mitigation and reparation of harms. Children and adolescents, older persons, persons with disabilities, women and gender-diverse persons have the right to context-sensitive preventive and protective measures aiming to combat structural and intersectional discrimination.

1. Safe drinking water and adequate sanitation, safe food, and housing

20. Article 5(e)(iv) provides for the right to adequate quantity, quality and maintenance level of safe drinking water and sanitation, safe food, and housing. This includes the right not to be subject to inadequate maintenance of water and sanitation infrastructure, contributing to health risks such as waterborne diseases and environmental contamination. Racial and ethnic groups have the right to be protected from residential segregation, discrimination in private rental market, overcrowded residences and forced evictions. They are entitled to measures addressing food deserts, limited economic resources, discriminatory practices in the food industry and other barriers to accessing healthy foods. Vulnerability and

poverty impact their diets and health, contributing to higher rates of diet-related diseases and nutritional deficiencies.

...

3. Climate change and environmental health hazards

22. Racial and ethnic groups have the right to a clean and healthy environment and the right to be protected against climate-induced hazards. They have the right not to be subjected to and to be protected against degradation and adverse effects arising from exploitation of natural resources, nuclear testing, toxic waste storage, mining, logging and other environmental harms and against violence by state authorities and private security personnel. They have the right to participate and be heard in meaningful consultations focusing on health-harming effects. Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources, which includes the right to free, prior and informed consent.²²
23. Racial and ethnic groups have the right not to be disproportionately subjected and to be protected against climate-induced health hazards, owing to their geographical location or socioeconomic situation, cultural norms and intrinsic psychological factors. This extends to prevention and protection from negative outcomes related to heat, air pollution, the increasing frequency and intensity of extreme weather events and natural disasters, or the impact on social networks and cultural traditions. Indigenous Peoples have the right to mitigation by non-harmful measures to their cultural and linguistic diversity, knowledge systems, food security, health, and livelihoods.²³

Forced sterilization

32. Indigenous women ... have been targeted in policies related to population control, including through coercive sterilizations, or control of infectious diseases such as HIV and AIDS. Within those groups, women with intellectual and/or psychosocial disabilities have been denied their legal capacity and, as a consequence, their right to give consent. Forced sterilizations is a violation under ICERD to reproductive autonomy, access to information, personal integrity and privacy, and to be free from racial and gender-based violence and discrimination.

Criminalisation and unsafe abortions

33. Safe, legal and effective access to safe abortion is part of the right to control one's health and body and the right to life of persons protected under the ICERD. Indigenous women, gender-diverse persons and women of racial and ethnic minorities are often at a higher risk of unwanted pregnancy, often lacking the means to overcome socioeconomic and other barriers to access modern contraceptive methods and safe abortion. Banning access to abortion has a profound disparate impact and does not comply with the principle of non-retrogression in providing access to safe, legal and effective abortion as detailed in the WHO Abortion Care Guideline.

²² [51] Article 29 UNDRIP; IACtHR, *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina* (6.2.2020); *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (Communication No. 155/96) ACHPR 35 (27 October 2001).

²³ [53] *Daniel Billy and others v. Australia* (CCPR/C/135/D/3624/2019).

34. The criminalization of abortion in all circumstances constitutes an indirect form of intersecting racial and gender-based discrimination as it has a greater impact on indigenous women and women of African descent, particularly those with low income, exposing them to life-threatening situations and constituting a violation of the principle of non-retrogression. Criminalization of abortion further exacerbates the underreporting of important health indicators and undermines monitoring racial inequalities. Failing to recognize the impact of racially motivated sexual violence, hindering access to information and programmes on modern contraception and safe abortion care, criminalizing and punishing access to abortion constitute a chain of compounded discriminatory exposure to health-harming conditions while each of these instances constitute a violation of Article 5(e)(iv).

C. The right to a system of health protection, including entitlements to public health as well as healthcare facilities, services and goods

35. Article 5(e)(iv) provides for the right to an inclusive health system, the right to equal and unhindered access to culturally appropriate, gender-sensitive and context-responsive quality health facilities, goods, services, the right to privacy and confidentiality and the right to participation. Freedom from racial discrimination and entitlements to substantive equality apply in all essential elements of the right to health.

...

3. Acceptability

41. All health providers, goods, information and services must be respectful of the culture of racial and ethnic groups and Indigenous Peoples and sensitive to gender, age, disability, gender and sexual diversity and life-cycle requirements. Healthcare and services that are culturally sensitive, culturally acceptable and respectful must be available within reasonable geographical reach. They should be adapted to linguistic characteristics of the beneficiaries, co-designed or in close cooperation with the communities concerned and should include members of their communities in the health workforce. Equality in acceptability of health entails actively combatting stereotypes and legacies of theories of racial superiority, slavery and colonialism, and bias against traditional knowledge, healers and practices. A lack of recognition, or the arbitrary prohibition, of traditional healers, medicines and pharmacopoeia specific to certain ethnic groups make them vulnerable to diseases.²⁴

4. Quality

42. Racial and ethnic groups have the right to healthcare facilities, goods, information and services of good quality, evidence-based, scientifically and medically appropriate and up to date. This requires access to trained and skilled healthcare personnel, scientifically approved and unexpired drugs and equipment. Institutional racial bias continues to impair and restrict access to quality and adequate healthcare, goods, and services due to unequal participation in clinical decision-making and normalization of social constructs in health practices, protocols and policies. Disease stereotyping and bias in medical training approaches and materials are perpetuated by conflating race and ancestry, by using terms with racial connotations and by referring to differences in the prevalence of disease.

²⁴ [93] Articles 21, 24, 29, and 31 UNDRIP.

43. Under the historical legacy of slavery, women and men of African descent have been considered to be physically stronger and to be able to endure more pain. The Working Group of Experts on People of African Descent reports lack of knowledge among health providers on how symptoms manifest in and on black bodies. Women of African descent, Indigenous women and Roma women often wait longer before they have access to medicine, including during labour. Groups within the purview of the ICERD tend to be excluded from medical research and studies on treatments and medicine. Physicians report that, owing to bias, structural barriers and an unwillingness to demonstrate flexibility and responsiveness with regard to integrating participation by members of ethnic and racial groups, medication and other goods and services are not tested taking into consideration the situation of those groups.

III. Obligations and recommendations

46. Articles 51(iv), 6 and 7 require : i) prevention of health-harming conditions, including climate change and environmental hazards, ii) access to safe drinking water and adequate sanitation, safe food, and housing, safe and healthy working conditions, iii) adequate quantity and quality of preventive, curative, and rehabilitative healthcare services, essential medicines, including traditional medicines and healing practices, within reasonable geographical reach, iv) access to information and technology and measures bridging digital divide, v) eliminating racial disparities in health outcomes and resources and protecting against health hazards by third parties, vi) collecting and disaggregating up to date statistics and monitoring health inequities, vii) promoting public awareness and education on combatting racial discrimination in the enjoyment of the right to health, viii) ensuring direct participation of racial and ethnic groups in decision-making, ix) adopting and implementing a national public health strategy and plan of action, and x) ensuring accountability and reparation for any damage suffered as a result of racial discrimination. States are required to prevent discrimination, protect individuals against harm, and promote equality and dignity for all members of society. Combatting structural inequalities requires comprehensive strategies that address the root causes of health inequities and promote social justice, equality, and inclusion. This includes investing in community-led initiatives and resources, promoting diversity and cultural competence in healthcare and other sectors, and identifying and addressing broader structural inequalities and systemic barriers perpetuating racial health disparities.

A. General principles on obligations under ICERD

47. Article 2, read in conjunction with article 51(iv), entails obligations to respect, protect and fulfil the right to equality and freedom from racial discrimination in the enjoyment of the right to health. States parties are required to pursue a policy of eliminating discrimination, indicating that a wide range of measures must be taken “without delay”, including special measures. Obligations undertaken under Article 51(iv) are of immediate effect and require taking concrete measures, ensuring that freedom from discrimination and the right to equality in the enjoyment of the right to health is respected, protected, and fulfilled. Retrogressive measures are not permissible. States must strictly scrutinise the necessity and proportionality of measures affecting racial and ethnic groups and Indigenous Peoples. Evidence-based knowledge on the impact of racism on health prioritizes an intersectional anti-racist measures over other competing interests. Obligations under the ICERD

apply not only to the territory of every State party, but also to all other territories over which the State party exercises control, including in armed conflicts.

B. Obligation to respect the right to equality and freedom from racial discrimination in the enjoyment of the right to health

48. The obligation to respect the right to health without racial discrimination requires States to refrain from any act or omission, any law, policy, practice that directly or indirectly restricts or affects disproportionately the enjoyment of the right to health by racial and ethnic groups. It also requires States to take general and special positive measures to ensure equality in the enjoyment of the right to health.

1. Repeal and refrain from any discriminatory act, policy or law (article 2(2)), which results in bodily harm, preventable morbidity and mortality;

49. Authorities, including law enforcement officials and health-related authorities, must refrain from racial bias, stigmatization, acts of discrimination, bias-motivated violence, incitement to racial hatred, acts of discrimination.

50. States parties should repeal:

- a) any law and policy that disproportionately limits access, including for non-citizens, to preventive, curative and palliative health services;
- b) laws that require health providers to report undocumented migrants to police.

51. States parties should refrain from:

- a) Prohibiting or impeding access to traditional medicine and practice.
- b) Conducting discriminatory experimental research, coercive treatments and discriminatory restrictions in the control of communicable and non-communicable diseases and mental health.
- c) Placing in detention persons with pre-existing health vulnerability.
- d) adopting disproportionate health-harming laws and practices in enforcing migration law.
- e) adopting discriminatory laws and practices in sexual and reproductive health: i) prohibit forced sterilization; ii) decriminalize access to abortion; iii) ensure access to contraceptives and other health goods.
- f) conducting activities causing disproportionate environmental damage.
- g) promoting residential segregation and from placing racial and ethnic groups in remote areas without access to health care and other providers.
- h) **expropriating Indigenous Peoples' lands and from displacing them without their prior, free and informed consent; installing waste disposal sites or other environmental hazards on Indigenous Peoples' territories.**
- i) **imposing restrictions on the permanent rights of Indigenous Peoples endangering their self-determination, traditional livelihoods and cultural rights, in accordance with the standards of the UNDRIP. [emphasis added]**
- j) over-policing communities, racial profiling, increased surveillance and other forms of policing activity with a negative impact on mental health and well-being of individuals and their families.
- k) subjecting individuals protected under the ICERD to involuntary admission to psychiatric institutions, involuntary treatment and seclusion or restraint.
- l) using solitary confinement and chemical agents except under strictly defined conditions that are regularly assessed for racial bias.

- m) criminalising safe traditional health practices or the exercise of reproductive rights, such as the right to abortion.
- n) carrying out practices resulting in geographical and other types of isolation of communities without access to health care and other providers (GR No. 27, para. 31).
- o) ...
- t) signing bilateral or multilateral agreements that reinforce the vulnerabilities of groups within ICERD's purview and result in negative health outcomes.
- u) using racial bias, including algorithmic in health and social policies.
- v) using racial stereotypes and misinformation regarding health protection or treatment.
- w) exposing racial and ethnic groups to vulnerabilities within data governance systems.

2. Ensure equal access to culturally appropriate, gender-sensitive and context-responsive quality health facilities, goods, services, social determinants of health, the right to privacy and confidentiality and the right to participation

52. States must refrain from omissions to advance and guarantee equality in the enjoyment of the right to health by:
- a) Adopting comprehensive legislation explicitly providing for positive measures ensuring equality and intercultural health, including measures enabling the right to privacy and confidentiality.
 - b) Distributing equitably trained medical and professional personnel and essential medicine, preventative goods and services, including through mobile health clinics.
 - c) Addressing with evidence-based policies causes of mortality and morbidity, including commercial determinants of health that disproportionately affect racial and ethnic groups.
 - d) Providing access to Universal Health Coverage and ensuring that criteria promote the health of those most in need, including migrants, asylum-seekers, and LGBTQI+ persons.
 - e) Ensuring that a sufficient number of health professionals provide services to Indigenous Peoples, and that the State party set up benchmarks for monitoring progress in key areas of indigenous disadvantage.
 - f) Ensuring that healthcare providers: i) inform every patient protected under the ICERD about the nature of the procedure, treatment options, and reasonable alternatives, including potential risks and benefits; ii) consider the individual's needs and ensure they understand the provided information; iv) ensure the consent given is free and voluntary.
 - g) Including professionals specifically focused on intercultural care, in addition to expanding intercultural competencies of existing staff.
 - h) Providing communication and transportation to health provides, goods, and treatments.
 - i) Ensuring in all contexts, including in places of deprivation of liberty, appropriate health screening, care and medical, laboratory and pharmacy records.
 - j) Ensuring access to interpreters where necessary and to social and health services in appropriate languages.
 - k) Providing equal access to health-related education and evidence-based information and removing language and cultural barriers.

- l) Conducting targeted awareness-raising campaigns with information about available health services and the requirements for universal health coverage.
- m) Co-designing with racial and ethnic groups and Indigenous Peoples culturally acceptable and gender-sensitive preventive, curative and palliative health services.
- n) Ensuring that primary care at local and referral levels relies on health workers, including physicians, nurses, midwives, auxiliaries and community workers as applicable, as well as traditional practitioners as needed, suitably trained socially and technically to work as a health team and respond to the expressed health needs of the community.
- o) Ensuring high-quality, free from racial bias, preventive, curative and palliative health services effective and affordable medicines, including traditional medicines, vaccines, diagnostics and other technologies.

D. Obligation to fulfil the right to equality and freedom from racial discrimination in the enjoyment of the right to health

55. The obligation to fulfil requires States, individually and through international assistance and cooperation, to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other positive measures for the full realization of the right to equality and freedom from racial discrimination in the enjoyment of the right to health. The immediate effect of obligations under the ICERD and the ICESCR (article 2 paras 1-2 CESCR) requires States to design, adopt, implement and regularly assess deliberate, concrete and targeted measures, considering intersectionality.

...

2. Participation, consultation and empowerment

58. Article 2(1)(e) sets out the obligation of State parties to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between “races”, and to discourage anything which tends to strengthen racial division. Integrationist multiracial organizations and movements should be understood as grassroots, community civil society organizations that support the principles of the ICERD. States should allocate resources to co-design intercultural health with racial and ethnic groups and Indigenous Peoples at the community, local, regional or national levels. States should involve associations and communities and their representatives, including women, in designing and implementing health programmes and projects concerning racial and ethnic groups.

...

4. Adopting and implementing national health action plans

61. States should adopt national health strategies and plans of action, in consultation with relevant groups for identifying gaps, setting out clear objectives, providing for special measures in accordance with article 2(2), ensuring coordination of all relevant authorities and effective budgeting. They should effectively adopt and implement well-resourced policies that aim to improve the socioeconomic situation of racial and ethnic groups and Indigenous Peoples, including specific programmes for women, children, older persons, persons with disabilities and to address the deep-rooted discrimination, including special measures. Specific health prevention programmes should target persons who are not covered by the public health insurance scheme, including undocumented migrants. A gender perspective in all policies and strategies for combating racial discrimination is

fundamental to put an end to multiple and intersectional discrimination faced by Indigenous Peoples, migrants and African-descendent women.

...

5. Education, training and public awareness

64. In line with article 7 of the ICERD, States parties should promote public awareness and education on the prohibition of racial discrimination and the right to equality in the enjoyment of the right to health. This includes educating health providers, policymakers, and the general public about the importance of addressing racial disparities in health and ensuring equal access to healthcare services for all.

65. States should:

- a) Develop and offer anti-racism, anti-discrimination and cultural competency training to the health workforce, involved at least in primary health care, including in humanitarian settlements, at the local, regional and national levels.
- b) Ensure that persons experiencing intersecting forms of discrimination participate in developing and delivering such training, where possible. Hospitals, primary health-care centres and social services should ensure that training is complemented by institutional interventions to limit discretion and increase oversight in areas vulnerable to stereotyping and biases.
...
- c) Encourage medical schools to increase diversity and representativeness of Indigenous Peoples as well as people of African descent, Roma and members of other ethnic groups, as applicable in the national context.

E. Accountability

66. In accordance with article 6, States must assure to everyone within their jurisdiction effective protection and remedies against any acts of racial discrimination which violate his or her right to health contrary to the ICERD, as well as the right to seek adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

67. States should:

- a) Establish effective and independent accountability mechanisms, both internal – in health-care establishments – and external and envisage disciplinary measures for misconduct.
- b) Carry out periodic audits, with the help of independent experts, to identify gaps in internal policies and practices. Transparency regarding the outcomes of these procedures is strongly recommended, as it may strengthen accountability and the trust of individuals and communities.
- c) Establish independent non-judicial accountability and grievance mechanisms with the competence to establish facts, identify those responsible for acts or omissions constituting racial discrimination and provide reparation for any harm.
- d) Establish non-judicial remedies co-designed with racial and ethnic groups and Indigenous Peoples.

...

IV. Dissemination of the general recommendation

71. States should disseminate this general recommendation to all relevant authorities, racial and ethnic groups, and Indigenous Peoples, in their languages and other communication forms.

• || •

Human Rights Committee

A. CONCLUDING OBSERVATIONS

1. Ecuador, CCPR/C/ECU/CO/7, 4 December 2024

C. Principal matters of concern and recommendations

...

States of emergency

9. The Committee is deeply concerned about the frequency with which the State party has declared states of emergency and derogated from certain Covenant rights and about the apparent normalization of states of emergency nationally and locally, bearing in mind that derogations should be invoked only in truly exceptional situations. Likewise, it regrets the recurrent recourse, since January 2024, to citing “internal armed conflict” as grounds for such declarations and the absence of measures to ensure compliance with Constitutional Court rulings on the matter. The Committee is also concerned about reports indicating that some rights, including freedom of movement, freedom of association and freedom of assembly, have been significantly and disproportionately restricted, particularly affecting Indigenous persons, persons living in poverty and migrants, refugees and asylum-seekers (arts. 4, 6, 7, 9, 12, 21 and 22).
10. The State party should limit recourse to states of emergency and should ensure strict respect for the human rights enshrined in the Covenant and systematic compliance with all the conditions set forth in article 4 of the Covenant, as interpreted by the Committee in its general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency. It should also ensure that any measures introduced to protect the population in the context of a state of emergency are temporary, proportionate, strictly necessary and subject to prompt judicial review; and that the principles of non-discrimination and proportionality continued to be guaranteed, in full compliance with articles 164 and 165 of the Constitution and Constitutional Court rulings.

Gender equality

17. The Committee...remains concerned about the persistent discriminatory stereotypes and entrenched patriarchal attitudes surrounding the role and responsibilities of women. While noting the amendments to the Organic Act on Elections and Political Organizations, the Committee is concerned about the limited presence of women in local elected offices and regrets not having received information on measures taken to increase the representation of Indigenous, Afro-descendant and Montubio women in the public and private sectors, particularly in political positions. While the Committee takes note of the addition of political violence to the catalogue of electoral offences, it notes with concern the cases of femicide, harassment and threats against women politicians (arts. 2, 3, 25 and 26).
18. In line with the recommendations made by the Committee on the Elimination of Discrimination against Women, the State party should intensify its efforts to ensure effective equality between men and women in all spheres and throughout the country. In particular, it should: (a) Strengthen measures to increase the participation of women, including Indigenous, Afro-descendant and Montubio

women, in political and public life, as well as their representation in the public and private sectors, especially in local elected office, ensuring, inter alia, full compliance with the temporary special measures provided for in the Code of Democracy...

Violence against women, children and adolescents

19. The Committee welcomes the adoption of the Comprehensive Organic Act to Prevent and Eradicate Violence against Women, as well as the information from the State party indicating that the Central Register of Cases of Violence will be operational in the near future. However, the Committee remains concerned about the high incidence of femicide and sexual violence against women and girls, the low number of convictions obtained for these offences, and the lack of adequate protection, support and compensation services for victims. The Committee regrets that sexual violence against women and girls is reportedly a frequent occurrence in schools and homes and that information on measures taken to encourage reporting, particularly by girls of African descent, Indigenous girls and girls living in remote, rural areas, is lacking. ...
20. The State party should intensify its efforts to prevent, combat and eradicate all forms of violence against women and girls, including domestic violence and sexual violence, paying special attention to women from minority and marginalized groups and in particular by:
 - (a) Stepping up the implementation of the Comprehensive Organic Act to Prevent and Eradicate Violence against Women, among other things by ensuring that it allocates the human, financial and technical resources necessary for its effective and coordinated application, and also for the implementation of the Central Register of Cases of Violence and the Early Warning System;
 - (b) Ensuring that all cases of violence against women are thoroughly investigated, that the perpetrators are prosecuted and, if found guilty, are given sentences commensurate with the seriousness of the offences committed; and that victims have access to effective remedies, receive full reparation, including adequate compensation, and also have access to appropriate protection and assistance such as shelters and medical, psychosocial, legal and rehabilitative support services throughout the country;
 - (c) Encouraging the reporting of cases of violence against women and girls, including in educational institutions, for example by informing them of their rights and of the protection, assistance and measures of redress available to them, by providing the means necessary for such complaints to be made, and also by combating the social stigmatization faced by victims, particularly victims of sexual violence;
 - (d) Providing effective training on how to handle cases of violence against women for public officials including judges, lawyers, prosecutors, law enforcement officers, and social welfare and healthcare providers....

Voluntary termination of pregnancy and reproductive rights

21. The Committee notes the measures taken by the State party to improve access to sexual and reproductive health services and information and to prevent and address teenage pregnancy, including pregnancy resulting from sexual violence. It notes in this connection the adoption, in 2022, of the Organic Act regulating the voluntary termination of pregnancy for girls and women in cases of rape. However, the Committee is concerned that abortion remains an offence, except in cases of rape or threat to the life or health of the mother. While the Committee takes note

of the precautionary measures adopted by the Constitutional Court, which have temporarily suspended the application of certain provisions of the Organic Act, it is concerned about the practical obstacles to access to legal abortion that women reportedly face, which include recourse to conscientious objection on the part of medical teams (arts. 3, 6, 7, 17 and 26).

22. Bearing in mind the Committee's general comment No. 36 (2018) on the right to life, the State party should:
 - (a) Amend articles 149 and 150 of the Comprehensive Organic Criminal Code and revise the Organic Act regulating the voluntary termination of pregnancy for girls and women in cases of rape with a view to guaranteeing safe, legal and effective access to abortion, including in remote, rural areas, when carrying the pregnancy to term would cause considerable pain or suffering for the pregnant, and especially if the pregnancy is the result of incest or is not viable; ...
 - (c) Step up its efforts to prevent unwanted pregnancies, especially among teenage girls, and to ensure full access to adequate sexual and reproductive health services, including accessible and appropriate contraceptives, in all areas of the country, particularly for Afro-descendant and Indigenous women, women living in remote, rural areas and women living in poverty or extreme poverty...

Human rights defenders

41. While noting the State party's efforts to protect human rights defenders, the Committee is concerned that there is still no comprehensive policy promoting the implementation of effective protective and preventive measures and no mechanism specialized in the protection of human rights defenders. The Committee appreciates the measures taken to prevent violence and protect and promote the rights of human rights defenders, such as, for example, the development of a criminal policy guaranteeing that they have access to justice. However, it remains concerned about the high incidence of attacks against defenders of human rights and the environment, in particular assaults, killings, intimidation, acts of stigmatization, criminalization, unlawful detention and defamation campaigns, and about the level of impunity that continues in these cases. It is also concerned about reports of criminal and disciplinary proceedings being used as a means to intimidate and threaten defenders of human rights and the environment as well as journalists investigating corruption cases (arts. 9, 14, 19 and 21)
42. With broad participation by civil society, the State party should adopt and implement a national policy for the protection of human rights defenders capable of responding to needs in the areas of prevention, protection, the fight against impunity and non-stigmatization. It should ensure that the policy is focused on the regions with the highest levels of violence, incorporates differential, ethnic, gender, feminist and intersectional approaches, and is implemented effectively, among other things by allowing the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide capacity-building support. Additionally, the State party should redouble its efforts to:
 - (a) Establish a dedicated mechanism for the protection of defenders of human rights and the environment, allocating sufficient financial and human resources for its work, acting to address structural risk factors on both a reactive and preventive basis and organizing activities that increase public awareness of the mechanism's work;

- (b) Guarantee effective assistance and protection for human rights defenders, including defenders of environmental rights and the rights of Indigenous persons, persons of African descent, social and community leaders and journalists who are victims of threats, violence or intimidation, and ensure that they can carry out their activities in appropriate conditions, including through the adoption of collective protection measures and the effective implementation of precautionary measures;
- (c) Ensure that all reports of harassment, intimidation and violence against human rights defenders are promptly, thoroughly, independently and impartially investigated and that the perpetrators are prosecuted and, if convicted, receive penalties commensurate with the seriousness of the offence;
- (d) Review legislation intended to guarantee adequate protection for whistle-blowers, witnesses and victims of corruption so as to ensure that they are not criminalized and do not face threats or fear of reprisals.

Freedom of expression and peaceful assembly

43. The Committee welcomes the creation of the prevention and protection mechanism safeguarding the work of journalists. However, it regrets that the mechanism's budget is insufficient to ensure timely fulfilment of its mandate, as established in relevant legislation. Furthermore, the Committee is concerned about allegations that the mechanism's cooperation with civil society is limited. The Committee is also concerned about reports of harassment, attacks and violence against journalists and other media professionals, which in some cases have even forced them into exile. Likewise, the Committee is concerned about the alleged violations of the right to freedom of expression and the right to peaceful assembly that took place in the context of the demonstrations of 2019 and 2020, particularly the excessive force used against demonstrators and journalists by the security forces, and about the lack of information on the outcome of the investigations (arts. 6, 7, 9, 14, 19, 21 and 26). 44. The State party should take the measures necessary to ensure full enjoyment of the rights to freedom of expression and to peaceful assembly by all persons, bearing in mind the Committee's general comments No. 34 (2011) on the freedoms of opinion and expression and No. 37 (2020) on the right of peaceful assembly. In particular, the Committee calls upon the State party to: ... (c) Guarantee and respect the rights to peaceful assembly and demonstration, especially for Indigenous and campesino organizations, and ensure that the implementation of the rights to freedom of opinion and expression and peaceful assembly fully complies with the requirements of articles 19 (3) and 21 of the Covenant.

Rights of Indigenous Peoples

47. The Committee is concerned about the State party's delay in finalizing and adopting a law regulating the right of Indigenous communes, communities, Peoples and nationalities to consultation and free, prior and informed consent, and also about reports that the State party has been applying Executive Decree No. 754 to Indigenous communes, communities, Peoples and nationalities, in contravention of Constitutional Court judgment No. 51-23IN/23 of 2023. Specifically, it is concerned that the presence of the armed forces and the operations carried out in implementation of Executive Decree No. 754 might have led to an increase in violence, engendering violent confrontations and the criminalization of human rights defenders. The Committee is also concerned about reports that adequate

and sufficiently participatory consultation procedures have not been carried out in order to obtain free, prior and informed consent for plans and programmes implemented on the land of Indigenous Peoples and nationalities that might affect their environment or culture, including the San Carlos Panantza, Warintza, Rio Blanco, Curipamba-el Domo, La Plata and Mirador mining projects. It is also concerned about reports of the hazards posed by contamination and oil spillages in inhabited areas, in particular the areas inhabited by Indigenous Peoples (arts. 6, 19 and 27).

48. The State party should:

- (a) Accelerate the adoption of an effective and appropriate law and legally binding protocols on consultation and free, prior and informed consent, which include an effective consultation mechanism, with the effective and meaningful participation of Indigenous Peoples and nationalities; and ensure that the law and the mechanism are aligned with the principles of the Covenant, the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), the United Nations Declaration on the Rights of Indigenous Peoples and other international standards, and also with article 57 of the Constitution;
- (b) Ensure effective and good faith consultations with Indigenous Peoples, in which they actively and effectively participate, with a view to obtaining their free, prior and informed consent before the adoption and application of any measure that may substantially affect their rights, their way of life and their culture, particularly infrastructure projects or projects involving the exploitation of natural resources;
- (c) Take measures to ensure the restitution to Indigenous Peoples and nationalities of traditional lands and resources that have been confiscated, occupied, utilized or damaged without their free, prior and informed consent and, only where this is not possible, to provide them with just and fair compensation;
- (d) Ensure that harassment, intimidation and violence against Indigenous Peoples and defenders of Indigenous rights and the environment are promptly, thoroughly, independently and impartially investigated, that those responsible are brought to justice and that the victims have access to full reparation;
- (e) Intensify its efforts to prevent and mitigate the effects of climate change and environmental degradation and take appropriate action to apply a precautionary approach that protects people, and particularly Indigenous Peoples, from the negative effects of climate change and natural disasters.

Indigenous jurisdiction

49. While taking note of the measures adopted to guarantee access to justice for Indigenous persons, including the implementation of a guide to mainstreaming the principle of interculturalism in the ordinary justice system, the Committee remains concerned about the lack of adequate coordination between the ordinary justice system and the Indigenous justice system, which constitutes an obstacle to access to justice for Indigenous persons (arts. 14 and 27).

50. The State party should intensify its efforts to guarantee access to justice for Indigenous Peoples, ensuring respect for their fundamental rights and guarantees of due process. In addition, it should continue its efforts to recognize, respect and strengthen the Indigenous justice system, particularly through harmonization, cooperation and coordination between the authorities of the ordinary justice system and the indigenous justice system.

2. France, CCPR/C/FRA/CO/6, 3 December 2024

Principal matters of concern and recommendations

Right to self-determination

4. The Committee takes note of the information provided by the State party regarding the status of the Non-Self-Governing Territories of New Caledonia and French Polynesia under Chapter XI of the Charter of the United Nations. The Committee is concerned about the lack of progress made in dealing with the issue of the self-determination of the people of French Polynesia. The Committee notes the State party's efforts to renew dialogue in New Caledonia and to continue to implement the Nouméa Accord, which was signed on 5 May 1998 and concerns the self-determination of the people of that territory. Nonetheless, the Committee notes with concern that the third referendum in New Caledonia, which was held during the coronavirus disease (COVID-19) pandemic and the Kanak customary mourning period and was marked by a high abstention rate of 56.13 per cent, was organized in a way that denied the Kanak people their right to be given the opportunity to give their free, prior and informed consent (art. 1).
5. Bearing in mind the Committee's general comment No. 12 (1984) on the right to self-determination, the State party should facilitate and accelerate the realization of the right of peoples, in particular the Indigenous Peoples of New Caledonia and French Polynesia, to self-determination by cooperating fully with the special committee responsible for examining the situation of these two Non-Self-Governing Territories pursuant to the Charter of the United Nations and General Assembly resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples. Before adopting any measures relating to the self-determination process, the State party should consult the Indigenous Peoples of New Caledonia and French Polynesia in order to obtain their free, prior and informed consent. More specifically, the Committee recommends that the State party uphold the principle of constitutional irreversibility set out in point 5 of the 1998 Nouméa Accord, which guarantees the integrity of the decolonization process.

Interpretative declarations and reservations to the Covenant

6. The Committee regrets that the State party does not intend to withdraw its reservations and interpretative declarations, the number and scope of which considerably restrict the application of the Covenant. In particular, it regrets the restrictive interpretation of article 27 of the Covenant, which the State party has adopted based on the principles of the indivisibility, equality and unicity of the French people (art. 2).
7. The State party should reconsider its interpretative declarations and reservations, in particular concerning article 27, with a view to significantly reducing their number and scope and ensuring the effective application of the provisions of the Covenant.

Excessive use of force by law enforcement officers

18. Recalling its previous concluding observations, the Committee remains concerned about the number of reported cases of excessive use of force by law enforcement officers, in particular during traffic controls, arrests, forced evacuations and demonstrations. Recalling also the most recent concluding observations adopted by the Committee on the Elimination of Racial Discrimination, the Committee is concerned about reports that these cases disproportionately involve members of certain minority groups, especially ... Indigenous Peoples.... The Committee is gravely

concerned about the number of deaths resulting from the use of firearms by law enforcement officers during traffic controls. ... The Committee deeply regrets the lack of information on the criminal proceedings initiated against officers alleged to have used excessive force and on the reparations provided to victims and, where appropriate, their families (arts. 2, 6, 7 and 26).

19. In the light of the principles of equality of all persons before the law and non-discrimination, the State party should:
 - (a) Review and, if necessary, amend the legal framework, policies and operational procedures governing the use of force by law enforcement officers, with a view to ensuring their compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement;
 - (b) Ensure that all law enforcement officers receive adequate, specific training in using force and firearms in a way that is compliant with the above-mentioned international standards and that they attend regular refresher courses;
 - (c) Ensure that all allegations of excessive use of force are promptly, thoroughly and impartially investigated, that those responsible are prosecuted and, if found guilty, punished, and that the victims or their families obtain reparations;
 - (d) Ensure the routine collection and publication of detailed data on cases of excessive or deadly use of force.

Liberty of person

24. The Committee is concerned about the transfer to metropolitan France of several defenders of Indigenous rights who are members of the New Caledonian independence movement and the fact that they continue to be held in pretrial detention following the demonstrations and incidents that took place in New Caledonia in May 2024 (arts. 9, 10 and 17).
25. The State party should reconsider its practice of holding inhabitants of the overseas territories in pretrial detention in metropolitan France and promote the use of non-custodial measures as an alternative to pretrial detention.

Treatment of persons deprived of their liberty

26. ... The Committee is also concerned about the overrepresentation of Indigenous Peoples in prisons in New Caledonia (art. 10).
27. The State party should intensify its efforts to bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including by allocating more resources for efforts to reduce prison overcrowding, especially in the overseas territories. In particular, the State party should: ... (e) Take specific measures to address the overrepresentation of Indigenous Peoples among the prison population in New Caledonia and meet their specific needs, including through the use of alternative measures that enable Indigenous convicts to serve their sentences in their community.

Right of peaceful assembly

...

48. The Committee is gravely concerned about allegations concerning the excessive use of force by the law enforcement authorities in New Caledonia since the outbreak, in May 2024, of demonstrations and incidents in response to the constitutional bill

that would modify voting lists in the territory. Some events are reported to have turned violent; a number of individuals, including around 10 members of the Kanak community and two gendarmes, lost their lives, while hundreds of others were injured (arts. 2, 6, 7 and 21).

49. The State party should ensure that all alleged cases of excessive use of force by the law enforcement and security forces during the demonstrations and incidents that have taken place in New Caledonia since May 2024 are promptly, impartially and effectively investigated, that the perpetrators of crimes and offences committed in the context of these events are prosecuted and, if found guilty, punished with penalties commensurate with the gravity of their acts, and that victims receive full reparations.

Participation in public affairs

50. While welcoming the announcement that the constitutional bill that would modify voting lists in New Caledonia has been shelved, the Committee is concerned about the lack of effective political participation of the Indigenous Kanak People and the absence of consultative measures that would enable them to provide their free, prior and informed consent concerning the adoption of laws or other measures affecting their rights. The Committee is particularly concerned about the limited decision-making powers of the Customary Senate (art. 25).
51. Recalling the commitments made by the signatory States to the United Nations Declaration on the Rights of Indigenous Peoples, the Committee invites the State party to ensure the effective participation in political life of Indigenous Peoples in its overseas territories and to guarantee respect for the right of Indigenous Peoples to be consulted so that they can give their free, prior and informed consent concerning the adoption of any legislative measures or initiatives that may have an impact on the enjoyment of their rights.

3. India, CCPR/C/IND/CO/4, 2 September 2024

Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party: ... (d) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, in 2015...

Principal matters of concern and recommendations

Non-discrimination

13. The Committee takes note of the legislation and policies established to address discrimination in the State party. It is concerned, however, by the absence of a comprehensive anti-discrimination law that provides full and effective protection as required under the Covenant ... (arts. 2 and 26).
14. The State party should: (a) Adopt comprehensive legislation prohibiting discrimination, including intersectional, direct and indirect discrimination in both the public and the private sectors and on all grounds prohibited under the Covenant, and ensure access to effective and appropriate remedies for victims...
15. While the Committee appreciates the constitutional and legal measures adopted to prevent, protect and address discrimination and violence against scheduled castes and scheduled tribes, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is concerned by reports indicating systemic

challenges to the implementation of such measures, including the delayed registration of “first information reports”, inadequate police investigations, lengthy trials and non-compliance with the 60-day case-disposal requirement. The Committee remains concerned by multiple reports of widespread discrimination and violence against these groups, including lynching, mob violence and displacement, and attacks on Adivasis practising Christianity.... The Committee is further concerned by the non-extension of scheduled caste status and reservation benefits for Dalits who have converted to Islam or Christianity ... (arts. 2 and 26).

16. The State party should ensure that everyone can enjoy the human rights enshrined in the Covenant without discrimination. In particular, it should:
 - (a) Strengthen the implementation, monitoring and enforcement of its legal and policy framework to prevent and address discrimination and violence against scheduled castes and scheduled tribes, as well as Dalits and the other so-called backward classes and other ethnic, religious and national minorities, in particular by the timely registration of first information reports, effective police investigations, the reduction of delay in judicial proceedings and compliance with the 60-day case-disposal requirement;
 - (b) Ensure that all allegations of discrimination or violence against scheduled castes and scheduled tribes, Dalits and the other so-called backward classes and other ethnic and national minorities and Dalits converted to Islam or Christianity are promptly, impartially and effectively investigated, that perpetrators are prosecuted, and, if convicted, punished with penalties commensurate with the gravity of the offences and that victims are provided with full reparation and means of protection;
 - (c) Consider amending legislation to ensure that Dalits, Muslims and Christians enjoy adequate protection against discrimination and violence....

Violence against women and harmful practices

21. Despite the measures taken by the State party, including the Protection of Women from Domestic Violence Act, 2005, and some provisions of the new criminal code, the Bharatiya Nyaya Sanhita, 2023, the Committee remains concerned about the endemic violence against women and girls, which is manifested by practices including marital and gang rape, domestic violence, acid attacks and public humiliation involving naked women being paraded through the streets. The Committee is concerned that such violence is exacerbated when directed against women and girls belonging to Indigenous ... communities and that it is largely underreported. The Committee is concerned about information concerning certain practices, including “honour crimes”, female genital mutilation, accusations of witchcraft and child marriage. The Committee is also concerned that the definition of rape under the Bharatiya Nyaya Sanhita, 2023 does not include marital rape (arts. 2, 3, 6, 7, 8 and 26).
22. The State party should adopt comprehensive legal and policy reform to prevent, address and eradicate violence against women and girls and other harmful practices in all their forms and manifestations. In particular, it should:
 - (a) Ensure that all cases of violence and harmful practices against women and girls are thoroughly and promptly investigated, that perpetrators are prosecuted and, if convicted, punished with penalties commensurate with the gravity of the offence;

- (b) Ensure that victims receive the necessary legal, medical, financial and psychological support and have access to effective remedies and means of protection;
- (c) Establish an effective mechanism to facilitate and encourage the reporting of cases of violence and harmful practices against women and girls, in particular those belonging to Indigenous, ethnic and religious minority and lower caste communities, including by ensuring that all women have access to information about their rights and to remedies, addressing the social stigmatization of victims and raising awareness among the general public about the criminal nature of such acts....

Counter-terrorism and security measures and accountability for serious human rights violations

27. The State party reports that certain “disturbed areas” suffer from terrorism and insurgency, leading to an acute “law and order situation” necessitating the involvement of the armed forces, which operate under the Armed Forces (Special Powers) Act, 1958, and the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990. The Committee notes that, while those measures could constitute emergency measures, the State party has not officially declared a public emergency, as provided for in article 4 of the Covenant and in the Committee’s general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency. The Committee is therefore concerned that the provisions of those Acts and related counter-terrorism legislation are not in compliance with the Covenant. The Committee is particularly concerned by the provisions of counter-terrorism legislation regarding: (a) the extensive power to use lethal force; (b) preventive detention without charge or judicial review for exceptionally long periods; and (c) the extensive power granted to executive bodies under broadly and vaguely defined terms, including designating individuals responsible for acts that are “likely to threaten” or “likely to strike terror in people”, which could infringe the presumption of innocence and be misused against dissidents and activists. As a result of that legislative framework and its application, the Committee remains concerned that the application of counter-terrorism legislation for decades in so-called disturbed areas, for example districts in Manipur, Jammu and Kashmir and Assam, has led to widespread and grave human rights violations, including the excessive use of force leading to unlawful killings, arbitrary detention without formal charges for years, habeas corpus petitions that are not dealt with expeditiously, sexual violence, forced displacement and torture and ill-treatment (arts. 2, 6, 7, 9, 14 and 26).
28. The State party should review the existing counter-terrorism legislation, including the Armed Forces (Special Powers) Act, 1958, the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, the National Security Act, 1980, the Unlawful Activities (Prevention) Act, 1967, the Jammu and Kashmir Public Safety Act, 1978, and the Chhattisgarh Special Public Security Act, 2005, that does not comply with the Covenant and ensure that it complies fully with its obligations under the Covenant and with the principles of legal certainty, predictability, necessity and proportionality. The State party should also:
- (a) Ensure that counter-terrorism legislation is not invoked or applied to unjustifiably limit any right enshrined in the Covenant, including the rights to life, liberty and security of person, procedural guarantees, such as the presumption of innocence, and freedom of expression and association or to repress human

rights defenders, journalists, peaceful protesters and political opponents, among others;

- (b) Ensure that persons suspected of or charged with terrorist acts or related offences are provided, in law and in practice, with all appropriate legal and procedural safeguards, including against arbitrary detention, that their detention is reviewed in a prompt, thorough and impartial manner by the relevant judicial authorities, including through the effective implementation of the right to habeas corpus, and that anyone detained arbitrarily is released without conditions and is adequately compensated;
 - (c) Ensure that counter-terrorism and other security and counter-insurgency measures in disturbed areas are temporary, proportionate, strictly necessary and subject to judicial review;
 - (d) Establish a mechanism with guarantees of independence, transparency and genuine investigative power to initiate a process to acknowledge responsibility, ascertain the truth and foster and preserve memory regarding human rights violations in disturbed areas.
29. The Committee is concerned that the requirement of mandatory prior authorization by the Government for the prosecution of members of the security and armed forces in the context of counter-terrorism and security and military operations creates a climate of widespread impunity regarding allegations of human rights violations. In that regard, the Supreme Court of India, in 2016, stated that allegations of extrajudicial killings must be thoroughly investigated. According to reports, however, out of the 1,528 documented instances of extrajudicial killings in Manipur from 1979 to 2012, only 39 First Information Reports were registered and not all of those cases have been scheduled for trial due, among other reasons, to the refusal to sanction the prosecution (arts. 2, 6, 7, 9, 14 and 26).
30. The State party should abolish the requirement of mandatory prior authorization of the Government for the prosecution of members of the security and armed forces, investigate promptly, thoroughly and impartially all human rights violations in the context of counter-terrorism, security and military operations, ensure that perpetrators are prosecuted and, if convicted, punished with penalties commensurate with the gravity of the offence and that victims have access to effective remedies.

Rights of minorities and Indigenous Peoples

59. While acknowledging the efforts of the State party to envisage affirmative action and empowerment in favour of certain communities, the Committee is concerned that the scheduled tribes remain among the most disadvantaged socioeconomic groups. The Committee is also concerned that rights to the land of Indigenous and tribal peoples are often threatened by development projects and the activities of extractive and other industries, without proper consultation and obtaining their free, prior and informed consent. The Committee is further concerned that the laws enacted to protect land rights and to prevent violence and discrimination against Indigenous and tribal peoples are inadequately enforced. The Committee is concerned by information received that in Raigarh, Chhattisgarh, 1,176 cases of tribal lands acquired under coercion and without seeking free, prior and informed consent remain unaddressed and the recommendations of the National Commission for Scheduled Castes and Scheduled Tribes regarding the issue are not being implemented (art. 27).

60. The State party should ensure that the rights of Indigenous and tribal peoples to own, use and develop their ancestral lands and resources are recognized, respected and protected, in law and in practice. It should also:
- (a) Guarantee the systematic application of participation processes necessary to obtain the free, prior and informed consent of Indigenous and tribal peoples in relation to all decisions that affect them and in accordance with international standards and ensure compliance with the agreements reached with the State and public and private companies;
 - (b) Ensure the effective implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and other international standards on the rights of Indigenous Peoples, such as the United Nations Declaration on the Rights of Indigenous Peoples;
 - (c) Ensure that evictions, when unavoidable, are carried out in accordance with due process of law, are preceded by consultation with the persons concerned and the consideration of alternatives, are subject to appeal and result in restitution or adequate compensation;
 - (d) Improve the provision of essential public services to Indigenous and tribal peoples in situations of vulnerability;
 - (e) Ensure adequate access to prompt and effective justice and remedies and fair and adequate reparation and compensation, including regarding the 1,176 cases of tribal lands that remain unaddressed in Raigarh, Chhattisgarh.

4. Suriname, CCPR/C/SUR/CO/4, 28 August 2024

National human rights institution

5. The Committee welcomes the delegation's indication that the future national human rights institute will be in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including with regard to its independence and mandate, that it will deal with complaints of human rights violations submitted by individuals and civil society organizations, that its governing body will reflect the plurality of Surinamese society and gender equality and that it will include a specific mechanism for ensuring effective consultation with Indigenous and tribal peoples. The Committee is nonetheless concerned by reports indicating a lack of transparency in the process of drafting the law to establish the institution, the lack of information on how civil society organizations will be included in the institution's functioning and the delays in finalizing its establishment (art. 2).
6. The State party should expedite the establishment of a national human rights institution in accordance with the Paris Principles. The State party should carry out an open, transparent and meaningful consultation process on the draft law, ensuring the participation of a wide range of stakeholders, including civil society organizations and Indigenous and tribal peoples.

Fight against impunity, and past human rights violations

11. The Committee welcomes the Constitutional Court's annulment, in August 2023, of the Amnesty Act of 1989 and its 2012 amending Act and the High Court's confirmation, in December 2023, of the convictions of perpetrators of the "December murders" of 1982 and the steps taken to address impunity for the perpetrators of the Moiwana Village massacre. The Committee is nonetheless concerned that the judicial and

law enforcement authorities have not been able to enforce the sentences imposed on two of the perpetrators of the “December murders” of 1982 who have absconded, including former President Desiré Bouterse. Furthermore, the Committee is concerned that other grave human rights violations that occurred during the de facto military regime (1980–1991) continue to go unpunished and the victims remain without adequate remedies and that the State party has yet to implement a comprehensive and effective framework for witness protection (arts. 2, 6, 7 and 14).

12. The State party should:

- (a) Ensure accountability for all serious human rights violations that occurred during the de facto military regime (1980–1991), including by thoroughly investigating and prosecuting alleged crimes and ensuring that perpetrators, if found guilty, are punished commensurately with the gravity of the acts committed, and take all measures necessary to prevent their repetition;
- (b) Ensure that investigations and prosecutions of past human rights violations are conducted according to international standards, specifically the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and the Minnesota Protocol on the Investigation of Potentially Unlawful Death;
- (c) Take all measures necessary to ensure the enforcement of all sentences imposed in the context of the “December murders” of 1982 trial;
- (d) Ensure that all victims of past human rights violations and their families receive full reparation, including rehabilitation and adequate compensation, and ensure respect for their right to truth and memory;
- (e) Ensure the effective protection of witnesses, including by establishing a comprehensive witness protection framework, investigating all cases of suspected witness intimidation and ensuring that perpetrators are appropriately punished.

Non-discrimination

13. The Committee regrets the lack of information provided regarding any plans for the adoption of a comprehensive anti-discrimination law and is concerned by the absence of complaints relating to discrimination or hate crimes in general, which may reveal a lack of public awareness of the legal remedies available, a lack of trust in the judicial system and fear of reprisals. While welcoming the adoption of the Equal Treatment in Employment Act, in 2022, which explicitly prohibits discrimination on the grounds of disability, sex, sexual orientation and gender identity, among others, the Committee is concerned about the lack of information on its implementation, including with regard to ensuring access to effective remedies for victims of discrimination, and that it does not apply to public servants (arts. 2, 19, 20 and 26).

14. Bearing in mind the recommendations of the Committee on the Elimination of Racial Discrimination,⁵ the State party should:

- (a) Prioritize the drafting and adoption of a comprehensive anti-discrimination law, within a clear time frame and with the effective and meaningful participation of civil society organizations and Indigenous and tribal peoples, and ensure that the law explicitly prohibits both direct and indirect discrimination in the public and private spheres;
- (b) Ensure the effective implementation of the Equal Treatment in Employment Act of 2022 and extend the scope of its application to include public servants;

- (c) Take appropriate measures to ensure access to effective remedies for victims of discrimination, including by conducting targeted public information campaigns to raise awareness of the available avenues for redress.

Access to justice, independence of the judiciary and fair trial

37. With reference to its previous concluding observations,⁷ the Committee welcomes the steps taken by the State party to strengthen the judicial system and increase access to justice, including ongoing initiatives to train judges and prosecutors and decentralize the justice system, and plans to reinforce judicial independence by establishing a separate entity within the High Court of Justice with its own budgetary authority. The Committee is concerned, however, by reports indicating continuing shortcomings, notably including funding and late payment issues affecting the legal aid system and the provision of interpretation and translation services and other expert services required for some cases. The Committee is also concerned about the obstacles to access to justice for Indigenous and tribal peoples, including the lack of recognition of collective legal personality or collective rights, as well as geographical, cost, language and educational barriers. Furthermore, the Committee regrets the lack of detailed information provided by the State party on the enforcement of the Code of Conduct for Judges, established in 2015, including information relating to complaints of judicial misconduct and their outcomes (art. 14).
38. The State party should continue and expand measures to furnish the justice system with appropriate human and financial resources, strengthen the independence of the judiciary and enhance access to justice for all persons subject to its jurisdiction. In particular, the State party should:
- (a) Implement and expand ongoing initiatives to decentralize the judicial system, including through the establishment of Legal Aid Bureau offices and the holding of judicial proceedings in remote areas of Suriname, with a particular emphasis on addressing practical challenges faced by Indigenous and tribal peoples in obtaining access to justice;
 - (b) Enact legislation on the rights of Indigenous and tribal peoples, recognizing their legal personality and standing before the law, including the recognition of collective legal personality and collective rights;
 - (c) Ensure adequate funding and efficient payment systems for the provision of legal aid and interpretation and translation services and other expert services;
 - (d) Ensure the effective enforcement of the Code of Conduct for Judges, including the complaint procedure for cases relating to judicial conduct, ensuring that the public is informed of the outcomes.

Participation in public affairs

45. The Committee is concerned that Indigenous and tribal peoples are not sufficiently included in public affairs, in particular political decision-making, and that amendments in 2023 to the Constitution and electoral regulations following the Constitutional Court's 2022 ruling may further reduce the ability of Indigenous and tribal peoples to influence public policy. The Committee is also concerned about: (a) the lack of information provided by the State party on measures taken or envisaged to ensure the effective implementation of the amended electoral regulations prior to the national elections scheduled for May 2025; and (b) the introduction of high financial deposits for political parties to register for the elections, which may prevent smaller parties from participating (arts. 25 and 26).

46. The State party should recognize the traditional authorities of Indigenous and tribal peoples and ensure their meaningful inclusion at the local and national levels in policy development and political decision-making, in particular on matters affecting their interests. The State party should also take appropriate measures to ensure the effective implementation of the recently amended electoral regulations ahead of the national elections to be held in 2025 and ensure that registration deposit requirements do not prevent smaller political parties from participating in the elections.

Rights of persons belonging to minorities

47. Recalling its previous concluding observations and the concluding observations adopted by the Committee on the Elimination of Racial Discrimination in 2022, the Committee remains concerned that Indigenous and tribal peoples are not sufficiently consulted on decisions that have an impact on their rights, notably as regards obtaining their free, prior and informed consent for the granting of concessions, extractive licences or easements on or near their traditional lands, including for the exploitation of minerals, forests and oil and gas deposits. The Committee is particularly concerned about the long delay in finalizing and adopting the draft Indigenous and Tribal Peoples' Collective Rights Act, which would protect their collective land rights, and reports indicating that the State party is selling or leasing public lands to private entities before the act is adopted, raising concerns that public lands claimed by Indigenous and tribal peoples could be affected. The Committee is also concerned by information received from the State party that judgments of the Inter-American Court of Human Rights regarding the rights of Indigenous peoples, particularly in the cases of *Moiwana Community v. Suriname* (2005), *Saramaka People v. Suriname* (2007) and *Kaliña and Lokono Peoples v. Suriname* (2015), have been only partially implemented (arts. 1, 2 and 27).
48. Echoing the concluding observations adopted by the Committee for the Elimination of Racial Discrimination and recalling the United Nations Declaration on the Rights of Indigenous Peoples, the Committee calls upon the State party:
- (a) To expedite the adoption, within a clear time frame, of the draft law on the collective rights of Indigenous and tribal peoples and the demarcation of their lands, territories and resources, with the effective and meaningful participation of Indigenous and tribal peoples;
 - (b) To ensure that no State-held land claimed by Indigenous and tribal peoples is sold or leased to private entities until the collective land rights of Indigenous and tribal peoples have been recognized in the above-mentioned draft law;
 - (c) To adopt measures to ensure meaningful consultation with Indigenous and tribal peoples on any current or future projects or legislative or administrative measures that may affect their lands, territories and resources, including by adopting a comprehensive legislative framework for obtaining their free, prior and informed consent;
 - (d) To take measures to ensure restitution to Indigenous and tribal peoples of their traditional lands, territories and resources that have been confiscated, occupied, used or damaged without their free, prior and informed consent and, only where this is not possible, to provide them with just and fair compensation;
 - (e) To ensure the full implementation of the judgments of the Inter-American Court of Human Rights regarding the rights of Indigenous and tribal peoples.

5. Honduras, CCPR/C/HND/CO/3, 23 August 2024

Non-discrimination

11. The Committee recognizes the State party's efforts to combat discrimination through measures such as the inclusion in the 2020 Criminal Code of provisions punishing the offence of discrimination and the establishment of ministries for social development and women's affairs. ... The Committee also regrets that there are no constitutional and legislative guarantees of equality and non-discrimination for ... vulnerable groups, such as ... Indigenous Peoples ... lack effective legal and institutional protection (arts. 2, 3, 6, 25, 26 and 27).
12. The State party should step up its efforts to prevent, combat and eradicate all forms of discrimination and provide effective protection. The State party should, inter alia:
 - (a) Ensure that its legislative and policy framework prohibits discrimination, in particular intersectional, direct and indirect discrimination, including against women, Indigenous Peoples, Afro-Hondurans and migrants, in both the public and private spheres, and on all the grounds prohibited under the Covenant. It should also adopt the legislative and other measures required to guarantee that lesbian, gay, bisexual, transgender and intersex persons, including those in adult same-sex relationships, enjoy equality and are not discriminated against on the basis of their sexual orientation and gender identity;
 - (b) Increase public education and awareness campaigns and training for the judicial sector to promote tolerance and respect for diversity.

Prohibition of slavery, forced labour and trafficking in persons

31. The Committee welcomes the implementation of programmes to combat all forms of trafficking in persons and the amendments to the Criminal Code that significantly increase the penalties for trafficking offences. The Committee regrets, however, that the Trafficking in Persons Act does not contain a definition of trafficking that is in line with international standards. It is also concerned about reports that the courts do not award any form of compensation or restitution to victims (arts. 2, 7, 8 and 26).
32. The State party should step up its efforts to combat, prevent, eradicate and punish trafficking in persons. In particular, the State party should: ... (d) Redouble its efforts to identify victims of trafficking in persons, especially children and adolescents from rural areas and Indigenous and Afro-Honduran peoples, and provide them with adequate protection and assistance, with special emphasis on offering support to and working in coordination with civil society organizations.

Access to justice, independence and impartiality of the judiciary and administration of justice

37. The Committee welcomes the progress made in training judges and prosecutors on the rights of Indigenous Peoples. The Committee is concerned that, according to the information received, impunity remains a structural problem; access to justice continues to be a challenge, especially for certain vulnerable groups; judicial proceedings continue to be unduly delayed; judicial decisions are insufficiently reasoned; no comprehensive investigations are carried out; the participation of victims of these violations in criminal proceedings is limited; and the Public Prosecution Service does not seek reparations for victims in proceedings concerning human rights violations.
38. The State party should:

- (a) Guarantee effective access to justice, in particular the availability of legal aid, for everyone, including ... Indigenous Peoples ... and, among other measures, create new courts with adequate resources, especially in rural areas;
- (b) Combat impunity and ensure that investigations into human rights violations are prompt, effective, impartial and thorough, that those responsible for such acts are prosecuted and receive penalties commensurate with the gravity of the offence and that victims are provided with full reparation;
- (c) Ensure that judicial proceedings are conducted in accordance with the guarantees established in article 14 of the Covenant and in the Committee's general comment No. 32 (2007), without undue delays, and that judicial decisions are duly reasoned;
- (d) Reduce delays in the justice system by allocating more resources to it and increasing the availability of judges, prosecutors and public defenders;
- (e) Adopt the measures necessary to ensure that, in criminal proceedings for human rights violations, the victims can appear as interested parties and the Public Prosecution Service seeks reparations for victims.

Human rights defenders, freedom of expression and the right of peaceful assembly

41. The Committee takes note of the implementation of the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials and its implementing regulations, in addition to the work of the corresponding national protection system. However, it regrets that, to date, this system has not been provided with enough resources to offer adequate protection measures. The Committee reiterates its concern at the large number of acts of intimidation, violence and murder committed by State agents and private individuals or organizations against human rights defenders, in particular environmental and land activists, ... members of Indigenous communities.... The Committee is also concerned about the difficulties faced by victims in gaining access to justice, the lack of effective investigations, the delays in judicial proceedings and the climate of impunity (arts. 19 and 21).
42. In the light of its previous recommendations (para. 41), the Committee reiterates that the State party should urgently take effective measures to:
 - (a) Guarantee effective protection and assistance for human rights defenders, in particular environmental and land activists, ... members of Indigenous communities ... among others, who are subjected to acts of violence and intimidation, including by involving civil society and the individuals concerned in the development and implementation of prevention and protection measures;
 - (b) Promptly and thoroughly investigate all allegations of intimidation, threats and attacks, ensure that the perpetrators are prosecuted and, if convicted, punished with penalties commensurate with the gravity of the offence and provide the victims with full reparation;
 - (c) Ensure that effective legal remedies are available and that victims can access them without fear of reprisals;
 - (d) Continue to increase the allocation of financial, technical and human resources to strengthen the capacity of State investigation and protection mechanisms, including those under the national protection system.

Rights of ethnic, religious and linguistic minorities

45. While the Committee takes note of the implementation of the project to enhance access to justice for Indigenous and Afro-Honduran peoples, it is concerned about the acts of intimidation and violence faced by these communities, including murders committed with impunity, and about their criminalization, forced displacement and lack of access to justice. It is also concerned to note the discrimination to which they are subjected, which worsens inequality. The Committee is further concerned about information regarding evictions of Indigenous and Afro-Honduran peoples, in some cases with excessive use of force, and the application of Decree No. 93-2021, which permits preventive evictions without judicial oversight. While the Committee takes note of the creation of the High-level Intersectoral Commission for Compliance with International Judgments of the Inter-American Court of Human Rights, it regrets the lack of substantial progress in ensuring full compliance with the Court's judgments concerning groups such as the Garifuna communities of Punta Piedra and Triunfo de la Cruz, the Tolupan tribe of the community of San Francisco de Locomapa and the Miskito divers (arts. 1 and 27).
46. The State party should redouble its efforts to ensure the protection and recognition, both in law and in practice, of the rights of Indigenous and Afro-Honduran peoples, particularly with respect to land, territory and natural resources. It should also:
- (a) Facilitate access to justice for Indigenous and Afro-Honduran peoples, including in their own language or through interpreters;
 - (b) Investigate all cases of intimidation, violence and discrimination against these groups and ensure that the perpetrators are prosecuted and, if convicted, punished with penalties commensurate with the gravity of the acts committed, and that the victims receive full reparation;
 - (c) Ensure prompt and full compliance with all judgments of the Inter-American Court of Human Rights.
47. The Committee regrets the lack of progress towards adopting the bill on free, prior and informed consultation, for which the preparatory work began in 2015, and reiterates its concern about the lack of an effective process for free, prior and informed consultation and consent during the drafting of the bill. It is also concerned about certain aspects of the bill that are not in conformity with international standards. The Committee is concerned that the effective participation of Indigenous and Afro-Honduran peoples in decision-making on matters that directly affect them is not guaranteed and that consultation processes do not meet international human rights standards.
48. The State party should expedite measures geared towards the adoption of the bill on free, prior and informed consultation and establish an effective consultation mechanism, ensuring that both the law and the mechanism are compatible with the principles set out in the Covenant, the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), the United Nations Declaration on the Rights of Indigenous Peoples and other international standards. In addition, the State party should guarantee the right of free, prior and informed consent for all Indigenous and Afro-Honduran peoples in respect of all measures that affect them, in particular decisions regarding development projects.

6. Guyana, CCPR/C/GUY/CO/3, 3 May 2024

Maternal mortality, sexual and reproductive health and voluntary termination of pregnancy

20. While noting the information provided by the State party that the maternal mortality rate is decreasing, the Committee is concerned that it remains high (100 deaths per 100,000 live births). The Committee is also concerned about the limited access to safe, legal and effective abortion services in all areas of the country, in particular for Indigenous women, women living in rural areas and women living in poverty, which results in a high number of unsafe, clandestine abortions. The Committee is further concerned about increasing breast cancer mortality due to lack of adequate health services, including access to mammograms and other screening services that can promote the early detection of breast cancer among women throughout the territory (arts. 2, 6 and 7).
21. In the light of paragraph 8 of the Committee's general comment No. 36 (2018) on the right to life, the State party should redouble its efforts to prevent and combat maternal mortality and ensure women's access to safe and legal abortion in practice, especially for Indigenous women, women in rural areas and women living in poverty. It should strengthen its efforts to address the high rates of breast cancer by improving prevention, as well as early detection, treatment and psychological support for women and girls with cancer, and allocating adequate human and financial resources for that purpose.

Environmental degradation caused by pollution and climate change

26. While welcoming the State party's ratification of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), the Committee is concerned about reports of inadequate implementation of environmental regulations, including the Environmental Protection Act, and the lack of detailed information on the effective role of the Environmental Protection Agency in the implementation of those regulations. The Committee is also concerned about limited access to environmental information and the lack of effective consultation and meaningful participation by the most disadvantaged groups, including Amerindians and fishery-dependent communities, on whom pollution and climate change have a direct impact, in decision-making processes. The Committee is further concerned about the prevalence of illegal mining activities, which contribute significantly to desertification, and about the lack of a thorough assessment of the environmental impact of such activities by the Environmental Protection Agency. It is concerned about the negative effects of the water pollution and air contamination caused by these activities, as well as the poor management of hazardous waste, and their impact in the form of environmental health conditions, such as abnormal childbirths, fatigue and memory loss. It is also concerned about reports of the hazards posed by mercury contamination and poisoning from mining activities in inhabited areas, in particular areas inhabited by Indigenous Peoples (arts. 6, 17 and 19).
27. In the light of paragraph 26 of its general comment No. 36 (2018), the State party should:
 - (a) Enhance the ability of the public to participate meaningfully in environmental decision-making and their access to information, in particular for Amerindians and fishery-dependent communities, including with regard to air and water

quality, laws, regulations, policies, permit applications and decisions, pollution data and enforcement action;

- (b) Redouble its efforts to address water pollution and air contamination, improve waste management, improve the framework for ensuring compliance with relevant regulations and regulate the maximum permissible concentrations of air and water pollutants;
- (c) Revise the legal framework governing social and environmental responsibility and the legal regime and regulatory standards applicable to mining activities, including by private foreign companies, to impose on them an obligation to exercise due diligence to identify risks of violations of the rights protected by the Covenant, prevent and mitigate such risks and prevent violations of those rights.

Access to justice, independence of the judiciary and right to a fair trial

40. The Committee is concerned about the role of the executive and the legislature in the appointment of members of the judiciary, in particular the Chancellor and Chief Justice, who are appointed directly by the President after obtaining the agreement of the leader of the opposition in accordance with article 127 of the Constitution, and judges, who are appointed by the President after consultation with the Judicial Service Commission. The Committee is also concerned that members of the Judicial Service Commission are appointed by the President after consultation with the leader of the opposition. The Committee is further concerned about the reported practice of appointing “acting judges”, which does not guarantee the independence of the judiciary or its competence. While noting the information provided by the State party on the progress made in reducing the number of civil cases, the Committee remains concerned about the considerable backlog of cases, in particular of criminal cases, resulting in lengthy pretrial detention, which is exacerbated by delays in the appointment of judges. Furthermore, the Committee is concerned about reports of limited access to free legal aid for people living in rural areas and members of Indigenous communities (arts. 2 and 14).
41. The State party should take all measures necessary to reform the justice system. To this end, it should:
- (a) Take the measures necessary to safeguard the independence and impartiality of the judiciary, including by ensuring that the procedures for the selection appointment, promotion, sanction and removal of judges are transparent and impartial and comply with the Covenant and relevant international standards, including the Basic Principles on the Independence of the Judiciary;
 - (b) Adopt a comprehensive strategy to address the backlog of cases, in particular criminal cases, throughout the judiciary, and ensure the right to a fair trial without undue delay, in accordance with article 14 of the Covenant and the Committee’s general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial;
 - (c) Expand the provision of free legal aid by strengthening the financial and human capacity of legal aid centres to facilitate access to justice for all, including those living in rural areas and Indigenous communities.

Participation in public affairs

44. While welcoming the amendment of the Representation of the People Act in 2022, which introduced improvements to the electoral process, the Committee remains concerned that the electoral system is exacerbating the existing ethnopolitical

polarization between the two main ethnic groups and contributing to the political marginalization of other ethnic groups and Indigenous Peoples. Furthermore, the Committee is concerned about the partisan structure of the Guyana Elections Commission, which excludes members of other parties and Indigenous Peoples, impeding it from effectively and independently implementing its mandate. It is also concerned about reports that persons with disabilities are not adequately included, supported and trained to exercise their right to vote and that prisoners and pretrial detainees continue to be deprived of their voting rights in practice (arts. 2, 25 and 26).

45. The State party should:

- (a) Review and revise the electoral system to guarantee full compliance with the Covenant, in particular article 25, and in the light of the guidelines for States on the effective implementation of the right to participate in public affairs, to ensure equal enjoyment of the right to participate for all citizens, irrespective of ethnicity, and to eliminate any unclear or vague provisions in the electoral regulations that may impede the system's transparent and fair operation;
- (b) Take all the measures necessary to ensure that the Guyana Elections Commission is impartial and independent of political parties and is able to exercise its role as a guardian of democratic pluralism;
- (c) Ensure that voting rights are made accessible to all citizens, including persons with disabilities and persons deprived of their liberty.

Rights of Indigenous Peoples

46. Although appreciating the information provided by the State party regarding laws and procedures to protect Indigenous Peoples in Guyana, the Committee echoes the concerns of the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women about the insufficient recognition of the right of Indigenous Peoples to the lands and territories that they have traditionally occupied, owned or used and the lack of progress made to introduce the necessary amendments to the Amerindian Act. Furthermore, the Committee is troubled by reports of inadequately regulated mining activities in the areas inhabited by Amerindians, as such activities have adversely affected the demarcation of their traditional lands, caused environmental degradation and threatened their health and traditional way of life. The Committee is concerned about credible reports of the inadequate participation of and consultations with affected Indigenous Peoples, including Wapichan communities, to obtain their consent for the granting of exploration and resource development licences in their traditional territories (arts. 1, 2 and 25–27).

47. The State party should expedite the process of revising the Amerindian Act 2006 to ensure that the rights of Indigenous Peoples to occupy, own, use and develop their traditional lands, territories and resources are fully respected and that the revised provisions are effectively applied in practice. The State party should expedite the demarcation and titling of the collective lands of Indigenous Peoples, including by improving the accessibility and efficiency of the title-granting process for Amerindian communities. The State party should ensure the necessary participation of Indigenous Peoples and that the necessary consultations are held with Indigenous Peoples to obtain their free and informed consent before the adoption of any legislation, policy or project affecting their lands or territories and other resources.

D. Dissemination and follow-up

...

49. In accordance with rule 75 (1) of the Committee's rules of procedure, the State party is requested to provide, by 29 March 2027, information on the implementation of the recommendations made by the Committee in paragraphs 5 (constitutional and legal framework within which the Covenant is implemented), 41 (access to justice, independence of the judiciary and right to a fair trial) and 47 (rights of Indigenous Peoples) above.

7. Indonesia, CCPR/C/IDN/CO/2, 3 May 2024

Impunity and accountability for past human rights violations

10. The Committee is deeply concerned by the pattern of extrajudicial executions, enforced disappearances and other gross human rights violations involving members of the security forces and law enforcement officers, and the failure to investigate these violations or provide reparations for victims. The Committee welcomes Supreme Court Decision No. 291 K/MIL/2023, which upheld the conviction of six law enforcement officers for the premeditated murder and mutilation of four Papuan people in Timika. The Committee notes that, in addition to the convictions, in 2005 and 2007, of three perpetrators involved in the murder of human rights defender Munir Said Thalib, Komnas HAM is still conducting further investigations into the murder. The Committee is concerned by multiple reports of extrajudicial killings and enforced disappearances of Indigenous Peoples in Papua, which have not been investigated despite the State party's commitment to do so. The Committee deeply regrets that, following the acquittal of Isak Sattu in 2022, there is still a lack of information on the charges brought against other military officers who participated in or abetted the reported extrajudicial killings of four Papuan children in Paniai in 2014; on the outcomes of investigations into the enforced disappearances of pro-democracy student protesters in 1997 and 1998; and on the locations of the mass graves of the estimated 500,000 victims of the "anti-communist" massacres in 1965 and 1966. The Committee is concerned that the report presented in December 2022 on the 12 cases brought before the Team for the Non-Judicial Resolution of Past Serious Human Rights Violations is not publicly available. The Committee is particularly concerned that only 4 of the 16 gross violations of human rights investigated by Komnas HAM have been brought before the courts. The Committee notes with regret that 2,487 victims of violence during the referendum for the independence of Timor-Leste in 1999 and 5,195 victims identified by the Aceh Truth and Reconciliation Commission have yet to receive effective remedies (arts. 2, 6, 7 and 14).
11. The State party should, as a matter of urgency, strengthen its efforts to end impunity and ensure accountability for past human rights violations, including by:
 - (a) Guaranteeing the independence and impartiality of both judicial and non-judicial accountability mechanisms, ensuring plurality in their composition, clear regulations on appointment and dismissal, and sufficient technical, financial and human resources for the mandate to be promptly fulfilled without delays, and expediting the adoption of the bill on truth and reconciliation;
 - (b) Promptly investigating all human rights violations, including arbitrary detention, enforced disappearances, torture and ill-treatment, and extrajudicial killings, including those reported to Komnas HAM, and ensuring that families receive information on investigations into the deaths of their relatives;

- (c) Affording full reparations to all victims of human rights violations and their families, including for the 7,682 victims identified by the Aceh Truth and Reconciliation Commission and in relation to the independence referendum of Timor-Leste;
- (d) Ensuring access to public information regarding such cases, including the full reports of the Team for the Non-Judicial Resolution of Past Serious Human Rights Violations and the investigation findings of Komnas HAM and of the independent fact-finding team set up in 2005 by the President to investigate the death of Munir Said Thalib;
- (e) Guaranteeing that mourning and commemorative activities for victims are conducted without restrictions or threats, thoroughly and promptly investigating all reports of harassment or intimidation, prosecuting the perpetrators and, if they are convicted, imposing penalties commensurate with the gravity of the offence;
- (f) Ensuring that the findings of Komnas HAM are followed up by law enforcement agencies, that perpetrators are prosecuted and, if convicted, imposed penalties commensurate with the gravity of the offence and that guarantees of non-repetition are provided.

Climate change and environmental degradation and the right to life

22. The Committee notes the extension, in 2019, of the moratorium on forest concessions and the adoption of Decree No. 8/2019 on the Determination of the Forest Reference Emission Level for Subnational (Province), Regulation No. 22/2021 on Environmental Protection, Organization and Management, Regulation No. 21/2022 on Procedures for Carbon Pricing Implementation and the State party's enhanced nationally determined contribution. While noting the availability of the PRISMA (Business and Human Rights Risk Assessment) application, which assists business entities in analysing the risks posed to human rights by business activities, the Committee regrets the lack of measures to prevent or prohibit violations of rights related to development projects and business entities. The Committee regrets the adoption of Omnibus Law No. 11/2020 on Job Creation, which simplifies environmental assessment requirements, integrates environmental permits into business licences and removes the concept of strict liability. The Committee also regrets the lack of information on the status of the complaint submitted to the Komnas HAM in 2022 by a group of young Indonesians alleging that the Government had failed to fulfil its climate change mitigation and adaptation responsibilities, and the lack of information on the measures adopted to protect people residing in Papua, Moluccas and Central Sulawesi from climate change-related disasters (art. 6).
23. In the light of general comment No. 36 (2018), the State party should:
- (a) Strengthen its efforts to develop mechanisms and systems to ensure the sustainable use of land and natural resources, develop and implement environmental standards to reduce air and water pollution and the destruction of forests and peatlands, provide appropriate access to information on environmental hazards and adopt a precautionary approach to protect persons in the territory of the State party, particularly the most vulnerable, including remote communities and Indigenous Peoples, from the negative impacts of climate change and natural disasters;
 - (b) Strengthen the mechanisms established to monitor and report on potential violations of rights, in particular the right to life, the right to freely dispose of

one's land, natural wealth and resources, and cultural rights, including in relation to ancestral land and burial practices;

- (c) Ensure independent human rights and environmental impact assessments in the context of natural resource exploitation projects and provide, in a transparent and comprehensive manner, information on their impact on the enjoyment of human rights;
- (d) Ensure that all projects that affect sustainable development and resilience to climate change are developed with the meaningful and informed participation of the public, in particular Indigenous Peoples and affected communities.

Torture and other forms of cruel, inhuman or degrading treatment

26. The Committee notes the training provided to judges, prosecutors and law enforcement personnel on the prohibition of torture and other forms of cruel, inhuman or degrading treatment and on the Principles on Effective Interviewing for Investigations and Information-Gathering (the Méndez Principles). The Committee is, however, concerned about systematic reports about the use of torture and other forms of cruel, inhuman or degrading treatment or ill-treatment in places of detention, in particular on Indigenous Papuans. The Committee regrets the lack of information provided on the number of reports received, cases registered, investigations conducted, prosecutions undertaken, and law enforcement personnel, security force members and senior officials sentenced. The Committee also regrets the lack of information on the number of cases of flogging, administered under the Aceh Special Autonomy Law and its interpretation of sharia law (arts. 7 and 10).
27. The State party should take immediate measures to end torture and other forms of cruel, inhuman or degrading treatment or ill-treatment, including by:
- (a) Reinforcing the regular human rights training of all judges, prosecutors, lawyers, security officers, and law enforcement and security forces personnel, including on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Minnesota Protocol on the Investigation of Potentially Unlawful Death;
 - (b) Guaranteeing that confessions obtained through torture or ill-treatment are not accepted by courts under any circumstances;
 - (c) Conducting prompt, thorough, impartial and effective investigations of all allegations of torture and other cruel, inhuman or degrading treatment, prosecuting perpetrators and punishing them, if convicted, with penalties commensurate with the gravity of the crime;
 - (d) Ensuring that victims and their families are afforded full reparations;
 - (e) Explicitly prohibiting flogging and other forms of torture or ill-treatment that have been interpreted as permissible under sharia law.

Rights of minority groups and Indigenous Peoples

44. Given that the State party does not recognize Indigenous Peoples in its territory, the Committee is concerned that communities that identify as Indigenous Peoples may be unable to fully exercise their rights as set out in the Covenant. The Committee notes the steps taken by the State party to address the internal displacement of Indigenous Peoples and local communities as a result of climate change-related natural disasters, including persons affected or displaced by droughts

in Agandugume and Lambewi districts. The Committee is concerned about the increasingly violent clashes between armed groups and security forces, which have resulted in numerous civilian casualties and fatalities, as well as displacement. The Committee also regrets the lack of information on measures adopted to address internal displacement or to facilitate the return of individuals to their homes in Papua and to provide reparations to victims (arts. 1 and 27).

45. The State party should:

- (a) Take all measures necessary to establish a legislative and policy framework that recognizes and protects the status and rights of all communities that identify as Indigenous Peoples;
- (b) Adopt measures to protect Indigenous Peoples and local communities from internal displacement resulting from climate change-related natural disasters, armed conflict or business activities, in order to guarantee that prior consultations are conducted in a systematic and transparent manner to ensure their free, prior and informed consent and access to effective remedies;
- (c) Prioritize facilitating the return of communities in order to protect the right to freely dispose of their land, natural wealth and resources, and their cultural rights, including in relation to ancestral land and burial practices;
- (d) Ensure adequate access to justice, effective remedies and fair and adequate reparation;
- (e) Repeal or amend legislation that undermines Indigenous Peoples' and local communities' right to land use and/or excludes their participation in decision-making on all matters that affect them, such as provisions in the Law on Job Creation and in Law No. 3/2020 on Mineral and Coal Mining that contradict the 2013 ruling of the Constitutional Court on customary land rights.

8. Namibia, CCPR/C/NAM/CO/3, 3 May 2024

Non-discrimination

8. While noting the measures taken to combat discrimination, the Committee is concerned that protection against discrimination is insufficient. It is particularly concerned about the continued prevalence of discrimination, marginalization and violence perpetrated against Indigenous Peoples such as the San, ... including with regard to access to health care, education and employment (arts. 2, 7, 26 and 27).
9. The State party should take appropriate measures to eliminate all forms of discrimination, including by conducting extensive education and awareness-raising campaigns involving and targeting traditional leaders, public officials and the general public. It should:
 - (a) Take the measures necessary to address the marginalization and de facto discrimination faced by Indigenous Peoples, most notably with regard to access to health care, education and employment. In this regard, it should expedite the adoption of the white paper on the rights of Indigenous Peoples in Namibia and take steps to increase the availability of medical practitioners and teachers who can speak Indigenous languages;
 - (b) Provide specific training for health-care providers and officials in the Ministry of Health and Social Services to address the discrimination in access to health care faced by disadvantaged populations, including Indigenous Peoples, ... and ensure that they are provided with health-care services that meet their specific needs...

Participation in public affairs

38. The Committee is concerned by the very low level of participation by Indigenous Peoples in political life and public administration, noting the near absence of members of these communities in governance structures at the national and local levels, including the Parliament and regional councils. The Committee notes that the Division of Disability Affairs and Marginalized Communities within the Ministry of Gender Equality, Poverty Eradication and Social Welfare encourages self-representation at different levels but does not focus on representation in governance structures, and that it targets only certain Indigenous Peoples, namely the San, Ovatie and Ovatjimba. The Committee is also concerned about the lack of recognition of the traditional chiefs of some Indigenous Peoples under the Traditional Authorities Act (Act No. 25 of 2000) even though they are recognized by their own people, which prevents them from autonomously managing the communal land allocated to them (arts. 25 and 27).
39. The State party should take the measures necessary to increase the representation of all Indigenous Peoples in governance structures and public administration, ensuring their effective participation in decision-making structures and the development of related policies. It should also review the process and criteria relating to applications for the recognition of traditional chiefs under the Traditional Authorities Act, in consultation with unrepresented Indigenous Peoples or peoples that contest their appointed representative.

Rights of Indigenous Peoples

40. The Committee is concerned that the State party does not recognize communities such as the San, Himba, Ovatie, Ovatjimba, and Ovazemba as Indigenous Peoples, referring to them as marginalized communities, notwithstanding the fact that Indigenous Peoples are entitled, under international standards, to rights related to their cultural, social and economic development, as well as to free, prior and informed consent on issues that affect them. The Committee remains concerned that Indigenous Peoples are insufficiently consulted regarding the extraction of natural resources on their lands, with a view to obtaining their free, prior and informed consent. The Committee notes that, under the Environmental Management Act (Act No. 7 of 2007), an environmental impact assessment must be undertaken and an environmental clearance certificate obtained prior to commencing a mining or development project, but is concerned at the lack of safeguards to ensure meaningful consultation with affected peoples and to promote their involvement in natural resource management and the sharing of benefits, as per the terms of the Act (arts. 1, 2 and 27).
41. The State party should consider recognizing communities such as the San, Himba, Ovatie, Ovatjimba and Ovazemba as Indigenous Peoples with the concomitant rights recognized in international standards, such as the United Nations Declaration on the Rights of Indigenous Peoples, and ensure meaningful consultation of Indigenous groups prior to granting licences to private enterprises seeking to exploit resources on the lands of Indigenous Peoples, with a view to obtaining their free, prior and informed consent.
42. The Committee notes the information provided regarding the inclusion of the San as a target group of the National Resettlement Policy but is concerned that other Indigenous Peoples are not included and that land allocated under the Policy is not always in line with the needs of resettled communities and remains vested in the

State. The Committee remains concerned that the ancestral lands that previously belonged to Indigenous Peoples remain under State ownership, and while noting the information provided by the State party with regard to the report by the Commission of Inquiry into Claims of Ancestral Land Rights and Restitution, it regrets that more specific information was not provided on the commission's recommendations and how the State party intends to implement them (arts. 1, 2 and 27).

43. The State party should ensure that Indigenous Peoples benefit fully from the National Resettlement Policy and that land allocation criteria take account of ancestral land ties. It should also take appropriate measures with a view to promoting the restitution of ancestral lands to affected communities, including Indigenous Peoples.

9. Chile, CCPR/C/CHL/CO/7, 1 May 2024

Gender equality

15. The Committee welcomes the measures adopted in the area of gender equality, including the quotas established in Act No. 20.840, to increase the representation of women in the electoral system at the national, regional and local levels and on the boards of directors of publicly owned enterprises. However, the Committee reiterates its concern about the absence of legislation expressly guaranteeing the principle of equality between men and women, and about the maintenance of the marital community property regime. Moreover, the Committee regrets that gender parity has not yet been achieved in the electoral system or on the boards of directors of private companies and that other inequalities, such as the gender wage gap, persist. With regard to Act No. 21.645, which regulates telecommuting and teleworking arrangements, the Committee is concerned about reports that its scope does not extend to some public sector workers, which results in its being applied in a discriminatory fashion (arts. 2, 3, 25 and 26).
16. The State party should intensify its efforts to ensure effective equality between men and women in all spheres. In particular, the State party should:
 - (a) Finalize draft legislation aimed at expressly guaranteeing in law the principle of equality between men and women and equal rights for spouses, including in the matrimonial property regime;
 - (b) Continue its efforts to increase the participation of women in political and public life and their representation in the public and private sectors, particularly in decision-making positions, ensuring that such representation includes Indigenous women....

Violence against women, including domestic violence

19. The Committee again welcomes the legislative and institutional initiatives undertaken to prevent and combat violence against women, including domestic violence, but at the same time reiterates its concern about the persistence of violence against women, adolescents and children in its various forms, and about the increase in femicide attempts and reports of violence. The Committee notes with concern reports that women victims of domestic violence face barriers in gaining access to justice, including secondary victimization, inadequate follow-up of protection measures and a legal framework that does not yet provide a comprehensive response to that issue. The Committee is also concerned about reports of sexual violence and harassment by police officers during the period under review. The Committee is further concerned about reports of obstetric violence and the forced sterilization of women with disabilities (arts. 2, 3, 6, 7 and 26).

20. The State party should continue its efforts to prevent, combat and eradicate all forms of violence against women and children. In particular, the State party should:
- (a) Ensure that all cases of sexual violence are investigated, that perpetrators are prosecuted and, if convicted, punished with commensurate sanctions, and that victims are provided with effective remedies, comprehensive reparation and access to appropriate protection and assistance, including legal, medical, financial and psychological assistance;
 - (b) Conduct an in-depth review of how care services and courts respond to violence against women in order to identify the biases and omissions that allow attacks and femicide to recur;
 - (c) Guarantee effective access to justice and information for all victims of sexual violence, especially children and adolescents, ensuring that ... Indigenous women are taken into account....

Persons deprived of their liberty and conditions of detention

31. The Committee notes the efforts made by the State party to improve detention conditions but reiterates⁸ its concern about the high levels of overcrowding in the prison system, and obstacles impeding access to the rights to health, drinking water, sanitation and education, among others. The Committee is also concerned about the high rates of pretrial detention in the State party and, in particular, about the excessively large number of adolescents in provisional detention. The Committee, while noting the existence of a legislative initiative in this regard, is concerned about reports of cases of pregnant women or women with children of up to 2 years of age living in prison units alongside other female inmates in alarming sanitary conditions (arts. 7, 9, 10 and 14).
32. The State party should intensify its efforts to ensure that conditions of detention fully comply with relevant international human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The State party should, inter alia:
- (a) Adopt measures to significantly reduce overcrowding in the prison system, including through the wider application of non-custodial measures as an alternative to incarceration for, inter alia, pregnant women, women with dependent children, and adolescents;
 - (b) Intensify its efforts to improve detention conditions, including adequate access to health services, drinking water, sanitation and education, and respond to the basic needs of persons deprived of their liberty, including the specific needs of persons belonging to Indigenous Peoples....

Rights of Indigenous Peoples and people of African descent

45. The Committee welcomes the initiatives of the Presidential Commission for Peace and Understanding and the Buen Vivir Plan and, while noting the proposals for the recognition of Indigenous Peoples in the constitutional amendment process, regrets that their existence and rights are still not recognized in the Constitution and that they do not yet have a council of Indigenous Peoples or a similar institution. The Committee regrets that Indigenous Peoples are not being consulted in accordance with international standards or on all legislative and administrative measures

affecting them, in particular due to various provisions of Supreme Decree No. 66/2014, which regulates the Indigenous consultation procedure. The Committee is concerned about the repeated extension of the constitutional state of exception in the Araucanía and Biobío regions, where a large number of Mapuche live, which may have the effect of restricting their rights of free movement and assembly. With respect to the Chilean tribal people of African descent, the Committee is concerned about reports that the draft regulations for the implementation of Act No. 21.151, which regulate the holding of consultations, do not fully comply with international standards (arts. 25–27).

46. Bearing in mind the Committee's previous recommendations,¹⁰ the State party should:
- (a) Continue its efforts to ensure constitutional recognition of the existence and rights of Indigenous Peoples;
 - (b) Redouble its efforts to, in consultation with Indigenous Peoples and with their agreement, establish a council of Indigenous Peoples;
 - (c) Establish an effective consultation mechanism that is in line with the principles of the Covenant, the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), the United Nations Declaration on the Rights of Indigenous Peoples and other international standards, and that guarantees the free, prior and informed consent of all Indigenous Peoples and tribal people of African descent regarding all measures that affect them, in particular decisions regarding development projects, and revise Supreme Decree No. 66/2014 accordingly;
 - (d) In the light of article 4 of the Covenant and general comment No. 29 (2001), ensure that any measures imposed in the context of a state of emergency are temporary, proportionate and strictly necessary, and that such measures are subject to judicial review.

D. Dissemination and follow-up

47. The State party should widely disseminate the Covenant and the two Optional Protocols thereto, its seventh periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society, non-governmental organizations operating in the country and the general public, including members of Indigenous Peoples.
48. In accordance with rule 75 (1) of the Committee's rules of procedure, the State party is requested to provide, by 29 March 2027, information on the implementation of the recommendations made by the Committee in paragraphs 16 (gender equality), 28 (excessive use of force in the context of social protests) and 46 (rights of Indigenous Peoples and people of African descent) above.

10. United States of America, CCPR/C/USA/CO/5, 7 December 2023

Hate crimes and hate speech

10. While noting the measures taken by the State party to combat hate crimes, including the COVID-19 Hate Crimes Act of 2021 and the Emmett Till Antilynching Act of 2022, the Committee is concerned about the persistence of hate crimes, including mass shootings, and hate speech against ... members of Indigenous Peoples ... including by politicians and high-level officials, as well as in the media and on social media platforms. It is also concerned at the underreporting of hate crimes by law enforcement agencies to the Federal Bureau of Investigation due to the voluntary nature of such reporting, which has led to a lack of statistical data on hate speech (arts. 2, 6, 20 and 26).
11. The State party should consider withdrawing or narrowing its reservation to article 20 of the Covenant, strengthen its efforts to combat hate crimes and hate speech and, in particular: (a) Take effective measures to prevent and publicly condemn hate speech, in particular hate speech by politicians and high-level officials....

Racial profiling

12. The Committee welcomes the adoption of the Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability in May 2023. However, it remains concerned about the persistence of the practice of racial profiling by law enforcement officials, including by officials of Customs and Border Protection and Immigration and Customs Enforcement, targeting certain ethnic and racial minorities, in particular people of African descent, members of Indigenous Peoples, persons of Hispanic/Latino origin and Muslims. It is concerned about the lack of legislation explicitly prohibiting that practice (arts. 2, 9, 12, 17 and 26).
13. Recalling its previous recommendations, and in line with the recommendations made by the Committee on the Elimination of Racial Discrimination, the Committee calls upon the State party:
 - (a) To prohibit racial profiling in federal, state and local legislation, taking into account initiatives such as the End Racial and Religious Profiling Act and the George Floyd Justice in Policing Act;
 - (b) To investigate and prosecute all allegations of racial profiling and provide effective remedies to the victims;
 - (c) To collect disaggregated data on all incidents, complaints and investigations of racial profiling by law enforcement agencies, including Customs and Border Protection and Immigration and Customs Enforcement;
 - (d) To train federal, state, local and territorial law enforcement officials on ethnic and cultural awareness and the unacceptability of racial profiling.

Racial disparities in the criminal justice system

14. While noting the impact of the First Step Act in reducing the federal prison population, the Committee continues to be concerned that persons belonging to racial and ethnic minorities, in particular ... members of Indigenous Peoples ... are overrepresented in the criminal justice system, are disproportionately placed and held in pretrial detention and affected by parole and probation sentences and are more often subjected to prison labour and harsher sentences (arts. 2, 9, 14 and 26).

15. In line with the Committee's previous recommendations, the State party should take additional measures to effectively eliminate racial disparities at all stages of the criminal justice process, including by reducing unnecessary criminal justice interventions; increasing the use of alternatives to incarceration; ensuring that bail requirements are reasonable and supporting alternative systems of pretrial release that do not rely on cash bail; amending regulations and policies that lead to racially disparate impacts at the federal, state, local and territorial levels, such as mandatory minimum sentencing policies, including for drug offences; and ensuring that parole and probation sentences are applied only when necessary and are proportionate to the offence.

Violence against women

20. The Committee recognizes the efforts made by the State party to prevent and combat violence against women and girls, including the adoption of the first National Plan to End Gender-Based Violence, released on 25 May 2023, and the most recent reauthorization of the Violence Against Women Act, in 2022. Nonetheless, it is concerned at the persistence of violence against women, including domestic and sexual violence, and the fact that ... Indigenous women ... are among the main victims of such violence. ...
21. The State party should intensify its efforts to prevent, combat and eradicate all forms of violence against women and girls, including domestic violence and sexual violence, paying special attention to women from minority and marginalized groups, in particular by:
 - (a) Encouraging and facilitating the reporting of cases of violence against women and girls, ensuring the safety of women and girls who come forward and protecting them from retaliation, including in the military and in educational settings;
 - (b) Ensuring that cases of violence against women and girls are thoroughly and effectively investigated and that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions;
 - (c) Providing victims with access to effective remedies, including access to civil remedies for military service members, and means of protection and legal, medical, financial and psychological assistance, notably access to accommodation, including shelters, and other support services....

Missing and murdered Indigenous women and girls

22. The Committee welcomes the issuance of Executive Order 14053, "Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People", of 15 November 2021. However, it is concerned that Indigenous women and girls are disproportionately affected by life-threatening forms of violence, homicides and disappearances. It is also concerned at the absence of comprehensive data on murdered and missing Indigenous women and at the lack of adequate resources for the effective and culturally appropriate investigation and processing of cases (arts. 3, 6, 7, 14, 17, 24 and 26).
23. The State party should intensify its efforts at the federal, state, local, tribal and territorial levels with a view to preventing the occurrence of murders and disappearances of Indigenous women and girls, in consultation with Indigenous women's and girls' organizations and the families of the victims. It should improve data collection and analysis to better understand the extent and causes of the crisis of missing and murdered Indigenous women and girls. In addition, it should ensure

that cases of missing and murdered Indigenous women and girls are effectively and thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions and that victims and their families are provided with adequate remedies and effective access to legal, medical, financial and psychological assistance.

Maternal mortality, voluntary termination of pregnancy and sexual and reproductive rights

26. While welcoming the adoption of the White House Blueprint for Addressing the Maternal Health Crisis on 24 June 2022, the Committee is deeply concerned at the increase in maternal mortality and morbidity in the State party, which has the highest rate of maternal mortality among developed countries, with women from vulnerable and minority groups particularly affected. It is also deeply concerned that women belonging to racial and ethnic minorities, in particular women of African descent, Indigenous women and, notably, Native Hawaiian and other Pacific Islander women, have the highest rates of maternal mortality in the country. It is concerned that, in various states, midwifery is severely restricted, banned or even criminalized, limiting the availability of culturally sensitive and respectful maternal health care for ... members of Indigenous communities (arts. 2, 3, 6, 7, 17 and 26).
27. In line with the recommendations made by the Committee on the Elimination of Racial Discrimination, the State party should redouble its efforts to prevent and combat maternal mortality and morbidity and to eliminate discrimination and disparities in the field of sexual and reproductive health and rights, in particular racial and ethnic disparities, and integrate an intersectional and culturally respectful approach into policies and programmes aimed at improving women's access to comprehensive sexual and reproductive health services and at reducing the high rates of maternal mortality and morbidity. It should take steps to remove restrictive and discriminatory legal and practical barriers to midwifery care, including those affecting midwives in communities of people of African descent and Indigenous Peoples.

Excessive use of force by law enforcement officials

36. The Committee remains deeply concerned at police brutality and the excessive and deadly use of force by law enforcement officials, including Customs and Border Protection officers, which has a disparate impact on ... members of Indigenous Peoples.... It is concerned at reports of a lack of accountability in the majority of cases of excessive or deadly use of force by law enforcement officials (arts. 2, 6, 7 and 26).
37. In line with the Committee's previous recommendations,¹⁶ the State party should:
 - (a) Review the federal and state regulations, standards and operational procedures governing the use of force by law enforcement officials and bring them into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement;
 - (b) Ensure that all allegations of the excessive use of force are investigated promptly, thoroughly and impartially, that those responsible are prosecuted and, if found guilty, punished and that the victims or their families obtain redress;
 - (c) Make the collection of data on and the reporting of cases of excessive or deadly use of force mandatory for law enforcement agencies at all levels so that such cases can be recorded in the database of the Federal Bureau of Investigation and ensure that the data are publicly available.

Climate change and the right to life

38. While noting the adoption of Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad”, of 27 January 2021, the Committee regrets the lack of specific information about measures taken to adopt a precautionary approach in order to protect persons, including those who are most vulnerable, from the negative impacts of climate change and natural disasters, such as the heavy floods, wildfires and extreme heat that the State party has experienced in recent years. The Committee notes the State party’s efforts to ensure access to clean, safe and affordable water for its population but is concerned about the various water crises that have occurred in the State party, such as the leaking of high levels of lead into water systems and outbreaks of Legionnaires’ disease in Flint, Michigan, which have a disproportionate impact on people of African descent and members of Indigenous Peoples (art. 6).
39. In the light of the Committee’s general comment No. 36 (2018) on the right to life, the State party should intensify efforts to prevent and mitigate the effects of climate change and environmental degradation, including by strengthening its legal framework, and take adequate steps to adopt a precautionary approach to protecting persons, in particular the most vulnerable, from the negative impacts of climate change and natural disasters. It should reinforce existing measures to prevent life-threatening water crises, including toxic contamination of water systems, and ensure access to safe and clean water for its population.

Freedom of assembly

60. The Committee is concerned at the increased adoption of legislative and other measures at the state level that severely restrict the right to peaceful assembly. It is also concerned about the use of counter-terrorism laws to prosecute peaceful protesters, including anti-racism demonstrators, environmental activists and Indigenous protesters. It is further concerned at reports of the excessive use of force by law enforcement officers and private security companies during peaceful protests and of surveillance, arbitrary arrests and mass detentions of peaceful demonstrators (arts. 2, 6, 7, 9, 21 and 26).
61. In the light of the Committee’s general comment No. 37 (2020) on the right of peaceful assembly, the State party should:
 - (a) Effectively guarantee and protect the right of peaceful assembly and ensure that any restrictions, including administrative and criminal sanctions against individuals exercising that right, comply with the strict requirements of article 21 of the Covenant;
 - (b) Ensure that all allegations of excessive use of force or arbitrary arrest or detention in the context of peaceful assemblies are investigated promptly, thoroughly and impartially, that those responsible are brought to justice and, if found guilty, punished with appropriate sanctions and that victims obtain full reparation;
 - (c) Provide appropriate training to law enforcement officials on the right of peaceful assembly, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.

Rights of the child

62. The Committee is concerned at reports of the high number of children who are separated from their families and placed in child welfare facilities in the State party. It is also concerned at the overrepresentation of children belonging to racial and

ethnic minorities, in particular children of African descent and Indigenous children, in the child welfare system. ... (arts. 2, 23, 24 and 26).

63. In line with the recommendations made by the Committee on the Elimination of Racial Discrimination,²³ the State party should adopt measures to reduce the harmful impact of child welfare interventions, increase due process protections for parents and review the factors that can trigger child welfare interventions, in particular poverty-related circumstances and lack of financial resources, including by amending or repealing the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act and the Adoption Assistance and Child Welfare Act....

Rights of Indigenous Peoples

66. While noting the measures adopted by the State party with regard to the rights of Indigenous Peoples, such as the Presidential Memorandum entitled “Tribal Consultation and Strengthening Nation-to-Nation Relationships”, of 26 January 2021, the Committee is concerned at the obstacles to the recognition of Indigenous Peoples, which prevent non-federally recognized communities from enjoying the same rights in relation to policies and activities that affect them. It remains concerned at the lack of protection of Indigenous lands and sacred sites from the impact of extractive industries, military infrastructure and toxic and nuclear waste. It is concerned at reports of the lack of timely and meaningful consultation with Indigenous Peoples and the State party’s restrictive interpretation of the principle of free, prior and informed consent (arts. 1, 2, 26 and 27).
67. In line with the Committee’s previous recommendations,²⁵ the State party should redouble its efforts to ensure the promotion and protection, both in law and in practice, of the rights of Indigenous Peoples, in particular with respect to land, territory and natural resources. In addition, it should:
- (a) Eliminate undue obstacles and facilitate the recognition of Indigenous Peoples;
 - (b) Adopt measures to guarantee the access of Indigenous Peoples to their lands and sacred sites and to effectively protect their lands and sites from the adverse impact of extractive industries, military infrastructure and toxic and nuclear waste;
 - (c) Ensure meaningful and good faith consultations with Indigenous Peoples, ensuring their active and effective participation, in order to obtain their free, prior and informed consent before adopting and implementing any measures that may substantially affect their rights, way of life and culture, including in relation to infrastructure or development projects;
 - (d) Take additional measures to honour the treaties that it has entered into with Indigenous Peoples and strengthen mechanisms for consultation with Indigenous Peoples on their implementation.

11. Venezuela, CCPR/C/VEN/CO/5, 28 November 2023

State of emergency

13. The Committee is concerned about the prolonged state of economic emergency that was in place between January 2016 and April 2021. ... The Committee also notes with concern reports of serious human rights violations committed during states of emergency, such as extrajudicial executions of journalists, human rights defenders and leaders of trade unions and Indigenous Peoples during the state of emergency declared in response to the coronavirus disease (COVID-19) and the suspension of

the right to peaceful assembly during the state of economic emergency (arts. 4, 6, 7 and 9).

Freedom of movement

33. The Committee welcomes the State party's commitment to ensure that all persons can obtain the identity and travel documents necessary to circulate freely, especially persons who are outside the country and whose documents have expired. The Committee is concerned that situations of forced internal displacement persist, particularly in border states and mining areas and especially among Indigenous and peasant communities. The Committee regrets that insufficient information has been provided by the State party in this regard (art. 12).
34. Bearing in mind the Committee's general comment No. 27 (1999) on freedom of movement, the State party should guarantee freedom of movement and avoid any restriction incompatible with article 12 of the Covenant, including restrictions on leaving and entering one's own country. In particular, the State party should guarantee the free movement of Indigenous persons throughout the country. The State party should also intensify its efforts to recognize and protect the rights of internally displaced persons and provide them with lasting solutions, such as adequate housing, in consultation with them in accordance with the relevant international standards, including the Covenant and the Guiding Principles on Internal Displacement.

Freedom of expression

37. The Committee is concerned by numerous reports of severe restrictions on freedom of opinion and expression in the State party, especially of members of the political opposition to the Government, such as:
- (a) The harassment, intimidation, public defamation, surveillance, persecution, arbitrary detention and imprisonment of journalists, human rights defenders and political activists considered to be critical of the Government and its agenda and the use of the Constitutional Act against Hatred and for Peaceful Coexistence and Tolerance to restrict freedom of expression....
38. In accordance with article 19 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, the State party should:
- (a) Take immediate steps to ensure that everyone can exercise the right to freedom of expression without interference and that any restrictions on the exercise of freedom of expression are in conformity with the strict requirements of article 19 (3) of the Covenant;
 - (b) Effectively prevent and combat acts of harassment, intimidation and violence against journalists, media workers, human rights defenders, trade unionists and Indigenous and political activists to ensure that they are free to carry out their work without fear of violence or reprisals....

Right to participation in public affairs

45. The Committee notes with deep concern reports of the imposition of restrictions on democratic space, whether by action or omission, by judicial and constitutional institutions such as the National Electoral Council, the Ombudsman's Office, the Office of the Comptroller General of the Republic and the Supreme Court of Justice, with such restrictions including political disqualification to prevent members of the opposition from running for public office. ... While noting the special regulations for

the election of Indigenous representatives in the 2021 elections of legislators to state legislative councils and councillors to municipal councils, the Committee is concerned by reports that these regulations withdrew Indigenous Peoples' right to direct and secret voting and that they were not adequately consulted before or during the drafting of the resolution that introduced the regulations. ... (arts. 1, 25 and 26).

46. The State party should take the measures necessary to ensure that its electoral regulations and practices are in full compliance with the Covenant, in particular article 25 thereof, and take into account the guidelines for States on the effective implementation of the right to participate in public affairs by guaranteeing, inter alia:
- (a) The full and effective enjoyment of the right of political participation by all citizens, including members of Indigenous Peoples, by repealing all electoral provisions that interfere with their right to participate in public affairs without undue restrictions, and young people, by ensuring their enrolment in the national electoral register....

Rights of Indigenous Peoples

47. The Committee takes note of the information received regarding social projects that have been carried out in order to guarantee the rights of Indigenous Peoples in the State party. However, it notes with concern the continuation of criminal activities in Indigenous territories, including by armed criminal groups, involving violence and threats against Indigenous Peoples that result in deaths and internal displacement. While noting the creation of a special protection and security unit in the Arco Minero del Orinoco zone, the Committee is concerned that the increased presence of the armed forces and operations focused on combating illegal mining have led to an increase in violence in the area. Reports pointing to a lack of free, prior and informed consultation of Indigenous Peoples on the adoption and implementation of policies relating to extractive industries, such as oil drilling and mining activities, and environmental conservation, are of concern. The Committee is concerned that the demarcation of Indigenous lands is progressing slowly and regrets that insufficient information has been provided on the updating of the 2011 census of Indigenous Peoples (arts. 1, 2, 6, 7 and 27).
48. Reiterating the Committee's previous recommendations,¹³ the State party should redouble its efforts to ensure the promotion, protection and recognition, both in law and in practice, of the rights of Indigenous Peoples, particularly with respect to their traditional lands, territories and resources, including sacred sites. It should also:
- (a) Continue and intensify its efforts to ensure that consultations are effectively held in good faith with Indigenous Peoples, while also ensuring their active and effective participation in those consultations, in order to obtain their free, prior and informed consent before the adoption and implementation of any measure that may substantially affect their rights, way of life and culture, particularly in the case of infrastructure or natural resource development projects;
 - (b) Accelerate and complete the demarcation of Indigenous lands within as short a time as possible;
 - (c) Effectively protect Indigenous Peoples against all acts of violence and ensure that the perpetrators of such acts are brought to justice and duly punished and that the victims obtain adequate redress;
 - (d) Step up the training of all security force personnel deployed in operations targeting illegal mining in order to effectively prevent and eliminate the excessive use of force.

12. Brazil, CCPR/C/BRA/CO/3, 6 September 2023

Positive aspects

3. The Committee welcomes the following legislative and policy measures undertaken by the State party: ...
 - (b) Establishment of the Ministry of Indigenous Peoples and the Ministry of Racial Equality, in 2023; ...
 - (f) Adoption of the guidelines for the judiciary on dealing with cases involving Indigenous Peoples in conflict with the law, in 2019...

Fight against impunity and past human rights violations

11. The Committee notes with concern the lack of implementation of recommendations contained in the report of the National Truth Commission, including to provide for adequate redress for victims and accountability of the perpetrators. The Committee welcomes the commitment made by the State party during the dialogue to implement the Commission's recommendations. The Committee regrets the absence of an adequate investigation regarding the violations of rights, including the rights of Indigenous Peoples during the dictatorship, including forced displacement from their traditional lands. The Committee is also concerned about the lack of compatibility of the Amnesty Law of 1979 with the provisions of the Covenant (arts. 2, 6, 7 and 14).
12. The State party should:
 - (a) Step up its efforts to ensure the full and effective implementation of the recommendations of the National Truth Commission;
 - (b) Investigate allegations of human rights abuses committed between 1946 and 1988, including against Indigenous Peoples and other minorities, prosecute the perpetrators, and, if they are convicted, impose appropriate penalties on them, and ensure access to effective remedies for victims;
 - (c) Consider reviewing the Amnesty Law of 1979 to ensure its conformity with the Covenant.

Hate speech

15. While welcoming the commitment of the State party to combating hate speech, including the recent creation of a Working Group on Strategies to Combat Hate Speech and Extremism, the Committee is concerned by the increasing levels of hate speech, especially online, based in particular on race, ethnicity, gender, sexual orientation and Indigenous status, even by high-level authorities. The Committee regrets the lack of an adequate and effective legal framework to prevent and punish hate speech and the fact that it is not explicitly criminalized (arts. 2, 19, 20 and 26).
16. The State party should strengthen its efforts, through both law enforcement and awareness-raising activities, to combat hate speech and incitement to discrimination or violence, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. ...

Gender equality

17. While welcoming measures adopted to promote gender equality, the Committee remains concerned about the low levels of participation of women, in particular women belonging to marginalized groups, such as ... Quilombola [and] and

Indigenous women ... in the political, judicial and other public sectors. The Committee is also concerned that, while a quota system has been introduced to improve the political representation of women, the quota is not being effectively implemented (arts. 3 and 26).

18. The State party should strengthen its efforts to guarantee gender equality in all spheres of life. In particular, it should: (a) Take measures to achieve the full and equal participation of women in public life, in particular in decision-making positions, if necessary through appropriate temporary special measures....

Violence against women, including domestic violence

23. ... The Committee regrets the lack of a comprehensive gender-based violence law, the insufficient and inadequate protection and assistance services and the lack of culturally sensitive polices to address violence against Indigenous women....
24. The State party should: (a) Adopt a comprehensive law on gender-based violence with a view to preventing, combating and punishing all forms of violence against women and girls in both the public and private spheres, including targeted protection measures for women of African descent and Quilombola women, ensure the effective implementation of the existing legislation and its compliance with the Covenant, adopt culturally appropriate policies for Indigenous women and women of African descent and consider revising the Parental Alienation Law (No. 12,318/2010)....

Right to Life

...

29. The Committee is concerned by the high mortality rates from the virus that causes COVID-19, affecting in particular on individuals of African descent, pregnant women, Indigenous peoples and Quilombola communities and people deprived of their liberty, among others, and by reports about negligence in the handling of the pandemic, lack of adequate measures to prevent avoidable deaths, the minimization of the severity of the COVID-19 pandemic and lack of accountability (art. 6).
30. The State party should ensure that any human rights violations related to the handling of the pandemic are promptly and adequately investigated, that those responsible are prosecuted, and, if convicted, punished with appropriate sanctions, and that victims have access to reparations.

Hate crimes

33. The Committee is concerned by the high levels of homicide and hate crimes, disproportionately affecting people of African descent, Indigenous Peoples, and lesbian, gay, bisexual, transgender and intersex persons, in particular transgender individuals. While the Supreme Court ruled in 2019 that the legal provisions to protect individuals from racism could be used in cases of homophobia, the Committee regrets the lack of specific legislation to criminalize homophobia (arts. 2, 6 and 20).
34. The State party should:
 - (a) Consider reviewing its legislation to introduce a separate definition of hate crime and to explicitly criminalize acts of hate crime on all prohibited grounds under the Covenant and strengthen its efforts to combat intolerance, prejudice, racial bias and discrimination;

- (b) Strengthen the capacity of law enforcement officers to investigate hate crimes and criminal hate speech, including on the Internet, reinforce the training of judges, prosecutors and law enforcement officers on addressing hate crimes and ensure that all cases are systematically investigated, that perpetrators are held accountable with appropriate penalties and that victims have access to reparations.

Climate change and environmental degradation

- 37. The Committee is concerned by the lack of substantial action to mitigate or address the impact of climate change and environmental degradation on the right to life, in particular for Indigenous Peoples and Quilombola communities. It is also concerned by the extensive deforestation in the Amazon and the lack of a legal and institutional framework adequate for its protection (art. 6).
- 38. In accordance with article 6 of the Covenant and in the light of the Committee's general comment No. 36 (2018), the State party should:
 - (a) Strengthen the legal framework to combat and alleviate the consequences of climate change and environmental degradation;
 - (b) Ensure that all projects with an impact on climate change and environmental degradation are developed with the free, prior and informed consent and the meaningful participation of the affected populations, including Indigenous Peoples and Quilombola communities.

Treatment of aliens, including migrants, refugees and asylum-seekers

- 45. While the Committee welcomes adoption of Law No. 13,445/2017 on migration and the efforts to support refugees and migrants from the Bolivarian Republic of Venezuela, it regrets that at least 39 administrative decrees have introduced entry restrictions related to the pandemic, leading to summary deportations, pushbacks, the suspension of asylum procedures and violations of due process, and that ordinance No. 678/2022 still hinders access to asylum procedures. The Committee notes with concern the lack of culturally sensitive public policies for Venezuelan Indigenous Peoples...

Right to privacy and home

- 51. The Committee is concerned about reports of forced evictions with excessive use of force by law enforcement officers, without due procedural guarantees or adequate resettlement or compensation, affecting in particular Indigenous Peoples and Quilombola communities (art. 17).
- 52. The State party should:
 - (a) Take all feasible measures to avoid forced evictions and ensure that, when they do take place, all evictions are carried out in accordance with international standards, such as general comment No. 7 (1997) on forced evictions of the Committee on Economic, Social and Cultural Rights and the basic principles and guidelines on development-based evictions and displacement,⁶ including the meaningful and informed participation of the individuals involved and providing effective remedies to individuals whose rights have been violated;
 - (b) Establish a national mandatory protocol for law enforcement action for cases of forced eviction, in compliance with relevant international standards.

Freedom of conscience and religious belief

55. The Committee welcomes the steps taken to combat religious intolerance, including the creation of a joint intergovernmental working group to develop a programme to combat religious racism and the adoption, in certain states, of legislation prohibiting religious discrimination. The Committee remains concerned about rising levels of religious violence and intolerance, including attacks against Indigenous and Afro-Brazilian religious leaders, the burning of sacred places of worship and the rising levels of antisemitism. ... (arts. 2, 18 and 26).
56. The State party should guarantee in practice the right to freedom of religion or belief for everyone and address rising tensions among ethnic and religious communities.
...

Human rights defenders

61. The Committee is concerned by the high increase of homicides, intimidation, unlawful surveillance and criminalization of, and violence, harassment and threats against, human rights defenders, Indigenous Peoples, environmental defenders and women's rights defenders and the lack of investigation of such crimes. The Committee regrets that the programme for the protection of human rights defenders, communicators, and environmentalists has not been effectively implemented, due to a lack of resources and autonomy, protection measures have not been adequate and the specific needs related to gender, race, ethnicity and cultural ties with the territory have not been addressed (arts. 6, 17, 19, 20, 21, 22 and 26).
62. The State party should:
- (a) Redouble its efforts to combat and prevent all forms of violence and threats against, and the harassment and intimidation of, human rights defenders and other civil society actors and take all measures necessary to guarantee their effective protection, so as to ensure that they are free to carry out their work without fear of becoming victims of violence or reprisals;
 - (b) Ensure that all human rights violations and attacks against human rights defenders are investigated, perpetrators brought to justice, and, if found guilty, duly punished, and that victims receive reparations;
 - (c) Develop comprehensive legislation and policies to protect human rights defenders, in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;
 - (d) Develop legislation and policies for the programme for the protection of human rights defenders, communicators, and environmentalists and ensure that it is properly resourced to implement its programmes efficiently and independently all over the country, with a gender, race, culture and ethnicity-sensitive approach and with individual and collective protection systems.

Participation in public affairs

63. The Committee is concerned by reports of violence, harassment, intimidation, and threats directed at politicians and political candidates during election campaigns, in particular women, people of African descent, Indigenous Peoples and lesbian, gay, bisexual, transgender and intersex persons. While the Committee acknowledges that decree No. 11,433/2023 establishes quotas in the executive and that Law No. 14,192 on combating political violence against women is aimed at increasing the ... Indigenous Peoples in the legislative and executive branches of Government, the low representation rates remain of grave concern. ...

64. The State party should give full effect to the right of every person to participate in public affairs, without discrimination, and in particular it should:
- (a) Protect political candidates and politicians, especially women, persons of African descent, Indigenous Peoples and lesbian, gay, bisexual, transgender and intersex persons, from violence, harassment and intimidation, including by investigating and prosecuting such cases, holding perpetrators accountable, including in the case of Marielle Franco, and providing adequate remedies to victims;
 - (b) Strengthen efforts to achieve the full and equal participation of women, persons of African descent, Indigenous Peoples, lesbian, gay, bisexual, transgender and intersex persons and members of disadvantaged and minority groups in political and public life, in particular in decision-making positions.

Rights of Indigenous Peoples and people of African descent

65. The Committee remains concerned about the lack of effective implementation of the land demarcation process, leading to a growth of land conflicts, illegal encroachment and exploitation of resources and attacks on and killings of Indigenous Peoples. The Committee is also concerned about the marco temporal (temporal landmark) limitation to claim the demarcation of Indigenous land and regrets that the titling of land for Quilombola communities has been progressing very slowly (arts. 1 and 27).
66. The State party should redouble its efforts to ensure the promotion, protection and recognition, both in law and in practice, of the rights of Indigenous Peoples, in particular with respect to land, territory and natural resources, and of other minorities. It should also:
- (a) Expedite the process of demarcation and titling of Indigenous and Quilombola lands, including by ensuring adequate resources for implementation;
 - (b) Uphold the right of Indigenous Peoples to the lands and territories that they have traditionally owned or occupied, including by reviewing its current legislation and rejecting and ending the application and institutionalization of the temporal landmark doctrine;
 - (c) Step up its efforts to prevent conflicts over land use, including by providing guarantees in relation to land traditionally owned or occupied by Indigenous Peoples and Quilombola communities and by combating the illegal invasion and illegal activities by logging, mining, fishing and large-scale farming companies;
 - (d) Provide effective protection and remedies for all human rights violations resulting from the lack of effective legal protection of lands traditionally owned or occupied by Indigenous Peoples and Quilombola communities.
67. While the Committee welcomes the increase in the budget of the National Indigenous People Foundation, it regrets that, during the period under review, there have been instances when the Foundation was undermined. The Committee is concerned about reports that the principle of free, prior and informed consent of Indigenous Peoples and Quilombola communities in matters concerning their rights is routinely violated (art. 27).
68. The State party should:
- (a) Guarantee the systematic application of the consultation processes with Indigenous Peoples and Quilombola communities necessary to obtain the free, prior and informed consent on issues concerning their rights;

- (b) Strengthen the capacities of the National Indigenous People Foundation, including by providing it with adequate resources, and ensure its autonomy so that, through its activities, the rights of Indigenous Peoples and Quilombola communities are fully protected and promoted.

Dissemination and follow-up

...

70. In accordance with rule 75 (1) of the Committee's rules of procedure, the State party is requested to provide, by 27 July 2026, information on the implementation of the recommendations made by the Committee in paragraphs 32 (excessive use of force and extrajudicial killings), 42 (conditions of detention) and 66 (rights of Indigenous Peoples and people of African descent) above.

13. Burundi, CCPR/C/BDI/CO/3, 29 August 2023

Rights of minorities and Indigenous Peoples

49. While it notes that articles 169 and 185 of the Constitution provide for three representatives of the Batwa community in the National Assembly and the Senate, the Committee is concerned at reports that the Batwa community is not represented at the provincial or local levels, does not hold any seats in the Independent National Human Rights Commission and is almost entirely absent from leadership positions in ministries. In addition, it is concerned at reports that, in February 2023, the Council of Ministers decided to suspend the adoption of a national strategy for sustainable development through the integration and socioeconomic inclusion of the Batwa people 2022–2027 (arts. 2, 25, 26 and 27).
50. The State party should take the measures necessary to: (a) ensure sufficient representation of the Batwa Indigenous People in the central Government, local authorities and the Independent National Human Rights Commission, including as commissioners; (b) strengthen programmes promoting equal opportunities and access to services for the Batwa, including access to health care, education and justice, in particular by adopting the national strategy for sustainable development through the integration and socioeconomic inclusion of the Batwa people 2022–2027; and (c) increase the participation of members of the Batwa community in decision-making processes, including for issues that concern them.

14. Colombia, CCPR/C/COL/CO/8, 4 September 2023

Non-discrimination

10. The Committee recognizes the State party's numerous efforts to combat discrimination, including the creation of the Ministry of Equality and Equity and departments dedicated to guaranteeing the rights of lesbian, gay, bisexual and transgender persons, persons with disabilities, persons of African descent and Indigenous persons. However, the Committee remains concerned at the high rate of acts of discrimination and violence, including physical violence, sexual violence and murder, against persons of African descent; Indigenous persons; lesbian, gay, bisexual and transgender persons; and migrants, including incidents of discrimination and violence by members of the security forces. It is also concerned at the persistent structural and historical discrimination suffered by members of Indigenous Peoples and communities of persons of African descent, which manifests in high rates of poverty and social exclusion among those groups in comparison with the rest of the population (arts. 2, 19, 20 and 26).

11. The State party should redouble its efforts to prevent, combat and eradicate discrimination and violence, in particular on grounds of race, ethnic origin, migration status, religion, sexual orientation and gender identity, in accordance with articles 19 and 20 of the Covenant. It should also, inter alia:
 - (a) Urgently develop and adopt a public policy to combat structural discrimination and allocate sufficient human, financial and technical resources for the full implementation of anti-discrimination plans and policies;
 - (b) Increase public education and awareness campaigns and training for the public, private and teaching sectors to promote tolerance and respect for diversity;
 - (c) Ensure that all acts of discrimination and violence against ... Indigenous Peoples are investigated thoroughly, that perpetrators are brought to justice and, if found guilty, punished with appropriate sanctions, and that victims receive full reparation;
 - (d) Guarantee protection for Indigenous persons and persons of African descent from discrimination by State agencies, public officials and any other person, group or organization;
 - (e) Effectively promote social inclusion and reduce the high rates of poverty and inequality among Indigenous Peoples and persons of African descent, including through the adoption of special measures designed to eliminate structural discrimination against them.

Freedom of movement

26. The Committee welcomes the measures adopted to prevent displacement, including social investment to enable victims of forced displacement to return and prevent the forced displacement of the most vulnerable persons. The Committee is concerned, however, at the continued internal displacement and lockdowns over territorial disputes, especially forced displacement resulting from armed clashes among illegal groups or between non-State armed groups and the security forces. It is also concerned at reports that these situations disproportionately affect Indigenous persons and persons of African descent (art. 12).
27. Reiterating the Committee's previous recommendations,⁹ the State party should continue and intensify its efforts to prevent internal displacement, adopting differential, gender, ethnic and racial approaches, to ensure that all victims receive appropriate care, assistance and full reparation in timely fashion and to ensure that, in practice, return and relocation are conducted safely, in a sustainable manner and without delay. Similarly, the State party should adopt urgent measures to avoid the lockdown of communities in the various regions and should consider including the prevention of internal displacement and lockdowns in its human security policy and in ceasefire agreements with armed groups.

Freedom of expression and protection for human rights defenders

34. The Committee welcomes the measures adopted to prevent violence and protect and promote the human rights of human rights defenders, including defenders of environmental rights and the rights of Indigenous persons, persons of African descent, social and community leaders and journalists, for example through the National Protection Unit. The Committee remains concerned, however, at the high number of attacks against human rights defenders and social leaders, particularly the murders of human rights defenders, and the level of impunity that continues in these cases (arts. 19 and 20).

35. As part of the National Safeguards Process, and with broad participation by civil society, the State party should adopt and implement a national policy for the protection of human rights defenders capable of responding to needs in the areas of prevention, protection, the fight against impunity and the non-stigmatization of human rights defenders. The State party should also redouble its efforts to:
- (a) Guarantee effective assistance and protection for human rights defenders, including defenders of environmental rights and the rights of Indigenous persons, persons of African descent, social and community leaders, Indigenous and Afrodescendent authorities and journalists who are victims of threats, violence or intimidation, and ensure that they can carry out their activities in suitable conditions, including through the adoption of collective protection measures and the effective implementation of precautionary measures;
 - (b) Strengthen the work of the Special Investigation Unit and the Working Group on Threats of the Office of the Attorney General of the Nation to ensure that murders, attacks, reprisals and threats against human rights defenders and journalists are investigated promptly, thoroughly, independently and impartially, that the instigators and perpetrators are prosecuted and punished with commensurate sentences and that victims receive full reparations;
 - (c) Reform the protection framework, including the National Protection Unit, through a participatory process with the aim of establishing a system that prioritizes prevention and collective and community protection, focuses on the territories with the highest levels of violence and adopts differential, ethnic, gender, feminist and intersectional approaches.

Rights of Indigenous Peoples and other minorities

38. The Committee notes with satisfaction the creation of the Directorate of the National Authority for Prior Consultation under Decree No. 2353 of 2019, which requires the free, prior and informed consent of Indigenous Peoples in decisions regarding projects and policies that affect their rights. The Committee is concerned, however, at reports that this right is yet to be fully guaranteed and that Indigenous Peoples encounter institutional barriers and non-compliance in the consultation process on the part of the Directorate of the National Authority for Prior Consultation and Congress. Moreover, while the Committee recognizes the State party's efforts to provide reparations to Indigenous persons and persons of African descent, it is concerned that these communities continue to be disproportionately affected by the internal armed conflict and other forms of violence, placing them at risk of physical and cultural extinction (arts. 1 and 27).
39. Bearing in mind the Committee's previous recommendations,¹¹ the State party should adopt a methodology that guarantees Indigenous Peoples' right to free, prior and informed consultation, in accordance with international standards, and the meaningful participation of persons of African descent in relation to all decisions that affect them, including those related to compliance with the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace. It should also revive and strengthen the bodies that enable the participation of ethnic minorities and facilitate ongoing and participatory monitoring, at the regional level, of the implementation of the section of the Agreement that relates to ethnic minorities. The State party should also intensify its efforts to guarantee the restitution of the land rights of Indigenous Peoples and persons of African descent.

Dissemination and follow-up

40. The State party should widely disseminate the Covenant and the two Optional Protocols, its eighth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public, including members of minorities and Indigenous Peoples.

15. Uganda, CCPR/C/UGA/CO/2, 11 September 2023

Participation in public affairs

...

50. The Committee is concerned that measures taken by the State party to ensure the meaningful participation of Indigenous Peoples in decisions affecting their livelihoods are not adequate, notably with regard to the forcible eviction of Indigenous Peoples from their ancestral lands and the designation of such lands as national parks and conservation zones without their free, prior and informed consent and without providing alternative livelihoods and adequate compensation, such as in the cases of the Batwa and Benet Indigenous Peoples.
51. The State party should:
 - (a) Ensure that the rights of Indigenous Peoples to own, use and develop their ancestral lands, territories and resources are respected, protected and fulfilled, in law and in practice, including where appropriate through the enactment of dedicated legislation;
 - (b) Ensure that necessary safeguards against forced evictions of Indigenous Peoples are in place and ensure the consistent and effective application of the principle of free, prior and informed consent in all matters concerning their rights.

16. Panama, CCPR/C/PAN/CO/4, 12 April 2023

Non-discrimination

11. The Committee takes note of the State party's efforts to combat discrimination. However, it is concerned about the persistence of discrimination in the State party against ... Indigenous persons ... in the system for the administration of justice and in the political sphere. The Committee is also concerned about reports of prejudice, stigmatization, hate speech, violence and xenophobia against ... Indigenous persons.... ...
12. The State party should:
 - (a) Redouble its efforts to ensure comprehensive protection against discrimination, both in law and in practice, for ... Indigenous persons ... including through public education and awareness-raising campaigns, and training for the public, private and educational sectors in order to promote tolerance and respect for diversity;
 - (b) Take measures to ensure the full participation in political life of ... Indigenous Peoples...;
 - (c) Expressly prohibit the use of racial profiling by law enforcement officials;
 - (d) Adopt the measures necessary to remove the discriminatory provision from article 12 of the Constitution;

- (e) Ensure that cases of discrimination and violence committed by individuals or State officials are systematically investigated, that those held to be responsible are punished with appropriate penalties and that victims receive comprehensive reparation.

Gender equality

- 15. The Committee welcomes the adoption of Act No. 375 of 8 March 2023, which establishes the Ministry of Women's Affairs. While it takes note of the information provided by the State party's delegation to the effect that women currently occupy the majority of decision-making positions in the judiciary and the Public Prosecution Service, the Committee remains concerned about the low representation of women, in particular women of African descent and Indigenous women, in publicly elected positions, including in the National Assembly and the office of mayor, and in leadership positions in the private sector. ...
- 16. The State party should:
 - (a) Allocate sufficient financial and human resources to the newly established Ministry of Women's Affairs so that it can effectively carry out its functions in the areas of gender equality and the promotion and protection of women's human rights;
 - (b) Adopt additional measures to increase the representation of women, including Indigenous women ... in political and public life, and their representation in the public and private sectors, particularly in leadership and high-level positions, by, inter alia, applying temporary special measures and amending electoral legislation so as to ensure gender parity....

Voluntary termination of pregnancy and reproductive rights

- 19. ... The Committee is also concerned about the reported forced sterilization of Indigenous women....
- 20. Bearing in mind the Committee's general comment No. 36 (2019) on the right to life, the State party should: ... (d) Ensure that all procedures are followed to obtain the full and informed consent of Indigenous women and women with disabilities with regard to sterilization; and, in this connection, the State party is encouraged to give effect to the recommendations made in February 2022 by the Committee on the Elimination of Discrimination against Women and in February 2023 by the Committee on Economic, Social and Cultural Rights....

Excessive use of force

- 23. The Committee takes note of the information provided by the State party's delegation regarding the ongoing training that is being provided to law enforcement officials on the use of force. However, the Committee is concerned about reports of recurrent excessive use of force by law enforcement officials during the period under review, particularly in the context of demonstrations against rising fuel and food prices, and against mining and hydroelectric projects, which has, on occasion, left some protestors dead and hundreds injured, particularly Indigenous persons, as was the case in, inter alia, the protests that took place in Changuinola in 2010, in Colón and San Felix in 2012 and in Chiriquí in 2021. In this context, the Committee is concerned that, according to the information provided by the State party's delegation, to date, there have been no convictions for excessive use of force (arts. 2, 6, 7, 14, 21, 26 and 27).

24. In the light of the Committee's general comments No. 36 (2019) on the right to life and No. 37 (2020) on the right to peaceful assembly, the State party should ensure that all allegations of excessive use of force and human rights violations, including those committed in the context of demonstrations, are promptly, thoroughly, independently and impartially investigated; that the alleged perpetrators are brought to justice and those found to be responsible are appropriately punished; and that victims receive comprehensive reparation. It should also continue to take measures to effectively prevent and eliminate the excessive use of force by law enforcement officials, especially in the context of demonstrations, including by intensifying their training, particularly on the Covenant, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.

Elimination of forced labour and trafficking in persons

29. While the Committee acknowledges the efforts made by the State party to combat trafficking in persons, it is concerned about the persistence of trafficking for the purposes of sexual exploitation and forced labour, which mainly affects migrant women and girls, and about the low number of prosecutions and convictions. It is also concerned about reports regarding the precarious working conditions of domestic workers, the majority of whom are ... Indigenous women ... including the fact that their wages are lower than the minimum wage set for other workers. It is further concerned about the prevalence of child labour, particularly in the agricultural sector, which mainly affects ... Indigenous children (arts. 3, 7, 8, 24, 26 and 27).
30. The State party should:
- (a) Intensify its efforts to prevent, combat and punish trafficking in persons, and ensure that trafficking offences are investigated, that perpetrators are prosecuted and punished, that victims are provided with comprehensive reparation and have access to adequate protection and assistance, including shelters with sufficient geographical coverage, particularly in border areas; and, in this connection, the State party is encouraged to give effect to the recommendations made in February 2022 by the Committee on the Elimination of Discrimination against Women;
 - (b) Ensure respect for the fundamental rights of domestic workers, including migrant workers in an irregular situation, and ensure that they are protected from abuse, have effective access to justice and that any violation of their rights is investigated and punished;
 - (c) Strengthen measures to prevent, combat and punish child labour, especially in the agricultural sector, including by increasing the number of labour inspections, awareness-raising campaigns and education and vocational training programmes for children and adolescents from vulnerable families, and enforce the regulations on compulsory primary education as a means of preventing children from being subjected to child labour....

Freedom of expression and violence against human rights defenders

33. While the Committee notes the establishment of the Unit for the Protection of Victims, Witnesses, Experts and Other Participants in Criminal Proceedings, it is concerned about the lack of specific legislation to protect human rights defenders in the State party, and about reports of harassment and threats against them, in particular defenders of the environment and of Indigenous Peoples. It is also

concerned about reports of increased recourse to legal action, based mainly on the crimes of slander and libel, against the media and journalists as a means to intimidate and threaten them, especially persons who investigate and report on issues of public interest such as corruption cases (arts. 6, 7, 9, 17, 19 and 22).

34. The State party should take the measures necessary to guarantee the full enjoyment of freedom of expression by everyone, taking into account the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression. In particular, the State party should:
 - (a) Redouble its efforts to prevent acts of harassment and intimidation against human rights defenders and journalists, and ensure that they can carry out their work in appropriate conditions, including by adopting special legislative measures to protect them;
 - (b) Ensure that all allegations of harassment and intimidation against human rights defenders and journalists are investigated promptly, thoroughly, independently

Rights of the child

37. ... While the Committee notes the significant efforts made by the State party to increase birth registration, it remains concerned that most cases of under registration of births are concentrated in Indigenous regions and in isolated rural areas. ... (arts. 16, 23 and 24).
38. The State party ... should also step up its efforts to ensure that all children born in its territory, including in Indigenous regions and isolated areas, are registered and receive an official birth certificate. ...

Rights of Indigenous Peoples

39. The Committee notes the adoption of Act No. 37 of 2016, which provides for consultation and free, prior and informed consent of Indigenous Peoples, but regrets that its implementing regulations have not yet been adopted. It is concerned about reports that appropriate and sufficiently inclusive consultations have not been held to obtain free, prior and informed consent for projects that have a negative impact on the lands or way of life of Indigenous Peoples, such as the Barro Blanco hydroelectric project and the fourth electricity transmission line. The Committee is also concerned about the lack of information on the demarcation and titling of the collective lands of Indigenous Peoples, and about allegations regarding the slowness of these processes. While the Committee takes note of the Plan for the Comprehensive Development of the Indigenous Peoples of Panama, it is concerned about the levels of poverty in these communities and the difficulties they experience in gaining access to education and health facilities, products and services (arts. 2, 26 and 27).
40. The State party should:
 - (a) Expedite the adoption of regulations to implement Act No. 37 of 2016 and ensure that such regulations are fully consistent with the Covenant and other relevant international standards, and ensure that Indigenous Peoples are actively involved in the drafting of those regulations and consulted on their content prior to their adoption;
 - (b) Ensure that effective and good faith consultations with Indigenous Peoples, in which they actively and effectively participate, are conducted with a view to obtaining their free, prior and informed consent before the adoption and

application of any measure that may substantially affect their rights, way of life and culture, in particular infrastructure projects or projects for the exploitation of natural resources;

- (c) Ensure that Indigenous Peoples affected by infrastructure projects or projects for the exploitation of natural resources have adequate access to justice, effective remedies and fair and adequate reparation;
- (d) Expedite the demarcation and titling of the collective lands of Indigenous Peoples, including by developing and applying a simplified procedure to this end;
- (e) Guarantee access to education and health facilities, products and services for Indigenous Peoples;
- (f) Consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.

Dissemination and follow-up

- 41. The State party should widely disseminate the Covenant, the two Optional Protocols thereto, its fourth periodic report and the present concluding observations, with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public, including members of minorities and Indigenous Peoples.

17. Peru, CCPR/C/PER/CO/6, 5 April 2023

Non-discrimination

- 16. The Committee acknowledges the many efforts made by the State party to combat discrimination, including the implementation of the National Human Rights Plan 2018–2021, the drafting and adoption of the National Action Plan on Business and Human Rights 2021–2025 and the plans that are under way to develop the National Multisectoral Policy on Human Rights to address discrimination and structural inequality. However, the Committee is concerned about the vulnerability of Indigenous persons ... and the persistent structural discrimination and hate speech directed against them, particularly against women and girls, in the areas of education, employment, health, including sexual and reproductive health, and public life. The Committee also notes with deep concern the impact on Indigenous persons of the social protests that have taken place since December 2022 and the disproportionate repression directed against such persons in the context of those protests (arts. 2, 3, 16, 25, 26 and 27).
- 17. The State party should continue to increase its efforts to prevent, combat and eradicate all forms of discrimination, particularly racial discrimination and xenophobia, including by:
 - a) Ensuring the allocation of sufficient resources for the full implementation of anti-discrimination plans and policies;
 - b) Taking measures to prevent all hate speech, discrimination, violence or other alleged offences motivated by prejudice and stereotyping, including when such offences occur in the media or on the Internet, and responding to them promptly and effectively;
 - c) Increasing public education and awareness campaigns and training for the public, private and teaching sectors to promote tolerance and respect for diversity;

- d) Stepping up efforts to train law enforcement officers so that they are aware of the need to act in ways that do not lead, even unintentionally, to ethnic and/or racial profiling and that avoid disproportionate repression of protests by Indigenous persons;
- e) Thoroughly investigating alleged offences motivated by prejudice and stereotypes, prosecuting the perpetrators and, if found guilty, imposing sanctions on them and providing victims with adequate reparations.

Equality between men and women

- 20. The Committee welcomes the measures taken in the area of gender equality. However, it is concerned that women, in particular campesino women, Indigenous women and Afro-Peruvian women, remain underrepresented in decision-making positions at all levels of the executive and judicial branches and regrets that it has not received information on the steps taken to increase the number of women in decision-making bodies in the private sector. It also notes with concern the wage gap between men and women and the cases of harassment and threats against women politicians (arts. 2, 3, 25 and 26).
- 21. The State party should intensify its efforts to ensure effective equality between men and women in all spheres and in all areas of the country. In particular, it should strengthen measures to increase the participation of women, including campesino women, Indigenous women and Afro-Peruvian women, in political and public life, as well as their representation in the public and private sectors, especially in managerial and high-level positions. It should also pursue its efforts to address the wage gap between men and women and to eliminate gender-based stereotypes about the roles and responsibilities of women and men in the family and in society. It should also make greater efforts to prevent cases of harassment and political violence.

Maternal mortality, voluntary termination of pregnancy and sexual and reproductive rights

- 24. The Committee commends the State party for the measures taken to improve access to health services and to information on sexual and reproductive health, as well as to combat and prevent teenage pregnancy and maternal mortality, in particular, the adoption of the Multisectoral Plan for the Prevention of Teenage Pregnancy 2013–2021 and the Technical Health Standard on Family Planning. The Committee also welcomes the information that the Ministry of Health has approved four bills on decriminalizing the voluntary termination of pregnancy in cases of rape or incest or when the fetus is unviable. However, the Committee is concerned that abortion continues to be criminalized, except in cases where the life or health of the pregnant woman is in serious danger, and that rates of rape and sexual violence against teenage girls remain high, leading to a high incidence of forced pregnancies. It is also concerned that teenage pregnancy and maternal mortality rates in rural areas remain high despite the preventive measures taken by the State party (arts. 2, 3, 6, 7, 17 and 26).
- 25. Bearing in mind the Committee's general comment No. 36 (2018) on the right to life, the State party should:
 - a) Amend its legislation to guarantee safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable;

- b) Ensure that criminal penalties are not applied to women and girls who have abortions or to the professionals who provide them with medical care;
- c) Step up its efforts to prevent unwanted pregnancies, especially among teenage girls, and to ensure full access to adequate sexual and reproductive health services, including accessible and appropriate contraceptives, in all areas of the country, particularly for Afro-Peruvian and Indigenous women, women living in rural areas and women living in poverty or extreme poverty;
- d) Redouble its efforts to raise awareness of and provide education on sexual and reproductive rights.

Use of force in the context of demonstrations

26. The Committee is concerned about reports of human rights violations allegedly committed in the context of social protests in November and December 2020 and since 7 December 2022, including cases of excessive, indiscriminate and disproportionate use of force and of firearms by security forces, extrajudicial executions, mass arbitrary detentions and cases of violence motivated by racism or discrimination, particularly against Indigenous persons.... While noting the ongoing investigations, the Committee is deeply concerned that Act No. 30151 (2014) recasts article 20 of the Criminal Code in a way that makes it difficult for members of the armed forces and the national police who cause death or injury while performing their duties or using their weapons to be held criminally liable. It also notes with deep concern that Act No. 31012 (2020) on Police Protection modifies the grounds for exemption from criminal liability for members of the armed forces and the national police, prohibits the imposition of pretrial detention on police officers accused of acts involving the use of their weapon and repeals the principle of proportionality in the use of force as recognized in article 4(1)(c) of Legislative Decree No. 1186 (2015). It further notes that although the Act should be interpreted in accordance with the Constitution and the international treaties to which Peru is a party, its application could pose serious obstacles to the fight against impunity and to accountability and access to justice (arts. 2, 6, 7, 14, 19 and 21).
27. Taking into account the Committee's general comments No. 37 (2020) on the right of peaceful assembly and No. 36 (2018) on the right to life, the State party should take measures to effectively prevent and eliminate all forms of excessive use of force by the security forces, in particular in the context of peaceful assemblies. Accordingly, it should:
- a) Urgently revise Acts No. 30151 (2014) and No. 31012 (2020) and bring the legislative framework into line with the Covenant and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
 - b) Ensure that human rights violations allegedly committed during demonstrations, including those that may have taken place during social protests since 7 December 2022, are investigated promptly, thoroughly, impartially and effectively;
 - c) Adopt measures to protect investigations of human rights violations from impunity, and to ensure that the alleged perpetrators are brought before the judicial body designated by law, which must offer full guarantees of independence and impartiality, that the individuals who are materially and intellectually responsible are appropriately punished, and that the victims receive full reparation, including compensation, rehabilitation, satisfaction and guarantees of non-repetition;

- d) Continue to take measures to effectively prevent and eliminate the excessive use of force by law enforcement officers, including those in the armed forces, especially in the context of demonstrations, including by stepping up the education and training of all officers deployed to control protests.

Freedom of expression and right of peaceful assembly

38. While noting the State's efforts to protect human rights defenders, such as the creation, in 2021, of the Intersectoral Mechanism for the Protection of Human Rights Defenders and, in 2020, of the register on situations of risk facing human rights defenders, the Committee is concerned about allegations of insults, threats, harassment and intimidation against human rights defenders, including lawyers, members of the National Electoral Authority and journalists. It is also concerned that the criminalization of defamation, libel and slander is being done in a way that impedes freedom of expression and information and the exercise thereof by journalists and human rights defenders. The Committee is concerned about the alleged violations of the right to freedom of expression and the right to peaceful assembly that took place in the context of the demonstrations of November 2020 and since 7 December 2022, in particular the excessive use of force against demonstrators and journalists by security forces, resulting in injuries and deaths (arts. 6, 7, 9, 14, 19, 21 and 26).
39. The State party should take the measures necessary to ensure the full enjoyment of the rights to freedom of expression and to peaceful assembly by all persons, bearing in mind the Committee's general comments No. 34 (2011) on the freedoms of opinion and expression and No. 37 (2020) on the right of peaceful assembly. In particular, the Committee urges the State party to:
 - a) Redouble its efforts to prevent acts of harassment and intimidation against human rights defenders and journalists, and take all necessary measures to guarantee their effective protection, including through the provision of sufficient resources to State protection mechanisms, and to ensure that journalists and media workers are free to carry out their work without fear of becoming victims of violence or reprisals;
 - b) Ensure that all allegations of harassment and bullying are investigated promptly, thoroughly, impartially and effectively, that the perpetrators are brought to justice and duly punished and that victims receive comprehensive reparation;
 - c) If defamation, slander and libel remain offences, it should ensure that the wording of the relevant articles of the Criminal Code does not place undue limits on freedom of expression and information, especially when exercised by journalists, members of the political opposition and other persons critical of the Government;
 - d) Guarantee and respect the rights to peaceful assembly and demonstration, especially for Indigenous and campesino organizations, and ensure that the implementation of the rights to freedom of opinion and expression and peaceful assembly fully complies with the requirements of articles 19 (3) and 21 of the Covenant.

Rights of minorities and Indigenous communities

42. The Committee welcomes the State party's efforts to promote the rights of Indigenous and Afro-Peruvian communities, including the approval, in July 2021, of the National Policy on Indigenous Languages, Oral Tradition and Interculturality

up to 2040, and, in June 2022, of the National Policy for Afro-Peruvian Persons up to 2030. However, notwithstanding the prior consultation processes conducted, the Committee continues to be concerned about reports of a lack of equitable and transparent dialogue and pressure to conclude agreements, as well as allegations that agreements are not duly complied with. The Committee is also concerned about the lack of legal certainty regarding the titling of Indigenous territories, which favours the interests of illegal activities, the overlapping rights to communal territories due to pressure from extractive industries, the lack of essential public services in the territories of Indigenous communities in rural areas and the high levels of pollution from hydrocarbons and minerals. The Committee is further concerned about the rise in threats against and murders of Indigenous leaders with the advance of illegal economic activities, such as drug trafficking, logging, mining and land trafficking, especially in the Peruvian Amazon (arts. 2, 6, 25, 26 and 27).

43. The State party should redouble its efforts to ensure the promotion, protection and recognition, both in law and in practice, of the rights of Indigenous Peoples, particularly with respect to land, territory and natural resources. It should also:
- a) Strengthen and guarantee the effectiveness and systematic application of the participation and/or consultation processes necessary to obtain free, prior and informed consent and ensure equitable dialogue and compliance with the agreements reached with the State and public and private companies;
 - b) Review the current regulations on the lands of Indigenous Peoples and communities to ensure that they are held, owned and/or used within the framework of the international agreements ratified by the country;
 - c) Improve the provision of essential public services, especially access to health facilities, goods and services, in Indigenous territories and address the issue of pollution in affected territories;
 - d) Adopt measures to combat illegal economic activities, especially in the Peruvian Amazon, implement measures to protect Indigenous leaders and ensure access to effective remedies for all members of Indigenous groups if their rights are violated;
 - e) Adopt all necessary measures to ensure that the National Policy for Afro-Peruvian Persons up to 2030 achieves real progress in the protection and recognition of the rights of such persons.

D. Dissemination and follow-up

44. The State party should widely disseminate the Covenant and the two Optional Protocols, its sixth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country and the general public, including members of minorities and Indigenous Peoples. The State party should ensure that the periodic report and the present concluding observations are translated into the official languages of the State party.
45. In accordance with rule 75 (1) of the Committee's rules of procedure, the State party is requested to provide, by 24 March 2026, information on the implementation of the recommendations made by the Committee in paragraphs 27 (use of force in the context of demonstrations), 37 (right to take part in public affairs and the right to a fair trial) and 43 (rights of minorities and Indigenous communities).

B. VIEWS ADOPTED UNDER OPTIONAL PROTOCOL I

1. Jovsset Ante Sara v. Norway, CCPR/C/141/D/3588/2019, 12 Sept. 2024

Views adopted by the Committee under article 5 (4) of the Optional Protocol

| | |
|--|---|
| <i>Communication submitted by:</i> | Jovsset Ante Sara (represented by counsel Trond Biti) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Norway |
| <i>Date of communication:</i> | 6 December 2018 (initial submission) |
| <i>Document references:</i> | Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 12 April 2019 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 19 July 2024 |
| <i>Subject matter:</i> | Mandatory order to cull reindeer |
| <i>Procedural issues:</i> | None |
| <i>Substantive issue:</i> | Right to enjoy one's own culture |
| <i>Article of the Covenant:</i> | 27 |
| <i>Article of the Optional Protocol:</i> | None |

- 1.1 The author of the communication is Jovsset Ante Sara, a national of Norway born in 1992. He claims that, by ordering him to reduce his reindeer herd, the State party has violated his rights under article 27 of the Covenant. The Optional Protocol entered into force for the State party on 23 March 1976. The author is represented by counsel.

...

Facts as submitted by the author

- 2.1 The author is a Sami reindeer herder. He is the leader of a *siida* unit in herding district No. 20 in Fálá, in Finnmark county. A *siida* is a group of reindeer owners who engage jointly in reindeer husbandry in specific areas. A *siida* unit is a family group or an individual who is part of a *siida* and who engages in reindeer husbandry under the leadership of one person. The author's father and grandfather also practised reindeer husbandry until they discontinued their practices in 2001/02 and 2003/04, respectively. The author's grandfather transferred his reindeer to his daughter, the author's aunt, who in turn transferred her *siida* unit to the author in 2010. The author had always wanted to participate in reindeer husbandry and, after attending a Sami upper secondary school, he attended a reindeer husbandry school.
- 2.2 When the author took over as leader of the *siida* unit in 2010, the unit had 71 reindeer. By 2011, the number had increased to 94, in 2012 to 116, in 2013 to 150, in 2014 to 145 and in 2015 to 215 reindeer. At the time of the submission of the complaint in 2018, there were approximately 350 reindeer in the *siida* unit. The reindeer numbers from 2010 to 2014 are indicative of reindeer husbandry in the establishment phase. There are nine other members in the *siida* unit. According to the reindeer husbandry report of 2014/15, the author's aunt had 33 reindeer in the *siida* unit, while the author's grandfather, father, brother, sister and three cousins had between zero and four reindeer each.
- 2.3 The author's reindeer husbandry is economically marginal. Since 2012, the operation has suffered a deficit. As the author's husbandry is in the establishment phase, it is necessary to build up the reindeer herd to achieve economically sustainable reindeer husbandry.

- 2.4 On 15 June 2007, the Reindeer Husbandry Act was adopted. It entered into force on 1 July 2007. Section 60 of the Act contains provisions on the number of reindeer per *siida* unit. Pursuant to section 60 (1), a maximum number of reindeer should be stipulated for each summer for the reindeer herding districts, based on the grazing resources available to the *siida*. Likewise, in order to ensure responsible use of winter grazing areas, the number of reindeer must be stipulated for the various winter *siidas*. Section 60 (3) of the Act contains provisions on herd reduction in cases where the number of reindeer exceeds the maximum established, setting out that the *siida* is obliged to prepare a culling plan. If the *siida* does not prepare a plan or fails to implement it, each *siida* unit must reduce its excess number of animals proportionally. The Reindeer Husbandry Board is responsible for ensuring that the reduction is carried out. Deadlines must be set for the preparation of a plan and implementation of the reduction of the number of reindeer.
- 2.5 In accordance with the agreement on procedures for consultations on the provisions of the Reindeer Husbandry Act between State authorities and the Sami Parliament signed by the Minister of Local Government and Regional Development and the President of the Sami Parliament on 11 May 2005, a position memorandum prepared by the Sami Parliament, dated 10 February 2006, stated that the Sami Parliament supported the idea of minority protection in order to maintain economically sustainable reindeer husbandry and to protect herders in the establishment phase. After the conclusion of the consultations on 6 June 2006, the Ministry of Agriculture and Food prepared a bill that was submitted to the Sami Parliament for review. Having considered the bill in September 2006 in a plenary session, the Sami Parliament proposed that *siida* units with 200 or fewer reindeer should be protected in the event of a reduction of the number of reindeer. The Ministry did not agree with that proposal, considering that in the long-term, it could result in an industrial structure that would weaken the overall average profitability of the *siida*.
- 2.6 After the adoption of the Reindeer Husbandry Act, a process was initiated for setting the maximum number of reindeer in the herding districts. On 2 July 2011, Fálá herding district No. 20 applied for permission to herd a maximum of 2,000 reindeer, which was eventually approved by the Ministry. At the end of 2011, a maximum number had been set for all herding districts, after which the Reindeer Husbandry Administration notified the district of an order to prepare a reduction plan, as the district had 3,105 reindeers as of 31 March 2012. On 2 July 2012, a notification was also sent to the author indicating that, when the number of reindeer exceeded the maximum stipulated, there was an obligation to prepare a reduction plan, in accordance with the Act. If the Reindeer Husbandry Administration did not receive a reduction plan by 10 September 2012, the Reindeer Husbandry Board would carry out a proportionate reduction of the number of reindeer in accordance with the Act.
- 2.7 While the herding district failed to agree on a reduction plan, four of its six *siida* unit leaders agreed on 8 September 2012 that they would jointly herd four sixths of the district's total number of reindeer. The Reindeer Husbandry Administration did not accept that agreement as a reduction plan and, at a meeting on 26 February 2013, the Reindeer Husbandry Board decided to order the author to cull the spring herd of his *siida* unit from 116 to 114 reindeer by 31 March 2013, to 94 by 31 March 2014 and to 75 by 31 March 2015.
- 2.8 The author appealed against the culling order and the Reindeer Husbandry Board reviewed the case on 20 November 2013, dismissing the appeal but forwarding it to the Ministry, which also dismissed it, on 10 March 2014. On 16 September 2015,

the Board ordered the author to cull his herd in accordance with the Ministry's cull order of 10 March 2014. He was also fined, pursuant to the Act, 2 kroner (about \$0.19) per day for each reindeer in excess of the maximum number. On 22 May 2015, the author brought an action against the State party before Indre Finnmark District Court claiming that the Ministry's cull order of 10 March 2014 was invalid.

- 2.9 On 18 March 2016, the District Court held that, as the cull order violated the author's right to protection of property under the first Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), it was invalid. The Court stressed that the author was one of very few reindeer herders who were significantly affected by the decision to reduce the number of reindeer, that its purpose could have been fulfilled otherwise and that it particularly affected young herders in the establishment phase. The State, represented by the Ministry of Agriculture and Food, appealed the judgment to Hålogaland Court of Appeal, which dismissed the appeal on 17 March 2017. It held that the cull order was invalid as it violated article 27 of the Covenant, namely the author's right to enjoy his own culture. The Court found that it was impossible to make a profit with a herd of only 75 reindeer and that the author would not have the means to garner continued economic benefit from reindeer husbandry after the required reduction in his herd.
- 2.10 The Ministry appealed the judgment to the Supreme Court which, on 21 December 2017, found that the cull order did not violate the author's rights. The Court noted that: (a) the validity of the cull order depended on whether it was in conflict with article 27 of the Covenant or the right to protection of property under the first Protocol to the European Convention on Human Rights; (b) the Reindeer Husbandry Act had been enacted to ensure ecologically, economically and culturally sustainable reindeer husbandry based on the Sami culture, tradition and customs in the interests of the herders and society in general; (c) the reduction in the number of reindeer pursuant to the Act had been ordered in the interests of the reindeer herders due to overgrazing; and (d) the Sami Parliament had agreed that the number of reindeer had to be reduced. The Court found that the proportionate reduction maintained the reindeer herders' interests as a group; the regulation affected everyone and ensured that the owners of the largest herds had to cull the highest number of reindeer. The reduction system met the criteria of being objective, reasonable and necessary to maintain the interests of the reindeer herders. While the system deprived the author, at least for a period, of the possibility of developing his business into a profitable one, his herd had been too small to begin with to yield an acceptable income. The Sami Parliament had been consulted throughout the legislative process and had had the opportunity to influence the regulation. The Court therefore concluded that there had been no violation of the author's rights under article 27 of the Covenant or his right to property under the first Protocol to the European Convention.
- 2.11 The author notes that the culling order of 26 February 2013 requires him to reduce his unit to 75 reindeer. He argues that it would be impossible to engage in reindeer husbandry as a principal business with such a low number, as it would mean slaughtering an estimated 25 animals per year, which would result in sales revenue of approximately 25,000 kroner (about \$2,338). In order to be eligible for a grant under the Reindeer Husbandry Agreement, the leader of a *siida* unit must have a minimum revenue of 50,000 kroner (about \$4,676), excluding value added tax, for the previous calendar year. Even with sales revenue that would trigger a grant,

the operating expenses would far exceed the operating revenue. Since operating expenses, such as agricultural buildings and vehicles, are not proportionate to the size of the reindeer herd, *siida* units with fewer than 200 reindeer have the highest costs per reindeer. Compliance with the culling order would thus mean that the author would be unable to make a profit from reindeer husbandry, entailing a real risk that he would have to discontinue his reindeer husbandry. Moreover, with only 75 reindeer, there would be a real risk that the number of reindeer would fall to 50 in case of difficult weather conditions and due to predators. Section 16 (4) of the Reindeer Husbandry Act stipulates that *siida* units with fewer than 50 reindeer for five years must be terminated.

Complaint

- 3.1 The author claims that by ordering him to reduce his reindeer herd, the State party has denied him the right to enjoy his own culture, in violation of his rights under article 27 of the Covenant. While the purpose of the reduction of the number of reindeer under the Reindeer Husbandry Act may have been based on reasonable and objective grounds, namely, to preserve ecologically, economically and culturally sustainable reindeer husbandry based on Sami culture, the method chosen for regulating the reindeer numbers was neither reasonable nor necessary.
- 3.2 The author notes that he was in the establishment phase of his practice and was cautiously building up his herd in order to reach a level at which he could make a financial profit when the decision on reducing the number of reindeer was made. He argues that the authorities' decision prevents him from engaging in reindeer husbandry in accordance with the traditions of the reindeer husbandry culture.³ He also argues that it was not reasonable or necessary in order to ensure the continued sustainability of reindeer husbandry in the area to extend the culling order to reindeer units with fewer than 200 reindeer, considering the view of the Sami Parliament that small *siida* units should be exempted from such orders.
- 3.3 The author argues that, by failing to take the Sami Parliament's view into account, the State party authorities failed to consult properly with the Sami community and to consider the community's rights to self-determination and to real and effective participation in the decision-making process.

...

Third-party submission by the Sami Parliament of Norway, joined by the Sami Reindeer Herders' Association of Norway

- 7.1 On 3 June 2019, the Sami Parliament of Norway, joined by the Sami Reindeer Herders' Association of Norway, submitted a third-party submission on the complaint.¹³ The Sami Parliament is the elected and representative body for the Sami people, the Indigenous People of Norway. The Sami Reindeer Herders' Association is a non-governmental organization that represents Sami reindeer herders in Norway. The submission aims to explain the domestic decisions in the author's case in the light of the Committee's previous jurisprudence, the potential threats to the author's right to enjoy his own culture caused by the domestic legislation and the lack of effective participation in the decision-making process.
- 7.2 In 2006, the Sami Parliament made the following submission to the authorities about amendments to the Reindeer Husbandry Act concerning the reduction of reindeer numbers: (a) the proposal had been sent to the Sami Parliament without the full details of the preparatory work concerning the law, and thus in violation

of the State party's consultation obligations; (b) the Sami Parliament objected to the proposal that it would be for the State party authorities to unilaterally decide about the reindeer numbers and their reduction; and (c) the Sami Parliament proposed that, unless agreement could be reached within a *siida*, a minimum herd size of 200 animals per owner would apply before a proportional reduction was ordered to the number of animals beyond that minimum. The Sami Parliament referred specifically to the importance of enabling young reindeer owners to attain economic sustainability at the stage when they are establishing themselves as reindeer herders. However, the State party authorities decided to not follow that position. Consequently, the complaint results from the State party authorities' unilateral decisions.

- 7.3 The case primarily concerns the internal allocation of reindeer herd quotas between Sami herders. In Norway, reindeer herding as an economic activity is reserved exclusively for the Sami people. The complaint therefore, along with *Lovelace v. Canada*, *Kitok v. Sweden* and *Mahuika et al. v. New Zealand*, concerns the role of an individual or a group of individuals within the broader Indigenous community, rather than interference in traditional or typical Indigenous activities through competing use of traditional lands, as tolerated or authorized by the State party. In its general comment No. 23 (1994), the Committee recognized States parties' obligation to take measures to ensure the effective participation of members of minority communities in decisions which affect them (para. 7). In cases concerning external interference in traditional or typical Indigenous activities, the Committee has combined the requirement for effective participation with continued sustainability, upholding the right to continue to benefit from Indigenous economic activity. In *Poma Poma v. Peru*, the Committee's Views suggest a move towards applying a more demanding test of free, prior and informed consent when addressing the permissibility of interference. While that case concerned external interference in the economic activity of an Indigenous group, rather than internal allocation, it remains relevant. If the current test for permissibility of interference is free, prior and informed consent, then it is clear that the standard for a role for the Indigenous community itself in decisions concerning the internal allocation of a scarce resource cannot be lower than that applicable in respect of external interference.
- 7.4 It is highly instructive for the assessment of the present case that, in its most recent cases concerning article 27, the Committee has introduced the notion of internal self-determination as an aspect of the rights of an Indigenous People under articles 27 and 25, interpreted in the light of article 1. In doing so, the Committee explicitly relied upon the provisions of the United Nations Declaration on the Rights of Indigenous Peoples when interpreting the Covenant. In *Sanila-Aikio v. Finland*¹⁴ and *Käkkäläjärvi et al. v. Finland*,¹⁵ it established that the State party had violated article 25 of the Covenant when it intervened in the ongoing Sami Parliament elections of 2015 by ordering the inclusion of a relatively high number of individuals in the electoral rolls of that Parliament. In those cases, the Committee appeared to accept that there may be some room for interference by the State party, even in matters that fall under the Indigenous group's internal self-determination, but only when it is based on objective and reasonable criteria. The threshold for permissible State party interference in decision-making in matters pertaining to the internal self-determination of an Indigenous group, such as internal allocation of resources, must be higher than for external interference in the economic activities of an Indigenous group. There should be a presumption that the Sami Parliament has exclusive jurisdiction in such internal matters. The State party should be required

to demonstrate that the interference is necessary to the extent that the matter has effects beyond the Sami community. The State party has failed to show why the default minimum herd size of 200 reindeer per owner was unacceptable.

- 7.5 As has been confirmed by the domestic courts, it is not economically sustainable to maintain a herd of only 75 reindeer when a family seeks to participate in reindeer herding as the main source of its subsistence. Any regulation should be designed in a way that supports the purpose of article 27, namely, to protect the minority community. Shielding a minimum number of reindeer from eventual cuts will more effectively protect the culture. It should be for the State party to show why such a measure is not feasible. The fact that the author is a young father, who together with his spouse wishes to continue the centuries-old tradition of reindeer herding, also transmitting this constitutive dimension of Sami culture to the next generation, supports the conclusion that the culling order is not based on considerations related to securing the continued viability of Sami reindeer herding and the continued welfare of the Sami as an Indigenous People.

...

Consideration of the merits

- 10.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.
- 10.2 The Committee notes the author's claim that, by ordering him to reduce his reindeer herd, the State party has denied him the right to enjoy his own culture, in violation of his rights under article 27 of the Covenant. It also notes his submission that, by failing to take the view of the Sami Parliament and the Sami Reindeer Herders' Association into account, the State party authorities failed to consult properly with the Sami community and to respect their right to real and effective participation in the decision-making process, also in violation of the requirements of article 27 of the Covenant. The Committee further notes the State party's submission that the decision imposing a culling order on the author does not represent a violation of his rights under article 27 of the Covenant, as the author has not been denied the right to enjoy the Sami reindeer husbandry culture. It notes the State party's additional argument that the rule of proportionate reduction, as stipulated in the Reindeer Husbandry Act, served the interests of the affected siidas as it was necessary to reduce the number of reindeer in the siida because of overgrazing, and that there was a reasonable and objective justification for applying the reduction rule to the author. It also notes the State party's arguments that extensive consultations were held with the Sami community prior to the enactment of the Act and that there is a conflict between the asserted individual rights of the author and the parallel rights and interests of the other siida shares regarding the number of reindeer to be culled.
- 10.3 The Committee recalls that article 27 establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights that all persons are entitled to enjoy under the Covenant. In accordance with article 27, members of minorities groups shall not be denied the right to enjoy their culture and measures whose impact amounts to a denial of that right are incompatible with the obligations under article 27. The enjoyment of that right may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities

in decisions that affect them. The protection of the rights enshrined in article 27 is directed towards ensuring the survival and continued development of the cultural identity of the minority concerned, thus enriching the fabric of society as a whole.

- 10.4 The Committee notes that, in the present case, the author is a member of an Indigenous People within the meaning of article 27 of the Covenant who, as such, has the right to enjoy his own culture. It is undisputed that reindeer husbandry is an essential element of that culture. In this context, the Committee recalls its previous jurisprudence that economic activities may come within the ambit of article 27 if they are an essential element of the culture of a community. The Committee also recalls that, in the case of Indigenous Peoples, the enjoyment of their culture may relate to a way of life which is closely associated with their traditional lands, territories and resources, including such traditional activities as fishing and hunting, and that the protection of this right is directed towards ensuring the survival and continued development of the cultural identity of the minority concerned. Therefore, Indigenous Peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life. Furthermore, the Committee recalls its jurisprudence that the close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival; their relations to the land are a material and spiritual element which they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to prevent their extinction as a people.
- 10.5 The Committee notes that the author is directly affected by the regulation under the Reindeer Husbandry Act and the orders imposed on him to reduce to 75 the number of reindeer in his herd. It also notes that it is undisputed between the parties that the purpose of the reduction regulation in the Reindeer Husbandry Act is based on reasonable and objective aims, namely, to preserve ecologically, economically and culturally sustainable reindeer husbandry. Nevertheless, the parties disagree as to the methods chosen for the reduction in the number of reindeer, and whether such methods were reasonable, justified and necessary. In this connection, the Committee notes the State party's argument that the proportionate reduction rule under the Reindeer Husbandry Act struck a fair balance between the interests of the smaller and the larger siida shares, and that the allocation of reindeer between the various siida shares is a zero-sum situation in which each reindeer added to the author's herd would result in a corresponding reduction of another family's herd. The Committee recalls that, in circumstances where the right of individuals to enjoy their own culture is in conflict with the exercise of parallel rights by other members of the minority group or of the minority as a whole, the Committee may consider: (a) whether the limitation in question is in the interests of all members of the minority; (b) whether there is reasonable and objective justification for its application to the individuals who claim to be adversely affected; and (c) whether the limitation is necessary for the continued viability and welfare of the minority as a whole. In the present case, the Committee considers that the reduction policy was issued in the interest of the reindeer herding community as a whole, as it was issued because of overgrazing and in the interest of preserving ecologically, economically and culturally sustainable reindeer herding currently and in the future. The question before the Committee is therefore whether there is reasonable and objective justification for not exempting herders with a small number of reindeer, such as the author, from the reduction policy, and whether issuing the culling orders in

question to herders like the author, who only had a small number of reindeer, was necessary for the continued viability and welfare of the community as a whole.

- 10.6 In this connection, the Committee notes the State party's argument that the first point to consider is that, under the Reindeer Husbandry Act, the proportionate reduction rule is secondary in nature as the allocation of reindeer between the *siida* shares is an internal matter within the *siida*, meaning that the *siida* in Fálá could have shielded the author from the reduction through a simple majority decision, by setting a cap on the number of reindeer per *siida* share. The Committee also notes the author's argument that this arrangement was only a theoretical possibility, as there would always be some members who would not join the agreement, and that in practice, it was not possible to reach such an agreement within the *siida*. The Committee recognizes the State party's argument that the culling order imposed on the author is time-limited and that the author can thus increase his herd in the future. Nevertheless, the Committee notes the author's assertion that the reduction decision has long-term effects and can be extended for up to five years. The Committee observes that the author could only increase his herd in the future provided that there is room for an increase within the maximum number of 2,000 reindeer that the *siida* in question can support. Consequently, the Committee considers that the secondary nature of the proportionate reduction rule and the time-limited nature of the culling order did not in practice shield the author from an order by the State party authorities to reduce his herd to 75 animals.
- 10.7 The Committee notes the author's argument that it would be impossible to make a financial profit from a small herd of 75 reindeer in line with the culling orders imposed on him, which would risk him having to discontinue his reindeer husbandry practice, preventing him from engaging in reindeer husbandry in accordance with the traditions of the Sami reindeer husbandry culture. It also acknowledges the State party's argument that the rule of proportionate reduction had a reasonable and objective justification as it meant that the biggest entities would have to bear the brunt of the stipulated reduction and that an exemption for small herds could in the longer term give the industry an unfavourable structure that would weaken both the total and average profitability of a *siida*, thus undermining the opportunity to practise financially viable reindeer husbandry. In this connection, however, the Committee notes the author's argument that it was not reasonable and necessary to ensure the continued sustainability of the reindeer husbandry in the area to extend the culling order to small *siida* units, such as his, of 200 reindeer or fewer, as the effect of protecting *siida* units with 200 or fewer reindeer would have had limited consequences for the larger *siida* units. The Committee observes that the author's claim is supported by a report of a working group on the regulation of reindeer numbers from 2012, in which several ministries, the Sami Parliament and the Sami Reindeer Herders' Association participated. The report substantiates that in West Finnmark, 15 out of the 157 *siida* shares had fewer than 200 reindeer before the culling orders were issued and that consequently, exempting the small *siida* shares from the reduction policy would have had a limited impact on the community as a whole.
- 10.8 The Committee observes that, during the preparatory work on the Reindeer Husbandry Act, the Sami Parliament and the Sami Reindeer Herders' Association supported exempting herders with 200 or fewer reindeer from the reduction policy. The Sami Parliament and the Association have also endorsed this position in their third-party submission in the present case. The Committee notes that, in

that submission, they also argued that the State party has failed to explain why the default minimum herd size of 200 reindeer per owner was not acceptable. The Committee also notes that the Sami Parliament argued its position by referring to the importance of enabling young reindeer owners to attain economic sustainability at the stage when they are establishing themselves as reindeer herders. The Committee further notes the Sami Parliament's and the Association's argument that the author is a young father who, together with his spouse, wishes to continue the centuries-old tradition of reindeer herding and to transmit this constitutive dimension of Sami culture to the next generation. According to the Sami Parliament and the Association, this supports the conclusion that the culling order is not based on considerations related to securing the continued viability of Sami reindeer herding and the continued welfare of the Sami as an Indigenous People. In this connection, the Committee notes that the author's argument that the Sami Parliament and the Association are best placed to determine the interests of the Sami community and the reindeer husbandry industry is consistent with the Committee's jurisprudence.²⁵

- 10.9 The Committee observes that, in the domestic proceedings pertaining to the present communication, the District Court stressed that the author was one of very few reindeer herders who were significantly affected by the decision to reduce the number of reindeer, that its purpose could have been fulfilled otherwise and that it particularly affected young herders in their establishment phase (see para. 2.9). The Court of Appeal likewise held that the cull order was invalid as it was in violation of article 27 of the Covenant, finding that it would be impossible to make a profit with a herd of only 75 reindeer and that the author would not have the means to garner continued economic benefit from reindeer husbandry after the required reduction in his herd.
- 10.10 The Committee thus recognizes that the reduction regulation enacted in the Reindeer Husbandry Act was in pursuit of a legitimate aim, namely, to preserve ecologically, economically and culturally sustainable reindeer husbandry. However, taking the above considerations into account (see paras. 10.5–10.9), the Committee considers that the State party has not demonstrated that the methods chosen to implement said reindeer reduction policy in the present case, namely not exempting herders such as the author, who have 200 or fewer reindeer from the reduction policy, in accordance with the position of the Sami Parliament and the Sami Reindeer Herders' Association, was based on reasonable and objective justifications, nor has it demonstrated that not including such an exemption was necessary in order to ensure the continued viability and welfare of the Sami reindeer husbandry industry. The Committee therefore concludes that the facts before it reveal a violation of the author's rights under article 27 of the Covenant.
- 10.11 Having thus concluded, the Committee does not consider it necessary to examine the author's remaining claims under article 27 concerning the right to effective participation in the decision-making process.
11. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 27 of the Covenant.
12. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated to review the culling orders issued to the author, taking into

account the Committee's findings in the present Views. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing the provisions of section 60 of the Reindeer Husbandry Act in order to ensure that they are in compliance with its obligations under article 27 of the Covenant

2. Ailsa Roy & Wunna Nyiyaparli Indigenous People v. Australia, CCPR/C/137/D/3585/2019, 13 March 2024

| | |
|---|--|
| <i>Communication submitted by:</i> | Ailsa Roy (represented by counsel, Scott Calnan) |
| <i>Alleged victim:</i> | The author and the other members of the Wunna Nyiyaparli Indigenous People |
| <i>State party:</i> | Australia |
| <i>Date of communication:</i> | 2 April 2019 (initial submission) |
| <i>Document reference:</i> | Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 9 April 2019 (not issued in document form) |
| <i>Date of adoption of Views:</i> | 15 March 2023 |
| <i>Subject matter:</i> | Effective participation of Indigenous Peoples in the mechanism for the determination of their rights to traditional territory |
| <i>Procedural issues:</i> | Substantiation of claims |
| <i>Substantive issues:</i> | Determination of Indigenous Peoples' right to traditional territory; discrimination; fair trial |
| <i>Articles of the Covenant:</i> | 1, 2 (3), 14 (1), 26, 27 3 |
| <i>Articles of the Optional Protocol:</i> | 3 |

- 1.1 The author of the communication is Ailsa Roy, an elder member of the Wunna Nyiyaparli, an Indigenous People from Australia comprising approximately 200 persons, with custodial responsibilities in relation to the traditional lands, territories and resources of the Wunna Nyiyaparli. She claims that the State party has violated the rights of the Wunna Nyiyaparli under articles 2(3), 14(1), 26 and 27 of the Covenant, read in the light of article 1.
- 1.2 The Optional Protocol entered into force for Australia on 25 December 1991. The author is represented by counsel. 1.2 On 9 April 2019, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, registered the communication but decided not to issue a request for interim measures under rule 94 of its rules of procedure.
- 1.3 On 10 June 2020, the Committee, acting through its Special Rapporteurs on new communications and interim measures, denied a request for third party intervention submitted by Minority Rights Group International.

Factual background

- 2.1 The Wunna Nyiyaparli Indigenous People are a local landholding group of the larger Nyiyaparli Indigenous People, who belong to the Western Desert Aboriginal People. Prior to European contact and the assertion of sovereignty by the Crown on 11 June 1829, the ancestors of the Wunna Nyiyaparli occupied their traditional

territory according to rights derived from filiation to a parent having held those rights or by way of incorporation. Traditional laws and customs, specifics relating to traditional territory and the governance of rights in relation to lands, the use and exploitation of resources and the protection of sites of significance continue to be actively acknowledged and observed by the Wunna Nyiyaparli.

- 2.2 The Wunna Nyiyaparli traditional territory, situated in the Pilbara Region, is known as the Roy Hill Pastoral Lease. The Wunna Nyiyaparli hold the rights, under Western Desert traditional laws and customs, to “speak for” this specific territory, which holds the sacred burial sites of their ancestors and other sacred sites registered with the Government (such as the Fortescue river marshes). This territory is key to the Wunna Nyiyaparli language, culture and religion. Their ability to live, hunt and fish on it, according to traditional practices transmitted from generation to generation, and their ability to control access to and care for their lands, are essential for the preservation of their Indigenous People group as such.
- 2.3 Wunna Nyiyaparli traditional territory is rich in minerals, such as iron ore. Several iron ore mines have already been developed on it without any information being shared with the Wunna Nyiyaparli. As a consequence of the mining, access to many parts of the lands is now restricted; the Wunna Nyiyaparli are no longer able to freely travel throughout them. Moreover, the Wunna Nyiyaparli learned, through public information, as they were never consulted, about the expansion of the Christmas Creek Iron Ore Mine and a licence awaiting approval for the construction of a road, a power line and a pipeline. According to the author, should any of the mines expand, or should further mineral concessions be granted, further damage would be caused, posing a danger to Wunna Nyiyaparli culture, which is intimately and inextricably linked to the territory. 2.4 On 7 May 2011, the community held a meeting and decided to file an application to have native title to its traditional territory recognized under the Native Title Act. The author clarifies that the State party has awarded native title to entire Indigenous Peoples that contain smaller cultural groups. When this occurs, the larger group does not speak for the “country” of the smaller landholding groups, but rather facilitates the obtaining of the native title that secures the ability of such smaller groups to speak for their own “country”. Native title has also been awarded to groups smaller than the whole language group itself; it is this latter course of action that the Wunna Nyiyaparli pursued.
- 2.5 In the application filed on 27 January 2012 before the Federal Court of Australia, the Wunna Nyiyaparli clarified that, to the extent that any minerals, petroleum or gas within the area of the claim were wholly owned by the Crown in the right of the Commonwealth or the State of Western Australia, they were not claimed by the applicants. The rights and interests claimed by the Wunna Nyiyaparli were the rights to access and live in the area, to make decisions about the use and enjoyment of the area and its resources, to control the access of others to the area, to maintain and protect places of importance under traditional laws, customs and practices, and to manage, conserve and look after the land, waters and resources. Under the laws and customs of the Western Desert Aboriginal People, this right to “speak for” the application area is roughly equivalent to a right of exclusive possession under English land law. Other Nyiyaparli people have standing permission to access and live in the Roy Hill Pastoral Lease and to use and enjoy its resources; however, this standing permission confers on them privileges more than rights, as the Wunna Nyiyaparli maintain the right to withdraw that permission.

- 2.6 On 30 March 2012, the National Native Title Tribunal placed the claim of the Wunna Nyiyaparli on the Register of Native Title Claims. In its examination of the case, the Tribunal had regard, in addition to the information contained in the claim, to geospatial assessments and to its own searches. A submission from the Yamatji Marlpa Aboriginal Corporation opposing the registration, stating that the wider Nyiyaparli people did not consent to the filing of the application, was not given weight by the Tribunal, which considered that the situation of the Wunna Nyiyaparli was different to the situation in another case mentioned by the Corporation, in which the application had been brought by only a few members of the peoples holding rights in the claim area. In the current case, the traditional laws and customs of the Western Desert recognize the Wunna Nyiyaparli as the landholding group of the Nyiyaparli people that, alone, possesses the rights to and interests on the Roy Hill Pastoral Lease. According to the Tribunal, the application included therefore that any person who was part of the Wunna Nyiyaparli was entitled to file, alone, the application.
- 2.7 According to the author, the registration test decision meant that the Wunna Nyiyaparli had a prima facie valid native title claim with a chance of success if it was fully argued before the Federal Court. Indeed, section 190 B of the Native Title Act sets out conditions that test the particular merits of a claim and section 190 C sets out procedural conditions. In particular, on the merits, the National Native Title Tribunal found that sufficient factual material strongly supported that: (a) in accordance with Western Desert traditional laws and customs, the ancestors of the Wunna Nyiyaparli were Nyiyaparli; (b) the Wunna Nyiyaparli had – as did their predecessors – an association with the claimed lands, on which they continued to live a largely traditional life through their mythology and rituals; (c) traditional Wunna Nyiyaparli laws were acknowledged and customs were observed (recalling that, according to the High Court, a law or custom is traditional when it has been passed from generation to generation, usually by word of mouth and common practice, when the origins of the content of the law or custom concerned can be found in the normative rules of a society that existed before the assertion of sovereignty by the Crown, when the normative system has had a continuous existence and vitality since sovereignty, and when the relevant society's descendants have acknowledged the laws and observed the customs since sovereignty without substantial interruption); and (d) the Wunna Nyiyaparli had continued to treat the lands claimed in accordance with those traditional laws and customs.
- 2.8 This registration, according to the Native Title Act, gave to the Wunna Nyiyaparli rights regarding the use of the lands claimed by third parties. As a consequence, the registration was challenged by another Nyiyaparli clan, which was negotiating, with mining companies, two Indigenous land use agreements for a large area that covered the traditional territory of the Wunna Nyiyaparli. Taking into account that, after the decision of the National Native Title Tribunal, it was no longer possible for the other Nyiyaparli clan to go ahead with the Indigenous land use agreements, that clan filed, on 13 July 2012, an application for judicial review of the Tribunal's decision. The author clarifies that, in 1998, the other Nyiyaparli clan had filed a native title application before the Federal Court, claiming lands comprising a larger area that wholly encompassed the lands claimed by the Wunna Nyiyaparli, with no resolution to date.
- 2.9 On 2 April 2015, four years after the filing of the Wunna Nyiyaparli application under the Native Title Act and three years after the registration test decision, the Federal

Court started to make orders concerning the preparation for the hearings of the native title claim of the Wunna Nyiyaparli.

- 2.10 In a hearing on 28 October 2015, the Federal Court ordered that the Wunna Nyiyaparli proceedings were to be examined jointly with the native title application filed in 1998 by the other Nyiyaparli clan. The Court also ordered that a “separate question”, aimed at determining whether the Wunna Nyiyaparli were descendants of the Nyiyaparli,⁷ be decided separately.
- 2.11 The counsel representing the Wunna Nyiyaparli before the Federal Court at that time immediately informed the Court that the Wunna Nyiyaparli did not consent to the proposed order for a hearing on the separate question because the community had never been consulted about it and did not understand how such a separate question had arisen, and recalled that the evidence to answer the question in the affirmative had already been supplied in the application.
- 2.12 In the absence of a response from the Federal Court, on 4 December 2015, the Wunna Nyiyaparli submitted additional documents in support of their claim and of their Nyiyaparli origin, including an anthropological report and statements by Wunna Nyiyaparli elders.
- 2.13 On 18 March 2016, the lawyers of the Wunna Nyiyaparli filed a notice of ceasing to act for the Wunna Nyiyaparli. The author clarifies that, prior to that date, because the relations with the lawyers had not been functional, the Wunna Nyiyaparli had been unable to fully understand the implications of the proceedings. Having no funds to hire other lawyers, the Wunna Nyiyaparli, who were no longer represented by lawyers at that point, took no further steps after that date. In particular, they did not attend a hearing on 24 March 2016 as they were unaware that it was necessary for them to attend; similarly, they did not attend a hearing on 13 April 2016 because, on the basis of comments made by the judge that they read in the transcript of the hearing of 24 March 2016, they had thought that the separate question had already been decided in their favour.
- 2.14 On 20 April 2016, the Registrar of the Federal Court addressed a letter to the Wunna Nyiyaparli, informing them of a direction hearing scheduled for 3 May 2016. They responded that they were confused about this letter and that they would not be able to attend without legal representation.
- 2.15 On 3 May 2016, the Registrar of the Federal Court made orders for the Wunna Nyiyaparli to file a notice indicating whether they wanted to participate in the hearing on the separate question. The Wunna Nyiyaparli only saw this email on 6 May 2016 and responded immediately, stating that it was their understanding, from a transcript that they had read, that the separate question had already been decided in their favour. They also indicated to the Registrar, in a second email sent on the same day, that they did not understand how the separate question proceedings had arisen and they asked how the other Nyiyaparli clan had become a party to their claim. On 9 May 2016, a response from the Registrar informed them that the Registrar could not provide legal advice and that it was inappropriate for them to correspond directly with the Registrar.
- 2.16 On 18 May 2016, the Federal Court decided that the separate question was to be heard without the participation of the Wunna Nyiyaparli because they had not filed a notice regarding their participation.
- 2.17 On 11 July 2016, the hearing for the trial on the separate question was held. Three members of the Wunna Nyiyaparli attended, thinking that the hearing was related

to their native title application. When the judge said that the hearing would proceed on the basis that the only evidence that would be adduced would be that from the Niyaparli, the three members of the Wunna Niyaparli submitted that they had understood that the separate question had already been answered in their favour. When the judge replied that they must have known about the proceedings on the separate question scheduled for that day, the Wunna Niyaparli indicated that they had been unable to effectively participate in the proceedings because they had no stable Internet connection and no legal representation. In response to the judge's comment that they could have looked for another lawyer in the period since 18 March 2016, they replied that they lacked the funds to do so. Moreover, as the matter was related to their fundamental rights on their traditional lands, they requested to be able to effectively participate in the proceedings, through consultation in all decisions affecting them and through an adjournment of the hearing on the separate question, and for the Court to examine the evidence that they had filed previously – and brought again that day – to support their claim that they were indeed Wunna Niyaparli, members of the Niyaparli people.

- 2.18 Nevertheless, according to the judge, the other party had not had the opportunity to prepare for a hearing on the basis that the Wunna Niyaparli would be adducing any evidence and the lawyer for the Niyaparli submitted that they would suffer prejudice if the Wunna Niyaparli were permitted to depart from the position on which they had allowed the parties and the Court to proceed. According to the judge, an adjournment of a hearing of that kind was a very serious matter as they were expensive to organize. There was a public interest in the Court making use of the time that had been set aside for the hearing and making proper use of the public moneys that had been expended in arranging the hearing. Consequently, the judge ruled that the hearing on the separate question would not be adjourned and that the Wunna Niyaparli would not be allowed to have any of their evidence considered. As a consequence, the judge listened only to the other party, which was interested in demonstrating that the Wunna Niyaparli were not descendants of Niyaparli in order to have the claim of the Wunna Niyaparli rejected and to be able to freely negotiate with mining companies.
- 2.19 On 16 December 2016, not considering the evidence filed by the Wunna Niyaparli in their native title claim, the Federal Court answered the separate question in the negative, considering that the Wunna Niyaparli applicants had not adduced any evidence to support the contention that they were part of the wider Western Desert Society. According to the Court, although it was true that their filed claim included extracts from some anthropological literature that might have supported the contention, that did not become evidence in the separate question. In the judgment, the native title application filed by the Wunna Niyaparli was dismissed.
- 2.20 Despite their limited funds, the Wunna Niyaparli managed to hire a new lawyer to draft a notice of appeal against the separate question judgment, submitting that the Court had committed an error by refusing to receive their evidence.
- 2.21 On 5 September 2017, in its judgment of appeal, the Federal Court admitted that it was possible that the Wunna Niyaparli were confused as to some of the procedural orders as a result of a lack of legal representation, but nevertheless dismissed their appeal considering that the first instance decision was “undoubtedly correct”. The Court ordered the Wunna Niyaparli to pay court costs of US\$ 14,561.
- 2.22 On 26 September 2018, the Federal Court made a consent determination of native title in favour of the other Niyaparli applicant over the traditional territory of the

Wunna Nyiyaparli. As a result, another Indigenous People – with no traditional rights to control access to the Wunna Nyiyaparli traditional territory but with interest in mining exploitations on those lands – now has legal control of the Wunna Nyiyaparli lands, to the exclusion of the Wunna Nyiyaparli. A consequence of that decision is the impossibility for the Wunna Nyiyaparli to keep looking after the culturally important areas on their traditional lands and, more generally, the extinction of their rights to their traditional territory. The impact of such a ruling will be huge, taking into account that the ability of the Wunna Nyiyaparli to live, visit, hunt and fish on their traditional lands is essential to their preservation as a people.

Complaint

- 3.1 The author clarifies that the central purpose of her communication is to find that the State party failed to provide the Wunna Nyiyaparli with an adequate procedure for the determination of their rights to traditional territory, with the implication of multiple violations of their rights under the Covenant, but that it is not to request the Committee to rule on which party has a better claim to native title or to pronounce itself on the absence of consultation in relation to mining projects.
- 3.2 The author submits that no remedies are available for her to appeal against the consent determination of native title made over the traditional territory of the Wunna Nyiyaparli to another Indigenous group (see para. 2.22 above). The Wunna Nyiyaparli are not entitled to alter this native title consent determination because, according to the Native Title Act, once a determination of native title is made by the Federal Court, an application for its variation or revocation can only be made by the registered native title body, the Commonwealth Minister, the State or Territory Minister or the Native Title Registrar. She alleges that the State party has no constitutional bill of rights or Human Rights Act by which the Wunna Nyiyaparli could have asserted their specific human rights as an Indigenous People.
- 3.3 The author claims that the State party violated article 27 of the Covenant due to the lack of effective participation by the Wunna Nyiyaparli in the judicial proceedings of determination of lands rights, with a direct consequence of the loss of their traditional territory (attributed to another Indigenous group interesting in mining concessions), which would lead to the dissolution of their own culture – based on their laws and customs held in relation to their traditional lands – and to the destruction of the Wunna Nyiyaparli as such.
- 3.4 The author argues that, in line with the Vienna Convention on the Law of Treaties, an evolutionary interpretation of article 27 of the Covenant should arise from contemporary international human rights norms regarding Indigenous Peoples' rights, considering that Indigenous Peoples' right to participate in decisions affecting them also applies to proceedings concerning the recognition of rights to traditional territory, which in Australia are judicial proceedings. The author recalls that the Wunna Nyiyaparli could not properly understand the issue of the separate question, having not been properly consulted about it and not having been able to provide their free, prior and informed consent to its specific wording.
- 3.5 The author refers to the Committee's general comment No. 23 (1994), previous jurisprudence of the Committee and regional human rights jurisprudence that serves to interpret international human rights. She refers in particular to the decision of the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann v. United States*, in which the Inter-American Commission found multiple violations in relation to the allegations of the victims – members of the Western

Shoshone Indigenous People of the State of Nevada – according to which the State had interfered with their use and occupation of their ancestral lands by purporting to have appropriated those lands as federal property through an unfair procedure before the Indian Claims Commission. The Inter-American Commission observed in particular that the Indian Claims Commission process was not sufficient in order for the State to fulfil its particular obligation to ensure that the status of the Western Shoshone traditional lands had been determined through a process of informed and mutual consent on the part of the Western Shoshone people. According to the author, the decision of the Inter-American Commission confirms that the correct view of the scope of article 27 is the requirement in general comment No. 23 (1994) that Indigenous Peoples may effectively participate in decisions affecting them and that the article applies to proceedings before courts in which it is decided whether Indigenous claimants have interests in lands that they have traditionally occupied and to which they have cultural and religious connections.

- 3.6 The author contends that the scope of article 27 of the Covenant should also be interpreted in line with article 27 of the United Nations Declaration on the Rights of Indigenous Peoples, in order to require that any process adjudicating Indigenous land rights must be established and implemented in conjunction with the Indigenous Peoples concerned, and must be fair and open. An indication of what such fairness might require is given by the Inter-American Commission on Human Rights: The insufficiency of this process was augmented by the fact that ... the issue of extinguishment was not litigated before ... the Indian Claims Commission [which] did not conduct an independent review of historical and other evidence. ... In light of the contentions by the Danns that they have continued to occupy and use [their] ancestral lands ..., it cannot be said that the Danns' claims to property rights in the Western Shoshone ancestral lands were determined through an effective and fair process.
- 3.7 The author claims that the State party violated the rights of the Wunna Niyaparli under article 26 of the Covenant, recalling that this article is not limited to the non-discriminatory provision of rights contained in the Covenant but applies to prohibiting discrimination in any field regulated and protected by public authorities. She claims discrimination on the ground of property rights, recalling that the inter-American human rights system has found that lands possessed by Indigenous Peoples pursuant to their traditional customs are property within the meaning of the American Convention on Human Rights. In particular, in *Mary and Carrie Dann v. United States*, the Inter-American Commission on Human Rights found that the victims had “not been afforded equal treatment under the law respecting the determination of their property” because “any property rights that the Danns may have asserted to the Western Shoshone ancestral lands were held by the [Indian Claims Commission] to have been ‘extinguished’ through proceedings in which the Danns were not effectively represented and where the circumstances of this alleged extinguishment were never actually litigated”.
- 3.8 In particular, the author submits that the Wunna Niyaparli experienced unjustified differential treatment in the determination of their rights to traditional lands on the following grounds: (a) by having had to litigate in two separate trials on the same matter (their native title claim and the separate question), contrary to the other Niyaparli applicant, the proceedings on the separate question having subjected them to a higher standard of proof compared with the other applicant; (b) by the Court's failure to allow the consideration of their evidence in the separate question

trial; and (c) by having failed to provide them with legal representation, contrary to the other party. On this last point, the author clarifies that Indigenous Peoples claiming land rights are not eligible for legal aid funding through the Western Australian legal aid system, unlike parties in other types of legal actions. Instead, funding for native title litigation is provided by representatives from representative Aboriginal/Torres Strait Islander bodies (a national network of organizations). In carrying out their functions, such bodies, in matters of competing claims over same lands, have funded only one claimant because they are required to minimize overlapping applications. The Wunna Nyiyaparli sought funding from the representative body in their region (Yamatji Marlpa Aboriginal Corporation) twice, in 2010 and in 2012, to no avail, as that body had funded the opposing party.

- 3.9 The author claims that the failure of the State party to provide the Wunna Nyiyaparli with legal aid to better understand the complexity of native title proceedings, a complexity already noticed by the Committee,¹⁶ amounted to a violation of article 14 (1) of the Covenant, read alone and in conjunction with article 2 (3). As unrepresented litigants, the Wunna Nyiyaparli: (a) were not able to obtain proper guidance from the Court as to the nature of the separate question proceedings; (b) could not take actions, because of misunderstandings of laws and facts, that might have prevented the Court from reaching its decision to declare the Wunna Nyiyaparli traditional territory as pertaining to another applicant; and (c) were not given the resources or the time to properly test the evidence advanced by the other party. On this last point, the author recalls that, according to the Committee, the failure of a State party to allow parties the ability to comment on evidence considered by a court in determining Indigenous land rights is a violation of the principles of both equality before the courts and fair trial.
- 3.10 The author claims that the violation of article 14 (1) of the Covenant arises from the failure of the State party to even consider, for the separate question trial, the evidence filed in the other trial (the native title determination), which proved the origin of the Wunna Nyiyaparli as Nyiyaparli, as well as the failure to allow an adjournment in the separate question trial for the Wunna Nyiyaparli to properly file the evidence, once again, the Court having established that it was necessary to file it twice (see para. 2.19 above). Such decision was arbitrary, regardless of the lateness of their request, in the light of the Committee's jurisprudence that tribunals that are not constrained by any prescribed time limit for the submission of evidence violate article 14(1) by failing to accept new evidence close to hearings. The author recalls that, according to the European Court of Human Rights, "each party must be afforded a reasonable opportunity to present his case".
- 3.11 Recalling the Committee's jurisprudence that failure to allow access to courts can amount to a violation of article 14 (1) of the Covenant,²⁰ the author claims that the rights of the Wunna Nyiyaparli were also violated due to the State party's failure to allow them to appeal the consent determination of native title made in favour of another applicant.
- 3.12 The author also claims that the State party's failure to provide the Wunna Nyiyaparli with an effective remedy and the absence of a forum in which they can request an examination of all the violations are constitutive of a violation of article 2(3) of the Covenant.
- 3.13 The author alleges that the right to self-determination, in part related in the context of Indigenous Peoples to their close connection to their traditional territories, should be taken into consideration when examining their claims. She refers to

the Committee's jurisprudence that the provisions of article 1 may be relevant to a determination of whether other rights contained in the Covenant have been violated. The author notes that the InterAmerican Court of Human Rights has found that substantive Indigenous rights are underpinned by the right to self-determination, as set out in article 1 of the Covenant.

- 3.14 The author seeks the removal of all legal effects of the native title determination made in favour of another Indigenous group. She requests the Court to continue the proceedings on the native title claim of the Wunna Nyiyaparli, ensuring their effective participation.
- 3.15 The author submits that, should a national court decide in favour of the claim of the Wunna Nyiyaparli, the State party must provide just, full and timely reparations, including adequate compensation, for any acts by third parties carried out on their lands after they filed their native title claim in 2012 to secure their lands.

Issues and proceedings before the Committee

Consideration of admissibility

- 7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.
- 7.2 The Committee notes the State party's submission that the claim under article 1 is inadmissible because the right to self-determination cannot be the subject of a communication. The Committee also notes the author's submission that the right to self-determination should be taken into consideration when examining the claims because, based on the definition of this right provided in the United Nations Declaration on the Rights of Indigenous Peoples, the deprivation by the Court of the right of the Wunna Nyiyaparli to "speak for" their traditional lands, and the consequent removal of their ability to freely pursue their economic, social and cultural development by interrupting their relation to such lands, directly implicates the right to self-determination in the facts of the case.
- 7.3 The Committee recalls that, although it does not have competence under the current development of its jurisprudence to consider a claim alleging a violation of article 1 of the Covenant, it may, when relevant, interpret that article in determining whether rights protected in parts II and III of the Covenant have been violated. Therefore, the Committee is of the view that, in the present communication, it may take article 1 into account in interpreting articles 14(1), 26 and 27 of the Covenant. In this regard, the Committee recalls that the Committee on the Elimination of Racial Discrimination has affirmed that, "in addition to being a form of intangible heritage, self-determination is linked to the effective realization of the rights of indigenous peoples".
- 7.4 The Committee notes the State party's submission that the author has failed to substantiate, for the purposes of admissibility, the claims under articles 26 and 27.
- 7.5 The Committee also notes that the Wunna Nyiyaparli self-identify as Indigenous, and that their laws, culture, language and traditions are intimately linked to their care and control of and access to their traditional lands. The Committee further notes that the State party made a consent determination of native title over the Wunna Nyiyaparli alleged traditional territory in favour of other applicants, without, allegedly, the effective participation of the Wunna Nyiyaparli. The Committee therefore considers that the claim under article 27 is sufficiently substantiated for the purposes of admissibility.

- 7.6 In relation to the admissibility of the claim under article 26, the Committee takes note of the allegations that the Wunna Nyiyaparli were discriminated against in the determination of their property rights, having experienced unjustified differential treatment in comparison with the other Indigenous applicant, having had to litigate in two separate trials on the same matter (firstly the determination of their rights on the lands and secondly the determination of their Nyiyaparli origin, the proceedings for which they had no possibility to submit evidence), and the State party having failed to provide them with legal representation, unlike the other party. The Committee considers that these issues are closely related to the merits and that, for the purpose of admissibility, the author has sufficiently substantiated her claim.
- 7.7 The Committee notes that the State party does not allege that the claim in relation to article 14 (1) is inadmissible and that it does not allege lack of exhaustion of domestic remedies for any of the author's claims. Accordingly, the Committee considers that it is not precluded, under article 5 (2) (b) of the Optional Protocol, from examining the present communication.
- 7.8 Therefore, the Committee declares the communication admissible insofar it raises issues under article 14 (1), read alone and in conjunction with article 2 (3), and articles 26 and 27, all read in the light of article 1, and proceeds with its considerations of the merits.

Consideration of the merits

- 8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.
- 8.2 The Committee notes the author's argument that the facts of the present case constitute a violation of article 27 of the Covenant because, due to a lack of effective participation in complicated judicial proceedings on the determination of their land rights, the Wunna Nyiyaparli lost their traditional lands, which were titled to another Indigenous People. The Committee also notes that, according to the author, this would lead to the dissolution of the Wunna Nyiyaparli culture, which is based on their laws and the customs held specifically in relation to their traditional territory, and to the destruction of the Wunna Nyiyaparli people as such. The Committee further notes the author's argument that the scope of article 27 of the Covenant contemplates, according to the evolution of Indigenous Peoples' rights, effective participation in decisions affecting them (including free, prior and informed consent). The native title determination procedure was a decision affecting them but they could not effectively participate in it. The Committee notes the State party's argument that there was no breach of article 27 because that article does not provide the right to free, prior and informed consent for Indigenous Peoples and because Australia has established a system to determine claims for native titles.
- 8.3 The Committee recalls that, in the case of Indigenous Peoples, the enjoyment of culture may relate to a way of life that is closely associated with their traditional lands, territories and resources, and that the protection of this right "is directed towards ensuring the survival and continued development of ... cultural identity". Therefore, Indigenous Peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life. Furthermore, the

Committee notes that the Committee on the Elimination of Racial Discrimination has stated, citing regional jurisprudence, that the close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival; their relations to the land are a material and spiritual element that they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to prevent their extinction as a people. The Committee notes that ownership of and control over ancestral territories are essential to Indigenous Peoples' survival as peoples, with the preservation of their distinct culture; indeed, any denial of the exercise of their territorial rights is detrimental to values that are very representative for members of Indigenous Peoples who are at risk of losing their cultural identity and the heritage to be passed on to future generations. As a consequence, the recovery, recognition, demarcation and registration of lands represent essential rights for cultural survival.

- 8.4 The Committee recalls that ancestral cemeteries, places of religious meaning and importance and ceremonial or ritual sites linked to the occupation and use of physical territories constitute an intrinsic part of the right to cultural identity; therefore, limitations on the right to traditional territories can also affect the right to the exercise of religion, spirituality or beliefs.
- 8.5 As a consequence, it is of vital importance that measures that compromise Indigenous Peoples' culturally significant territories are taken after a process of effective participation and with the free, prior and informed consent of the community concerned, so as not to endanger the very survival of the community and its members. Mechanisms of delimiting, demarcating and granting collective titles can legally affect, modify, reduce or extinguish Indigenous Peoples' rights with regard to their traditional territories. As a consequence, the Committee considers that such mechanisms require prior consultation of the relevant Indigenous People.
- 8.6 In the light of the above, the Committee recalls that article 27 of the Covenant enshrines the inalienable right of Indigenous Peoples to enjoy their traditional territories and that any decision affecting them should be taken with their effective participation.
- 8.7 In the present case, the Committee notes that, beyond indicating that the Federal Court did not consider the Wunna Niyaparli to be Niyaparli Indigenous Peoples, the State party does not contest their self-identification as Indigenous Peoples. The State party also does not contest that they maintain cultural interests in the territory that they have used and occupied for immemorial time, known as the Roy Hill Pastoral Lease, which holds their sacred sites and is key to their language, culture, religion and preservation as an Indigenous People as such. Nevertheless, the Committee notes that the State party has not demonstrated having taken any steps to protect the right of the Wunna Niyaparli to enjoy their culture, having on the contrary attributed their traditional territory to another Indigenous group without having ensured their effective participation in the proceedings for the determination of their fundamental right to traditional territory, a decision affecting their survival as a people. In the light of the foregoing, the Committee concludes that the facts before it disclose a violation of article 27 of the Covenant, read in the light of article 1 of the Covenant and of the United Nations Declaration on the Rights of Indigenous Peoples.
- 8.8 The Committee notes the author's argument that the facts of the present case constitute a violation of article 26 of the Covenant based on an alleged discrimination

on the ground of property rights because the Wunna Nyiyaparli experienced unjustified differential treatment in the proceedings for the determination of their rights to traditional lands, mainly due to the alleged lack of legal representation, the fact that they were made to take part in two separate trials on the same matter and the Court's failure to consider their evidence. 8.9 The Committee is aware that non-discrimination is the basis for the understanding that Indigenous Peoples' right to traditional lands and resources deserves equal protection under human rights treaties than non-Indigenous peoples' right to property, privacy, family and home. Nevertheless, the Committee observes that, in the present case, the alleged discrimination in the enjoyment of the fundamental right to traditional territory is not in comparison with non-Indigenous peoples, but with another Indigenous group, and considers that the alleged lack of legal representation, the request for their participation in two separate trials on the same matter and failure to consider evidence should be examined under article 14(1).

- 8.10 The Committee notes the author's arguments that the facts of the present case constitute a triple violation of article 14(1) of the Covenant, read alone and in conjunction with article 2(3), due to: (a) the State party's failure to provide the Wunna Nyiyaparli with legal aid to better understand the complexity of native title proceedings; (b) the State party's failure to consider, for the separate question trial, the relevant evidence filed in the first proceeding (the native title determination), which already proved their origin as Nyiyaparli, and to allow an adjournment of the separate question proceeding for them to file the evidence once again; and (c) the State party's failure to allow the Wunna Nyiyaparli to appeal the consent determination of native title made by the Court in favour of another applicant over their traditional territory.
- 8.11 The Committee also notes the State party's argument that the author's claim under article 14(1) is without merit, taking into account that: (a) the native title representative body must minimize the number of applications covering overlapping claims and there is no obligation under article 14(1) to provide legal aid beyond criminal proceedings; (b) the Court provided the Wunna Nyiyaparli with numerous opportunities to submit evidence, their troubles in receiving emails were not the State party's responsibility, the filing of such evidence would not have made any difference to the outcome of the proceedings and the Court's decision not to adjourn the proceedings was justified considering the necessity to resolve disputes as quickly, inexpensively and efficiently as possible; and (c) the impossibility to seek the revision of a native title determination is justified because native title determination proceedings need limits to revocation and variation.
- 8.12 The Committee recalls that the failure of a State party to allow a party the ability to comment on evidence considered by a court in determining Indigenous land rights is a violation of the principles of both equality before the courts and fair trial. The Committee also recalls that tribunals that are not constrained by any prescribed time limit for the submission of evidence exercise arbitrary discretion in failing to accept new evidence close to hearings. The Committee further recalls that, as the availability or absence of legal assistance often determines whether or not a person can participate in relevant proceedings in a meaningful way, States parties are encouraged to provide free legal aid beyond criminal proceedings for individuals who do not have sufficient means to pay for it, and may be obliged to do so in some cases.

- 8.13 Specifically in relation to judicial guarantees in cases involving Indigenous Peoples, the Committee observes that, according to various international instruments, States are to take all effective measures to ensure that Indigenous Peoples can understand and be understood in legal proceedings in order to guarantee their right to a fair trial and effective access to justice. In particular, it is indispensable to consider their “particularities, social and economic characteristics, as well as the situation of special vulnerability, customary law, values, customs, and traditions”.
- 8.14 The Committee considers that, in addition to such standards on accessing justice, generally speaking (see para. 8.12 above, in relation to both non-Indigenous and Indigenous Peoples, and para. 8.13 above in relation to Indigenous Peoples specifically), the present communication should be analysed from the perspective of the specific proceedings created to provide a place for Indigenous Peoples to claim the recovery, recognition, demarcation and registration of their traditional territories. Indeed, applying the established principle that human rights treaties are living instruments that must be interpreted and applied taking into account contemporary circumstances, States are bound to adopt measures to guarantee and give legal certainty to Indigenous Peoples’ rights in relation to ownership of their traditional territories through the establishment of such mechanisms and procedures for delimitation, demarcation and titling in accordance with their customary law, values and customs.
- 8.15 Accordingly, such administrative or judicial procedures must respond to the requirements of judicial guarantees and effectiveness, be accessible and simple, be conducted with respect for the right to a fair trial, be free of unnecessary formalisms or requirements that undermine their prompt development, be free from excessive legal rigours or high costs, imply a substantial independent review of the historical or other evidence that can allow for a decision on territorial claims over ancestral lands in a substantive manner and not on other grounds such as arbitrary stipulations or negotiation, and provide for the decisions to be subject to judicial review.
- 8.16 The Committee considers that these provisions on the evolution of Indigenous Peoples’ rights, in combination with article 14 (1) of the Covenant, place the State party under the obligation to provide due process guarantees to the Wunna Nyiyaparli in their claim for traditional territory. The Committee observes that the State party provided only two weeks to the Wunna Nyiyaparli to prepare a hearing on the separate question (see para. 2.14 above), not respecting Indigenous Peoples’ timelines to meet among themselves to prepare the trial. The Committee also observes that, contrary to the other party, the Wunna Nyiyaparli were not legally represented, after having been denied funding for legal aid, and had difficulties in accessing the Internet to allow access to information about the Court’s orders (see paras. 2.17 and 5.1 above), which the State party considers not its responsibility (see para. 6.3 above). The Committee further observes that the Federal Court, in its appeal decision, recognized that the Wunna Nyiyaparli might have been confused as to the procedural orders. The Committee considers that, in the absence of a response from the Wunna Nyiyaparli to the Court’s emails, given their difficulty in accessing the Internet, the fact that they were without legal representation and as they were confused regarding the proceedings, the State party failed to take measures to ensure that they understood the implications of the proceedings and could effectively participate in such proceedings. The Committee considers, moreover, that, in the circumstances, owing to the absence of legal counselling and

the important implications of the separate question proceedings for the exercise of their fundamental rights to traditional territories, the Court's decision not to allow the Wunna Nyiyaparli to adduce evidence and no to adjourn the proceedings was arbitrary and violated the principles of fair trial and equality of arms. In the light of all the above, the Committee considers that the facts before it amount to a violation of article 14(1), read alone and in conjunction with article 2 (3) of the Covenant.

9. Acting under article 5(4) of the Optional Protocol, the Committee is of the view that the information before it discloses a violation by the State party of articles 14 (1), read alone and in conjunction with article 2(3), and 27 of the Covenant, read in the light of article 1.
10. Pursuant to article 2(3)(a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to provide full reparation to persons whose rights have been violated. Accordingly, the State party should, inter alia: (a) reconsider the Wunna Nyiyaparli's native title claim and ensure their effective participation in the proceedings in order to carry out the delimitation, demarcation and titling of their claimed traditional territory; (b) abstain from acts that might affect the existence, value, use or enjoyment of the area where the Wunna Nyiyaparli live and carry out their traditional activities; (c) review the mining concessions already granted within the claimed traditional territory without consulting the Wunna Nyiyaparli, in order to evaluate whether a modification of the rights of the concessionaires is necessary to preserve the survival of the Wunna Nyiyaparli; and (d) provide adequate compensation to the Wunna Nyiyaparli for the harm they have suffered. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future by reviewing the legal aid and funding model with respect to overlapping Indigenous native title claims, in order not to leave an applicant without legal representation.

3. Arthur William Taylor, Sandra Hinemanu Ngaronoa and Sandra Wilde v. New Zealand, CCPR/C/138/D/3666/2019, 22 February 2024

| | |
|---|---|
| <i>Communication submitted by:</i> | Arthur William Taylor, Sandra Hinemanu Ngaronoa and Sandra Wilde (represented by counsel, Richard Francois) |
| <i>Alleged victims:</i> | The authors |
| <i>State party:</i> | New Zealand |
| <i>Date of communication:</i> | 15 October 2019 (initial submission) |
| <i>Document reference:</i> | Decisions taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 November 2019 (not issued in document form) |
| <i>Subject matter:</i> | 5 July 2023 |
| <i>Procedural issues:</i> | Voting rights of prisoners |
| <i>Substantive issues:</i> | Exhaustion of domestic remedies; ratione materiae; substantiation of claims; victim status |
| <i>Articles of the Covenant:</i> | Conditions of detention; cruel, inhuman or degrading treatment or punishment; discrimination; discrimination on the ground of race; effective remedy; Indigenous Peoples; treatment of prisoners; voting and election |
| <i>Articles of the Optional Protocol:</i> | 2 (1)–(3), 5, 7, 10, 25 and 26 2, 3 and 5 (2) (b) |

1. The authors of the communication are Arthur William Taylor, Sandra Hinemanu Ngaronoa and Sandra Wilde, nationals of New Zealand. They claim that the State party has violated their rights under articles 2 (1)–(3), 5, 7, 10, 25 and 26 of the Covenant. The Optional Protocol entered into force for the State party on 26 August 1989. The authors are represented by counsel.

Factual background

Legislative history – voting rights of prisoners

- 2.1 In New Zealand, legislation affecting the voting rights of prisoners has been modified several times over the past half century. Under section 42 (1) (b) of the Electoral Act 1956, persons detained pursuant to convictions in any penal institution were disqualified from voting in New Zealand. The blanket ban on voting by prisoners was repealed in 1975 then was reinstated in 1977.
- 2.2 In a report published in 1986, the Royal Commission on the Electoral System recommended the repeal of the blanket voting restriction for prisoners. In the report, the Royal Commission stated that a voting restriction for prisoners serving sentences of three years or more could be justified, taking into account the triennial election cycle and minimizing the possibility of arbitrary application. That proposed restriction was likened to the loss of the right to vote by nationals of New Zealand who were absent from the country for three years or more. In 1992, the Solicitor-General was asked to provide his opinion on whether the restriction contemplated was consistent with the New Zealand Bill of Rights Act 1990. The Solicitor-General considered that such a restriction involved a prima facie interference with the right to vote and that it was therefore necessary to determine whether the limitation of that right was reasonable, prescribed by law and justified in a free and democratic society. He concluded that the aim of deterring and denouncing criminality was legitimate and that the voting limitation pursued that aim in a rational and proportionate manner that went no further than necessary to advance the aim. He opined that, if the restriction were to apply to prisoners serving sentences of three years or more, it may be legitimate since it was limited only to individuals who had been convicted of criminality of a certain seriousness.
- 2.3 In 1993, a prisoner claimed before the High Court that the disenfranchisement of all prisoners under the Electoral Act 1956 breached his right to vote.¹ The High Court considered that there was a clear conflict between the blanket ban and the right to vote under the New Zealand Bill of Rights Act 1990. Nonetheless, the Court concluded that the Electoral Act 1956 prevailed over the New Zealand Bill of Rights Act 1990, in accordance with section 4 of the latter Act.
- 2.4 However, in 1993, Parliament passed the Electoral Act 1993, which came into effect in 1994. Section 80 (1) (d) of the Electoral Act 1993 eliminated the blanket ban on voting for prisoners and replaced it with a provision under which prisoners who were serving a prison sentence of three years or more were disqualified from registering to vote. Following their release from prison, prisoners were eligible to apply to be reregistered on the electoral roll.
- 2.5 In 2010, New Zealand amended section 80 (1) (d) of the Electoral Act 1993 by passing the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 (“2010 Act”). As a result of the amendment, which became law on 15 December 2010, a person who was detained in a prison pursuant to a sentence of imprisonment imposed after the commencement of the 2010 Act was disqualified from registration as an elector. Thus, such persons could not vote while serving their sentences. The 2010

Act became law despite an opinion that had previously been issued in 2010 by the Attorney-General, who opposed the amendment. In his opinion, the blanket voting restriction for all sentenced prisoners was inconsistent with section 12 of the New Zealand Bill of Rights Act 1990, which incorporates article 25 (b) of the Covenant.

- 2.6 On 25 February 2020, the State party introduced a legislative bill that removed the blanket ban on electoral registration that had applied to all sentenced prisoners since 2010. It restored electoral law to its position prior to the enactment of the 2010 Act, according to which prisoners serving a sentence of imprisonment of three years or more were disqualified from registering to vote. On 24 June 2020, Parliament passed the bill. On 29 June 2020, the Electoral (Registration of Sentenced Prisoners) Amendment Act 2020 (“2020 Act”) became law. Subject of the communication
- 2.7 At different times, the authors were imprisoned pursuant to criminal sentences in New Zealand. The present communication arises from their domestic challenges to the 2010 Act. Those proceedings took place – and the communication was submitted – before the adoption of the 2020 Act. Thus, during the time period at issue in the communication, the authors were not eligible to vote, under the blanket voting restriction for all prisoners serving sentences of imprisonment.

...

Proceedings challenging the 2010 Act

- 2.15 After obtaining the judgment of the High Court that contained the declaration of inconsistency, in 2016, the authors filed separate claims against the Attorney-General before the High Court. They argued, inter alia, that the 2010 Act was inconsistent with their rights to inherent dignity, personal autonomy, liberty, humane treatment and freedom from disproportionately severe and degrading treatment under the New Zealand Bill of Rights Act 1990. They also argued that the 2010 Act constituted indirect discrimination against Māori individuals because Māori were overrepresented in the prison population.
- 2.16 On 4 March 2016, the High Court dismissed the authors’ claims. It reasoned, inter alia, that the loss of the right to vote could not be characterized as degrading and disproportionate and severe treatment, in the sense in which those terms were used in section 9 of the New Zealand Bill of Rights Act 1990; that the loss of the right to vote did not breach the individual prisoner’s right to be treated with humanity, respect and inherent dignity; that there was no discrimination, since the legislation affected all prisoners equally; and that, although Māori might be disproportionately affected by the loss of voting because they were ordinarily eligible to vote in both general and Māori elections, that did not constitute material discrimination of the type envisaged by the Covenant, the intent of which was reflected in the New Zealand Bill of Rights Act 1990.
- 2.17 The authors appealed against the judgment of the High Court to the Court of Appeal, arguing, inter alia, that given the disproportionately high numbers of Māori in the prison population, the 2010 Act would give rise to indirect discrimination. The authors pointed to several material consequences of the prohibition for Māori, namely: a reduction in the number of Māori on the Māori and general electoral rolls, a reduction in the total Māori electoral population and a reduction in the number of Māori electoral districts.
- 2.18 On 17 August 2017, the Court of Appeal dismissed the authors’ appeal on various grounds. The Court referred to its previous jurisprudence on the issue of discrimination, according to which the first step in the analysis was to ask whether

there was differential treatment or effects between persons or groups in analogous or comparable situations on the basis of a prohibited ground of discrimination. The second step related to whether that treatment had a discriminatory impact. Differential treatment on a prohibited ground of a person or group in comparable circumstances was discriminatory if, when viewed in context, it imposed a material disadvantage on a person or group differentiated against. Applying that established approach, the Court determined that the appropriate comparator group was Māori and non-Māori prisoners. Because the 2010 Act applied equally to all prisoners, Māori and non-Māori prisoners were treated in exactly the same way. On that basis, it could not be said that the measure gave rise to discrimination. The Court stated that, if section 80 (1) (d) of the Electoral Act 1993 were discriminatory under the New Zealand Bill of Rights Act 1990, because the disproportionate representation of Māori in prisons meant that they would be disproportionately disadvantaged, “the same will apply to all prison policies that have a negative effect on prisoners’ lives. The limits to the freedom of prisoners, to what they may eat and do and who they may consort with, as they apply to Māori and non-Māori prisoners, could all be criticised on the same basis. No prisoner has the right to any of these basic freedoms. Māori prisoners are not deprived of something that other prisoners can enjoy. Further, other groups in addition to Māori are overrepresented in prisons. For instance ... both males and young persons are seriously overrepresented in prisons.”

- 2.19 The Court of Appeal also considered the authors’ argument that the loss of Māori voters might negatively affect the voting rights of the Māori because the number of Māori electorates (i.e. voting areas) was determined by the size of the Māori electoral roll. The Court rejected that argument on the ground that the census data determined the number of Māori electorates, not the number of individuals enrolled on the Māori roll. In addition, the establishment of the Māori electorate was a measure of positive discrimination and it was not necessarily discriminatory to indirectly neutralize a provision that facilitated positive discrimination.
- 2.20 The Court of Appeal went on to consider whether the measure was discriminatory if the comparison were made between the impact of the measure on the general Māori and non-Māori population. The Court considered that, as a matter of proportion, the impugned provision of the 2010 Act deprived more Māori voters than non-Māori voters of the right to vote, because a greater percentage of Māori were in prison compared with other groups. That difference was sufficiently great for the Court to accept that there was an indirect difference in treatment. Nevertheless, as the Court reasoned, in terms of the overall number of votes, the difference was not significant, since less than 1 per cent of each group (i.e. Māori and non-Māori) was in prison. Thus, the impact of the prohibition on Māori as a group was so small that the 2010 Act did not materially disadvantage Māori. The Court further stated that it had already analysed the downstream effects of the policy on Māori voters, and was not able to accept the authors’ more specific arguments of significant prejudice to Māori voters when they could not exercise their choice to register on the Māori roll.
- 2.21 With respect to the authors’ arguments regarding the right to protection from cruel, inhuman and degrading treatment or punishment under section 9 of the New Zealand Bill of Rights Act 1990, the Court of Appeal considered that the voting restriction did not constitute shocking maltreatment; that disenfranchisement did not relate to securing bodily integrity; that there was no allegation of harm to bodily integrity; and that even taken cumulatively with other conditions of imprisonment, disenfranchisement did not meet the threshold required to demonstrate a violation.

- 2.22 Addressing the authors' arguments concerning the right of persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the person, the Court of Appeal stated that the relevant test was whether the impugned conduct would be considered unacceptable by New Zealand society. The Court cited several examples of conduct that had been previously deemed unacceptable (e.g. lengthy unlawful segregation from other prisoners, poor cell hygiene, bedding and clothing falling below prison regulation standards, inadequate monitoring of inmate mental health and inadequate exercise conditions). The Court considered that the voting restriction under the 2010 Act did not approach the level of any of those examples.
- 2.23 On 14 September 2017, the authors requested leave to appeal to the Supreme Court against the judgment of the Court of Appeal on the issues of entrenchment and discrimination. On 6 December 2017, the Supreme Court granted the authors' request for leave to appeal with respect to entrenchment and denied it on the issue of discrimination. The Supreme Court stated, "The issues of discrimination and Māori over-representation in prison potentially raise matters of general or public importance. We do not, however, consider this is the right case to consider these issues and, in particular, the intersection between them. We would be considering the issues in a very particular context. Further, a legislative provision is involved and all that is sought is a declaration." After an appeal hearing on 26 March 2018, the Supreme Court dismissed the authors' appeal with respect to entrenchment in a judgment dated 14 December 2018.

Waitangi Tribunal claim

- 2.24 In 2014, the two Māori authors, Ms. Ngaronoa and Ms. Wilde, filed a claim before the Waitangi Tribunal in which they alleged that the 2010 Act violated the rights of Māori to vote and to enjoy political representation and self-determination under the Treaty of Waitangi. The Waitangi Tribunal is a standing commission of inquiry, not a court of law; it has jurisdiction to consider claims that the State party has breached the principles of the Treaty of Waitangi. Only Māori individuals may file claims before the Waitangi Tribunal. The recommendations of the Waitangi Tribunal are not binding on the State party. However, the State party usually accords the findings and recommendations of the Tribunal considerable respect. In 2019, the Waitangi Tribunal published *He Aha i Pērā Ai? The Māori Prisoners' Voting Report*, in which it addressed three claims – including those filed by Ms. Ngaronoa and Ms. Wilde in 2014 – that sought the repeal of section 80 (1) (d) of the Electoral Act 1993. The Waitangi Tribunal considered that Māori had been disproportionately affected by section 80 (1) (d) of the Electoral Act 1993, exacerbating a pre-existing and already disproportionate removal of Māori from the electoral roll. The Waitangi Tribunal did not address discrimination within the meaning of section 19 of the New Zealand Bill of Rights Act 1990, but rather the principles of equity and protection that arose under the Treaty of Waitangi. The Waitangi Tribunal did not find that the pre-2010 restriction on voting for prisoners serving sentences of three years or more gave rise to a breach of the Treaty of Waitangi. The Waitangi Tribunal did, however, recommend the repeal of section 80 (1) (d) of the Electoral Act 1993 and that there be no voting restrictions for any prisoners. The authors maintain that they have exhausted domestic remedies and have not submitted the same matter to another international body.

Complaint

- 3.1 The authors submit that, by enacting the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, the State party has violated their rights under articles 2 (1)–(3), 5, 7, 10, 25 and 26 of the Covenant.
- 3.2 The voting rights of prisoners are subject to frequent political changes in New Zealand. Centre-right political parties have favoured blanket bans on voting regardless of the severity of a prisoner's criminal offending. Centre-left political parties have favoured allowing some prisoners to vote, depending on the gravity of their crimes; that position has led to the three-year threshold for sentences of imprisonment. Such vacillating between blanket and qualified voting restrictions should not occur, because voting is a fundamental right under the New Zealand Bill of Rights Act 1990.
- 3.3 The Members of Parliament who voted for the 2010 Act were fully aware that the law targeted a specific sector of society, as they knew that more than half of prisoners were Māori. One Member of Parliament (who voted against the law) stated that the law directly discriminated against Māori and several Members referred to the disproportionate number of Māori in prison. The loss of the right to vote under the 2010 Act represented an indignity. Mr. Taylor stated that, after it had been passed, most prisoners did not know that they had lost the right to vote. Ms. Ngaronoa stated that she felt like a refugee in her own country and that voting was a right guaranteed to the Māori under the Treaty of Waitangi. The Supreme Court should not have denied the authors' application for leave to appeal against the decision of the Court of Appeal with respect to their claim of discrimination.
- 3.4 The 2010 Act also restricted voting rights even after the release of an individual from prison. After such release, re-enfranchisement did not automatically occur. Many individuals who had been released from prison did not rejoin the electoral roll owing to literacy problems or disillusionment with the system. Accordingly, the Māori electoral population declined each year.
- 3.5 The authors cite the standards in the Committee's general comment No. 25 (1996) that apply to the right to vote, including for those convicted of an offence (paras. 4 and 14). The Supreme Court of Canada, the European Court of Human Rights and the Constitutional Court of South Africa have all indicated that disenfranchising prisoners contravenes the ideals of humanity and dignity of the person. The authors also cite the report of the Working Group on the Universal Periodic Review on its second cycle review of New Zealand, in which various States made recommendations concerning the rights of Māori. The authors further cite a report of a visit to New Zealand in 2014, in which the Working Group on Arbitrary Detention expressed concern regarding the overrepresentation of Māori in the prison population.
- 3.6 Māori face several disadvantages in New Zealand, including systemic bias in the criminal justice system, overrepresentation in carceral populations and high rates of suicide and illiteracy. According to official statistics published in 2012, Māori represented 51 per cent of the sentenced male prisoner population and 58 per cent of the female prisoner population. In 2012, Māori comprised approximately 15 per cent of the total population of New Zealand. The act of disenfranchisement further disadvantages Māori prisoners compared with non-Māori prisoners. Those consequences in a free and democratic society constitute discrimination.

Issues and proceedings before the Committee

Consideration of admissibility

...

- 6.9 The Committee notes the State party's argument that Mr. Taylor's claim under article 26 of the Covenant is inadmissible. The Committee notes that, according to the communication, Mr. Taylor is not Māori and does not explain his claim of discrimination. The Committee considers that that aspect of the communication is therefore insufficiently substantiated under article 2 of the Optional Protocol with respect to Mr. Taylor.
- 6.10 The Committee notes the State party's assertion that the authors' claim under article 26 of the Covenant is inadmissible because it was already considered by the domestic authorities, which issued reasonable decisions after fair proceedings. The Committee recalls that it is generally for the courts of States parties to review facts and evidence, or the application of domestic legislation, in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice, or that the court otherwise violated its obligation of independence and impartiality. The Committee notes that the latter standard applies primarily to the enforcement, not the substance, of domestic legislation. In contrast, the Committee considers that the essence of the authors' claim under article 26 of the Covenant is that the substance of the 2010 Act disparately affected Ms. Ngaronoa and Ms. Wilde as Māori prisoners. While the authors do take issue with the analysis of that matter by the Court of Appeal, their arguments originate in the text of the Act, rather than the manner in which the Court of Appeal applied it. The Committee recalls that, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory.²⁵ Accordingly, the Committee considers that the authors have provided sufficient arguments to substantiate – for the purpose of article 2 of the Optional Protocol – the claim of Ms. Ngaronoa and Ms. Wilde under article 26 of the Covenant with respect to the allegedly racially discriminatory effects of the 2010 Act.
- 6.11 With the aforementioned limitations, the Committee declares the authors' claims under articles 25 and 26 of the Covenant admissible and proceeds to examine them on the merits.

Consideration of the merits

- 7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.
- 7.2 The Committee recalls its general comment No. 25 (1996), in which it stated that the right to vote could not be suspended or excluded except on grounds that were established by law and were objective and reasonable (paras. 4 and 14).
- 7.3 The Committee notes, as observed by the State party, that the High Court declared that the blanket voting ban for prisoners under the 2010 Act was inconsistent with the right to vote under section 12 (a) of the New Zealand Bill of Rights Act 1990, which incorporates article 25 (b) of the Covenant; that the Supreme Court upheld the decision of the High Court; and that, when the 2020 Act rendered the 2010 Act without effect, the Government made it clear that the new legislation was a response to the High Court's declaration and the recommendation of the Waitangi

Tribunal. The Committee notes that, in its observations, the State party accepts that the 2010 Act was inconsistent with article 25 (b) of the Covenant because it imposed a restriction on voting that applied to all sentenced prisoners, irrespective of the seriousness of the criminality of which they had been convicted.

- 7.4 In its own assessment of whether the 2010 Act violated the authors' rights under article 25 (b) of the Covenant, the Committee notes the State party's position that limiting the right to vote of prisoners serving sentences for criminality of a certain gravity is proportionate to the legitimate objective of serving the public interest in deterring and denouncing such criminality (see para. 4.6 above). The Committee considers that the information on file does not indicate that automatic disenfranchisement of prisoners who have committed serious offences is effective in deterring further offending at either a specific or general level, thus raising questions as to whether it is proportionate to that objective. Furthermore, the Committee notes that disenfranchisement is not among the restrictions that are unavoidable in a closed environment. Indeed, the Committee considers that imprisonment and the corollary deprivations that inevitably accompany it (for example, restrictions on visitation, movement and contact with the outside world; and an obligation to abide by other prison rules and regulations) constitute a constellation of serious punishments for criminal offending, and that disenfranchisement represents an additional and separate punishment.
- 7.5 The Committee construes paragraph 14 of its general comment No. 25 (1996) to mean that, if the disenfranchisement of prisoners constitutes a form of punishment to further the aim of retribution, clear legal standards and assessments should be applied in order to specifically determine the reasonableness of disenfranchisement in the same manner as for other forms of penal sanctions. The Committee observes that, absent certain circumstances – such as, for example, sentencing for voter or ballot fraud, voter suppression, election tampering and related civil rights violations, crimes related to campaign finance, bribery, corruption, treason, sedition, mail fraud, identity theft, or other offences that may target elections, democratic order, processes or institutions, or the State itself – deprivation of the right to vote is unrelated to the specific nature of the offence. The Committee also considers that prisoners who are resident citizens of a State party remain subject to the laws of that State and thus should – absent compelling reasons – have an opportunity, on an equal footing with others, to participate in democratic electoral processes. In that regard, the Committee notes that, without the ability to vote, those prisoners are excluded from the political processes and decisions that affect their interests and the way in which they are governed by elected representatives. The Committee thus considers that automatic disenfranchisement resulting from a criminal conviction or sentence violates article 25 (b) of the Covenant in the absence of a reasonable connection between the nature of the offence and the act of disenfranchisement. Therefore, because the 2010 Act did not require such a connection, it did not meet the required standards of reasonableness and objectivity and was incompatible with article 25 (b) of the Covenant.
- 7.6 The Committee notes the State party's information that Mr. Taylor and Ms. Ngaronoa were convicted of serious drug offences and that neither party has indicated the offences committed by Ms. Wilde. In the absence of an assessment of a reasonable connection between the specific nature of their offences and the act of disenfranchisement, the Committee considers that the 2010 Act violated the authors' rights under article 25 (b) of the Covenant.

- 7.7 Having found a violation of article 25 (b) of the Covenant, the Committee does not deem it necessary in the present case to examine the remaining claim under article 26 of the Covenant.
8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation of the authors' rights under article 25 (b) of the Covenant.
9. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. That requires it to make full reparation to individuals whose Covenant rights have been violated, while taking into account that, in the present case, the authors have not requested pecuniary compensation. Accordingly, the Committee considers that, in the present case, its Views on the merits of the claim constitute sufficient remedy for the violation found. However, the State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future, including by reviewing its legislation on voting restrictions for prisoners and its implementation thereof, in order to align it with the State party's obligations under article 25 (b) of the Covenant.

• III •

Committee
on Economic,
Social and
Cultural Rights

A. CONCLUDING OBSERVATIONS

1. Honduras, E/C.12/HND/CO/3, 27 September 2024

Domestic application of the Covenant

6. The Committee notes that the Covenant is directly applicable in the legal order of the State party. However, it regrets that little information was provided on judicial decisions invoking the Covenant, the implementation of such decisions and the small number of communications submitted under the Optional Protocol.
7. The Committee recommends that the State party intensify efforts to familiarize judges, magistrates, lawyers, members of the National Congress and civil society with the Covenant and the individual communications procedure under the Optional Protocol and that it raise awareness in that regard, inter alia through specific training programmes. The Committee recommends that the State party be guided by the Committee's general comment No. 9 (1998) on the domestic application of the Covenant. It also recommends that the State party take the necessary measures to ensure that all judicial decisions on economic, social and cultural rights, in particular the amparo ruling in favour of the Tolupeán Indigenous People in Yoro, are implemented in a timely manner.

Business and human rights

10. The Committee takes note of the establishment of the Business and Human Rights Sectoral Round Table. However, it is concerned about the absence of a comprehensive regulatory framework on human rights due diligence, the lack of adequate consultation with communities, substandard environmental assessments and the impacts of extractive projects on the environment and the economic, social and cultural rights of disadvantaged groups. It is also concerned that the legal provisions repealing Legislative Decree No. 236-2012 on employment and economic development zones have not yet taken full legal effect.
11. The Committee recommends that the State party:
 - (a) Establish a clear regulatory framework for companies operating within its jurisdiction to ensure that they exercise human rights due diligence to avoid or mitigate any negative impacts on economic, social and cultural rights, and be guided by the Committee's general comment No. 24 (2017) on State obligations under the Covenant in the context of business activities;
 - (b) Adopt a national action plan on business and human rights, taking account of the guidance on national action plans on business and human rights of the Working Group on the issue of human rights and transnational corporations and other business enterprises;
 - (c) Review and adjust the environmental regulatory framework and the licensing process to ensure that public, independent and systematic environmental and human rights impact assessments are carried out and that broad and participatory consultations are held with affected communities;
 - (d) Effectively repeal Legislative Decree No. 236-2012, ensuring that employment and economic development zones are registered under the special regimes

in force and ensuring the right of Indigenous and Afro-Honduran peoples to participation, as well as their right to be consulted and to free, prior and informed consent;

- (e) Ensure that all investments, whether by international financial institutions or private entities, especially those linked to natural resource exploitation and business activities, strictly comply with the obligations set out in the Covenant;
- (f) Establish a transparent and independent monitoring and oversight mechanism that allows for the continuous supervision of investment projects and business activities to assess their compatibility with the rights protected under the Covenant.

Right to be consulted and to free, prior and informed consent

- 14. The Committee is concerned about reports that the authorities have granted licences for extractive and development projects on the lands and territories of Indigenous and Afro-Honduran peoples without duly consulting them to obtain their free, prior and informed consent (art. 1).
- 15. The Committee endorses the relevant recommendations of the Human Rights Committee⁸ and urges the State party to take the necessary measures to guarantee the right to be consulted and to free, prior and informed consent. The Committee also recommends that the State party:
 - (a) Ensure that prior consultations are carried out systematically and transparently to obtain the free, prior and informed consent of Indigenous and Afro-Honduran peoples before licences are granted for natural resource exploitation and business activities on the lands and territories that they have traditionally owned, occupied or used;
 - (b) Ensure that Indigenous and Afro-Honduran peoples affected by extractive projects and business activities are consulted, receive compensation for any damage or loss suffered and obtain tangible benefits from such activities.

Non-discrimination

- 22. The Committee takes note of the anti-discrimination provisions of the Criminal Code in force since 2020. However, the absence of a comprehensive legal framework for combating discrimination remains a cause of concern. The Committee is also concerned about the prevalence of socioeconomic, racial and gender inequalities and about social stigmatization, violence and discrimination against disadvantaged and marginalized groups (art. 2 (2)).
- 23. The Committee recommends that the State party:
 - (a) Ensure that the legal framework to combat discrimination complies with international human rights standards, article 2 (2) of the Covenant and the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights and that it prohibits direct and indirect discrimination on any grounds in all areas covered by the Covenant, and, in this regard, take account of the Practical Guide to Developing Comprehensive Anti-Discrimination Legislation;
 - (b) Ensure that victims of discrimination and violence have access to effective remedies, including the possibility of obtaining redress;
 - (c) Effectively prevent and combat discrimination against Indigenous persons, Afro-Hondurans, persons with disabilities, persons living with HIV/AIDS,

refugees, asylum-seekers and persons in situations of human mobility through awareness campaigns and affirmative action, to ensure the full enjoyment of all Covenant rights without discrimination....

Equal rights of women and men

24. While noting the measures adopted, the Committee is concerned about the persistent gender inequality and high rates of femicidal violence that undermine women's economic, social and cultural rights (arts. 3 and 10).
25. In the light of the commitments made by the State party under the Human Rights 75 initiative, the Committee recommends that the State party: (a) Strengthen measures to combat gender stereotypes, bring about a change in attitudes and ensure women's equal access to employment, social security, health care and health services, education, land and income-generating activities, in particular for women who are ... Indigenous ... , and be guided by the Committee's general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights....

Right to work

26. The Committee takes note of the National Employment Policy of Honduras 2017–2028. However, it is concerned about reports of barriers hindering access to decent work and about the high levels of unemployment and underemployment affecting disadvantaged individuals and groups (art. 6).
27. The Committee recommends that the State party: (a) Adopt a comprehensive strategy to promote employment and ensure access to decent work, including a plan of action with specific, time-bound goals, paying special attention to ... Indigenous [Peoples]....

Environment and climate change adaptation

48. The Committee takes note of the process of updating the National Climate Change Adaptation Plan. However, it is concerned about the State party's vulnerability to climate change and disasters such as floods and droughts and about long-term changes such as sea level rise and temperature increase. It is also concerned about the impacts of extractive projects, deforestation and poor management of waste and effluents, which exacerbate the vulnerability of disadvantaged groups and contribute to displacement and migration (art. 11).
49. The Committee recommends that the State party:
 - (a) Ensure the equitable and sustainable management of natural resources, including forests and fisheries, with the participation of Indigenous and Afro-Honduran peoples, small-scale farmers and artisanal fishers, affected communities, civil society and competent authorities;
 - (b) Mainstream the human rights approach in all adaptation and loss and damage measures, including the update of the National Climate Change Adaptation Plan, the draft bill on climate change and the Special Act on Carbon Transactions for Climate Justice, with broad participation and in consultation with the most affected groups, taking their specific needs into account;
 - (c) Strengthen adaptation measures with early warning systems, financial inclusion and social security for the most vulnerable communities and groups, giving priority to resilient infrastructure and developing contingency and livelihood recovery plans, in consultation with affected communities;

- (d) Take specific, deliberate steps to protect coastal communities and densely populated areas from sea level rise and flooding;
- (e) Intensify measures for the proper management of waste and effluents, especially in remote, rural and coastal areas;
- (f) Strengthen international cooperation to obtain financial and technological support for climate change mitigation and response measures, including under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts;
- (g) Take account of the recommendations made by the Special Rapporteur on the promotion and protection of human rights in the context of climate change following his visit to Honduras.

Land rights

50. The Committee takes note of the protocol for the prevention of conflicts related to land, territory and the environment. However, it is concerned about reports of unequal access to land, lack of legal security and natural resource hoarding, which undermine the rights of disadvantaged groups and contribute to social conflict, violence, evictions, displacement and migration (art. 11).
51. The Committee recommends that the State party:
 - (a) Ensure equitable access to land, territory and natural resources by expediting agrarian reform and the modernization of land registries, safeguard use and tenure rights, especially for peasants and other historically excluded groups, and be guided by the Committee's general comment No. 26 (2022) on land and economic, social and cultural rights;
 - (b) Simplify and harmonize the legal and regulatory frameworks for land and natural resource management, ensuring transparency and coordination between the different levels of public administration responsible;
 - (c) Ensure access to effective legal remedies and reparations for victims of human rights violations related to land conflicts;
 - (d) Implement mechanisms to address the conflict in Bajo Aguán by providing for reparation measures and guarantees of non-repetition, including the tripartite commission created under the February 2022 agreements between the Government and peasant groups in Bajo Aguán.

Forced evictions

52. The Committee is concerned about reports of evictions under Decree No. 93-2021 involving the excessive use of force and a lack of judicial oversight and about the destruction of property and crops affecting the economic, social and cultural rights of disadvantaged and marginalized groups (art. 11).
53. The Committee recommends that the State party repeal Decree No. 93-2021 and ensure that any unavoidable evictions are carried out in accordance with due process, without the use of force and with judicial oversight; are preceded by consultations with the persons affected and consideration of possible alternative measures; and are subject to appeals by the victims that result in the recovery of property, return to homes or land, or receipt of an adequate alternative and appropriate compensation, and that it be guided by the Committee's general comment No. 7 (1997) on forced evictions and by the basic principles and guidelines on development-based evictions and displacement.

Rights of Indigenous and Afro-Honduran peoples

54. The Committee is concerned about the complex and slow process of registering and demarcating the lands of Indigenous and Afro-Honduran peoples and about cases of eviction, dispossession and displacement of these peoples due to land disputes and the impact of extractive projects carried out on their customary territories without consultation or free, prior and informed consent (arts. 1, 11 and 15).
55. The Committee recommends that the State party:
- (a) Adopt, in consultation with Indigenous and Afro-Honduran peoples and with their free, prior and informed consent, measures to expedite the delimitation of lands and territories that they have traditionally owned, occupied or used, as well as the granting of titles pertaining to such lands, while preventing intrusion or interference by third parties;
 - (b) Ensure that Indigenous and Afro-Honduran peoples are not dispossessed or displaced from their customary lands, territories and resources without their free, prior and informed consent;
 - (c) Take measures to enable Indigenous and Afro-Honduran peoples to preserve and express their identity, culture, languages and traditions and to maintain their spiritual relationship with their customary lands;
 - (d) Fully implement the judgments of the Inter-American Court of Human Rights in this regard.

Right to participate in and to enjoy the benefits of scientific progress

66. The Committee is concerned at the low level of public resources devoted to scientific research and outreach. It is also concerned about negative gender stereotypes that impede women's substantive equality in the field of science and their underrepresentation in the fields of science, technology, engineering and mathematics. Furthermore, it is concerned about limited Internet access and low digital literacy, which hinder citizen participation, access to information and the closing of the digital divide (arts. 3 and 15).
67. The Committee recommends that the State party: ... (c) Accelerate universal access to the Internet and improve digital literacy in remote areas, especially among women and Indigenous and Afro-Honduran peoples, in order to bridge the digital divide, increase citizen participation and combat disinformation, and be guided by the Committee's general comment No. 25 (2020) on science and economic, social and cultural rights.

Other recommendations

71. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations (31 October 2026), information on the implementation of the recommendations contained in paragraphs 11(b) (business and human rights), 51(d) (land rights) and 55(a) (rights of Indigenous and Afro-Honduran peoples).

2. Sweden, E/C.12/SWE/CO/7, 22 March 2024

Climate change

10. The Committee acknowledges the adoption of the Climate Act (2017:720), which commits the State party to reaching net-zero emissions by the year 2045. However, it is concerned about the findings of the Swedish Climate Policy Council, which indicate that the measures taken by the State party may increase emissions in the short term and do not appear to be sufficient to enable the State party to meet its target. The Committee is also concerned about the lack of adequate consideration of the impact on the Sámi people of the development of industries such as wind power and mining of critical minerals on Sámi land, which are being implemented in the context of the green transition, adversely affecting the Sámi people's right to an adequate standard of living and enjoyment of their culture (arts. 2 (1), 11 and 15).
11. The Committee recommends that the State party:
 - (a) Continue to strengthen its activities to achieve the greenhouse gas emissions reduction target;
 - (b) Ensure the meaningful and informed participation of communities, including the Sámi people, in the adoption of measures under the Climate Policy Action Plan, including green transition projects, and that those measures do not adversely affect people in vulnerable and disadvantaged situations.

Indigenous Peoples

14. The Committee notes the information provided on the entry into force of the Act on Consultation (2022:66), which requires the Government and government agencies to consult the Sámi Parliament or a Sámi representative organization on issues concerning the Sámi, as well as the information that by March 2024, the Act is to apply across all municipalities and regions. The Committee also notes that the Truth Commission for the Sámi People was established in November 2021, and that a bill concerning elections to the Sámi Parliament and a strategy for climate adaptation are under development. The Committee regrets, however, the lack of specific information on effective guarantees, both in law and in practice, to ensure effective consultation with the Sámi in the decision-making that affects them, as well as to ensure their free, prior and informed consent (arts. 1 (2) and 2).
15. The Committee recommends that the State party:
 - (a) Ensure the effective implementation of the Act on Consultation, including by providing adequate training for government and municipal officials on its provisions and the importance of meaningful dialogue and consultation with the Sámi;
 - (b) Support the work of the Truth Commission for the Sámi People, ensuring it has access to all necessary information and resources to conduct its investigations thoroughly, while guaranteeing that its findings and recommendations are fully considered and implemented, where appropriate, to address historical injustices and promote reconciliation;
 - (c) Ensure that the development of a bill concerning elections to the Sámi Parliament and a strategy for climate adaptation involve extensive consultation with the Sámi Parliament and reflect the needs and priorities of the Sámi;

- (d) Guarantee, both in law and in practice, the free, prior and informed consent of the Sámi in all decisions affecting them, with respect for Sámi traditions and decision-making processes.

Business and human rights

18. The Committee notes the ongoing discussions on the European Union Corporate Sustainability Due Diligence Directive. The Committee is concerned at potential limitations of the State party's legal framework with respect to holding businesses accountable for human rights abuses abroad and guaranteeing effective remedies for victims of human rights violations arising from business activities. The Committee is particularly concerned about the application of statutes of limitations and the challenges faced by victims in establishing liability for harm. The Committee is also concerned that the State party has yet to adopt adequate measures to address or mitigate the potential adverse effects of large renewable energy and mining projects on the traditional lifestyle of the Sámi people, including impacts on reindeer herding.
19. The Committee recommends that the State party:
 - (a) Actively engage in discussions on and commit to multilateral negotiations and agreements, such as the European Union Corporate Sustainability Due Diligence Directive, while advocating for provisions that align with international human rights standards, including the Guiding Principles on Business and Human Rights;
 - (b) Establish clear, transparent and enforceable standards to ensure that State-owned businesses adhere to the required standards of "exemplary conduct", while conducting regular monitoring and requiring public reporting;
 - (c) Remove barriers faced by victims of human rights violations arising from business activities, including by reviewing the application of statutes of limitations, and strengthen the means by which victims can seek and obtain effective remedies;
 - (d) Adopt comprehensive measures to protect the rights of the Sámi people against the adverse effects of large development projects, including through environmental and human rights impact assessments in consultation with the Sámi, ensuring their free, prior and informed consent before initiating such projects, and establish mechanisms to mitigate and compensate for any negative impacts on their traditional lifestyles and reindeer herding activities;
 - (e) Be guided by general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

Repatriation of cultural objects

38. While welcoming the plans of the State party to take steps towards the repatriation of cultural objects to communities abroad, the Committee regrets the limited information on steps taken towards the return of cultural heritage items, including objects and human remains, to the Sámi people within the State party's territory. The Committee notes that in April 2024, the State party will publish findings following an investigation on the prerequisites for the repatriation of cultural objects (art. 15).

39. The Committee recommends that the State party:
- (a) Continue to engage with representatives of communities and Indigenous Peoples, including Sámi Parliament representatives, both abroad and within its own territory, adopt measures for returning cultural heritage items, including objects and human remains, to the Sámi people and empower relevant authorities to prepare for and receive repatriated objects;
 - (b) Adopt measures to identify and encourage voluntary repatriation of objects held in private collections that are of cultural significance to national minorities, while facilitating dialogue between the affected communities and private collection managers;
 - (c) Conduct public awareness campaigns on the importance of cultural repatriation as well as the cultural contributions of affected communities.

3. Indonesia, E/C.12/IDN/CO/2, 14 March 2024

Human rights defenders

8. The Committee is concerned about cases of harassment, intimidation and reprisals against human rights defenders, in particular those advocating for the rights of Indigenous Peoples and on environmental and land-related issues, as raised in successive reports of the Secretary-General⁴ and by special procedure mandate holders. In this regard, the Committee is concerned about the use of Law No. 11/2008, on electronic information and transactions, to criminalize the work of human rights defenders. The Committee is alarmed by the increase in militarization and the mobilization of military and police forces to evict and restrict the freedom of expression of local communities where the implementation of national strategic projects is taking place, as exemplified by the Mandalika project.
9. The Committee recommends that the State party:
- (a) Take measures to ensure that human rights defenders, in particular those advocating for the rights of Indigenous Peoples and on environmental and land-related issues, are able to carry out their work in a safe and enabling environment;
 - (b) Amend or repeal the overbroad criminal provisions contained in articles 27 and 28 of the revised Law No. 11/2008, on electronic information and transactions, concerning defamation, hate speech and dissemination of false information, and ensure that human rights defenders are not criminalized for carrying out their work;
 - (c) Conduct prompt, thorough and impartial investigations into all reports of harassment, intimidation and reprisals against human rights defenders and ensure that perpetrators are brought to justice;
 - (d) Immediately review and take steps to monitor and prevent militarization and the mobilization of military and police forces in development projects;
 - (e) Take into account the Committee's statement on human rights defenders and economic, social and cultural rights.

Business and human rights

10. The Committee welcomes the enactment of the National Strategy on Business and Human Rights through the promulgation of Presidential Regulation No. 60/2023. The Committee is concerned, however, that the Strategy:

- (a) does not include mandatory human rights due diligence;
 - (b) does not include salient policy actions on industries known to have a negative impact on the environment and the enjoyment of human rights; and
 - (c) lacks an action plan concerning affected communities, land and natural resources. The Committee notes the sizeable presence of State-owned enterprises and entities in which the State party holds minority shares, in various industries, in particular those that have caused adverse effects on and violations of human rights, as well as the absence of concrete plans to require them to conduct human rights due diligence in their domestic and foreign operations.
11. The Committee recommends that the State party review its National Strategy on Business and Human Rights, in consultation with Indigenous Peoples, affected communities and relevant stakeholders, to:
- (a) ensure that business entities operating in or domiciled in the State party conduct mandatory human rights due diligence throughout their operations and supply chains, giving priority to State-owned enterprises and entities in which the State party holds shares;
 - (b) include policy measures targeting industries known to have been having a negative impact on the environment and the enjoyment of human rights, in particular the palm oil and nickel mining industries; and
 - (c) include an action plan on concerns underlying affected communities, land and natural resources.
12. The Committee is concerned about the negative impacts of large-scale development projects and business activities on the environment and the enjoyment of economic, social and cultural rights, in particular by Indigenous Peoples and affected communities. In this regard, the Committee is concerned, inter alia, about the environmental and human rights impacts of the construction of the new capital city of Nusantara and the transboundary haze caused by the drainage and burning of peatland in the State party.
13. The Committee recalls its general comment No. 24 (2017) on State obligations under the Covenant in the context of business activities and recommends that the State party:
- (a) Carry out systematic, public and independent human rights and environmental impact assessments in the context of development projects and business activities in a transparent and comprehensive manner, with information on their impact on the enjoyment of economic, social and cultural rights by Indigenous Peoples and affected communities;
 - (b) Take all measures necessary to ensure accountability for violations of economic, social and cultural rights resulting from development projects and business activities and ensure that appropriate remedies are provided to victims;
 - (c) Take all measures necessary to address deforestation and coastal degradation while implementing the construction of the new capital city of Nusantara;
 - (d) Implement the Association of Southeast Asian Nations Agreement on Transboundary Haze Pollution, including through the introduction of specific haze prevention and mitigation legislation;

- (e) Engage in meaningful consultations with affected communities, civil society organizations and relevant stakeholders in the development and implementation of laws and regulations related to environmental protection and natural resource management.
14. The Committee is concerned about the implementation of Law No. 6/2023 (Job Creation Law), which, inter alia:
 - (a) eases the requirement for businesses to conduct a thorough environmental impact assessment as a prerequisite for obtaining a business licence;
 - (b) prevents indirectly affected communities, civil society, human rights defenders and environmental experts from participating in public consultations during the environmental impact assessment preparation process; and
 - (c) removes requirements relating to forestry area utilization as outlined in Law No. 41/1999 (Forestry Law). The Committee is also concerned about the implementation of Law No. 3/2020, on mineral and coal mining, which contains several provisions that ease the requirements and mechanisms for obtaining and issuing mining permits. It is further concerned that article 162 of Law No. 3/2020 has been reportedly used as a basis to arrest individuals who protest against mining activities.
 15. The Committee recommends that the State party review and amend Law No. 6/2023 (Job Creation Law) to, inter alia:
 - (a) reinstatetherequirementforbusinessestoconductathoroughenvironmental impact assessment as a precondition to obtaining a business licence;
 - (b) ensure that the environmental impact assessment process instituted by the Job Creation Law broadly allows the public, including civil society organizations, human rights defenders and community members, the opportunity to participate in decision-making regarding proposed projects; and
 - (c) restore requirements related to forestry area utilization as outlined in Law No. 41/1999 (Forestry Law), ensuring the sustainable management of forest resources. The Committee also recommends that the State party review and amend Law No. 3/2020, on mineral and coal mining, to ensure that mining permits are issued with strict adherence to environmental standards and respect for human rights, including through safeguarding the rights of individuals to peacefully protest against mining activities without fear of arrest or reprisals.

Rights of Indigenous Peoples

16. The Committee is concerned about the ongoing problems in the recognition of Indigenous Peoples in the State party, which imposes challenges with regard to formal legal registration of their collective rights to land. The Committee is also concerned about reports of dispossession, displacement and relocation of Indigenous Peoples from their customary lands and territories, often without respecting their right to free, prior and informed consent (art. 1).
17. The Committee recalls its general comment No. 26 (2022) on land and economic, social and cultural rights and recommends that the State party:

- (a) Enact the Indigenous Peoples' rights bill in order to simplify the process of recognition of Indigenous Peoples and their customary lands;
- (b) Expedite efforts to guarantee the right of Indigenous Peoples to own, use, control and develop the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired, including by expanding the scope of the customary law communities (Masyarakat Hukum Adat);
- (c) Repeal or otherwise amend legislation that undermines the right of Indigenous Peoples to land use and/or excludes their participation in decision-making on all matters that affect them, such as provisions that contradict the 2013 Constitutional Court ruling on customary land rights in the Job Creation Law and Law No. 3/2020, on mineral and coal mining;
- (d) Take all measures necessary to guarantee that prior consultations are conducted in a systematic and transparent manner in order to obtain the free, prior and informed consent of Indigenous Peoples in the context of decisions likely to affect them, notably before the granting of licences for development projects and business activities, in particular plantation and mining activities, in the lands and territories that they have traditionally possessed, occupied or used;
- (e) Consider ratifying the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Land conflicts and forced evictions

48. The Committee is concerned about the significant negative impact of land conflicts on the enjoyment of economic, social and cultural rights. The Committee is also concerned about the reported high number of communities that have been forcibly evicted or that are facing the risk of being forcibly evicted, in particular in the context of the implementation of national strategic projects (art. 11).
49. The Committee recommends that the State party:
- (a) Streamline and harmonize legal and regulatory frameworks concerning the management of land and natural resources;
 - (b) Ensure transparency and coordination between ministries and government agencies mandated to manage the use of land and natural resources;
 - (c) Guarantee that victims of human rights violations in relation to land disputes have access to effective legal remedies and reparation;
 - (d) Take effective measures to prevent forced evictions, in particular in the implementation of national strategic projects, and ensure that victims have access to an effective remedy that allows for the restitution of their property, return to their homes or land or a suitable alternative, and appropriate compensation;
 - (e) Ensure that forced evictions of Indigenous Peoples and communities living in the concerned areas are not undertaken as the result of the implementation of any national strategic project;
 - (f) Where relocations take place with the consent of the affected communities, introduce special measures to ensure that they do not have an adverse impact on their livelihoods.

Climate change and environmental protection

50. The Committee is concerned that, despite the State party's commitments to reduce its reliance on coal, there has been an increase in the number of coal plants across the State party, which may affect the State party's efforts to meet its nationally determined contributions under the Paris Agreement by 2030 (art. 11).
51. The Committee recommends that the State party intensify its efforts to achieve its nationally determined contributions plan under the Paris Agreement and to reduce its greenhouse gas emissions, in particular by effectively reducing its reliance on coal and promoting alternative and renewable energy sources while upholding human rights obligations, including the right of Indigenous Peoples to free, prior and informed consent. The Committee refers the State party to its statement on climate change and the Covenant and to its statement with the Committee on the Elimination of Discrimination against Women, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities on human rights and climate change.
52. The Committee is concerned about the State party's high vulnerability to the impacts of climate change, including extreme events such as floods and droughts, and long-term changes from sea level rise, shifts in rainfall patterns and increasing temperatures. The Committee is also concerned about the effects of deforestation, forest degradation and waste production on climate change, pollution of the air, land and water, and biodiversity, including on marine ecosystems, affecting, in particular, the livelihoods of Indigenous Peoples and affected communities and exacerbating their vulnerability (art. 11).
53. The Committee recommends that the State party:
 - (a) Ensure that natural resources, including forest resources, are used in accordance with a fair and equitable conservation policy developed in consultation with Indigenous Peoples and affected communities, civil society organizations and the authorities responsible for conservation;
 - (b) Cease the practices of illegal logging and cease, to the extent possible, non-sustainable uses of natural resources, including forests;
 - (c) Take all measures necessary to protect coastal communities and densely populated areas from rising sea levels and potential flooding;
 - (d) Strengthen the implementation of waste management policies and regulations, including by expanding waste collection coverage, optimizing the use of existing waterway and drainage infrastructure to prevent plastic waste from reaching the sea, promoting a circular economy to reduce plastic consumption, and systematically monitoring and improving data on waste management;
 - (e) Ensure the development of a national adaptation plan for climate change, taking into account the needs of marginalized and disadvantaged groups, in particular Indigenous Peoples and affected communities, that incorporates adaptation measures for climate change that respect economic, social and cultural rights.

Right to physical and mental health

54. The Committee is concerned about disparities in the quality and availability of health-care services between urban areas and rural or remote regions, insufficient health-care infrastructure and high rates of maternal mortality. The Committee is particularly concerned about reports on the state of the health-care system in West Papua, characterized by abandoned and destroyed health centres and a significant decrease in the number of medical facilities, in particular in highland regencies, and the dire health situation of internally displaced persons (art. 12).
55. The Committee recommends that the State party:
 - (a) Improve the coverage and quality of essential health services, in particular for disadvantaged and marginalized individuals and groups living in rural and remote areas;
 - (b) Take measures to improve health-care infrastructure, in particular in rural and remote regions, including through the construction and upgrading of hospitals, clinics and health centres;
 - (c) Allocate resources promptly to rebuild and enhance health-care infrastructure and services in West Papua;
 - (d) Allow humanitarian access by national and international humanitarian organizations to internally displaced people in West Papua.

4. Brazil, E/C.12/BRA/CO/3, 15 November 2023

Positive aspects

3. The Committee welcomes the legislative, administrative and policy measures adopted by the State party for the protection and progressive realization of economic, social and cultural rights, such as Constitutional Amendment No. 64/2010, which enshrined the right to food as a fundamental social right in the federal Constitution, [and] the establishment of the Ministry of Indigenous Peoples....

Principal subjects of concern and recommendations

Climate change mitigation

17. Taking note of the climate change mitigation measures that have been adopted, the Committee is concerned that the State party is not on track to meet its nationally determined contribution under the Paris Agreement.
18. The Committee recommends that the State party:
 - (a) Take all measures necessary to meet its nationally determined contribution under the Paris Agreement, in particular in the energy, agricultural and land-use, land-use change and forestry sectors, paying attention to the formulation of a coherent and whole-of-government policy framework;
 - (b) Consider adopting a national emissions trading system;
 - (c) Refer to the Committee's statement on climate change and the Covenant and to its joint statement with the Committee on the Elimination of Discrimination against Women, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities on human rights and climate change.

Rights of Indigenous Peoples, Quilombolas and other traditional communities

19. The Committee is concerned about the lack of effective legal mechanisms in line with international standards to guarantee that Indigenous Peoples, Quilombolas and other traditional communities are consulted regarding legislative or administrative measures likely to affect them. It is also concerned about the fact that the State party continues to grant licences for large-scale investment and natural resource exploitation projects without systematically engaging in consultations aimed at obtaining the free, prior and informed consent of those communities (art. 1 (2)).
20. The Committee recommends that the State party:
 - (a) In consultation with Indigenous Peoples, Quilombolas and other traditional communities, and taking into account their cultural characteristics, ways and customs, develop and implement a law and effective, appropriate and legally binding protocols, including clear requirements regarding the form of the consultations and the representation of affected communities, to ensure full respect for their right to be consulted and to obtain their free, prior and informed consent in relation to decisions likely to affect them;
 - (b) Take the administrative measures necessary to guarantee that prior consultations are conducted in a systematic and transparent manner in order to obtain the free, prior and informed consent of Indigenous Peoples, Quilombolas and other traditional communities in the context of decisions likely to affect them, notably before the granting of licences for large-scale investment and natural resource exploitation projects in the lands and territories that they have traditionally possessed, occupied or used, even in the context of the “security suspension” (suspensão de segurança) mechanism;
 - (c) Systematically conduct, as part of the prior consultation process, independent studies on the potential social, environmental and human rights impact of large-scale investment and natural resource exploitation projects on the Indigenous Peoples, Quilombolas and other traditional communities concerned and publish the results of those studies;
 - (d) Bear in mind and uphold the international obligations and commitments stemming from its ratification of the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards.

Equal rights of women and men

25. The Committee is concerned about the persistent substantive inequality between women and men, which predominantly affects disadvantaged women, hindering their enjoyment of economic, social and cultural rights (art. 3).
26. The Committee recommends that the State party:
 - (a) Take all measures necessary to promote the full access of women, in particular ... Indigenous ... women, to employment, social security, health care and services, education, land and income-generating activities on an equal footing with men;
 - (b) Adopt comprehensive measures to eliminate deep-rooted gender and racial stereotypes with a view to changing patriarchal and discriminatory attitudes and promoting the equal sharing of family responsibilities between women and men;

- (c) Refer to the Committee's general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

Right to social security

39. The Committee acknowledges the adoption of the new Family Grant (Bolsa Família) Programme and the measures taken to expand social security benefits in the context of the coronavirus disease (COVID-19) pandemic. However, it is concerned that the financial sustainability of the social security system in the State party is under pressure. The Committee is also concerned about the fact that social security benefits are tightly linked to formal employment, as reflected in the low coverage under the social security system, in particular among workers in the informal sector and self-employed workers (art. 9).
40. The Committee recommends that the State party:
- (a) Ensure the effective administration and supervision of the social security system so as to safeguard its financial sustainability;
 - (b) Take measures to establish a social protection floor that includes universal social guarantees and redouble its efforts to develop a social security system that guarantees universal coverage and provides sufficient benefits for all persons, in particular Afrodescendent and Indigenous women in the North and North-East Regions, to ensure that they have a decent standard of living....

Right to adequate housing

47. The Committee notes the adoption of the "My House, My Life" (Minha Casa, Minha Vida) Programme and the ongoing efforts to elaborate a new policy for the social reintegration of homeless persons. However, it is concerned about: (a) The severe lack of social and affordable housing in the State party ... (art. 11).
48. The Committee recommends that the State party:
- (a) Redouble its efforts to address the lack of social housing, in particular for persons and households with low incomes, people of African descent and members of Indigenous Peoples, notably women heads of household, including by upgrading existing housing and ensuring security of tenure, in particular in the North and North-East Regions, and be guided by the Committee's general comment No. 4 (1991) on the right to adequate housing....

Right to water and sanitation

51. The Committee is concerned that access to safe drinking water and sanitation is much lower in peripheral and rural areas. It is also concerned about reports of water pollution owing to agricultural expansion and mining activities that pollute surface and groundwater, affecting the livelihoods of communities downstream (art. 11).
52. The Committee recommends that the State party:
- (a) Redouble its efforts to guarantee access to safe drinking water and sanitation services for all without discrimination, in particular those living in the North and North-East Regions, ensuring effective coordination among the federal, state and municipal levels of government and allocating sufficient resources for the adequate provision of those services;
 - (b) Ensure that safe drinking water and sanitation services are affordable and be guided by the Committee's general comment No. 15 (2002) on the right to water;

- (c) (i) Take measures to protect its water resources, including by: Addressing the negative impact of economic activities and natural resource exploitation and the effects of climate change;
- (ii) Adopting a legislative framework to ensure legal liability for State-owned and private business enterprises that, through their activities, pollute water resources.

Environment and climate change

- 53. The Committee takes note of the adoption of the Ecological Transformation Plan by the State party. It is, however, concerned about the increased environmental damage, in particular the unprecedented rates of deforestation, caused by agricultural expansion and natural resource exploitation in the Cerrado and Amazon biomes, affecting the livelihoods of local and traditional communities and increasing their vulnerability to climate change (art. 11).
- 54. The Committee recommends that the State party take all measures necessary to stop deforestation, protect the environment, address environmental degradation and adapt to climate change, including by updating its national adaptation plan and taking into account the effects of the plan on local communities, Indigenous Peoples, Quilombolas and other traditional communities. The Committee also recommends that the State party develop food systems that protect the rights of small-scale farmers, including rural and migrant farmworkers, and the environment.

Land rights

- 55. The Committee is concerned about reports that land-grabbing, natural resource hoarding, a large number of unresolved land disputes and the high concentration of land ownership in the State party undermine the enjoyment of economic, social and cultural rights by disadvantaged and marginalized individuals and groups and have triggered serious social conflict and violence (art. 11).
- 56. The Committee recommends that the State party:
 - (a) Establish an effective mechanism to protect the rights of Indigenous Peoples and Quilombolas to own, use, develop and control their lands, territories and resources in full security and to prevent intrusion into their lands and territories, ensuring the adequate allocation of financial, technical and human resources for its implementation;
 - (b) Expedite the demarcation, regularization and titling of the lands and territories of Indigenous Peoples, Quilombolas and other traditional communities in accordance with international standards and uphold their rights by rejecting the application and institutionalization of the “temporal framework” doctrine;
 - (c) Ensure that Indigenous Peoples, Quilombolas and other traditional communities affected by economic activities and the exploitation of natural resources in their territories are consulted, receive compensation for any damage or loss and draw tangible benefits from such activities;
 - (d) Take the measures necessary to ensure respect for and protect fair access to land and natural resources and safeguard land-use rights, in particular for landless peasants and rural workers, by expediting the agrarian reform, and be guided by the Committee’s general comment No. 26 (2022) on land and economic, social and cultural rights.

Right to education

67. While noting the measures taken by the State party, the Committee is concerned about:
- (a) The insufficient budget allocated to education;
 - (b) The persistent inequalities in access to education affecting children living in rural and peripheral areas and, in particular, children with disabilities;
 - (c) The shortage of qualified teachers and the inadequate conditions in which teachers work;
 - (d) Shortcomings in the quality of school infrastructure and teaching materials in rural and peripheral areas, including the lack of sanitation facilities;
 - (e) High illiteracy rates, in particular in the North and North-East Regions and among members of Indigenous Peoples and people of African descent ... (arts. 13 and 14).
68. The Committee recommends that the State party:
- (a) Redouble its efforts to allocate financial, human and technical resources to the education sector in order to ensure universal and equal access to quality early, primary and secondary education and be guided by the Committee's general comment No. 13 (1999) on the right to education;
 - (b) Redouble its efforts to improve access to school for children in the North and North-East Regions and, in particular, children with disabilities;
 - (c) Improve the quality of teaching by, inter alia, continuing to invest in in-service teacher training and improving working conditions for teachers;
 - (d) Improve school infrastructure and learning materials, in particular in rural and peripheral areas, and ensure that all schools have adequate water supply and sanitation facilities;
 - (e) Strengthen its policies and programmes on literacy and non-formal education, including in the framework of Decree No. 11556/2023, which establishes a national commitment on children's literacy;
 - (f) Adopt appropriate measures to reduce school dropout and repetition rates at all levels of education, in particular secondary education, and among students belonging to marginalized and disadvantaged groups;
 - (g) Continue its efforts to ensure the incorporation of human rights education into school curricula, including in the framework of the Programme for the Promotion and Defence of Human Rights, with a view to strengthening respect for economic, social and cultural rights.

Cultural rights

69. The Committee is concerned about insufficient funding and the weakened institutional framework for cultural rights, which affects the right to participate in cultural life and the protection of cultural heritage. It is also concerned that the lack of protection and demarcation of the ancestral lands and territories of Indigenous Peoples and Quilombolas undermines the exercise of their cultural rights ... (art. 15).
70. The Committee recommends that the State party:
- (a) Take the steps necessary to strengthen the protection of cultural rights and respect for cultural diversity by, inter alia, increasing the budget allocated to promote the development and dissemination of science and culture; (b) Take all measures necessary to enable Indigenous Peoples, Quilombolas and other

traditional communities to preserve, develop, express and share their identity, history, culture, languages, traditions and customs and to maintain their spiritual relationship with their lands, territories and resources...

5. France, E/C.12/FRA/CO/5, 30 October 2023

Climate change

8. While the Committee takes note of the measures adopted by the State party to address climate change, in particular the National Low Carbon Strategy adopted in 2021, Act No. 2019-1147 of 8 November 2019 on Energy and Climate and Act No. 2021-1104 of 22 August 2021 to Combat Climate Change and Build Resilience to its Effects (Climate and Resilience Act), it is concerned by the findings of the High Council on Climate, which considers that these measures have not accelerated the reduction of greenhouse gas emissions and do not appear to be sufficient to enable the State party to meet its obligations under the Paris Agreement. The Committee is also concerned about the lack of adequate adaptation measures that take account of the effects of climate change on the enjoyment of economic, social and cultural rights by the most vulnerable populations, in particular those living in the overseas territories (art. 2 (1), and art. 11).
9. The Committee recommends that the State party: (a) Step up its activities to meet the greenhouse gas emission reduction target, in compliance with the Paris Agreement and, in this connection, take the measures necessary to comply with Council of State Decision No. 427301 of 1 July 2021; (b) Adopt adequate adaptation measures focusing on the most important effects of climate change, taking into account the uneven effects of climate change on people in more vulnerable and disadvantaged situations and those living in the overseas territories; (c) Take into account the Committee's statement on climate change and the Covenant, 6 which was adopted in 2018.

Overseas territories

16. The Committee is concerned about the lack of adequate resources and public policies to ensure the full enjoyment of economic, social and cultural rights in the overseas territories (art. 2 (2)).
17. The Committee recommends that the State party provide adequate financial and human resources for the administrations in the overseas departments and regions and the overseas collectivities, so that all inhabitants of the State party enjoy economic, social and cultural rights on an equal footing.

Cultural rights

58. The Committee remains concerned by the State party's failure to recognize minority groups, which limits the enjoyment of the specific cultural rights of persons belonging to such groups, in particular the cultural and linguistic rights of ethnic minorities, regional groups and Indigenous Peoples. The Committee notes with concern the lack of measures to promote the knowledge and use of regional languages (art. 15).
59. The Committee reiterates the recommendations made in its previous concluding observations and requests the State party to consider reviewing its position with regard to minorities and to officially recognize the need to protect the cultural and linguistic rights of all minority groups, including those of Indigenous Peoples in the overseas territories. The Committee also recommends that the State party

recognize and promote the right of persons belonging to regional or minority linguistic groups, including Indigenous Peoples, to practise their own language as part of their right to participate in cultural life, not only in their private lives but also in public life, in regions where regional languages are traditionally spoken.

6. Panama, E/C.12/PAN/CO/3, 31 March 2023

Use of natural resources

10. The Committee is concerned about the limited application of laws and mechanisms for the protection of Covenant rights when awarding licences for large-scale economic development and natural resource exploitation projects. It is also concerned about the impact that such projects are having on the traditional ways of life, means of subsistence and culture of Indigenous Peoples. In particular, the Committee notes with concern that neither comprehensive environmental impact studies nor sufficient consultations designed to obtain free, prior and informed consent were carried out ahead of investment projects, including the Barro Blanco hydroelectricity project and the fourth electricity transmission line. Furthermore, the Committee regrets the absence of information on compliance with the agreements reached with the Indigenous Peoples affected by this kind of project (art. 1 (2)).
11. The Committee recommends that the State party:
 - (a) Enforce environmental law and conduct comprehensive social, environmental and human rights impact studies prior to awarding licences for development and natural resource exploitation projects;
 - (b) Design, adopt and implement, in consultation with Indigenous Peoples, appropriate guidelines and mechanisms for the effective realization of the right to consultation and to free, prior and informed consent in keeping with Act No. 37 of 2016 and, to that end, consider requesting technical support from the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council;
 - (c) Fully implement all the agreements reached with Indigenous Peoples affected by development and natural resource exploitation projects, especially the tripartite framework agreement of 26 November 2009, and provide appropriate and fair reparation;
 - (d) Take specific measures to preserve the traditional ways of life, means of subsistence and culture of Indigenous Peoples in the context of development projects and third-party incursions into their territories, for instance by accelerating the demarcation and titling of the collective property of Indigenous Peoples who do not live in Indigenous regions (comarcas);
 - (e) Ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169);
 - (f) Take into account the Committee's general comment No. 26 (2022) on land and economic, social and cultural rights.

Maximum available resources

12. The Committee regrets that it did not receive up-to-date information on the share of the State budget allocated to social spending, on taxation policy or on the measures adopted by the State party to guarantee fiscal transparency. The Committee is concerned about: (a) High inequality in the State party despite strong

economic growth in recent years, and the minimal distributive effect of taxes and transfers on reducing inequality....

13. The Committee recommends that the State party: (a) Increase the level of social spending, particularly on social security, housing, health care and education, paying special attention to disadvantaged and marginalized persons and areas where unemployment and poverty rates are high, especially rural areas and Indigenous territories....

Non-discrimination

16. The Committee is concerned that the sectoral legal framework on discrimination adopted by the State party does not provide full protection against discrimination within the meaning of the Covenant. The Committee is also concerned about the lack of practical measures to combat de facto discrimination in the effective enjoyment of economic, social and cultural rights experienced by disadvantaged and marginalized persons and groups (art. 2(2)).
17. The Committee recommends that the State party:
 - (a) Adopt comprehensive and general legislative, policy and administrative measures against discrimination that prohibit and punish direct, indirect and multiple discrimination in keeping with article 2 (2) of the Covenant;
 - (b) Ensure access to effective remedies for victims of discrimination, including the possibility of obtaining redress;
 - (c) Effectively prevent and combat de facto discrimination against ... Indigenous Peoples ... in particular through awareness-raising campaigns and affirmative action;
 - (d) Take into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Equality between men and women

20. While it notes the legal framework adopted by the State party to achieve gender equality, including Act No. 4 of 1999 and the Public Policy for Equal Opportunities for Women, the Committee is concerned about the persistent gender pay gap. It is also concerned about the underrepresentation of women, especially ... indigenous women, in leadership and decision-making positions in the public and private sectors. ...

Unemployment and the informal economy

24. The Committee notes the gradual reduction in unemployment over the last ten years but regrets that insufficient measures have been taken to address job loss triggered by the coronavirus disease (COVID-19) pandemic, as seen in the significant rise in unemployment and the increase of informal employment to above 40 per cent. In addition, the Committee is concerned about the barriers to access to the labour market encountered by migrants, refugees and asylum-seekers (art. 6).
25. The Committee recommends that the State party:
 - (a) Assess the impact of the contract suspension system set up in response to the COVID-19 pandemic on the enjoyment of Covenant rights by groups who traditionally experience greater levels of unemployment, in particular ... Indigenous Peoples....

Poverty and inequality

36. The Committee regrets not having received updated information on poverty and inequality levels in the State party. It notes with concern the persistent poverty and extreme poverty in rural and remote areas, especially among ... Indigenous Peoples ... (art. 11).
37. The Committee recommends that the State party redouble its efforts, including under the Beehive Plan (Plan Colmena) and other conditional cash transfer programmes, to combat inequality and poverty, particularly extreme poverty, by setting clear, measurable goals, effectively identifying the population living below the poverty line and giving due regard to regional disparities and the actual needs of the population, especially the most disadvantaged and marginalized groups. In this respect, the Committee draws the attention of the State party to its statement on poverty and the Covenant.

Rights to water and sanitation

38. The Committee welcomes the significant increase in access to sources of safe drinking water and the steps taken to treat contaminated water sources in Indigenous regions, including the distribution of water purification tablets. However, the Committee is concerned about reports of water outages during the COVID-19 crisis and the fact that access to sanitation and hygiene services remains low. It is also concerned by the large regional and socioeconomic disparities in the availability, accessibility, affordability and quality of drinking water and adequate sanitation (art. 11).
39. The Committee recommends that the State party:
 - (a) Take legislative and administrative measures to safeguard the right to drinking water and sanitation;
 - (b) Redouble its efforts to improve access to water, hygiene and sanitation services, with a particular focus on the most disadvantaged and marginalized groups;
 - (c) Take into account the Committee's general comment No. 15 (2002) on the right to water and its statement on the right to sanitation.

Right to food

40. The Committee regrets not having received up-to-date information on the prevalence of undernutrition and malnutrition in the State party or on the concrete results of the National Food and Nutrition Security Plan 2017–2021. The Committee notes with concern reports of high rates of undernutrition and malnutrition in the State party, including overweight and obesity problems, particularly in rural and indigenous areas (art. 11).
41. The Committee recommends that the State party:
 - (a) Redouble its efforts to protect the right to adequate food by taking all the measures necessary to address food insecurity and undernutrition in an effective and comprehensive manner, including through the establishment of programmes promoting healthier diets that contain clear objectives and deadlines and provide for appropriate monitoring and assessment mechanisms;
 - (b) Take into account the Committee's general comment No. 12 (1999) on the right to adequate food and the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted by the Council of the Food and Agriculture Organization of the United Nations.

Adaptation to climate change

44. While it notes the adaptation measures that have been adopted, the Committee is concerned about the State party's vulnerability to the effects of climate change. The Committee is further concerned about the impact of climate change on the enjoyment of Covenant rights by Indigenous Peoples, in particular the Guna Yala Indigenous People (art. 11).
45. Intensify its adaptation measures, including the development of a national climate change adaptation plan, especially in Indigenous territories, ensuring that Indigenous Peoples are effectively consulted and fostering their full participation in the design and implementation of relevant policies and programmes.

Right to health

46. The Committee notes the National Health Policy and Strategic Guidelines 2016–2025 but is concerned about the insufficient and inappropriate allocation of resources to the health sector, the scarcity of medicines, medical and surgical supplies and health-care professionals, the state of disrepair of infrastructure and the unavailability of medical centres, especially in rural areas and Indigenous regions (art. 12).
47. The Committee recommends that the State party:
 - (a) Increase the budget allocation for the health sector;
 - (b) Take all effective measures necessary to ensure the availability, accessibility and quality of health-care services;
 - (c) Ensure that there are sufficient, appropriately staffed, public health-care establishments, facilities and services, as well as sufficient approved medicines, hospital equipment and adequate hygiene conditions, especially in rural areas and Indigenous regions;
 - (d) Take into account the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health.

Sexual and reproductive health

48. The Committee ... is further concerned about reports that ... indigenous women continue to be subjected to forced sterilization despite the adoption of Act No. 7 of 2013 regulating the sterilization of women. In this connection, the Committee shares the concern expressed by the Committee on the Elimination of Discrimination against Women (art. 12).
49. The Committee recommends that the State party:
 - (c) Redouble its efforts to develop programmes and strategies to address the high rates of unwanted pregnancy, teenage pregnancy and sexually transmitted diseases among adolescents in keeping with the law and sex education guides, and improve access to sexual and reproductive health information, particularly in Indigenous territories and rural areas;
 - (d) End the practice of forcibly sterilizing women with disabilities and Indigenous women....

Right to education

50. While it notes the steps taken by the State party to increase the education budget, the Committee is concerned about deficiencies in education, not only in terms of infrastructure and teaching materials, but also of curriculum and teacher training,

especially in rural areas and Indigenous regions. The Committee is also concerned about the high dropout rate, particularly during the transition from primary to secondary education, and the difficulties that migrants, refugees and asylum-seekers face in accessing education (arts. 13 and 14).

51. The Committee recommends that the State party:
 - (a) Strengthen the public education system, first and foremost by increasing the budget for primary and secondary education to enhance their quality and accessibility, without hidden fees, especially for children from low-income families and children living in rural areas or Indigenous regions;
 - (b) Take all measures necessary to improve the quality of instruction, for instance by raising the status and remuneration of teachers, increasing the number of qualified teachers and providing them with in-service training, and upgrading infrastructure and teaching materials, especially in rural areas and Indigenous regions....

Cultural rights

52. While it notes the steps taken to preserve and protect the cultural heritage of Indigenous Peoples and persons of African descent and to protect the tangible and intangible cultural heritage of Panama, the Committee is concerned about reports that the cultural practices and languages of Indigenous Peoples are at risk of extinction. The Committee is also concerned about the shortcomings of the Bilingual Intercultural Education Programme in terms of quality, accessibility, budget and technical and human resources (art. 15).
53. The Committee recommends that the State party:
 - (a) Take the measures necessary, in consultation with Indigenous Peoples, to preserve all indigenous cultural practices and languages;
 - (b) Evaluate, in consultation with Indigenous Peoples, the implementation of the Bilingual Intercultural Education Programme and ensure that the Programme is adapted to the needs of the various Indigenous Peoples;
 - (c) Provide sufficient budgetary, technical and human resources for the implementation of the Bilingual Intercultural Education Programme;
 - (d) Take into consideration the Committee's general comment No. 21 (2009) on the right of everyone to take part in cultural life.

7. Cambodia, E/C.12/KHM/CO/2, 27 March 2023

Business and economic, social and cultural rights

10. The Committee is concerned by reports regarding the negative impacts that business activities and large development projects, including in the Special Economic Zones, have on the enjoyment of economic, social and cultural rights, in particular on access to land, the right to an adequate standard of living, labour rights and the right to health. The Committee is also concerned that, while it is mandatory to carry out environmental impact assessments before realizing investments and implementing development projects, such assessments may not be carried out in an independent manner and in consultation with the relevant affected communities or groups.
11. The Committee recommends that the State party:
 - (a) Accelerate its efforts towards the adoption of a national action plan on business and human rights while ensuring that both the formulation and implementation

processes involve all interested parties, including representatives of businesses, civil society organizations, Indigenous Peoples and the most affected communities;

- (b) Adopt appropriate legislative and administrative measures to ensure that business entities operating in or domiciled in the State party conduct human rights due diligence so as to prevent or mitigate their negative impacts on the exercise of economic, social and cultural rights;
- (c) Take all measures necessary to ensure accountability for violations of economic, social and cultural rights resulting from business activities and development projects, and ensure that appropriate remedies are provided to victims;
- (d) Carry out systematically consultations and independent human rights and environmental impact assessments in the context of business activities and development projects;
- (e) Provide in a transparent and comprehensive manner information concerning Special Economic Zones, including assessments of their impacts on land, local communities, workers' rights and the environment, as well as tax and investment benefits that they receive and the effectiveness of remedies that they provide in the case of rights violations;
- (f) Take into account the Committee's general comment No. 24 (2017), especially the introduction of mandatory human rights due diligence.

Climate change

12. While welcoming the strategic plan on climate change (2014–2023) and the commitment by the State party to reduce greenhouse gas emissions, the Committee remains concerned about the lack of adequate adaptation measures to address the impact of climate change on the population. The Committee is also concerned about the increased deforestation in recent years and its effects on climate change, affecting the livelihood of Indigenous Peoples and other affected communities and increasing their vulnerability.
13. The Committee recommends that the State party:
 - (a) Develop a new strategic plan on climate change that includes adequate adaptation and mitigation measures focusing on the most significant effects of climate change;
 - (b) Ensure that natural resources, including forest resources, are used in accordance with a fair and equitable conservation policy developed in consultation with the communities concerned, such as Indigenous Peoples, civil society organizations and the authorities responsible for conservation;
 - (c) Stop the practices of illegal logging and cease, to the extent possible, other non-sustainable uses of natural resources, including forests;
 - (d) Ensure the development of a national adaptation plan, taking into account the adaptation needs of particular marginalized and disadvantaged groups, and that, based on such a plan, adaptation measures for climate change that respect economic, social and cultural rights are implemented;
 - (e) Take account of the Committee's statement on climate change and the Covenant,⁶ adopted in October 2018.

Rights of Indigenous Peoples

14. The Committee is deeply concerned about reports of dispossession, displacement and relocation of Indigenous Peoples from their land and territories, including natural, protected areas that they have traditionally occupied, often without respecting their right to be consulted with a view to obtaining their free, prior and informed consent. The Committee is concerned about the complex and slow process for the registration and demarcation of Indigenous Peoples' land and the lack of effective mechanisms for protecting their rights related to their lands, territories and resources, particularly when those have not been registered in ongoing land acquisition processes (art. 1).
15. The Committee recommends that the State party:
 - (a) Adopt an adequate legal framework that provides effective recognition and protection for the rights of Indigenous Peoples to possess, use, develop and control their lands, territories and resources, and ensure that effective mechanisms with adequate human, technical and financial resources are in place to ensure the enforcement of such a legal framework;
 - (b) Ensure that Indigenous Peoples are not dispossessed, displaced or relocated from their ancestral land and territories, including loss of access to natural resources, without following all legal and procedural international safeguards; in this regard, the State party should also accelerate, to the extent possible, the process of registration and demarcation of such Indigenous land and territories;
 - (c) Design, adopt and implement, in consultation with Indigenous Peoples, an appropriate procedure to guarantee their right to be consulted with a view to obtaining their free, prior and informed consent to any legislative or administrative measure that may affect their rights and territories, and ensure that the procedure respects their traditions and cultural specificities;
 - (d) Ratify the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Right to education

48. While the Committee notes that access to preschool and primary education has been improved in the State party, it is nevertheless concerned about: (a) The high level of school dropout rates, especially in secondary education and among students belonging to marginalized or disadvantaged groups and Indigenous children....
49. The Committee recommends that the State party: (a) Adopt the appropriate measures to reduce the school dropout and repetition rates at all levels of education, especially at secondary level and among students belonging to marginalized, disadvantaged groups and Indigenous children....

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

50. The Committee notes with concern the negative and disproportionate impact of the preventive measures adopted in the context of the COVID-19 pandemic on the right to education given that most students did not, and still do not, have access to the Internet or technological and digital resources to pursue their studies online. Moreover, the Committee notes with concern that the COVID-19 measures have contributed to increasing the overall situation of indebtedness affecting the access to education of children from poor households (arts. 13–14).

51. The Committee recommends that the State party take all the measures necessary to improve access to the Internet and technological and digital resources for students, especially those from low-income families, those living in rural or remote areas and Indigenous children, to ensure that education is accessible, available and affordable without discrimination. The Committee recommends that the State party adopt appropriate measures to ensure that children from families living in poverty affected by indebtedness have adequate and effective access to education.

Cultural rights

52. The Committee regrets not having received information on the concrete measures adopted to ensure respect for the cultural diversity and participation in cultural life of Indigenous Peoples, and on the measures to promote their traditions, languages and culture. The Committee is concerned at the negative impact that the failure to protect and demarcate the ancestral lands and territories of Indigenous Peoples has on the exercise of their cultural rights (art. 15).
53. The Committee recommends that the State party take the steps necessary to strengthen the protection of cultural rights and respect for cultural diversity. The Committee also recommends that the State party promote an enabling environment for Indigenous Peoples to preserve, develop, express and share their identity, history, culture, languages, traditions and customs, as well as to maintain their spiritual relationship with their lands, territories and resources.

Other recommendations

...

58. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide, within 24 months of the adoption of the present concluding observations, information on the implementation of the recommendations contained in paragraphs 9 (a) (human rights defenders and civil society organizations); 15 (a) (rights of Indigenous Peoples); and 39 (b) and (c) (poverty) above.

B. VIEWS ADOPTED UNDER OP

1. J.T., J.P.V. and P.M.V. and others v. Finland, E/C.12/76/D/251/2022, 8 Oct. 2024

Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

| | |
|---|--|
| <i>Communication submitted by:</i> | J.T., J.P.V. and P.M.V., on their own behalf and on behalf of their minor children S.V., E.S.V. and E.A.V.; P.A.L., P.T.J., O.A.V., M.L.V., N.M.V., L.T.V., J.O.J., N.A.L., Á.M.L., M.L., M.L., J.T.L., V.T. and N.M.V. (represented by counsel Martin Scheinin) |
| <i>Alleged victims:</i> | The authors |
| <i>State party:</i> | Finland |
| <i>Date of initial submissions:</i> | 31 December 2021 (communication 251/2022), 15 May 2022 (communication 289/2022) |
| <i>Date of adoption of decisions:</i> | 27 September 2024 |
| <i>Date of adoption of Views:</i> | Granting of a mineral exploration permit (251/2022) and an area reservation (289/2022) on Sámi people's traditional territory without impact assessment nor free, prior and informed consent |
| <i>Subject matter:</i> | Victim status; failure to exhaust domestic remedies; substantiation of claims |
| <i>Procedural issues:</i> | Right to self-determination; non-discrimination and equality; right to an adequate standard of living; right to take part in the cultural life of a community; Indigenous Peoples; right to land |
| <i>Substantive issues:</i> | 1; 2(2); 6; 7(a)(ii); 11; 12; 15(1)(a) |
| <i>Articles of the Covenant:</i> | 3 (1) and 3 (2) (e) |
| <i>Articles of the Optional Protocol:</i> | 3 (1) and 3 (2) (e) |

- 1.1 The authors of both communications, dated 31 December 2021 and 15 May 2022 respectively, are J.T., J.P.V., P.M.V., S.V., E.S.V., E.A.V., P.A.L., P.T.J., O.A.V., M.L.V., N.M.V., L.T.V., J.O.J., N.A.L., Á.M.L., M.L., M.L., J.T.L., V.T. and N.M.V., all belonging to the Kova-Labba Siida, a community of Sámi reindeer herders. The authors submit that, by granting a mineral exploration permit (communication no. 251/2022) and an area reservation (communication no. 289/2022) on their traditional territory without proper impact assessment and without a process of consultations aimed at obtaining the free, prior and informed consent, the State party violated their rights to take part in the cultural life of a community (article 15) and to enjoy just and favourable conditions of work which ensures remuneration that provides a decent living (article 7(a)(ii)), both interpreted in the light of the rights to self-determination (article 1), to work (article 6), to an adequate standard of living (article 11) and to health (article 12), and both in conjunction with the right not to be discriminated against (article 2(2)). The authors requested the adoption of interim measures to halt the exploration works (251/2022) and to reject any request for exploration works in the area reservation (289/2022). The Optional Protocol (OP) entered into force for the State party in April 2014. The authors are represented by counsel.

...

Summary of the information and arguments submitted by the parties

Common factual background

- 2.1 The authors are indigenous Sámi people and practise traditional Sámi reindeer herding. They belong to the Kova-Labba Siida, which is one of the three traditional reindeer herding villages that are part of the Käsivarsi Reindeer Herders' Cooperative. Sámi reindeer husbandry is semi-nomadic due to the seasonal and weather-dependent rotation of pastures, and is an essential part of Sámi culture, maintained by small groups of kin or village-based herders ("siida" in Sámi language) and transmitted from generation to generation.
- 2.2 The State Party's Forest Agency, Metsähallitus, is the landowner of approximately 90% of the Sámi homeland, including the authors' traditional reindeer herding territory. According to the Mining Act, exploration work can be carried out with the consent of the landowner, and the exploration permit holder is obliged to pay compensation (exploration fee) to the owners of the land included in the exploration area.
- 2.3 The regions where the Sámi live are warming more than three times faster than the global average. Frozen and moulting pastures and extreme snow conditions pose challenges for reindeer and reindeer herders, threatening the Sámi's ability to continue reindeer herding as a main source of income. This has a detrimental effect on the culture, languages and traditional knowledge of the Sámi, as it disrupts the practice of traditional livelihoods, which is central to maintaining and transmitting their culture.

Factual background regarding communication no. 251/2022

- 2.4 On 28 March 2014, the Geological Survey of Finland (an agency under the Ministry of Economic Affairs and Employment - GTK), applied for a mineral exploration permit called "Lätäs 1", requesting permission for the exploration works of gold, copper and iron, which includes the drilling of 100 to 300-metre-deep holes into the bedrock in about 20 different locations within an area of 390 hectares in the Kova-Labba Siida, the authors' traditional reindeer herding territory. The project entails bringing into the territory one-ton drilling machines and five-ton support vehicles that would provide a water source for the drilling.
- 2.5 The Safety and Chemicals Agency (Tukes), which is responsible for the mining permit, sought written comments in October and November 2014 from the Sámi Parliament and the Käsivarsi Reindeer Herders' Cooperative and invited them to participate in meetings on 17 May 2015 and 17 May 2016. The Käsivarsi Reindeer Herders' Cooperative, acting on behalf of its members -including the authors-, submitted the statements concerning the negative impact of the mineral exploration works on Sámi reindeer herding and the failure of the State party to carry out a proper assessment of the impact of exploration and other forms of land use on reindeer herding in the area and on the rights of Sámi. The Sámi Parliament stated in three occasions that, the basic preconditions for a free, prior and informed consent had not been met, given the lack of an assessment of the impact on the Sámi culture. Under the Mining Act, the State party's mining authority is obliged to assess the impact of mining or exploratory activities under its consideration on the rights of the Sámi as an Indigenous People. In this regard, the Supreme Administrative Court (SAC) 2014:111 clarified that "The Finnish Safety and Chemicals Agency as the permit authority was obliged to contribute to ensuring that appropriate opportunities existed for the co-operation procedure for clarifying the matter under section 38 of the Mining Act. This involved, inter alia, making

sufficient material available to the Sámi Parliament for assessing the impacts that the activities referred to in the application would have on Sámi culture”.

- 2.6 On 7 July 2016, Tukes granted GTK for an initial period of four years and renewable for up to 15 years, finding that the application met the requirements of the Mining Act.
- 2.7 On 8 August 2016, the Käsivarsi Reindeer Herders' Cooperative, signed by J.T., the first author of the communications, on behalf of all members of the cooperative, including the authors, appealed against the decision of 7 July 2016 to the Administrative Court of Northern Finland.
- 2.8 On 19 December 2018, the Administrative Court of Northern Finland dismissed the appeal and upheld the exploration permit, noting the involvement of the Sámi Parliament and the Käsivarsi Reindeer Herders' Cooperative in the permit procedure.
- 2.9 On 18 January 2019, the Käsivarsi Reindeer Herders' Cooperative (on behalf of all members of the cooperative, including the authors), together with the Sámi Parliament and the Lapland Branch of the Finnish Association for Nature Conservation, filed a request for leave of appeal and an appeal before the Supreme Administrative Court.
- 2.10 On 21 June 2021, the Supreme Administrative Court rejected the appeal, considering that: i) the co-operation procedure provided conditions to ensure that the Sámi had a de facto opportunity to participate in the permit procedure; ii) the exploration permit included conditions intended to reduce and prevent possible damage to reindeer herding (e.g. work must be carried out outside of the calving season, limited during times important for reindeer husbandry and only after the location of possible reindeer has been cleared in advance; the permit holder must agree locally on the means by which the harmful movement of reindeer from one area to another is to be prevented; the permit holder must notify the cooperative and the siida of any exploration activities and their schedule in advance of the start of the exploration activities; and the permit holder must ensure that any tracks of snowmobiles or tracked vehicles briefly visible in the area or disturbances caused by off-road traffic do not increase the uncontrolled movement of reindeer from one area to another); and that iii) the surface area of the exploration work was relatively small. The authors note that the Court compared the exploration area not against the size of the Kova-Labba Siida but against the size of the Käsivarsi Reindeer Herders' Cooperative consisting of the Kova-Labba Siida and two other villages.
- 2.11 The authors submit that Tukes granted GTK the exploration permit within the traditional reindeer herding lands of the indigenous Sámi community without a proper assessment of the adverse impact of the exploration activities on Sámi reindeer herding, and without good faith efforts to obtain their free, prior and informed consent. According to the authors, the obligations arising from the Mining Act on the impact assessment must be interpreted in the light of international standards on Indigenous rights. However, the State party replaced the impact assessment with a pro forma consultation. Moreover, given that the Sámi should be consulted based on an impact assessment, the procedure followed before the permit was issued did not meet the standards of free, prior and informed consent.
- 2.12 The authors also argue that the exploration permit area is in the heart of their winter herding lands. The winter months are critical for the reindeer's survival as in winter the snow cover is at its thickest and they have to dig through the thick layers of snow to reach the ground lichen or, where there are pristine forests, they have to

feed on the lichen growing on the branches of old trees; climate change-induced frozen and moulting pastures and extreme snow conditions add to the difficulties of reindeer herding; and getting the reindeer to graze in winter is very delicate work and grazing can be easily disturbed. Winter and spring-winter are therefore challenging seasons for reindeer herding. The heavy machinery and support vehicles, the workers and the tracks left in the snow, would cause great harm to the herders. Letting the herds leave their natural winter grazing areas will disrupt the annual cycle between seasonal herding lands and thereby the sustainable use of scarce natural resources. The authors submit that the provisions in the exploration permit aimed at reducing damage to reindeer herding are impossible to enforce in practice, considering the natural environment, reindeer behaviour, and the Sámi reindeer herding. In addition, the herders' working conditions will become more demanding, and despite all the extra effort, the benefits of the work, including remuneration, would be less than what they would otherwise be. This would make it unsustainable for Sámi reindeer herding.

- 2.13 The authors submit that all domestic remedies have been exhausted as they appealed against the exploration permit all the way to the final judicial instance, the SAC, and in the proceedings, they explicitly invoked the same substantive rights that are included in the communication: their rights to take part in the cultural life of their community, to property, not to be discriminated against, and to work or livelihood of their choice.

Factual background regarding communication no. 289/2022

- 2.14 On 16 March 2022, a private mining company, Element 92 Suomi Oy, submitted an application to Tukes to reserve 284square kilometres in the Kova-Labba Siida for the purpose of surveying the area for battery minerals (nickel, copper and cobalt).
- 2.15 On 20 April 2022, Tukes granted an area reservation, called “Ruossakero”, for a period of two years. According to the Mining Act, the holder of an area reservation has a priority in applying for an exploration permit for the reserved area.
- 2.16 The company did not make any contact with the authors before or after submitting the application, and the mining authority did not contact with them before or after its decision.
- 2.17 Under the Mining Act, exploration can be carried out based on the consent of the landowner. The property owner of the Sámi lands in question is the State's Forest Agency (Metsähallitus). It means that in principle, the State can determine the nature and scope of the reserving company's exploration works in their traditional land, including highly intrusive operations such as the use of heavy machinery and drilling into the bedrock. The authors submit that together with the highly unstable weather conditions driven by ongoing climate change, any new disturbances could lead to unpredictable and adverse consequences for both the reindeer and their herders.
- 2.18 According to the authors, “Ruossakero” area contains important reindeer pastures and critical winter herding lands. Rich with lichen and ecologically diverse, it provides the Sámi with important flexibility in their annual herding cycle, as it can be used at different times of the year depending on weather conditions. This is an important factor as climate change has made weather conditions more unpredictable. Therefore, any unavailability of the area will disrupt the annual cycle between seasonal herding lands, as winter pastures only recover if the reindeer are kept elsewhere. The area reservation will inevitably lead to an increase in human presence in an area that has been a refuge for reindeer even during active tourist

seasons. The authors argue that the granting of an area reservation will affect the sustainability of Sámi reindeer herding, regardless of what kind of exploration work the company intends to carry out at a later stage.

- 2.19 According to the authors, there is no domestic remedy available to them as the Supreme Administrative Court has already firmly established that they do not have legal standing to appeal against the granting of a reservation area.

The complaint

- 3.1 The authors submit that the granting of the permit for a mineral exploration project, despite their consistent opposition and in the absence of an impact assessment (251/2022), and the granting of an area reservation (289/2022) on their traditional territory without obtaining their free, prior and informed consent and in the context of ongoing climate change and the cumulative effect of other interferences, such as wind farms, activities by the military and organised group tourism, with reindeer herding, has the effect of eroding the preconditions of communal reindeer herding and its transmission from generation to generation, and therefore constitutes a violation of their rights to take part in the cultural life of a community and to enjoy just and favourable conditions of work that ensures remuneration which provides a decent living for themselves and their families, both rights interpreted in the light of articles 1, 6, 11 and 12, and both in conjunction with article 2(2). They emphasize that the right to transmit an Indigenous way of life and a traditional economic activity from generation to generation constitutes a core dimension of articles 15 and 7(a) (ii) in the context of Indigenous Peoples.
- 3.2 In submitting that both provisions should be read alone and in conjunction with article 2(2), the authors claim, for 251/2022, that they are subject to substantial, indirect and systematic discrimination in respect of the unilateral power of the State party to conduct (GTK), authorize (Tukes) and uphold (the Courts) mineral exploration works in their traditional territory without good faith efforts to obtain their free, prior and informed consent, and that the discriminatory nature of the Mining Act is demonstrated through the fact that, as the State has declared itself as the owner of their lands, it will receive annual compensation from its own agency (GTK) while, in contrast, the Sámi (who are not recognized as owners of their traditional lands) will receive no compensation for the adverse impact upon their lands. Clarifying that this does not imply that they would accept monetary compensation as an adequate remedy, the authors assert that no other landowner is in the same situation as the Sámi where even their right to compensation is denied. In communication no. 289/2022, the authors claim that they are at the mercy of the State party's Forest Agency as to the intensity of exploration works that will be conducted, and that the discriminatory nature of the Mining Act is demonstrated through the fact that they have no right of appeal against the granting of a reservation nor are in a position to control the nature of the works.
- 3.3 In both communications, the authors further argue that the violations of the Covenant must be assessed in the context of the cumulative effects of earlier interventions in their lands, aggravated by ongoing climate change. They explain that ongoing climate change has increased the challenges faced by the reindeer in their ability to dig through the snow in search of ground lichen during the critical winter months. This has led to an increase in work for the Sámi and unpredictability in the location and timing of the reindeers' movements. Furthermore, the alternating winter temperatures result in impenetrable sheets of ice between layers of new

snow, preventing the reindeer from accessing the ground lichen. They mention the Committee's expressed concern about the impact of climate change on Indigenous Peoples living in the Arctic region.

...

Committee's considerations of admissibility

- 10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 10(2) of its Rules of Procedure under the OP, whether or not the communication is admissible.
- 10.2 The Committee recalls that, under article 3(2)(c) of the OP, it shall declare inadmissible any communication which concerns a matter that has already been or is being examined under another procedure of international investigation or settlement. The Committee takes note of the authors' statement that children from their community have submitted a communication to the Committee on the Rights of Child concerning the same mineral exploration project as communication no. 251/2022. The Committee notes that the petition procedure before the CRC constitutes a "procedure of international investigation or settlement" within the meaning of the above-mentioned provision. The Committee also recalls that the "same matter" means one and the same claim relating to the same parties, events and substantive rights. Given that the complaint with the CRC has not been filed by the same authors, the Committee concludes that it is not the "same matter" and that articles 3(2)(c) is therefore not an obstacle to the admissibility of the communications.
- 10.3 The Committee notes the State party's argument that the authors' claims are of an *actio popularis* and premature nature, and thus they lack victim status. The Committee notes, however, that the authors present information in their communications alleging that State party failed to obtain the free, prior and informed consent or undertake good faith efforts to obtain it when granting the exploration permit (251/2022) and the area reservation (289/2022) in the authors' traditional territory, and that this allegedly constitutes a violation of their own rights, irrespective of future development. The Committee accordingly considers that the authors have victim status and that article 2 of the OP is not an obstacle to the admissibility of communication no.251/2022 and communication no. 289/2022.

...

Committee's considerations of the merits

...

Committee's general considerations

13. The Committee reaffirms that human rights treaties are living instruments,¹⁹ a view with which the State party agrees. The Committee will, therefore, read the Covenant in the light of the evolving interpretation of the rights of Indigenous Peoples, as reflected in the Committee's relevant general comments.

Article 15(1)(a), read alone and in conjunction with articles 1, 2(2) and 11

- 14.1 The Committee notes that the authors are indigenous Sámi people and practise reindeer herding in their traditional territory, which is an essential part of Sámi culture and livelihood, and has been transmitted from generation to generation, which is uncontested by the State party. The Committee considers that the aforementioned elements can be considered to fall within the scope of the right to

take part in cultural life of the community, enshrined in article 15(1)(a), and the right to an adequate standard of living, provided for in article 11 of the Covenant.

- 14.2 The Committee recalls its General Comment 21, which elaborates that article 15(1)(a) recognizes a right to exercise their cultural practices and way of life, and in the case of Indigenous Peoples, the value of communal dimension of cultural life should be given due account. The Committee also recalls that the right to take part in the cultural life of a community includes traditional economic activities, such as reindeer herding and fishing, as a means of subsistence, which has a bearing on the right to an adequate standard of living. The Committee further recalls that the communal dimension of Indigenous Peoples' cultural life, including traditional activities, is closely linked to their traditional lands, territories and resources, and is "indispensable to their existence, well-being and full development". The Committee recalls its General Comments 21 and 26 on the right to land, which elaborate that article 15(1)(a) of the Covenant enshrines the inalienable right of Indigenous Peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. In this respect, Indigenous Peoples' "cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity. The Committee observes that the protection of traditional lands, territories, and resources is also a prerequisite for the right to an adequate standard of living of Indigenous Peoples, as they are an important basis for their livelihoods.
- 14.3 The Committee notes that the recognition of Indigenous Peoples' right to land as an indispensable part of their right to take part in cultural life is in line with international human rights jurisprudence in this area. The CERD has affirmed that "the close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival; their relations to the land are a material and spiritual element that they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to prevent their extinction as a people." The Human Rights Committee has also recognized that "ownership of and control over ancestral territories are 'essential to Indigenous Peoples' survival as peoples, with the preservation of their distinct culture'; and that "any denial of the exercise of their territorial rights is detrimental to values that are very representative for members of Indigenous Peoples who are at risk of losing their cultural identity and the heritage to be passed on to future generations". The IACrHR has held that the culture of the members of Indigenous Peoples "corresponds to a specific way of life, of being, seeing and acting in the world, constituted on the basis of their close relationship with their traditional lands and natural resources, not only because these are their main means of subsistence, but also because they are an integral element of their cosmology, their spirituality and, consequently, their cultural identity". Cultural rights have an intergenerational aspect which is fundamental to the cultural identity, survival, and viability of Indigenous Peoples.
- 14.4 The Committee also recalls that "land is also closely linked to the right to self-determination enshrined in article 1 of the Covenant". Indeed, it is in the light of the right to self-determination set out in the Covenants that the IACrHR interprets the rights of Indigenous Peoples to traditional property, understood as traditional territories, lands and resources. The Committee further observes that there is a

“growing tendency to recognize more forcefully the right to self-determination as a key principle when it concerns the collective rights” of Indigenous Peoples. In particular, the three United Nations mechanisms for the rights of Indigenous Peoples have considered that the most important right for Indigenous peoples is the right to self-determination, as without the enjoyment of this right, they could not enjoy their other fundamental human rights. Accordingly, the Committee reiterates that “the realization of self-determination is an essential condition for the effective guarantee and observance” of the rights of Indigenous Peoples”, and is also considered “the fundamental premise of the right to consultation and consent”.

14.5 The Committee, therefore, is of the view that, in the context of Indigenous Peoples, article 15(1)(a), read in conjunction with articles 1 and 11, entails the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, and requires States parties to “take measures to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources”. It follows that States parties must ensure the effective participation of Indigenous Peoples in decision-making processes that may affect their way of life, particularly their right to land, based on the principle of their free, prior and informed consent, so as not to endanger the very survival of the community and its members, as enshrined in article 32(2) of the UN Declaration on the Rights of Indigenous Peoples and reaffirmed in the Committee’s General Comments.

14.6 In the case of communication no. 251/2022, the Committee notes that the State party invited comments from the Käsivarsi Reindeer Herders’ Cooperative and the Sámi parliament, and arranged two negotiation meetings to consider the exploration permit with them. The Committee also notes that despite both institutions’ opposition, Tukes granted the permit to GSK. The Committee takes note that the SAC considered that the aforementioned procedure “provided conditions to ensure that the Sámi, as Indigenous people, had a de facto opportunity to participate in the permit procedure. The Committee also observes that, throughout the process, there was no independent assessment of the impact of the exploration activities on the reindeer herding, as a fundamental part of the Sámi culture and livelihood, their intergenerational transmission of the practice, and the right of the Sámi as Indigenous Peoples. The Committee is of the view that an adequate and effective process of free, prior and informed consent, when the rights of Indigenous Peoples may be affected by projects carried out in their traditional territories, must include not only the sharing of information and the reception of comments from the affected community, but also an interactive and continuous dialogue through Indigenous Peoples’ own representative institutions, from the outset and through culturally appropriate procedures, respecting the right of Indigenous Peoples to influence the outcome of decision-making processes affecting them. The Committee also considers that environmental, social and cultural impact studies, conducted by independent and technically competent entities, should be a precondition for a process of consultations aimed at obtaining the free, prior and informed consent. The Committee notes the observation of the State party that the principle of free, prior and informed consent does not mean that a consensus should be reached if sufficient guarantees of effective participation have been provided. The Committee finds, nonetheless, that the procedure provided in this case does not meet the standard of effective participation in accordance with the principle of free, prior and informed consent.

- 14.7 In the case of communication no. 289/2022, the Committee notes that the authors were not contacted at any point in the process of granting of this permit, and there are precedents from the SAC that a reservation decision does not affect the practice of reindeer herding, nor restricts the right of the Sámi as an Indigenous people to maintain and develop their culture; and that the Sámi do not have legal standing to appeal against the granting of a reservation area. The Committee notes that a report commissioned by the Ministry of Economic Affairs and Employment of the State party on the functioning of the reservation mechanism under the Mining Act observed that while “a reservation under the Mining Act has not been considered to have legal effects extending beyond the parties engaged in exploration”, “however, making a reservation notification creates uncertainty regarding the future opportunities to use and manage the area subject to the reservation”. The report further stated that this uncertainty “can also be considered to affect the Sámi people’s views on conditions for practicing traditional economic activities and the perceived fairness in general of the claim procedure under the Mining Act”. The Committee notes that the area reservation concerns the traditional territory of the authors as Indigenous Peoples. The Committee considers, however, that the procedure for the granting of an area reservation takes no account of the rights of Sámi living on the affected area to control and use their land and transmit their traditional livelihoods from generation to generation.
- 14.8 In the light of above, the Committee considers that the State party has not demonstrated that the process of granting of the exploration permit (251/2022) and the area reservation (289/2022) adequately took into account the right of Indigenous Peoples to land, as part of the right to take part in cultural life, read alone and in conjunction with the rights to self-determination and to an adequate standard of living, and the obligation to ensure their effective participation, established in international human rights law.
- 14.9 In addition, the Committee observes that the State party did not refute that the Kova Labba Siida is part of the authors’ traditional territory. The Committee notes the submission by the State party that exploration work can be carried out with the consent of the landowner and exploration permit holder is obliged to pay compensation to the landowner in accordance with the Mining Act, and the owner of the area in both communications is the State. The Committee further notes the State party’s observation that the legislation in question applies to both Sámi and non-Sámi reindeer herders and landowners, regardless of origin.
- 14.10 The Committee recalls its General Comment on article 2(2), which states that “eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations”. The Committee also recalls that “treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same”. Positive measures are required to prevent and eliminate conditions that perpetuate discrimination and to ensure equal enjoyment of rights in the Covenant. In the context of Indigenous Peoples, it necessitates measures to give legal recognition, including collective ownership, and protection of their rights to their traditional lands, as an essential element of the right to take part in cultural life of the community, and to provide effective remedies when these rights are infringed.

14.11 The Committee observes that the State party's failure to give legal recognition to the rights of Indigenous Peoples to their traditional lands, which are also the base for their livelihood and income, has led to a situation where the Sámi are not entitled to compensation when their traditional lands are subject to the mineral exploration (251/2022), and they are not recognized as the interested party in the granting of the area reservation (289/2022), which has the effect of nullifying the recognition, enjoyment or exercise by Indigenous Peoples, on an equal footing, of their rights to their traditional territories and natural resources. The Committee, therefore, considers that the State party has not demonstrated how the processes of granting the permit and the reservation area under the Mining Act adequately took into account the authors' rights under article 15(1)(a) of the Covenant, in conjunction with article 2(2).

E. Conclusion and recommendations

15. Acting under article 9(1) of the OP, the Committee is of the view that the facts and information before it disclose a violation of article 15(1)(a), read alone and in conjunction with articles 1, 2(2), and 11, of the Covenant.

Recommendations in respect of the authors

16. The State party should therefore provide the authors with effective reparation for the violations suffered, including through an effective review of the decisions concerning the mineral exploration project and the area reservation, based on an adequate process of free, prior and informed consent, accompanied by an independent assessment of the impact on the rights of the authors.

General recommendations

17. The State party is under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the State party is requested to pursue its efforts to amend its legislation and administrative procedures to enshrine the international standard of free, prior and informed consent, and to include the environmental, social and cultural impact assessment. The State party is also requested to initiate the process of legal recognition of the rights of Indigenous Peoples to their traditional lands, including through collective ownership.

• IV •

Committee
on the Rights
of the Child

CONCLUDING OBSERVATIONS

1. Argentina, CRC/C/ARG/CO/7, 18 October 2024

Main areas of concern and recommendations

4. The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: ... children belonging to Indigenous groups (para. 47) and administration of child justice (para. 52).
5. The Committee recommends that the State party ensure the realization of children's rights in accordance with the Convention, the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography throughout the process of implementing the 2030 Agenda for Sustainable Development. It urges the State party to ensure the meaningful participation of children in the design and implementation of policies and programmes aimed at achieving all 17 Sustainable Development Goals as far as they concern children.

Allocation of resources

11. Recalling its previous concluding observations, deeply concerned by the continuing drastic decrease in the budget allocations for children, including disinvestment in health and education in recent months, and recalling its general comment No. 19 (2016) on public budgeting for the realization of children's rights, the Committee recommends that the State party: ... (b) Ensure that budgetary lines for children in disadvantaged or marginalized situations, particularly children with disabilities and Indigenous children, are protected in the current restrictive context....

Children's rights and the business sector

15. Welcoming the first National Action Plan on Business and Human Rights (covering the period 2023–2026), and recalling its previous concluding observations and its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, and the Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in 2011, the Committee recommends that the State party establish and implement legally binding regulations to ensure that the business sector carries out due diligence procedures on the rights of children and complies with international and national human rights, labour, environmental and other standards, particularly with regard to children's rights. In particular, it recommends that the State party ensure that businesses establish monitoring mechanisms for the investigation and redress of violations of children's rights, with a view to improving accountability and transparency.

General principles (arts. 2, 3, 6 and 12)

Non-discrimination

16. Noting the National Discrimination Map and the programmes implemented to prevent and eradicate discrimination against children but concerned about the closures of the National Institute Against Discrimination, Xenophobia and Racism through Decree No. 696/2024, and the Ministry of Women, Genders and Diversity, and about the potential impact of this on the prevention of discrimination, the Committee urges that the State party: ... (d) Raise awareness and conduct public education campaigns and actions to end discrimination against children, and address and investigate negative social attitudes towards children, in particular Indigenous children ... and promote tolerance and respect for diversity...

Right to life, survival and development

17. Welcoming the efforts made by the State party to decrease the infant mortality rate and the resulting decreases between 2018 and 2020, but noting discrepancies regarding the mortality rate of Indigenous children, the Committee recommends that the State party: (a) Reduce, address and redouble its efforts on the underlying determinants of infant deaths, especially post-neonatal deaths, and of child mortality, including social and economic deprivation and inequality, especially affecting Indigenous communities...

Civil and political rights (arts. 7, 8 and 13–17)

Birth registration and nationality

19. Concerned at the insufficient timely registration in rural and Indigenous areas, the Committee urges the State party: (a) To establish coordinated and cross-sectoral mechanisms between national, provincial and local-level governments for the early detection and referral of children lacking birth registration or national ID documents...

Health (arts. 6, 24 and 33)

Health and health services

35. Recalling its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee recommends that the State party: (a) Ensure the availability of and equitable access to free, high-quality primary and specialized healthcare services for children in all provinces, particularly those from socially and economically disadvantaged groups, including Indigenous children...

Nutrition

38. Concerned that moderate and severe food insecurity has increased alarmingly in the past years and that the interruption in the provision of food and economic benefits at community kitchens has a negative impact on children, the Committee recommends that the State party: (a) Identify the root causes of child food insecurity and malnutrition throughout the State party, in particular among the Indigenous community, and the impact of policies and programmes in place to address these causes...

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40 of the Convention, and the Optional Protocol on the involvement of children in armed conflict)

...

Children belonging to Indigenous groups

46. While the Committee welcomes resolution No. RESOL-2021-1461-APNSENNAF#MDS establishing an agreement with the Indigenous Children's Area of the Indigenous Rights Directorate of the National Institute of Indigenous Affairs, the Committee is seriously concerned about the:
 - (a) Lack of specific policies for the protection of Indigenous children;
 - (b) Higher incidence of poverty, limited access to adequate food and healthcare, higher childhood mortality rates, precarious housing without access to safe water or sanitation, lower rates of school attendance and systematic acts of discrimination;
 - (c) Death of Indigenous children from malnutrition or related illnesses in the Province of Salta;
 - (d) Numerous native communities of the Chaco Salteño at critical risk due to lack of access to water.
47. Recalling its general comment No. 11 (2009) on Indigenous children and their rights under the Convention, the Committee urges the State party:
 - (a) To adopt measures that guarantee the right to land of Indigenous children;
 - (b) To 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) To 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 language of the State party.

2. Mexico, CRC/C/MEX/CO/6-7, 8 October 2024

A. General measures of implementation (arts. 1, 4, 42 and 44 (6))

...

Data collection

10. Recalling its general comment No. 5 (2003) on general measures of implementation of the Convention, the Committee recommends that the State party: (a) Expeditiously improve its data collection system and ensure that it covers all areas of the Convention and the Optional Protocols thereto, with data disaggregated by age, sex, disability, geographical location, Indigenous, ethnic, national and Afrodescendent origin, migration status, socioeconomic background and alternative care situation....

Children's rights and the business sector

15. Recalling its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and to the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, the Committee recommends that the State party:

- (a) Establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environmental and other standards, particularly with regard to children's rights;
- (b) Establish a clear regulatory framework for the industries and businesses operating in or managed from the State party to ensure that their activities respect labour and other standards, especially those relating to children's rights, and do not negatively affect human rights or endanger the environment and health;
- (c) Require companies to undertake assessments and consultations and provide full public disclosure of the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts;
- (d) Require companies to undertake due diligence in their operations and across supply chain with regard to the harmful effects of environmental degradation on children's rights.

General principles (arts. 2, 3, 6 and 12)

Non-discrimination

16. The Committee is concerned about the persistence of de facto discrimination deeply rooted in cultural practices that perpetuate inequality, particularly affecting girls and adolescents, because of sex, gender, age, race, socioeconomic status, disability, ethnicity, situation of migration or refugee status, gender identity and expression and sexual orientation. The Committee is also concerned about the generational marginalization of Afro-Mexican and Indigenous children, who lag behind in all indicators, and the prevalence of gender norms and stereotypes that deepen gender-based discrimination and inequalities.
17. The Committee urges the State party:
- (a) To put in place laws and regulations to explicitly prohibit all forms of discrimination on the grounds of social and national origin, ethnicity, disability, sex, gender identity and sexual orientation, and to promote a positive image of children as rights holders;
 - (b) To implement affirmative action with adequate resources to close the gaps affecting specific groups of children in vulnerable situations...

Violence against children (arts. 19, 24 (3), 28 (2), 34, 35, 37 (a) and 39 of the Convention, and the Optional Protocol on the sale of children, child prostitution and child pornography)

...

Harmful practices

29. Noting the persistence of child marriage, particularly in rural areas and Indigenous communities and the high rates of adolescents in informal unions, and recalling the joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, the Committee urges the State party:
- (a) To address the persistence of child marriage and informal unions, particularly in rural areas and Indigenous communities, in view of transforming gender norms and cultural practices affecting the most-at-risk girls;
 - (b) To undertake a comprehensive study to collect data, set indicators informed by gender-sensitive and culturally respectful approaches regarding Indigenous

Peoples and strengthen monitoring and evaluation mechanisms to address the issue of child marriage....

Children's rights and the environment (arts. 2, 3, 6, 12, 13, 15, 17, 19, 24 and 26–31)

Impact of climate change on the rights of the child

42. Recalling its general comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, the Committee recommends that the State party:
- (a) Ensure that children's views are considered in developing environmental, climate change, disaster risk reduction and crisis management policies and systems;
 - (b) Increase children's awareness and preparedness for climate change and natural disasters by incorporating it into the school curriculum and teacher training programmes;
 - (c) Prioritize strengthening the climate-resilient water, sanitation and hygiene infrastructure in schools;
 - (d) Ensure children's participation in the implementation of the updated nationally determined contribution of 2022 and in the preparation of the next nationally determined contribution, which should include a child-rights impact assessment.

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40 of the Convention and the Optional Protocol on the involvement of children in armed conflict)

...

Indigenous and Afro-Mexican children

51. Recalling its general comment No. 11 (2009) on Indigenous children and their rights under the Convention, the Committee urges the State party:
- (a) To accelerate the harmonization process of constitutional reform to ensure the recognition of Indigenous Peoples and Afro-Mexicans as rights holders;
 - (b) To 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 by addressing the root causes of such conflicts;
 - (c) To systematically guarantee the free, prior and informed participation of Indigenous children before adopting and implementing any legislative or administrative measures that may affect them and provide effective remedies in cases of violation of their rights.

3. Namibia, CRC/C/NAM/CO/4-6, 26 June 2024

General principles (arts. 2, 3, 6 and 12)

Non-discrimination

16. While noting the efforts of the State party to address discrimination, the Committee recommends that the State party: (a) Review relevant legislation to explicitly prohibit all forms of discrimination, including on the basis of language, political or other opinion, national origin, disability, place of birth, sexual orientation or gender identity; (b) Implement targeted policies and programmes to eliminate discrimination against children belonging to Indigenous or ethnic minority groups,

including San, Ovahimba and Ovazemba children...; (c) Ensure that children in disadvantaged situations have access to birth registration, education, adequate health services, housing and an adequate standard of living.

Education, leisure and cultural activities (arts. 28–31)

...

Inclusive education

40. Noting with appreciation the policy on inclusive education of 2013 and the establishment of schools in Osire refugee camp for asylum-seeking and refugee children, the Committee recommends that the State party: (a) Strengthen measures aimed at ensuring that all children with disabilities, including forcibly displaced and stateless children, have access to inclusive education in mainstream schools, such as by: ... (b) Expand the provision of quality multilingual education, particularly for children belonging to Indigenous or ethnic minority groups, including through multilingual teachers and appropriate materials and educational technologies; (c) Continue to ensure, including through sufficient resources, that children in rural areas, children in alternative care, children belonging to Indigenous or ethnic minority groups and other groups of children in disadvantaged situations have access to inclusive education and sporting, recreational, leisure, cultural and artistic activities.

4. Guatemala, CRC/C/GTM/CO/7, 21 June 2024

A. General measures of implementation (arts. 1, 4, 42 and 44 (6))

...

Allocation of resources

9. Recalling its general comment No. 19 (2016) on public budgeting for the realization of children's rights, as well as its previous concluding observations, the Committee recommends that the State party: (a) Conduct a comprehensive assessment of the budget needs of children and allocate adequate resources, in accordance with article 4 of the Convention, for the implementation of children's rights and, in particular, increase the budget allocated to social sectors and address disparities on the basis of indicators related to children's rights; ... (d) Increase efforts to reduce the inequalities affecting children in disadvantaged situations with budget lines for Indigenous children....

Child rights and the business sector

15. Recalling its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, and the Guiding Principles on Business and Human Rights, the Committee recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly with regard to children's rights. In particular, it recalls its previous concluding observations and recommends that the State party:

- (a) Establish a clear regulatory framework for businesses operating in the country to ensure that their activities do not negatively affect human rights or endanger environmental, health, labour and other standards, especially those relating to the rights of Indigenous children, in particular their right to be consulted to obtain their free, prior, and informed consent; the rights regarding their cultural and linguistic identity and heritage; and their rights relating to lands, territories

and resources that they have traditionally owned, occupied or otherwise used or acquired;

- (b) Require companies to undertake assessments, consultation and full public disclosure of the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts;
- (c) Require companies to undertake due diligence in their operations and across supply chains with regard to the harmful effects of environmental degradation on children's rights;
- (d) Maintain and strengthen its cooperation with the Office of the United Nations High Commissioner for Human Rights in the area of business and human rights.

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

- 16. The Committee remains deeply concerned by the pervasive structural discrimination against Indigenous peoples and peoples of African descent, who constitute almost half of the population, and the widespread poverty and social exclusion among those populations, disproportionately affecting Indigenous children and children of African descent. The Committee is further concerned about the intersecting forms of discrimination against children in disadvantaged situations.
- 17. The Committee recalls its previous concluding observations and urges the State party: (a) To put an end to structural discrimination against the Maya, Garifuna and Xinka peoples by addressing the root causes thereof and by strengthening legislation and adopting special measures to combat racism and discrimination against Indigenous peoples and peoples of African descent....

Respect for the views of the child

- 20. Recalling its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party: (a) Take measures to ensure effective implementation of legislation recognizing the right of the child to be heard in relevant legal proceedings, including by establishing systems and procedures for social workers and courts to facilitate compliance with the principle; ... (d) Adopt linguistic and culturally adequate measures to ensure the respect for the views of Indigenous children, children of African descent and children on the move.

Birth registration

- 21. The Committee urges the State party: (a) To strengthen and expand the Network for Dialogue and Registration of the Guatemalan Population and the measures implemented by the National Registry Office, such as awareness-raising events, to ensure birth registration and the issuance of birth certificates for all children born on its territory immediately after the birth and free of charge; (b) To adopt specific measures for registering the birth of children in disadvantaged situations, including those born in rural areas and remote areas, children living in poverty, Indigenous children....

G. Health (arts. 6, 24 and 33)

Health and health services

- 34. Recalling its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee recommends that the State party: (a) Ensure access by all children to basic and culturally sensitive health

services, provide health-care infrastructure and ensure the availability of health-care professionals, especially for Indigenous children....

Nutrition

38. Ensure that HIV exposure and transmission is not criminalized. The Committee urges the State party: (a) To strengthen, as a matter of urgency, measures to address high levels of hunger and malnutrition among children in disadvantaged situations, in particular Indigenous children, including through effective implementation of the national plan on nutrition for 2020–2024; ... (d) To ensure the best interests of the child in the design, approval and implementation of legislation and policies on healthy diets.

Children's rights and the environment (arts. 2, 3, 6, 12, 13, 15, 17, 19, 24 and 26–31)

Impact of climate change on the rights of the child

40. The Committee is concerned about the high level of vulnerability of children owing to the impact of climate change and the limited child sensitivity of the State party's climate policies and disaster risk management. The Committee notes that the State party has signed, but not yet ratified, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).
41. Recalling its general comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, and recalling its previous concluding observations, the Committee recommends that the State party:
- (a) Ensure that the special vulnerabilities, needs and views of children, in particular Maya, Xinka and Garifuna children, children living in poverty and refugee and migrant children, are taken into account in the development of policies and programmes to address climate change and disaster risk management;
 - (b) Ensure that child rights impact assessments are conducted to inform the process of development and implementation of policies and programmes, such as the 2018 national climate change action plan, to address climate change and disaster risk management and ensure that children are properly consulted in the assessments and the policy development;
 - (c) Collect disaggregated data identifying the types of risk faced by children in relation to the occurrence of different types of disaster in order to formulate international, regional and national policies, frameworks and agreements accordingly;
 - (d) Increase children's awareness of and preparedness for climate change and natural disasters by incorporating the subject into the school curriculum and teacher training programmes;
 - (e) Expedite the ratification of the Escazú Agreement;
 - (f) Seek bilateral, multilateral, regional and international cooperation in implementing the above recommendations.

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40 of the Convention, and the Optional Protocol on the involvement of children in armed conflict)

...

Indigenous children and children of African descent

46. Concerned by the limited progress in the recognition of the rights of Indigenous children and children of African descent, by the high level of poverty among them and by the obstacles they face in accessing culturally sensitive health care, education services and justice, the Committee recommends that the State party:
- Ensure the recognition and effective enjoyment of the collective rights of Indigenous peoples and peoples of African descent, in particular their rights concerning their land, territories and natural resources;
 - Systematically consult and cooperate in good faith with Indigenous peoples, including Indigenous children, in order to obtain their free, prior, and informed consent before adopting any legislative or administrative measures that may affect them, and provide effective remedies in cases of violation of their rights;
 - Allocate sufficient technical, human and financial resources for bilingual intercultural education to ensure access by all Indigenous children and children of African descent to sufficient and quality bilingual learning material and adequately trained teachers, considering the linguistic and cultural diversity of Indigenous peoples and peoples of African descent;
 - Remove the obstacles faced by Indigenous children in accessing culturally appropriate health care and education services, such as the payment of school fees and the prohibition on wearing traditional clothes at school.

5. Paraguay CRC/C/PRY/CO/4-6, 18 June 2024

Main areas of concern and recommendations

- The Committee reminds the State party of the indivisibility and interdependence of all the rights enshrined in the Convention and emphasizes the importance of all the recommendations contained in the present concluding observations. The Committee would like to draw the State party's attention to the recommendations concerning the following areas, in respect of which urgent measures must be taken: ... children belonging to Indigenous groups (para. 46).
- The Committee recommends that the State party ensure the realization of children's rights in accordance with the Convention, the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography, throughout the process of implementing the 2030 Agenda for Sustainable Development. It urges the State party to ensure the meaningful participation of children in the design and implementation of policies and programmes aimed at achieving all 17 Sustainable Development Goals as far as they concern children.

Data collection

- Recalling its general comment No. 5 (2003) on general measures of implementation of the Convention, the Committee recommends that the State party: (a) Expediently improve its data collection system and ensure that it covers all areas of the Convention and the Optional Protocols thereto, with data disaggregated by

age, sex, disability, geographical location, ethnic, national and Indigenous origin, migration status and socioeconomic background, in order to facilitate analysis of the situation of children, in particular those in situations of vulnerability...

Dissemination of the Convention and awareness-raising

11. Taking into consideration the statement made by the head of the State party's delegation regarding its commitment to children's rights, but concerned by the current trend of calling children's rights into question, the Committee recommends that the State party reinforce its efforts for the systematic dissemination of the Convention and awareness-raising among the general public, including children, adolescents, families and teachers, but also among members of public administration, among other groups, including in the languages of the Indigenous peoples.

Children's rights and the business sector

13. Recalling its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and the Guiding Principles on Business and Human Rights, the Committee recommends that the State party:
 - (a) Ensure the accountability of the business sector, including agriculture and in particular the soybean farming sector, and informal sectors in relation to international and national human rights, health and environmental standards;
 - (b) Require companies to undertake due diligence in their operations and across supply chains and to undertake assessments and consultations and make full public disclosure of the impacts of their business activities on the environment, health and children's rights and their plans to address such impacts.

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

14. Noting Act No. 6940/2022 to prevent racism and discrimination against people of African descent, but very concerned about the existence of resolutions from State agencies and speeches from high-ranking officials that contain strong discriminatory content towards certain groups of children, the Committee urges the State party: ... (b) To implement targeted policies and programmes to eliminate discrimination against children, in particular ... Indigenous children ... and ensure their access to health services, education and a decent standard of living....

Birth registration and nationality

19. Welcoming the adoption of Act No. 6149/2018 on the Protection of and Facilities for the Naturalization of Stateless Persons, the Committee strongly urges the State party: ... (c) To address disparities in birth registration between urban and rural areas, especially in Indigenous communities, ensuring that all births are properly registered; (d) To review article 56 of Act No. 1266/1987 to ensure that it aligns with non-discriminatory practices and respects the rights to Guaraní identity; ... (h) In the case of Indigenous communities and isolated populations, to propose mobile service operations that, in addition to registration, bring other public services closer, under the conceptual slogan "the State reaches out to the community"....

Violence against children (arts. 19, 24 (3), 28 (2), 34, 35, 37 (a) and 39 of the Convention, and the Optional Protocol on the sale of children, child prostitution and child pornography)

...

Harmful practices

24. The Committee is deeply concerned about exceptions to the minimum age for marriage of 18, under Act No. 5419/2015, for children 16 years of age and over marrying with the consent of parents, guardians or a judge and about child marriage still taking place, in particular in Indigenous and rural areas.
25. Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, the Committee urges the State party: (a) To abolish all exceptions to the marriage age of 18 in law and prevent child marriage in practice, in particular in Indigenous and rural areas....

Optional Protocol on the sale of children, child prostitution and child pornography

28. The Committee welcomes the information provided on the implementation of its initial concluding observations and recommends that the State party: ... (b) Take measures to prevent, detect, process and prosecute effectively the sexual abuse of girls and Indigenous children, both online and in the context of tourism....

Health (arts. 6, 24 and 33)

Health and health services

33. The Committee is concerned about the following: (a) Quality of health care, in particular in rural areas and among people of African descent and Indigenous communities....
34. Recalling its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, the Committee recommends that the State party: (a) Increase access to quality and culturally sensitive health care, in particular in rural areas and Indigenous communities, and improve vaccination coverage and provide accurate information about the importance of vaccines....

Children's rights and the environment (arts. 2, 3, 6, 12, 13, 15, 17, 19, 24 and 26–31)

37. Recalling its general comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, and taking note of the environmental protection legislation of the State party, the Committee recommends that the State party:
 - (a) Conduct an assessment of the effects of polluted air, water and soil and electromagnetic pollution on children's health as a basis for designing a well-resourced strategy to remedy the situation and prevent similar occurrences in the future and implement the environmental health standards, indicators and definitions set by the World Health Organization;
 - (b) Evaluate the impact of pesticides, in particular in Indigenous communities, and take appropriate measures based on the evaluation's findings;
 - (c) Monitor the effective compliance with environmental regulations and sanction those responsible for their violation;
 - (d) Ensure that children's rights-based approach is integrated into its climate change-related strategies and plans and that they reflect children's views on this matter;
 - (e) Increase children's awareness of and preparedness for climate change-related events, in particular by incorporating them into the school curriculum and teacher training programmes;

- (f) Ensure that health professionals receive training in the diagnosis and treatment of the health impacts related to environmental harm;
- (g) Take the necessary adaptation measures in the areas of public services, including access to clean water and housing, in particular in climate change-affected zones.

Education, leisure and cultural activities (arts. 28–31)

Education: aims and coverage

38. Welcoming the implementation of the plurilingual education plan from the perspective of Indigenous Peoples, 2022–2023, the Committee recommends that the State party: (a) Address the causes of school exclusion, including language policies, to ensure that all children, in particular Indigenous children, children living in poverty, children with disabilities and children living in rural areas, are in school and take measures to address the causes of school dropout...

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40 of the Convention, and the Optional Protocol on the involvement of children in armed conflict)

...

Children belonging to Indigenous groups

45. The Committee is seriously concerned about the following:
- (a) Increase of forced evictions and displacement of Indigenous and rural children in recent years;
 - (b) Contamination of ancestral land and water;
 - (c) Persisting food insecurity, poverty and vulnerabilities to violence and exploitation among Indigenous children.
46. Recalling its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party:
- (a) To prevent evictions and displacement of Indigenous peoples, including pastoralists, hunter-gatherers and forest people, guarantee that Indigenous children and adolescents have access to their ancestral lands, as well as to uncontaminated land and water and provide redress to those evicted or displaced from their lands;
 - (b) To develop a protocol for evictions aligned with the conventions and treaties ratified by the State party;
 - (c) To consult and cooperate 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 violations of their rights;
 - (d) To 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;
 - (e) To take effective measures to promote Indigenous languages, including through strengthening the provision of bilingual education to Indigenous children in their own Indigenous languages and in the official languages of the State party.

6. South Africa, CRC/C/ZAF/CO/3-6, 11 March 2024

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40 of the Convention, and the Optional Protocol on the involvement of children in armed conflict)

...

Children belonging to minority or Indigenous groups

43. Recalling its general comment No. 11 (2009) on Indigenous children and their rights under the Convention, the Committee recalls its previous recommendations and recommends that the State party follow the Constitutional Court's decision and re-enact the Traditional and Khoi-San Leadership Act by reasonably facilitating public involvement, including of children, in different stages of the public participation in the preparation of the Act.

7. Congo, CRC/C/COG/CO/5-6, 1 March 2024

Follow-up measures taken and progress achieved by the State party

3. The Committee welcomes the various legislative measures taken by the State party to implement the Convention, including the new Constitution adopted on 25 October 2015, which, inter alia, make all duly ratified relevant international human rights instruments an integral part of the Constitution. The Committee also welcomes the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and of the Convention on the Rights of Persons with Disabilities and its Optional Protocol. The Committee further welcomes the following institutional and policy measures that have an impact on children: ... (d) Decree No. 2019-204 of 12 July 2019 on special measures to facilitate access to education for Indigenous children and adult literacy...

Main areas of concern and recommendations

...

General principles (arts. 2, 3, 6 and 12)

Non-discrimination

16. Noting with concern that ... Indigenous children ... and girls, particularly girls who fall into the aforementioned categories, continue to be subject to multiple discrimination from the earliest stages of their life, and through their childhood, including gender-based discrimination, due to the persistence of adverse and traditional attitudes and norms, and recalling targets 5.1 and 10.3 of the Sustainable Development Goals, the Committee recommends that the State party: (a) Urgently address all forms of discrimination and, in particular, expand girls' education, improve their safety and protect them against violence: (b) Undertake effective systematic efforts, including with religious, tribal and village leaders, opinion makers, and the mass media, to combat and change all these discriminatory attitudes and practices....

Right to life, survival and development

19. The Committee recommends that the State party investigate all cases of murder of children, in particular ... Indigenous children, and prosecute and bring to justice those responsible.

Civil and political rights (arts. 7, 8 and 13–17)

Birth registration

20. The Committee welcomes Decree No. 2022-308 of 13 June 2022 approving the national policy for the reform and modernization of civil status in the Congo (2022–2026), as well as the State party's cooperation project with the African Development Bank on the implementation of a National Digital Identity System. Nevertheless, the Committee remains seriously concerned about the large number of children who are still not registered, the existence of unofficial payments attached to late birth registration, the insufficient number of civil registry offices in remote areas and the insufficient awareness of the importance of registration. It also notes with concern that the one-month limit for families to register births increases difficulties and costs for families.
21. Taking note of target 16.9 of the Sustainable Development Goals, the Committee urges the State party: (a) To abolish all birth registration fees and ensure that all children, including Indigenous children and children of unmarried parents, are properly registered at birth, including by raising awareness among the general population on the procedure for obtaining a birth certificate, and its free delivery, as well as by specifically targeting personnel working at civil registry services....

Education, leisure and cultural activities (arts. 28–31)

Education, including vocational training and guidance

43. While noting that the Education Act (Act No. 25-95 of 17 November 1995) on the reorganization of the education system provides for free education, and while also taking note of Decree No. 2019-204 of 22 July 2019 on measures to facilitate Indigenous children's access to education, as well as skills-upgrading seminars for teachers undertaken in collaboration with UNICEF, the Committee is seriously concerned about: ... (d) The lack of effective measures to develop inclusive education, in particular for children with disabilities, children in rural areas, and Indigenous children and adolescents....
44. Taking note of targets 4.1, 4.3, 4.4, 4.5, 4.6, 4.a, 4.b and 4.c of the Sustainable Development Goals, the Committee recommends that the State party: ... (b) Take the necessary measures to ensure that all children are enrolled in school, including Indigenous and refugee children and children with disabilities, and improve accessibility to education, paying particular attention to disparities in access to schools based on sex and on socioeconomic, ethnic, regional or any other grounds; (c) Provide additional school facilities, particularly in rural areas, and incorporate schools for Indigenous children into the national budget, to increase access to education for all children....

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40 of the Convention, and the Optional Protocol on the involvement of children in armed conflict)

Children belonging to Indigenous groups

48. While welcoming the State party's issuance of the 2019 decree to implement Law No. 05-2010 on the promotion and protection of the rights of Indigenous Peoples, the Committee is concerned about its implementation and, recalling its general comment No. 11 (2009) on Indigenous children and their rights under the Convention, urges the State party:

- (a) 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;
- (b) To consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.

8. Russian Federation, CRC/C/RUS/CO/6-7, 1 March 2024

Main areas of concern and recommendations

...

Children's rights and the business sector

16. Recalling its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, the Committee recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environmental and other standards, particularly with regard to children's rights. In particular, it recommends that the State party:
- (a) Establish a clear regulatory framework and legal accountability for the industries, especially the oil and gas and coal-extraction industries, operating in the State party or managed from the State party to ensure that their activities do not negatively affect human rights or contravene environmental, health, labour and other standards, especially those relating to children's rights, including the rights of Indigenous children, and are in line with the Convention and the Optional Protocols;
 - (b) Require companies to undertake assessments of and consultations on the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts and to provide full public disclosure of those impacts and plans.

Standard of living (arts. 18 (3), 26 and 27 (1)–(3))

Standard of living, including social security, housing and childcare services

37. Taking note of targets 1.1, 1.2 and 1.3 of the Sustainable Development Goals, the Committee recalls its previous concluding observations and recommends that the State party: (a) Guarantee an adequate and sustainable standard of living for all children within its territory, with particular focus on children in the most marginalized and disadvantaged situations, such as ... Indigenous children ... by providing them with appropriate accommodation, access to social and health services and benefits, nutrition and education....

Education, leisure and cultural activities (arts. 28–31)

Education, including vocational training and guidance

39. The Committee is seriously concerned about reports of: (a) The interference of the ruling party in the educational process and the creation of "hero's desks" to provide positive information about the participants in the armed conflict in Ukraine....
40. Taking note of targets 4.1, 4.5 and 4.a of the Sustainable Development Goals, the Committee recommends that the State party: (a) Put an end to the politicization and militarization of schools and ensure that education is aimed at the preparation

of the child for a responsible life in a free society in a spirit of understanding, peace, tolerance, equality of the sexes and friendship among all peoples, ethnic, national and religious groups and persons of Indigenous origin, in line with article 29 of the Convention....

Special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)–(d) and 38–40 of the Convention and the Optional Protocol on the involvement of children in armed conflict)

...

Children belonging to Indigenous groups

42. Recalling its general comment No. 11 (2009) on Indigenous children and their rights under the Convention and its previous concluding observations, the Committee urges the State party:
- (a) To preserve the cultural and linguistic identity and heritage of Indigenous children and ensure that they have access to school and receive basic education in their native language to the extent possible;
 - (b) To improve health-care facilities and services in remote villages for Indigenous children;
 - (c) To facilitate the traditional way of life, diet and traditional economic activities of Indigenous groups, such as access to wildlife and fishing.

9. Finland, CRC/C/FIN/CO/5-6, 15 November 2023

General measures of implementation (arts. 4, 42 and 44 (6))

Legislation

7. While welcoming the legal reforms relating to the well-being services counties and the proposal put before Parliament to speed up the handling of crimes against children, the Committee recommends that the State party: ... (b) Take measures to strengthen children's rights impact assessments in the legislative process; (c) Reform legislation relating to Sami people, in particular with regard to the cultural and linguistic rights of Sami children.

Data collection

10. While welcoming the development of indicators to assess trends in the realization of children's rights, the Committee recalls its previous recommendation 4 and recommends that the State party:
- (a) Continue strengthening its system for collecting data relating to both qualitative and quantitative indicators encompassing all areas of the Convention;
 - (b) Ensure that the data are disaggregated also by disability, migratory background, socioeconomic background, status as a member of ... an Indigenous People (Sami)....

Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Violence against children, including sexual exploitation and abuse

22. While welcoming the Non-Violent Childhoods Action Plan for the Prevention of Violence against Children (2020–2025), the action plan on bullying (2021), the barnahus project and the amendments to the Criminal Code relating to sexual abuse, the Committee is deeply concerned about: ... (b) The particular vulnerability

of girls, children with disabilities, children in alternative care settings, migrant and refugee children and children in socioeconomically disadvantaged situations....

23. The Committee urges the State party: ... (b) To ensure that strategies and plans include targeted measures for girls, children with disabilities, children in socioeconomically disadvantaged situations, migrant children and children belonging to minority groups (Roma and Sami) and that such strategies and plans are adequately resourced and comprehensively address sexual exploitation and abuse....

Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33)

Health and health-care services

31. The Committee recommends that the State party:
- (a) Strengthen measures, including through training for health-care professionals, to ensure prompt and efficient access to high-quality health-care services for children throughout the country, paying particular attention to children in disadvantaged or marginalized situations, including ... Sami children ... who do not identify with the gender assigned to them at birth and children without, or at risk of losing, parental care; ...
 - (d) Ensure that children's rights to self-determination and participation are considered as a cross-cutting issue in all areas of social welfare and health care.

Impact of climate change on the rights of the child

34. While welcoming the State party's adoption of the Climate Act in 2022, the Committee recommends that the State party:
- (a) Ensure that national policies, laws, strategies and programmes on climate change and mitigation and adaptation measures are implemented in accordance with the rights enshrined in the Convention, integrate the protection of children and take into account the urgency of children's needs and views;
 - (b) Evaluate the possible effects of climate actions and mitigation measures on children, including Sami children, and their rights;
 - (c) Undertake legislative and other measures to uphold its extraterritorial obligations concerning environmental impacts that affect children's rights abroad, including in the context of business operations and international cooperation initiatives in or managed from the territory of the State party.

Education, leisure and cultural activities (arts. 28–31)

Education, aims of education and human rights education

36. While noting the State party's promotion of the principle of inclusive education, the Committee remains concerned about disparities in access to quality education, the large gap in knowledge between children of immigrant origin and other children and discrimination, harassment and the high incidence of bullying in schools. The Committee recommends that the State party: ... (c) Ensure the availability of quality multilingual and intercultural education for ... Sami children that is free from discriminatory attitudes, including by providing appropriate materials, multilingual teachers and educational tools....

10. Sweden, CRC/C/SWE/CO/6-7, 7 March 2023

Children's rights and the business sector

15. The Committee notes with appreciation the action plan for businesses and human rights but is concerned about the lack of legal accountability for business enterprises that have violated children's rights. Recalling its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, the Committee recommends that the State party:
- (a) Establish a clear regulatory framework for business enterprises and their subsidiaries operating in or managed from the State party's territory to identify, prevent, mitigate and account for activities that negatively affect human rights or endanger children's rights, including risks posed by fossil fuel production;
 - (b) Establish monitoring mechanisms for the investigation and redress of violations by the business sector of children's rights, with a view to improving accountability and transparency;
 - (c) Require companies to undertake assessments of, and consultations on, and fully disclose the environmental, health-related and other child rights impacts of their business activities, and to submit their plans to address such impacts.

B. General principles (arts. 2–3, 6 and 12)

Non-discrimination

16. The Committee welcomes ... the inquiry on the Discrimination Act (2008), but is deeply concerned about:
- (a) The absence of data on discrimination against children disaggregated by age, as age is included among the grounds for discrimination prohibited under the Act;
 - (b) Persistent discrimination, including through expressions of racism, racist attacks and bullying, against children in disadvantaged situations;
 - (c) Regional disparities, including in access to quality health-care services, social services and education, and in relation to the justice system.
17. The Committee urges the State party:
- (a) To collect data on discrimination against children disaggregated by age, including for the purpose of identifying and analysing discrimination on the basis of age as provided for under the Act;
 - (b) To implement targeted policies and programmes to combat racist and xenophobic activities among children, and to eliminate discrimination against children in disadvantaged situations, including ... Sami children....

Education, leisure and cultural activities (arts. 28–31)

Education, including vocational training and guidance

37. While noting the principle of inclusive education promoted by the State party, the Committee remains concerned about disparities in access to quality education and about discrimination, harassment and bullying in schools.
38. The Committee recommends that the State party: ... (e) Ensure the availability of quality multilingual and intercultural education for ... Sami children, including through appropriate materials, multilingual teachers and educational tools....

11. Pluricultural State of Bolivia, CRC/C/BOL/CO/5-6, 6 March 2023

General measures of implementation (arts. 4, 42 and 44 (6))

Legislation

7. While welcoming the fact that the Convention has the status of supreme law in the State party and is part of domestic law and also welcoming the adoption of the Children and Adolescents Code, the Committee recommends that the State party:
... (b) Undertake measures to align any Indigenous customary laws that are not in line with the Convention....

Data collection

11. While noting improvements in the compilation of statistical information concerning children, including in the Child and Adolescent Information System, the Committee is concerned by the slow pace of implementation of Ministerial Decision No. 071/2016 of 3 May 2016, the limited information currently available and the lack of a coordinated and integrated system of statistics on children with comprehensive and disaggregated data, indicators and information about the situation of children. The Committee recalls its previous recommendation and recommends that the State party: ...
 - (b) Ensure the collection of data disaggregated by ... Indigenous descent, rural and urban context ... and geographical location for all areas of the Convention;
 - (c) Ensure the collection and analysis of data on discrimination against children, the mental health of children, younger children, Indigenous children, children in alternative care, child poverty, children in the justice system, children whose nationality is unknown, violence against children, child labour, trafficking in and sexual exploitation and abuse of children....

General principles (arts. 2–3, 6 and 12)

Non-discrimination

15. Noting the implementation of the differentiated approach to the comprehensive protection of Indigenous original campesino children and adolescents in the Plurinational State of Bolivia and the inclusion of the principle of non-discrimination against Indigenous children at the legislative and policy levels, and recalling target 10.3 of the Sustainable Development Goals, the Committee recommends that the State party:
 - (a) Ensure compliance with the right to non-discrimination and apply the regulations effectively so that all children have access to basic services without discrimination;
 - (b) Ensure the systemic investigation of cases of discrimination against children, including through specialized units or investigators, and further address discrimination cases among children;
 - (c) Develop policies and awareness-raising measures aimed at addressing the root causes of de facto discrimination against children, with a view to eliminating stereotyping of, and prejudice and discrimination against, for example, children belonging to minority groups, girls and Indigenous children.

Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

22. While taking note of Act No. 1443 of 4 July 2022 on the Protection of victims of Femicide, Infanticide and Sexual Violence against Children, the Summary

Criminal Procedure Act (No. 1173 of 3 May 2019) and the promulgation of the Children and Adolescents Code (Act No. 548 of 17 July 2014), the Committee remains seriously concerned by: ... (d) Cases of violence against children taking place in rural areas continuing to be handled in an unlawful manner by Indigenous and rural authorities to the detriment of the victim....

23. Challenges children face in reporting violence. Recalling its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence and target 16.2 of the Sustainable Development Goals, the Committee urges the State party: ... (d) To ensure that the Jurisdiction Demarcation Act (No. 073 of 16 December 2010) is observed and that conciliation is not used without taking into account the victim's situation....

Harmful practices

27. The Committee recommends that the State party: (a) Put in place measures to prevent marriages involving children, in particular in Indigenous and mining communities and in rural areas....

Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33) Health, mental health and health services

34. While noting the national universal health coverage model and increased levels of health expenditure, and taking note of the National Mental Health Plan (2017–2020), the Committee remains concerned by the high maternal and infant mortality rates, particularly in Indigenous communities, and, recalling its previous recommendations,¹⁰ recommends that the State party: ...
- (b) Establish effective measures to reduce the maternal mortality rate and ensure the provision of essential obstetric services to pregnant women, in particular Indigenous ... women...;
 - (c) Strengthen efforts to ensure timely access to quality health services to all children, including mental health services regardless of the age of the child, in particular to children in residential programmes, and provide data on results associated with improving mental health;
 - (d) Ensure that Indigenous children have access to high-quality health services that are culturally sensitive and in their language.

Adolescent health

35. While taking note of Act No. 1152 of 20 February 2019 on the universal and free unified health-care system to provide access to sexual and reproductive health care, noting the decrease in the number of teenage pregnancies up to 2020 and recalling its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence and its previous recommendations, the Committee remains concerned by the high number of adolescent pregnancies, in particular the increase since 2020, and the fact that girls are being forced to continue their pregnancies, and recommends that the State party:
- (a) Approve and promulgate a law on sexual and reproductive rights and renew the strategic plan for sexual and reproductive health to prevent early and unwanted pregnancies, and ensure access to health and reproductive rights, in particular for Indigenous children, children with disabilities and children living in rural areas....

Standard of living

38. The Committee welcomes the measures taken to reduce extreme poverty and combat child poverty. However, the Committee remains concerned by: (a) sanitation; (b) The decrease in the number of people with access to drinking water and The impact of the political and social crisis the country has been facing since the last quarter of 2019, the economic recession and the impact of the coronavirus disease (COVID-19) pandemic, all of which threaten to affect the progress achieved in recent years.
39. Recalling target 1.2 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Prioritize the provision of adequate, properly treated and safe drinking water, and improve sanitation services in isolated rural communities;
 - (b) Further strengthen policies to ensure that all children have an adequate standard of living, including by increasing social benefits for low-income families with children, simplifying application procedures for financial support, strengthening the system of family benefits across all departments of the State party, developing measures to prevent homelessness and increasing budget allocations for the benefits system; ...
 - (d) Ensure a comprehensive and development-oriented approach to child poverty, with a particular focus on children from disadvantaged families, including Indigenous children...;
 - (e) Assess the impact of measures to combat poverty, including any negative effects on the enjoyment of other rights, with a view to ensuring that such measures are comprehensive and follow a child rights-based approach.

Education, aims of education and human rights education

40. While welcoming the provisions in the Constitution and Act No. 070 of 20 December 2010 that ensure the provision of free education at all levels up to higher education, the increased public spending on education and Ministerial Decision No. 001/2022, which facilitates access for migrant children to school throughout the year, the Committee recommends that the State party: ... (d) Provide high-quality training for teachers, with particular emphasis on Indigenous children, children with disabilities and children in rural areas....

Special protection measures (arts. 22, 30, 32–33, 35–36, 37 (b)-(d) and 38–40)

...

Indigenous children

43. While noting that Indigenous original campesino peoples exercise jurisdictional functions and uphold constitutional rights and guarantees of children, and recalling its previous recommendations,¹³ the Committee urges the State party:
- (a) To develop policies and measures to guarantee Indigenous children's access to land and clean water and to prevent discrimination against the Indigenous population;
 - (b) To take the necessary measures, including enacting legislative and financial procedures, to guarantee equal rights (including civil and political rights and the right to education and housing) of Indigenous peoples by ensuring their participation in the design and approval of public standards and policies affecting them;

- (c) To ensure that all Indigenous children are a priority group in public policies and programmes and have de facto access to health, education and social protection services, without discrimination and that the principle of interculturality is translated into practice in these areas.

Economic exploitation, including child labour

44. While welcoming Act No. 397 of 1 December 2018, pursuant to which it is no longer possible for exceptions to be made to the minimum working age established in the Children and Adolescents Code, and the increase of the minimum working age from 10 to 14 years, the Committee is concerned by the numerous reports of economic exploitation of children (according to a survey carried out in 2019 by the National Statistics Institute (INE), 83,000 children between 5 and 13 years old working, including in dangerous conditions, for more than 40 hours per week and during the night), in particular among Guarani children in the Chaco region, as well as in the informal economy and in rural regions, and recommends that the State party:
- (a) Put in place measures to eradicate the worst forms of child labour and to prevent children from becoming victims of debt bondage or forced labour, eliminate hazardous labour practices where child workers are exposed to environmental risk factors, promote safer alternatives and ensure monitoring of the children affected, and update the hazardous work list;
 - (b) Consider increasing the minimum age for admission to employment or work, taking into account children's views, and ensure that when children work, it does not interfere with their right to education and development;
 - (c) Expand the field and increase the frequency of inspections to cover remote locations, in particular where mining and chestnut and sugar cane harvesting takes place and where Indigenous communities live, end child labour for those under 14 and improve and regulate working conditions for older children....

Sale, trafficking and abduction

46. While taking note of the Comprehensive Act on Combating Human Trafficking and Smuggling (No. 263 of 31 July 2012) and the promulgation of acts, protocols and a plan on combating human trafficking and smuggling, the Committee remains concerned by the high and growing number of cases of trafficking of children, recalls its previous recommendations and recommends that the State party: ...
- (c) Put in place measures to protect children, in particular ... Indigenous children ... from being smuggled and trafficked;
 - (d) Strengthen further efforts to prevent and combat trafficking in children and expeditiously bring perpetrators of such trafficking to account.

12. New Zealand, CRC/C/NZL/CO/6, 28 February 2023

Allocation of resources

10. While noting with appreciation the prioritization of indicators aimed at measuring child well-being in the 2023 budget policy statement, the Committee recalls its general comment No. 19 (2016) and recommends that the State party: ... (c) Define budgetary lines for all children, with special attention given to those in disadvantaged or vulnerable situations who may require special measures, such as Maori and Pasifika children ... and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies.

General principles (arts. 2–3, 6 and 12)

Non-discrimination

15. The Committee is deeply concerned that discrimination persists against children in situations of vulnerability, including Maori and Pasifika children, children in out-of-family care and children with disabilities, noting especially their restricted ability to benefit from basic services, including education, health and protection, and to enjoy an adequate standard of living. It further notes with deep concern their exposure to higher risks of suicide and of experiencing sexual and domestic violence, school bullying, mental distress, homelessness and transient housing situations. The Committee further takes note of the information provided that the Bill of Rights Act 1990 and the Human Rights Act 1993 prohibit discrimination from the age of 16 only.
16. Taking note of target 10.3 of the Sustainable Development Goals, the Committee urges the State party to address the structural discrimination against children in situations of vulnerability by leveraging its mandate under the child and youth wellbeing strategy (2019) to prioritize action against racism and discrimination, including by collecting and analysing data on the disparities experienced by such children and developing a strategy to confront the barriers to and measure the progress achieved in respect of improving outcomes for them. It also recommends that the State party take measures to ensure that children (aged less than 16), who are excluded from the protection of the Bill of Rights Act 1990 and the Human Rights Act 1993, are not unjustly discriminated against on the basis of age.

Right to life, survival and development

18. Concerned that the suicide rates for Maori and Pasifika children and youth (aged 10–24) have remained consistently higher than other groups and that males are disproportionately affected, the Committee recommends that the State party:
(a) Integrate into its suicide prevention strategy (2019–2029) and the suicide prevention action plan (2019–2024) specific measures targeting Maori, Pasifika children and boys, and ensure that they consider interconnected root causes such as poverty, economic deprivation and inequality, homelessness, mental distress, bullying and discrimination, substance addiction, family violence and abuse, and intergenerational trauma....

Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

Violence against children, including sexual violence, abuse and neglect

23. The Committee welcomes the establishment in 2019 of the Independent Children's Monitor and its reporting function on government adherence to the national care standards that organizations having legal custody of children are required to meet; the creation in 2018 of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions; and the establishment in 2018 of the joint venture for family violence and sexual violence to foster government agency collaboration and innovation in addressing the issue, and the formalization of this arrangement in 2021 as the Te Puna Aonui Executive Board for the Elimination of Family Violence and Sexual Violence, noting its specific focus on children, Maori [and] Pasifika.... The Committee also welcomes the significant increase in financial and human resources dedicated to strengthening the response to child abuse, family violence and sexual violence, and for the care and protection and youth justice systems. However, the Committee remains seriously concerned about the persistent rates of abuse and neglect of, and violence

against, children, particularly domestic violence, noting the higher risk faced by Maori [and] Pasifika [children].... It is further concerned about the limited access to child-friendly reporting channels, physical and psychological rehabilitation and health services, including mental health services, that are available to children who have suffered violence, trauma or abuse.

24. In the light of its general comment No. 13 (2011) and target 16.2 of the Sustainable Development Goals, the Committee urges the State party: (a) To strengthen and centralize the collection and analysis of disaggregated data on children who are victims of all forms of violence, such as domestic violence, bullying and sexual exploitation and abuse, with a view to assessing the extent of the phenomenon and formulating and implementing, with the participation of children, a comprehensive strategy for preventing and combating all forms of violence against children, with special attention paid to the situation of Maori [and] Pasifika [children]....

Family environment and alternative care (arts. 5, 9–11, 18 (1)–(2), 2021, 25 and 27 (4))

Family environment

26. The Committee welcomes the State party's prioritized investment in managed withdrawal and post-treatment support for alcohol and drug-related problems, targeting districts with large Maori populations; the commitment to overhauling the welfare system; and the delivery of early support and intensive response services to children, their families and communities. It recommends that the State party establish a system to effectively monitor and evaluate the delivery of State-provided services and support for families, also assessing their cultural appropriateness.

Children deprived of a family environment

27. The Committee notes the efforts undertaken by the State party to improve the situation of children in alternative care, notably through the reform of the care, protection and youth justice systems and the establishment of the Oranga Tamariki in 2017, noting that the amendments to the Oranga Tamariki Act 1989 set out special measures for advancing the rights of Maori children in coordination with Maori child rights organizations. It remains seriously concerned, however, about:
- (a) The persistent overrepresentation of Maori children in State care, including among the high number of infants taken into State custody, and the incidents of harm disproportionately experienced by such children;
 - (b) Allegations that children in secure residential care facilities are often denied the opportunity to have their opinions heard in decisions about their placement, experience injuries from the use of restraints by staff, are subjected to bullying and unsanitary conditions and lack access to a fair and effective complaints procedure;
 - (c) The lack of data on the needs and experiences of children with disabilities in the care system.
28. Drawing the State party's attention to the Guidelines for the Alternative Care of Children, the Committee urges the State party:
- (a) To strongly invest in measures developed and implemented by Maori children and communities to prevent their placement in out-of-home care, limit removal, when it is deemed necessary, to the shortest time possible, provide them with adequate support while in alternative care, including access to mental health and therapeutic services, and facilitate reintegration into their families and communities;

- (b) To prevent and reduce the number of children removed from their family environment by providing appropriate assistance and support services to parents and caregivers in the performance of child-rearing responsibilities, including through education, counselling and community-based programmes for parents;
- (c) To harmonize, make transparent and publicize the criteria, based on the needs as well as the best interests of the child, for removing and placing children in alternative care, with a view to providing the highest level of protection;
- (d) To ensure that the need for the placement of each child in out-of-home care is always assessed by competent, multidisciplinary teams of professionals and is regularly reviewed, and that children and their families participate in decision-making in order to guarantee an individualized, culturally and community-sensitive approach;
- (e) To ensure adequate human, technical and financial resources and continuous capacity-building for those exercising responsibilities under the Oranga Tamariki legislation on upholding children's rights, in particular staff members and caregivers of State-run institutions, family homes and foster placements....

Basic health and welfare (arts. 6, 18 (3), 24, 26, 27 (1)–(3) and 33)

Health, including mental health, and health services

32. Recalling its general comment No. 15 (2013) and taking note of target 3.2 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Strengthen its response to reducing the prevalence of preventable and infectious diseases, including by prioritizing the delivery of immunization programmes, especially for Maori and Pasifika children and children living in poverty, and by monitoring the strict application of the healthy homes standards (2019) to improve the quality of rental properties;
 - (b) Strengthen the measures promoting, protecting and supporting breastfeeding, with a view to increasing the number of infants up to six months of age who are exclusively breastfed, in particular among Maori infants, including by publicizing breastfeeding guidelines, encouraging flexible working arrangements and raising awareness of the importance of breastfeeding among families and the general public;
 - (c) Ensure an informed focus on children in the work of the Mental Health and Wellbeing Commission, address inequalities of mental health outcomes for Maori, Pasifika and lesbian, gay, bisexual, transgender and intersex children, and prioritize children's access to affordable, quality, age-appropriate mental health and counselling services in a timely manner.

Adolescent health

33. Recalling its general comments No. 4 (2003) and No. 20 (2016) and taking note of targets 3.7 and 5.6 of the Sustainable Development Goals, the Committee recommends that the State party:
- (a) Promote healthy lifestyles for adolescents, including by monitoring the implementation of the healthy active learning initiative, strictly enforcing the amendments to the Smokefree Environments and Regulated Products Act 1990 and developing programmes of education and awareness-raising on the harmful effects of second-hand smoke;
 - (b) Address the still high rate of teenage pregnancy and the increasing rates of sexually transmitted diseases, including through ensuring:

- (i) The training of educators on the sexuality education guidelines (2015) to ensure their consistent and systematic implementation in schools across the country;
- (ii) That all girls and boys, prioritizing Maori adolescents, those who are out of school and those in rural areas, receive confidential and child-friendly sexual and reproductive health information and services, including access to contraceptives through the contraceptive access initiative;
- (iii) That awareness of responsible parenthood and sexual behaviour is raised and fostered, paying particular attention to boys.

Impact of climate change on the rights of the child

34. Taking note of target 13.5 of the Sustainable Development Goals, the Committee recalls its previous recommendations¹¹ and further recommends that the State party facilitate the access of children and young people, in particular Maori and Pasifika children and children living in low-income settings, to meaningful participation in climate change planning and decision-making, including on adaptation and mitigation work as required by the Climate Change Response (Zero Carbon) Amendment Act 2019, and in the work of the Climate Commission.

Standard of living

35. The Committee welcomes the wide-ranging measures introduced to reduce child poverty, including the Child Poverty Reduction Act 2018, the four well-being budgets since 2019, the families package (2018), and the child and youth well-being strategy (2019). The Committee is however seriously concerned that a significant proportion of children live in poverty and experience food insecurity and severe housing deprivation, including homelessness, insecurity of tenure and overcrowding, resulting in poor health and education outcomes and disproportionately affecting Maori and Pasifika children.
36. Taking note of the recommendations of the Special Rapporteur on the right to housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context arising from her mission to New Zealand in February 2020,¹² including the development of a human rights-based housing strategy, and recalling targets 1.1, 1.2 and 1.3 of the Sustainable Development Goals, the Committee urges the State party: ... (a) To ensure that measures taken to end child poverty are linked to expected time frames, are allocated adequate resources and are assessed, with a view to ensuring that such measures are impactful, comprehensive and comply with a child rights-based approach, specifically prioritizing groups disproportionately impacted by poverty, including Maori [and] Pasifika children...

Education, leisure and cultural activities (arts. 28–31)

Education, including early childhood education and care

37. The Committee welcomes the State party's consultative efforts with children in its reform of the education system, including in processes to adopt the Education and Training Act 2020, noting its obligation on the Government to actively promote and protect the rights of Maori children and guarantee children with disabilities the same rights to education at State schools on an equal basis. Taking note of targets 4.1, 4.2 and 4.a of the Sustainable Development Goals and recalling the recent recommendations of the Committee on Economic, Social and Cultural Rights, the Committee recommends that the State party:

- (a) Strengthen children's ability to have meaningful input into decisions that affect them at school, including in the planned update of the curriculum, by implementing the requirements under the Education and Training Act 2020 on consultation with children and student representation in governance structures, and in establishing accessible, independent dispute resolution mechanisms; ...
- (c) Address the racism, discrimination, stigma and bias experienced by Maori and Pasifika children in school, including by strengthening efforts to promote and foster the Maori language, cultural identity and history in education....

Special protection measures (arts. 22, 30, 32–33, 35–36, 37 (b)–(d) and 38–40)

Children belonging to minority or indigenous groups

39. The Committee notes with appreciation the progress made in establishing measures for the full enjoyment by Maori and Pasifika children of their rights, also demonstrated through the increased funding allocated through the well-being budget, particularly to health and social services. It is deeply concerned, however, about the inequitable survival and development outcomes for Maori children, including the disproportionate mortality rate for Maori infants and the suicide rate of Maori youth, the overrepresentation of Maori children who are victims of homicide, family violence, child abuse and neglect, and the number of Maori children in State care and in conflict with the criminal justice system.
40. The Committee recalls its general comment No. 11 (2009) and urges the State party:
- (a) To systematically assess the impact of policies, legislation and government services in addressing the root causes of the vulnerability experienced by Maori children and their families, including the higher likelihood of living in deprivation and poverty;
 - (b) In line with the recent legislative developments, to strengthen the duties of schools and child protection and youth justice sector decision makers to recognize and uphold the right to identity of Maori children, systematically ensure that the voices of Maori children are heard and that their views are considered in decisions that affect them and strengthen support for organizations promoting and protecting their rights and those of their families;
 - (c) To finalize the national action plan against racism and the action plan on the United Nations Declaration on the Rights of Indigenous Peoples and include Maori children in their development.

Administration of child justice

42. The Committee remains seriously concerned that:
- (a) The minimum age of criminal responsibility is below international standards and is offence-based rather than child-centred;
 - (b) The goal of separating children from adults in all places of detention is still not reached and that children aged 14 to 17 can be remanded in police custody after their first court appearance in the youth justice system for an indeterminate duration pending transfer to another facility;
 - (c) Although legislative changes have extended the youth justice system to most 17-year-olds, offenders charged with certain serious offences are automatically transferred to the adult criminal justice system, thereby depriving them of the special protections for children;

- (d) Maori children remain disproportionately represented in the youth justice system and are overrepresented among young people who die by suicide in closed institutions.
43. Recalling its general comment No. 24 (2019), the Committee urges the State party to bring its child justice system fully into line with the Convention and:
- (a) To raise the minimum age of criminal responsibility to 14 years for all children, regardless of the offence;
 - (b) To repeal the practice of remanding children into police custody and reduce the proportion of children in secure youth justice residences who are on remand, including by investing in the development of community-based residences and strengthening the availability and use of non-custodial measures;
 - (c) For the few situations where deprivation of liberty is used as a measure of last resort, to continue to strive for full compliance with the international requirement to detain children separately from adults and ensure that detention conditions are compliant with international standards, including with regard to access to education and health services, and, for pretrial detention, that detention is reviewed on a regular basis with a view to its withdrawal;
 - (d) To end the automatic transfer of 17-year-olds who are accused of serious offences to be tried by the adult courts and ensure that they are dealt with in the youth justice system;
 - (e) To develop an effective action plan aimed at eliminating the disparity in the rates of sentencing, incarceration and survival in detention of Maori children by addressing the connections between offending and neuro-disability, alienation from whanau (family), school and community, substance abuse, family violence, removal into State care and intergenerational issues.

B. GENERAL COMMENTS

1. General comment No. 26 on children's rights and the environment with a special focus on climate change, CRC/C/GC/26, 22 August 2023

14. ... The impact of environmental harm has a discriminatory effect on certain groups of children, especially Indigenous children....
49. ... Particular attention should be paid to preserving the traditional land of Indigenous children and protecting the quality of the natural environment for the enjoyment of their rights, including their right to an adequate standard of living. ...
58. Indigenous children are disproportionately affected by biodiversity loss, pollution and climate change. States should closely consider the impact of environmental harm, such as deforestation, on traditional land and culture and the quality of the natural environment, while ensuring the rights to life, survival and development of Indigenous children. States must undertake measures to meaningfully engage with Indigenous children and their families in responding to environmental harm, including harm caused by climate change, taking due account of and integrating concepts from Indigenous cultures and traditional knowledge in mitigation and adaptation measures. While children in Indigenous communities face unique risks, they can also act as educators and advocates in applying traditional knowledge to reduce the impact of local hazards and strengthen resilience, if this knowledge is passed on and supported. Comparable measures should be taken regarding the rights of children belonging to non-Indigenous minority groups whose rights, way of life and cultural identity are intimately related to nature.

C. VIEWS ADOPTED UNDER OP²⁵

I. M. E. V., S. E. V. and B. I. V. v. Finland, CRC/C/97/D/172/2022, 7 Oct. 2024

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure

| | |
|---|---|
| <i>Communication submitted by:</i> | M. E. V., S. E. V. and B. I. V. (represented by Martin Scheinin) |
| <i>Alleged victims:</i> | The Authors |
| <i>State party:</i> | Finland |
| <i>Date of communication:</i> | 12 January 2022 |
| <i>Date of Views:</i> | 13 September 2024 |
| <i>Subject matter:</i> | Granting of a mineral exploration permit on Sámi people's traditional territory without impact assessment nor free, prior and informed consent. |
| <i>Procedural issues:</i> | Victim status; failure to exhaust domestic remedies; substantiation of claims; fourth instance. |
| <i>Substantive issues:</i> | No discrimination; right to identity; right to health; right to a standard of living adequate; right to culture. |
| <i>Articles of the Convention:</i> | 2.1, 8, 24, 27 and 30. |
| <i>Articles of the Optional Protocol:</i> | 7 (e) and (f) |

1.1 The authors of the communication, dated 12 January 2022, are M. E. V. (born on 3 March 2005), S. E. V. (born on 3 January 2007) and B. I. V. (born on 19 November 2008). They are three sisters belonging to the Sámi People and specifically members of the KovaLabba Siida, a community of reindeer herders. The authors submit that their rights under articles 8, 27 and 30 of the Convention, all interpreted in the light of article 24 and all read alone and in conjunction with article 2.1, have been violated by the State party in permitting a mineral exploration project on their traditional territory without proper impact assessment and without obtaining the free, prior and informed consent of their community. The authors requested the adoption of interim measures to halt the exploration works. The Optional Protocol entered into force for the State party in November 2015. The authors are represented by counsel.

...

Factual background

2.1 The authors are three sisters aged 13, 15 and 16 at the time of submission, members of a multigenerational Sámi reindeer herding family from the Kova-Labba Siida, which is one of the three traditional reindeer herding villages part of the Käsivarsi Reindeer Herders' Cooperative. The Kova-Labba Siida represents the Sámi reindeer herding culture in Finland, based on semi-nomadic herding of relatively small herds by small kin or village-based ("siida" in Sámi language) groups of herders, living there since time immemorial.

2.2 The authors submit that the Sámi way of life is being challenged by outside threats to their culture, such as mining, tourism, wind farms and the rapidly changing environment. In particular, their family have been forced to start providing additional food to the reindeer as the winters have varied during the authors' lifetime, while additional feeding with methods more similar to cattle breeding does not belong to traditional Sámi reindeer herding. The authors are nevertheless determined

²⁵ See also Rules of Procedure in the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, CRC/C/62/3/Rev.1, 13 October 2021, https://tbinternet.onchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2F62%2F62%2F3%2FRev.1&Lang=en.

to learn the traditions of Sámi reindeer herding, which is a cornerstone of Sámi culture and way of life. Reindeer herding has been the culture, livelihood, heart and soul of their family for centuries. As such, they participate during weekends and school holidays in reindeer herding. During the summer, they participate in the earmarking of reindeer calves; their father has taught them in their early age how to cut their own individual earmark and each has her own registered reindeer earmark based on the earmarks used in the family for centuries. The authors are also actively teaching and involving their younger brothers to the Sámi way of life and reindeer herding.

- 2.3 The authors have also learned since early age, from elder family members, the traditional Sámi way of singing (luohti yoik), used by women in the fells during their reindeer watch, to scare away predators. In addition, as girl children, they bear a special responsibility in accordance with Sámi traditions for the production of traditional Sámi handicrafts (duodji). Since early age, the authors have been taught by elder female family members and now create themselves everything, from traditional reindeer fur boots (nuvttohat) to traditional outfit worn in ceremonial contexts (gákti). As reindeer provides a range of materials for traditional handicrafts, including fur, skin, veins and bones, if traditional reindeer herding is lost, the Sámi culture will suffer as well. In the same way, their mother tongue, Northern Sámi, is a language deeply rooted in nature: the whole vocabulary used in reindeer herding is in Northern Sámi, so children do not learn the special vocabulary of the language otherwise than by being part of the reindeer herding community. There is no future for their mother tongue if there is no place for traditional reindeer herding because of activities negatively affecting their ancestral territories.
- 2.4 On 28 March 2014, the Geological Survey of Finland (an agency under the Ministry of Economic Affairs and Employment), applied for the mineral exploration permit called "Lätäs 1", requesting permission for the exploration works of gold, copper and iron entailing the drilling of 100 to 300 metres deep holes into the bedrock in about 20 different locations within an area of 390 hectares in the authors' traditional reindeer herding territory.
- 2.5 As the Mining Act 5 requires the State party to identify impacts of mining or exploratory activities on the right of the Sámi to maintain their culture, the Safety and Chemicals Agency (the State party's mining authority) sought written comments in October and November 2014 from the Sámi Parliament and the Käsivarsi Reindeer Herders' Cooperative and invited them to participate in meetings on 17 May 2015 and 17 May 2016. The Kova-Labba Siida was not specifically invited to provide comments or to participate in the meetings.
- 2.6 The Käsivarsi Reindeer Herders' Cooperative, acting on behalf of its members including the authors-, opposed the approval of the permit due to the harm that the mineral exploration works would cause to them and due to the lack of effort from the State party to obtain their free, prior and informed consent. The Sámi Parliament stated in three occasions⁶ that, given the lack of an impact assessment of the consequences for Sámi reindeer herding, the basic preconditions for a free, prior and informed consent did not exist. Indeed, only once the assessment has been completed shall the State party's mining authority request the opinion of the Sámi Parliament.
- 2.7 On 7 July 2016, the Safety and Chemicals Agency granted the permit to Geological Survey Finland, renewable for up to 15 years, finding that the application met the requirements of the Mining Act.

- 2.8 The exploration area is planned to be located in the heart of the authors' winter herding lands and to happen every year in winter, while, according to the authors, it is the worst possible period of time as regards traditional reindeer herding. Indeed, the winter months are the most critical ones for the survival of the reindeer that have to dig through the thick snow in order to reach ground lichen or, where pristine forests can be found, feed on the lichen that grows on the branches of old trees. According to the authors, winter and spring-winter are therefore challenging seasons for reindeer and reindeer herding because the snow cover is at its thickest; to get the reindeer to graze during winter is very sensitive work and the grazing can be easily disturbed⁸. Moreover, the project entails bringing into the pristine nature one-ton drilling machines and five-ton support vehicles that would provide a water source for the drilling. The authors note that the machines, the workers and the tracks left in the snow would cause great harm to the reindeer and their Sámi herders: the herds may follow such tracks or be dispersed by the sight and noises, and the exploration project would therefore make Sámi reindeer herding unsustainable due to a collapse of the system. As explained by the chairperson of the Käsivarsi Reindeer Herders' Cooperative, "Reindeer follow tracks in the snow and all unknown tracks cause trouble to traditional reindeer herding [...] reindeer [could end in] areas that do not contain favorable conditions for digging and finding food [...] reindeer start losing weight [...] losing important male reindeer (bull) lead to lesser calves, losing female, mother reindeer (cow) lead to losing calves and the effects last for years [...] These kinds of threats and fears, that we have to fight for our culture's survival the whole time and despite fighting there is no certainty of our future, they affect negatively our youngsters believe in their future in reindeer herding".
- 2.9 According to the authors, the Safety and Chemicals Agency granted the permit to Geological Survey Finland without proper impact assessment and without proper involvement of their reindeer herding community. At no stage was there even a proper assessment made of the adverse impact upon reindeer herding in the area affected by the exploration works. According to the authors, the obligations arising from the Mining Act on the impact assessment must be interpreted in light of international standards on Indigenous rights. Furthermore, while the performance of an assessment requires an understanding of the Sámi culture, neither the Safety and Chemicals Agency nor Geological Survey of Finland are familiar with the Sámi culture, ending in regulations in the exploration permit intended to decrease damage to reindeer herding impossible to enforce, as "the permit holder shall see to it that the momentarily visible tracks created by snowmobiles or tracked vehicles will not increase the unmanaged moving of reindeer from one area to another". According to the authors, the impact assessment was substituted by a pro forma consultation that did not entail a good faith effort to obtain their free, prior and informed consent. On the absence of effective participation of the Sámi, considering that it is based on an independent impact assessment that they could efficiently be consulted, the procedure applied before issuing the permit did not meet the standards of free, prior and informed consent. Moreover, representatives from the Kova-Labba Siida were not invited to the negotiation meeting (two representatives from the cooperative were heard but they are not members of the village that herds reindeer in the exploration area).
- 2.10 Therefore, on 8 August 2016, the chairperson of the Käsivarsi Reindeer Herders' Cooperative (on behalf of all members of the cooperative, including the authors), appealed against the decision of 7 July 2016 to the Administrative Court of Northern Finland, together with the Sámi Parliament and the Lapland Branch of the Finnish

Association for Nature Conservation.

- 2.11 On 19 December 2018, the Administrative Court of Northern Finland dismissed the appeal and upheld the exploration permit, pointing to the involvement of the Sámi Parliament and the Käsivarsi Reindeer Herders' Cooperative in the permit procedure.
- 2.12 On 18 January 2019, the Käsivarsi Reindeer Herders' Cooperative (on behalf of all members of the cooperative, including the authors), the Sámi Parliament and the Lapland Branch of the Finnish Association for Nature Conservation, filed a request for leave of appeal and an appeal before the Supreme Administrative Court.
- 2.13 On 21 June 2021, the Supreme Administrative Court rejected the appeal, considering that: i) consulting the Sámi was sufficient for purposes of the Mining Act; ii) the regulations imposed in the exploration permit intended to decrease possible damage to reindeer herding (works outside of the calving season, limited in time important for reindeer husbandry, and only when the location of possible reindeer has been cleared in advance), were sufficient; and that iii) the surface area of the exploration works was relatively small-scale. But the Court compared the exploration area not against the size of the Kova-Labba Siida, the community directly affected [we do not have the extension of the specific siida], but against the size of the three communities composing the Käsivarsi Reindeer Herders' Cooperative.
- 2.14 According to the authors, the exploration works would cause unpredictable adverse consequences for the continuity of their culture, limiting their ability to benefit from the transmission, from older generations, of Sámi culture and associated work and livelihood. As the continuance of the Sámi children culture and way of life is strongly dependent on traditional reindeer herding, if traditional reindeer herding is lost due to additional threats on it -allowed by the State party as mineral exploration works which are further aggravating the situation and destroying the sustainability of reindeer herding-, their identity, standard of living adequate, language, and more broadly their culture, will suffer and be lost as all those elements are grounded in living with reindeer.
- 2.15 The authors submit that, even though other members from their siida have submitted a communication to the Committee on Economic, Social and Cultural Rights that addresses the same mineral exploration project, they decided to submit their own communication to the Committee on the Rights of the Child in order to address their individual circumstances as female Indigenous children beneficiaries of the unhindered intergenerational transmission of the Sámi culture and way of life. The authors emphasise that the right of an Indigenous child to the transmission, from generation to generation, of an Indigenous identity, way of life and traditional economic activity, constitutes a core dimension of the rights of Indigenous children. Therefore, according to the authors, the communication before the Committee on Economic, Social and Cultural Rights relates not only to different victims but also to a different set of human rights violations.
- 2.16 The authors further submit that all domestic remedies have been exhausted as, in their opposition to the granting of the exploration permit and subsequent appeals before domestic courts, they explicitly invoked the same substantive rights that are invoked in the communication: their rights to take part in the cultural life of their community, to property, not to be discriminated against, to work or livelihood of their choice, and more generally their right to provide their free, prior and informed consent to activities harmful for the continuity of their culture. The authors also submit that their actions before the Supreme Administrative Court also included

testimonies on the threats to reindeer herding that affect the youth's perception of their possibilities to continue in reindeer herding, as well as on the significant importance that reindeer herding has on how traditional knowledge is maintained and protected for future generations.

The complaint

- 3.1 The authors claim that the mineral exploration works would violate their right to enjoy their own culture in community with other Sámi (article 30), their right to identity as Sámi (article 8), their right to an adequate standard of living based on reindeer herding (article 27), all interpreted in the light of article 24 (health) and all read alone and in conjunction with article 2.1 (non-discrimination).
- 3.2 In particular, the authors submit that the granting of the permit despite their consistent opposition and in the absence of impact assessment, infringes their right to preserve their identity (article 8 of the Convention) as Sámi because, where the preconditions of continued membership and participation in the way of life of a Sámi reindeer-herding community become unsustainable due to external interferences in the Sámi use of their lands and resources, the Indigenous identity is denied.
- 3.3 On the violation of article 27 of the Convention, the authors submit that the granting of the permit despite their consistent opposition and in the absence of impact assessment may deprive them of a standard of living based on reindeer herding.
- 3.4 The authors further submit that, in a situation where the sustainability and transmission to new generations of Sámi reindeer herding culture is already under threat (the violation needing to be assessed in the context of cumulative effects of earlier interventions in their territory and now aggravated by ongoing climate change), any new intervention allowed by the State party also amounts to a violation of their right, as Indigenous children, individually and in community with each other and other Sámi, not be denied the right to enjoy their own culture, as protected by article 30 of the Convention, specifically if undertaken without their free, prior and informed consent.
- 3.5 The authors further submit that all above-mentioned provisions should be interpreted in the light of article 24 of the Convention, mentioning in particular General Comment No. 15, paragraphs 2, 5, 7 and 50.
- 3.6 The authors finally submit that all above-mentioned provisions should be read alone and in conjunction with article 2.1 of the Convention. On their right not to be discriminated against, the authors submit that their status as children members of the Sámi People, together with the persistent denial of their right to their traditional lands, makes them subject to substantial, indirect and systematic discrimination in respect of the unilateral power of the State party to conduct (Geological Survey Agency), authorize (Safety and Chemicals Agency) and uphold (the Courts) mineral exploration works in their traditional territory without the free, prior and informed consent of their community. In addition, according to the authors, the discriminatory nature of the Mining Act is demonstrated through the fact that, as the State has declared itself as the owner of Sámi lands, it will receive annual compensation from its own agency -Geological Survey Agency- while, in contrast, the Sámi (who are not recognized as owners of their traditional lands) will receive no compensation for the adverse impact upon their lands. Clarifying that this does not imply that they would accept monetary compensation as an adequate remedy, the authors claim that no other landowner than the Sámi is in the same situation that even their right to compensation is denied.

...

Issues and proceedings before the Committee

Considerations of admissibility

...

8.3 The Committee takes note of the State party's argument that the communication should be declared inadmissible due to its *actio popularis* and premature nature, as the authors have not yet been personally affected by the exploration permit (*supra* para. 4.3). The Committee notes, however, that the authors are alleging violations of their own rights under the Convention, which occurred already with the granting and upholding of the permit, without the Sámi free, prior and informed consent. The Committee considers that if the granting of the permit on the authors' traditional territory occurred without seeking the free, prior and informed consent of their community, this fact may represent in itself, irrespective of future developments, a breach to the authors' rights under the Convention. Taking all the above-mentioned factors into account, the Committee concludes that the authors have victim status under article 5 (1) of the Optional Protocol.

...

Considerations of merits

9.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 10.1 of the Optional Protocol.

9.2 The Committee takes note of the authors' general claim that, in the current circumstances created by climate change and other outside threats to the sustainability and transmission of Sámi reindeer herding culture, the mineral exploration project granted by the State party for the exploration of Copper, Iron and Gold on their traditional territory during the critical time of the winter months in scarce winter herding pastures, without impact assessment and without obtaining the free, prior and informed consent of their community, violates their fundamental rights as child members of the Sámi People under the Convention. In particular, the Committee takes note of the authors' claim that the project would cause irreparable damage to their reindeer herding community by disrupting the whole annual cycle, making Sámi reindeer herding unsustainable and therefore damaging the core dimension of their rights as indigenous children to be active and willing recipients of an unhindered transmission of: i) the Sámi way of life (continuity of their cultural heritage – article 30), ii) the Sámi identity (article 8), and iii) the Sámi traditional economic sustainability based on reindeer herding (livelihood and adequate standard of living – article 27). The Committee takes note of the authors' argument that all those elements (culture, language, identity and livelihood) are strongly dependent on traditional reindeer herding and that reindeer herding has significant importance on how traditional knowledge is maintained and protected for future generations. The Committee takes note of the authors' claim on the intergenerational nature of Indigenous Peoples' right to transmit their culture to new generations, and that a chain of cultural transmission is interfered with much earlier than an indigenous culture is destroyed.

9.3 The Committee also takes note of the State party's argument that, while recognizing that traditional Sámi livelihoods, including reindeer herding, constitute the foundation of Sámi cultural life and language -so it is for the State party of paramount importance to transfer traditional reindeer herding to the next generations-

transferring Sámi culture to Sámi children is becoming increasingly difficult because even 70 per cent of all Sámi children live outside the Sámi Homeland. The Committee also takes note of the State party's claim that the exploration works would be relatively small-scale and temporary, not causing far reaching effects that would cause reindeer husbandry to collapse.

- 9.4 The Committee takes note of the authors' claim that their rights have been violated because the international standard of free, prior and informed consent was not complied with when the Safety and Chemicals Agency granted the exploration permit within their traditional territory and when the Supreme Administrative Court upheld that permit. Pursuant to the Mining Act, the permit holder must only adjust its operations in order to avoid essential harm to reindeer herding, and they were merely given an opportunity to be heard during consultation events.
- 9.5 The Committee takes note of the State party's claim that there is no breach of the Convention because it complied with the Mining Act: the authors were consulted before the granting of the permit, an extensive hearing process has been conducted where a mutual agreement was reached to prevent the dispersal of the reindeer, and the exploration permit decision set several conditions to reduce the harm caused by mineral exploration to reindeer herding (supra para. 6.3).

Parties' claims on discrimination

- 9.6 The Committee also takes note of the authors' claim that they suffer discrimination by not being recognized as owners of their traditional lands and by not being treated differently from the non-Sámi population, the State party ignoring the particularities of the Sámi cultural identity, traditional livelihoods and dependence on reindeer herding for survival. The Committee also takes note of the State party's claim that the legislation is not discriminatory as it applies to both Sámi and Finnish landowners, and that determining the owner of the lands is ultimately a private law issue.
- 9.7 The Committee observes that, due to the specificities of the communication, the authors' claims are interrelated, the granting of the mineral exploration permit in their traditional lands allegedly without effective participation, having had allegedly multiple consequences on the enjoyment of their rights.
- 9.8 The Committee observes that both parties agree on the facts that: i) the three authors, from a traditional semi-nomadic herding community, are trying to learn traditional Sámi reindeer herding from their ancestors and determined to continue the Sámi way of life they are grown into despite outside threats to their culture; ii) that Sámi reindeer herding is a cornerstone of Sámi culture and way of life; and that iii) the authors' culture, identity, livelihood and mother tongue (Northern Sámi), are strongly dependent on traditional reindeer herding.
- 9.9 The Committee further observes that it has not been contested by the State party that the winter months are the most critical ones for the survival of the reindeer and therefore for traditional Sámi reindeer herding; and that the authors and their siida are permanently fighting for their culture's survival.
- 9.10 The Committee observes that the element in dispute between the parties is linked to the effects of mineral exploration on reindeer herding, in particular, on whether the drilling of 100 to 300 metres deep holes into the bedrock in about 20 different locations within an area of 390 hectares in the heart of the authors' traditional

reindeer herding territory, would cause temporary or, on the contrary, long-lasting effects on their distinct culture. According to the authors, the effects of the works, disrupting the herding in the critical time of the winter months in the scarce winter herding pastures, would imply long-lasting effects on the composition of the herd limiting their ability to benefit from the transmission of Sámi culture and associated work and livelihood. On the contrary, according to the State party, the works would be momentary and relatively small-scale.

9.11 The Committee acknowledges the State party's assertions: i) that the right of Indigenous Peoples to self-determination served as a model for the Constitution of Finland; ii) of the importance to increase the current obligation under its legislation to negotiate, to get closer to the international standard of free, prior and informed consent; iii) that the case law on article 27 of the ICCPR, read in light of the right of Indigenous Peoples to self-determination, must be taken into account in applying article 30 of the Convention.

9.12 The Committee concurs with the State party that human rights treaties are living instruments. The Committee will therefore read the Convention in the light of the evolutionary interpretation of Indigenous Peoples' rights, in particular, the United Nations Declaration on the Rights of Indigenous Peoples, as an authoritative framework for interpreting State party obligations under the Convention concerning Indigenous peoples' rights, keeping also in mind that "Indigenous children are also impacted by the challenges facing their families and communities".

9.13 The Committee notes that, according to the Human Rights Committee's jurisprudence on article 27 of the ICCPR,

"in the case of Indigenous Peoples, the enjoyment of culture may relate to a way of life that is closely associated with their traditional lands, territories and resources, and that the protection of this right 'is directed towards ensuring the survival and continued development of [...] cultural identity'. Therefore, Indigenous Peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life. [...] the Committee on the Elimination of Racial Discrimination has stated, citing regional jurisprudence, that the close ties of Indigenous Peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival; their relations to the land are a material and spiritual element that they must fully enjoy to preserve their cultural legacy and transmit it to future generations and are, therefore, a prerequisite to prevent their extinction as a people. [...] ownership of and control over ancestral territories are essential to Indigenous Peoples' survival as peoples, with the preservation of their distinct culture; indeed, any denial of the exercise of their territorial rights is detrimental to values that are very representative for members of Indigenous Peoples who are at risk of losing their cultural identity and the heritage to be passed on to future generations". Therefore, "it is of vital importance that measures that compromise Indigenous Peoples' culturally significant territories are taken after a process of effective participation and with the free, prior and informed consent of the community concerned, so as not to endanger the very survival of the community and its members".

- 9.14 The Committee also recalls that the integrity and durability of culture depend on having in times to come the conditions for the own ways of life, that cultural rights have an intergenerational aspect which is fundamental to the cultural identity, survival, and viability of Indigenous Peoples, that article 8 of the United Nations Declaration on the Rights of Indigenous Peoples recognizes their right not to be subjected to the destruction of their culture; that, in its General Recommendation No. 23 (1997), the CERD has called on the States parties to recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation; that it stated, in its own General Comment No. 11 (2009) on Indigenous children and their rights under the Convention, the close linkage between article 30 of the Convention and article 27 of the ICCPR, and that Indigenous Peoples' right to exercise cultural rights "may be closely associated with the use of traditional territory and the use of its resources". In particular, in "the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture".
- 9.15 The Committee also recalls that language, which is the "principal mode of transmission of traditional knowledge", is "a foundational element of indigenous cultures and identity. Indigenous children learning and using their languages are key to preserving indigenous cultures, historical memory and worldview".
- 9.16 The Committee considers that it is precisely because the State party is aware that transferring Sámi culture to Sámi children is "becoming increasingly difficult", that it must be particularly cautious when regulating activities that may endanger the continuity of their culture.
- 9.17 In the light of the above, the Committee considers that article 30 of the Convention enshrines the right of Indigenous children to enjoy their traditional territories and that any decision affecting them should be taken with their effective participation.
- 9.18 The Committee observes that, in the State party, the procedure for an exploration permit application began with a public announcement of the application on the bulletin board of the municipality, and by notifying the legally recognized landowners. The Committee further observes that, under the Mining Act, the State party is required to identify impacts of exploratory activities on the right of the Sámi to maintain their culture, but that, according to the Supreme Administrative Court, the Mining Act does not provide "further stipulations for the practical execution of the [...] assessment [...] in each individual case". In the present case, comments were invited from the Käsivarsi Reindeer Herding Cooperative and, following the public announcement and the procedure for obtaining comments, a negotiation meeting was arranged to support the permit consideration. The Committee also takes note that, for the Supreme Administrative Court, it was sufficient that the permit holder sought to minimize the disruptions caused to Sámi reindeer herding and sought to notify the Cooperative of exploration activities and their scheduling.
- 9.19 The Committee recalls that article 32.2 of the United Nations Declaration on the Rights of the Indigenous Peoples provides that the 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.

- 9.20 The Committee considers that it is incumbent upon States parties to prove that they organized and operated consultations in good faith and with a view to reaching consensus. In particular, an adequate and effective process of free, prior and informed consent whenever Indigenous Peoples' rights may be affected by projects carried out in their traditional territories, must not only imply the sharing of information and the reception of comments by the community affected, but an interactive and continuous dialogue, since the earlier stage and through culturally appropriate procedures, with a genuine and sincere ambition to reach consensus and not starting with predefined ideas according to which the project must necessarily be carried out.
- 9.21 The Committee also considers that impact assessments should be part of the consultation process with Indigenous peoples. Environmental and social impact studies, conducted by independent and technically competent entities, should be part of this consultation process, and it is based on these studies that consultations must be held from the early stages and before the design of the project.
- 9.22 The Committee recalls that, under article 12 of the Convention, it is the obligation of the States parties to provide children with the opportunity to be heard in any judicial and administrative proceedings affecting them. In application of this article to Indigenous children, State parties must play an important role in promoting Indigenous children' consultation on all matters affecting them, including issues concerning their traditional territories and environment. The Committee moreover considers that Indigenous children must be particularly at the heart of the processes, from their consideration in impact assessments to their effective participation in processes of consultations aimed at obtaining their free, prior and informed consent.
- 9.23 In light of the above, the Committee considers that the State party has not demonstrated how the process of granting the permit under the Mining Act correctly took into account the standards established in international human rights law for the participation of Indigenous Peoples, including Indigenous children, in the decision to grant the exploration permit on the authors' traditional lands used for reindeer herding, which affected their culture, identity and standard of living, in violation of articles 8, 27 and 30 read in conjunction with article 12 of the Convention.
- 9.24 Finally, the Committee recalls that to ignore the right of Indigenous peoples to use and enjoy land rights and to refrain from taking appropriate measures to ensure respect in practice for their right to offer free, prior and informed consent whenever their rights may be affected by projects carried out in their traditional territories, constitutes a form of discrimination, as it results in nullifying or impairing the recognition, enjoyment or exercise by Indigenous peoples, on an equal footing, of their rights to their ancestral territories, natural resources and, as a result, their identity. The Committee moreover considers that the discrimination suffered by an Indigenous people also impacts their children, whose preservation of cultural identity is crucial as they represent the continuity of their distinct people.
- 9.25 The Committee therefore concludes that the information before it reveals that the granting of the exploration permits without having ensured the effective participation of the authors in a consultation process based on a prior impact assessment of the exploration works on the consequences for Sámi reindeer

herding, amounted to violations of the authors' rights under articles 8, 27 and 30, read in conjunction with article 2.1 of the Convention.

- 9.26 In light of all the above, the Committee, acting under article 10 (5) of the Optional Protocol, concludes that the granting of the permit violated the authors' rights under articles 8, 27 and 30 of the Convention, read alone and in conjunction with articles 2.1 and 12 of the Convention.
10. The State party should therefore provide the authors with effective reparation for the violations suffered, including by effectively revising the mineral exploration project, after a child rights-oriented impact assessment, as a first stage that would make it possible to carry out an adequate process of free, prior and informed consent of the authors' siida, in which the authors should effectively participate. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the State party is requested to pursue its efforts to amend its legislation to enshrine the international standard of free, prior and informed consent, specifically ensuring the participation of affected Indigenous children, and to include an environmental and social including children's rights oriented-impact assessment.

D. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN CHILD PROSTITUTION AND CHILD PORNOGRAPHY

1. Panama, CRC/C/OPSC/PAN/CO/1, 11 June 2024

IV. General measures of implementation

...

B. Comprehensive policy and strategy

11. The Committee is concerned about the lack of a holistic policy and strategy for the implementation of the State party's obligations under the Optional Protocol. This relates especially to inter-institutional coordination mechanisms, delays in procedures of investigation, prosecution and sentencing, the protection of victims and the allocation of institutional resources for the prosecution and punishment of these crimes. Moreover, the Committee is concerned that the provincial and local authorities do not have a clear role to play and do not receive State support for the implementation of the Optional Protocol.
12. The Committee recommends that the State party:
- (a) Develop a comprehensive policy and strategy aimed at addressing all issues covered under the Convention and include the issues under the Optional Protocols in its general action plan, with clear goals, timelines, sufficient resources and measurable outcomes to address the sale of children and the exploitation of children for prostitution and child sexual abuse material; ...
 - (c) Formulate comprehensive, integrated action plans that outline specific roles and responsibilities for the provincial, Indigenous and local authorities in the national plan of action;
 - (d) Develop regulations and guidelines to elaborate the responsibilities assigned to the provincial, Indigenous and local authorities, including through the new comprehensive child protection system, with regard to the implementation of the Optional Protocol, in particular concerning the reporting and referral of

cases and the reintegration of children who are victims of offences under the Optional Protocol...

Coordination and evaluation

13. The Committee notes the information provided by the State party on the National Commission for the Prevention of Sexual Exploitation Offences, the National Commission against Trafficking in Persons, the National Secretariat for Children, Adolescents and the Family and the National Intersectoral Committee for the Prevention of Violence against Children and Adolescents. However, it is concerned about the lack of effective coordination of these bodies with regard to the implementation of the Convention and the Optional Protocol. 14. The Committee recommends that the State party: ... (g) Include the provincial, Indigenous and local authorities in the dialogue and actions for the protection of children, among other things, to register, monitor and address complaints and engage local authorities in responding to the offences defined in the Optional Protocol, including support to children who are victims thereof.

Dissemination and awareness-raising

15. The Committee welcomes the national campaigns to raise awareness about sexual exploitation. However, it is concerned that similar campaigns on the sale of children and the exploitation of children for prostitution and child sexual abuse online are not being conducted. It is also concerned that information on the provisions of the Optional Protocol are not being disseminated to children.
16. The Committee recommends that the State party: ... (f) Implement targeted measures to adapt all recommendations to the specific needs and vulnerabilities of minority groups, such as Indigenous communities...

Prevention of the sale of children, child prostitution and child pornography ((art. 9 (1) and (2))

A. Measures adopted to prevent offences prohibited under the Optional Protocol

23. The Committee notes the initiatives taken by the State party to raise awareness about the offences under the Optional Protocol. However, the Committee is seriously concerned about the disproportionate number of vulnerable children facing prohibited offences under the Optional Protocol, especially Indigenous children...
24. The Committee urges the State party: (a) To strengthen its efforts to identify, detect and take preventive measures to protect children at risk of falling victim to offences under the Optional Protocol, especially ... Indigenous children...

Protection of the rights of child victims (arts. 8 and 9 (3) and (4))

A. Measures adopted to protect the rights and interests of children who are victims of offences prohibited under the Optional Protocol

38. The Committee welcomes the efforts of the State party but remains concerned that the measures in place do not protect the rights and interests of children who are victims of and witnesses to the offences covered by the Optional Protocol at all stages of criminal proceedings.
39. In the light of article 9 (3) of the Optional Protocol, the Committee recommends that the State party: ... (d) Reinforce child protection infrastructure, including the strengthening of the national child protection authority and its offices at the provincial level, in particular those located in Indigenous regions with the status of

a province...

• V •

the Elimination of Discrimination Against Women

A. CONCLUDING OBSERVATIONS

Positive aspects

4. The Committee welcomes the progress achieved since the consideration in 2016 of the State party's combined eighth and ninth periodic reports (CEDAW/C/CAN/CO/8-9) in

undertaking legislative reforms, in particular the adoption of the following: ...

- (c) United Nations Declaration on the Rights of Indigenous Peoples Act, in 2021, and its corresponding action plan;
 - (d) Bill C-25, amending the Canada Business Corporations Act to require federally incorporated corporations to disclose diversity information to their shareholders, including representation of women, Indigenous Peoples ... on their boards of directors and senior management teams, in 2018....
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, such as the adoption and establishment of the following: ... (j) Final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, which sets out 231 calls for justice, in 2019....

Principal areas of concern and recommendations

Effectiveness of initiatives to eliminate discrimination against women and girls and promote gender equality

9. The Committee recognizes Canada's extensive efforts to promote women's equality through legal reforms, initiatives and programmes, backed by substantial domestic and international funding. ...
10. The Committee recommends that the State party:
- (a) Implement measurement tools, such as follow-up studies, to assess the impact of its gender equality policies, so that lessons are learned and policy goals are achieved;
 - (b) Develop an effective mechanism, including by working with coalitions rather than hundreds of organizations, to ensure that the inputs and views of non-governmental organizations that promote women's rights and gender equality, as well as of Indigenous women and Indigenous women's organizations, are included in all initiatives for the elimination of discrimination against women and the promotion of gender equality, and their aftermath assessments, and to secure transparency, accountability and the involvement of all relevant stakeholders;
 - (c) Enhance data collection and analysis across all demographic sectors, particularly for disadvantaged and Indigenous women, disaggregated by sex, age, disability and geographical location, to measure progress on gender equality initiatives and inform evidence-based policymaking in all areas covered by the Convention, in collaboration with Indigenous women and Indigenous women's organizations....

Temporary special measures

17. The Committee notes that the State party has introduced temporary special measures in employment and women's participation in political life, including targeted programmes, legislative reforms and incentives designed to increase women's representation in key areas such as politics, leadership positions and corporate boards. The Committee is concerned about:

- (a) The significant barriers to participation in public life that disadvantaged groups of women, including Indigenous women ... continue to experience, and the absence of an intersectional approach in designing and evaluating the effectiveness of temporary special measures to address their specific needs;
 - (b) The absence of adequate mechanisms to ensure the meaningful participation of First Nations, Inuit and Métis women and their communities in the development of these measures....
18. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party:
- (a) Mainstream intersectionality in all of its temporary special measures and ensure that they meet the needs of all women, in particular Indigenous women ... and establish mechanisms to regularly assess the effectiveness of these measures;
 - (b) Develop mechanisms to ensure the effective and meaningful participation of Indigenous women, including those living off-reserve, in the planning, implementation and supervision of compliance with temporary special measures....

Stereotypes and harmful practices

19. The Committee regrets the lack of concrete information from the State party regarding the implementation of recommendations from the 2020 report entitled "Broken dreams, broken lives: The devastating effects of sexual harassment on women in the RCMP", which revealed a pervasive culture of misogyny, racism and homophobia within the Royal Canadian Mounted Police, and the absence of information on investigations initiated in response to these findings and subsequent outcomes. This lack of transparency impedes the Committee's ability to assess the State party's progress in addressing these serious issues within its national law enforcement agency. The Committee is also concerned about the persistent stereotypes directed at marginalized groups of women and girls who are facing historical and intersecting forms of discrimination, namely, Indigenous women.... ... It is also concerned that the media continues to portray women in stereotyped roles and largely focuses on appealing to men.
20. The Committee recommends that the State party:
- (a) Establish an independent, external oversight mechanism to monitor the implementation of recommendations from the 2020 report entitled "Broken dreams, broken lives". It urges the State party to conduct thorough, impartial investigations into all allegations of misconduct and human rights violations within the Royal Canadian Mounted Police as documented in the report and ensure accountability by imposing appropriate disciplinary measures and, where applicable, criminal sanctions on Mounted Police personnel found responsible for violations, regardless of rank. Furthermore, it should develop and implement a comprehensive, victim-centred reparations programme for those affected, including financial compensation, psychological support and career rehabilitation. The Committee also recommends that the State party regularly report on progress and implement structural reforms within the Royal Canadian Mounted Police to address systemic issues of misogyny, racism and homophobia;
 - (b) Enhance the Canadian Radio-Television and Telecommunications Commission's role in combating gender stereotypes in broadcast media, strengthen the

Canadian Association of Broadcasters' Equitable Portrayal Code to include an effective complaint mechanism with provisions for appropriate remedies and implement a comprehensive system to regularly assess and report on the impact of these measures in reducing stereotypes and promoting equitable broadcast media representation, ensuring continuous improvement and accountability.

Gender-based violence against women and girls

21. The Committee welcomes the progress made by the State party in addressing gender-based violence against women and girls, including the adoption of a federal strategy. However, the Committee remains concerned about:
 - (a) The increase in the number of police-reported cases of gender-based violence, including femicide and hate crimes, in particular affecting Indigenous women...;
 - (b) The lack of femicide-specific research, despite the extensive availability of data.
22. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and target 5.2 of the Sustainable Development Goals (Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation), the Committee urges the State party to meaningfully engage communities and civil society in the implementation of the National Action Plan to End Gender-Based Violence and establish mechanisms for its independent oversight, monitoring and evaluation. It further recommends that the State party:
 - (a) Ensure, through mandatory and continuous training and capacity building for judges, prosecutors, police officers and other law enforcement officials, that gender-based violence, including femicide and hate crimes against Indigenous women ... are effectively investigated and prosecuted, that perpetrators are adequately punished, that protection orders are effectively enforced and monitored, with sanctions in case of non-compliance, and that programmes targeted at perpetrators are developed based on a cognitive behaviour approach and closely linked with the safety of the victims;
 - (b) Prioritize and allocate resources for comprehensive femicide-specific research, leveraging the extensive data available, to better understand the root causes, patterns and consequences of gender-related killings of women and girls, develop evidence-based prevention strategies and interventions, enhance data collection mechanisms to ensure accurate and disaggregated statistics on femicide cases and use the research findings to inform policymaking, improve victim protection measures and strengthen the criminal justice response to femicide, with the ultimate goal of preventing these crimes and ensuring accountability for perpetrators.
23. The Committee notes the amendments to the Criminal Code adopted in 2019 to enhance the response to intimate partner violence and the Government of Canada's support for private member Bill C-332 that, if adopted, would create an offence of exercising coercive control of an intimate partner by engaging in conduct with the intention to cause one's intimate partner to believe that their physical or psychological safety is threatened, or being reckless as to whether it could have that effect. Nevertheless, the Committee is concerned that women continue to experience higher and disproportionate rates of intimate partner violence, especially Indigenous women and women of African descent.

24. The Committee recommends that the State party amend its legislation to expand the definitions of domestic violence to include non-physical forms of abuse in domestic violence cases, including emotional and psychological abuse, as well as coercive control, and ensure comprehensive protection of women experiencing domestic violence.

Missing and murdered Indigenous women and girls

25. The Committee commends the publication in 2019 of the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls and notes that the State party has dedicated Can\$ 2.2 billion to address the root causes of violence against Indigenous women and girls, including lesbian, bisexual, transgender and intersex women. However, the Committee deeply regrets the State party's failure to fully implement the recommendations contained in the Committee's report on the inquiry conducted under article 8 of the Optional Protocol to the Convention (CEDAW/C/OP.8/CAN/1) and the delay in providing follow-up information, which hinders the Committee's ability to effectively assess progress and address persistent issues affecting Indigenous women and girls. In particular, the Committee is concerned about:
- (a) The State party's slow progress in implementing the calls for justice from the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls;
 - (b) The insufficient preventive measures to protect Indigenous women and girls from further violence and the lack of concrete actions aimed at addressing the root, systemic causes of all forms of violence against Indigenous women and girls, including sexual violence, as identified in the final report of the National Inquiry.
26. The Committee urges the State party to implement, without further delay, the recommendations contained in the report of the Committee on the inquiry under article 8 of the Optional Protocol to the Convention (CEDAW/C/OP.8/CAN/1) and submit by 1 May 2025 the outstanding information on the measures taken to implement the recommendations made by the Committee under the follow-up procedure to the inquiry report. It also recommends that the State party:
- (a) Speed up the implementation of calls for justice 1.1, 1.7, 1.10, 4.5 and 13.1 of the 2019 final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls;
 - (b) Ensure that funding opportunities for Indigenous women and their organizations are intersectional and address their specific needs, especially regarding gender-based violence and disappearances, and establish clear indicators to measure the effectiveness of these funding initiatives, ensuring alignment with call for justice 1.8 from the final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Such indicators should be developed in close consultation with Indigenous women and their representative organizations to ensure cultural relevance and efficacy in addressing the unique challenges faced by Indigenous communities.

Trafficking of women and girls and exploitation of prostitution

27. The Committee welcomes the progress of appointing a Senior Advisor to Combat Human Trafficking and towards establishing a survivor-led advisory committee, as well as implementing the Protection of Communities and Exploited Persons Act

enacted in 2014. However, it notes with concern: (a) The lack of adequate resources and coordination to identify and investigate trafficking cases, including of Indigenous women ... who are particularly vulnerable to sexual exploitation through trafficking and prostitution....

28. Recalling its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, the Committee recommends that the State party:
- (a) Strengthen efforts to combat trafficking in women and girls by encouraging enhanced coordination between different agencies and allocating adequate funds for the effective implementation of its National Action Plan, paying particular attention to Indigenous women, underage girls, migrant women, homeless women and women with disabilities;
 - (b) Guarantee the systematic collection and analysis of data on trafficking, disaggregated by age, sex and forms of trafficking....

Participation in political and public life

29. The Committee commends the State party for the high representation of women in its foreign service, with women constituting 53 per cent of Canadian foreign service officers and 47 per cent of heads of mission, as well as the existence of an Ambassador for Women, Peace, and Security. It also acknowledges that the current Governor General, Mary Simon, is the first Indigenous person to hold this role. However, the Committee remains concerned about women's representation in politics and management and as members of boards, which continues to be insufficient. ...

Nationality and citizenship rights

31. The Committee is deeply concerned that despite amendments to the Indian Act, gender-based discrimination against Indigenous women and girls persists. It is particularly concerned about:
- (a) The provisions of the Indian Act setting forth that after two generations of "out-parenting", Indian status cannot be transmitted to a child (second generation cutoff), as well as those requiring that there be two Indian parents to transmit status to a child (two-parent rule);
 - (b) The ongoing lack of action to reinstate membership to the Indian Bands (natal and other) to women and their descendants who were automatically removed from their Indian Band membership;
 - (c) The legal provisions of the State party preventing First Nations women and their descendants from obtaining reparations for human rights violations regarding the Indian Act;
 - (d) The low registration of new memberships; the lack of effective policies ensuring that unregistered Indigenous women and girls, as well as Indigenous women living off-reserve, can access programmes and benefits related to Indigenous early learning and childcare, along with affordable, accessible and culturally relevant childcare services. Furthermore, the Committee is worried about insufficient support for Indigenous women to overcome barriers to employment and entrepreneurship, boost participation in traditional economies and access workplace vocational training and education within their communities. These gaps in policy and support systems hinder the ability of Indigenous women to fully participate in economic and educational opportunities, potentially

perpetuating cycles of disadvantage.

32. The Committee recommends that the State party:

- (a) Amend section 6 of the Indian Act to remove status categories under sections 6 (1) (f) and 6 (2) and any other legal provisions that do not recognize the equal right of women and men to transmit their Indian status to their children and eliminate all remaining categories or classes of Indian status, including differentiations in eligibility caused by pre- and post-1985 birth and marriage dates;
- (b) Review records to grant status to First Nations women, and their descendants, who were previously denied status and are now eligible;
- (c) Repeal all domestic legal provisions restricting access to comprehensive reparations for the violation of human rights of First Nations women and their descendants, including those stemming from the Indian Act, and develop a mechanism to address reparation claims, in coordination with First Nations women and their descendants;
- (d) Conduct outreach campaigns to inform First Nations women and their descendants that they may be newly entitled to status, while allocating sufficient resources, funding and support to achieve increased membership numbers and secure successful, expedited registration processes within the same time frame as other identification services, establish a mechanism to challenge all refusals issued in the procedure to recognize status to Indigenous women and their descendants, which includes representation of First Nations, and develop and implement comprehensive policies ensuring that all Indigenous women and girls, including those who are unregistered and off-reserve, have equal access to early learning, childcare, employment support and educational opportunities. These policies should be adequately funded, culturally relevant and developed in consultation with Indigenous communities.

Education

33. The Committee acknowledges that according to the Organisation for Economic Co-operation and Development in 2022 Canada was ranked as the most educated country in the world and the country ranks at the top in the percentage of adults having tertiary education, with over 57 per cent of Canadian adults having attained at least an undergraduate degree. However, the Committee is concerned about:

- (a) The gap in education levels between Indigenous Peoples and non-Indigenous Peoples and cuts to First Nations educational institutes that have crippled Indigenous language immersion programmes for primary students, the insufficient progress in substantially increasing post-secondary education access for Indigenous women and girls, boosting enrolment rates and preventing student dropouts, and the lack of comprehensive measures to ensure the inclusive education of women with disabilities, including those with intellectual disabilities;
- (b) The intergenerational harm of Canada's Indian residential school system that still affects women and girls in the State party and the links between the legacy of residential schools and the current, disproportionately high rates of violence against Indigenous women, which is four times the national average....

34. The Committee recommends that the State party:

- (a) Develop policies to ensure equal access to quality education for Indigenous Peoples so as to narrow the persisting gaps in education with non-Indigenous

Peoples, increase the inclusion and effective retention and reinsertion of girls in school, in particular at the post-secondary level, with special attention to Indigenous girls, including through scholarships, and develop a national strategy for inclusive education for persons with disabilities, including women with intellectual disabilities;

- (b) Implement the calls to action of the 2015 final report of the Truth and Reconciliation Commission, including calls 62 and 63, on strengthening learning connected with Indigenous perspectives, cultures, histories and contemporary realities, ensure that educational centres educate on truth and reconciliation and anti-violence against Indigenous women and girls, and investigate the correlation between the legacy of residential schools and high rates of violence against Indigenous women and ensure reparations for this victimization....

Employment

- 35. The Committee welcomes the Canada-wide Early Learning and Child Care Plan and praises the State party for its results, including the increased participation in the paid labour force of mothers with young children. However, the Committee remains concerned about: ... (e) The lack of comprehensive measures to address the employment challenges faced by Indigenous women....
- 36. The Committee recommends that the State party:
 - (a) Ensure sufficient funding for the implementation of the Canada-wide Early Learning and Child Care Plan, particularly in rural and remote areas; ...
 - (e) Implement temporary special measures to accelerate substantive equality and eliminate intersecting forms of discrimination, such as affirmative action for Indigenous women....

Health

- 37. The Committee commends the State party on its strong public health system, which is grounded in a human rights-based model and the principles of equity and fairness and is State-sponsored. It also notes the tremendous potential for Canada to be a leader in healthcare innovation by leveraging recent advances in artificial intelligence. However, the Committee is concerned about:
 - (a) Despite the Artificial Intelligence and Data Act, the way data is collected and interpreted by gender in relation to artificial intelligence being subject to fundamental biases in Canada and that the gender gap is worse for Indigenous women;
 - (b) The persistence of forced sterilizations of Indigenous women, despite the Canadian Standing Senate Committee on Human Rights detailing forced and coerced sterilizations in Canada in its 2021 report and recommending that the Government of Canada respond to the report without delay and that a parliamentary committee conduct further study on forced sterilizations with the goal of identifying solutions to stop the practice, as well as the entrenched distrust of Indigenous women in State sponsored medical facilities and resources;
 - (c) The lack of adequate laws and policies to ensure the granting of informed consent, understood as more than simply signing a consent form;
 - (d) The correlation between lack of access to menstrual products and poverty, disproportionately affecting youth, single mothers [and] Indigenous women....
- 38. The Committee recommends that the State party:

- (a) Approve Bill S-250 introduced in Parliament in 2022, paying full attention to the mental, psychological and physical impact of forced and coerced sterilizations on Indigenous women and communities, address the intergenerational harm that coerced and forced sterilization has caused and develop programmes to eliminate the distrust of Indigenous communities in State-sponsored healthcare facilities;
- (b) Create comprehensive forms, guidelines and protocols to ensure that all women have access to adequate informed consent procedures in all healthcare and medical institutions, especially those that Indigenous women frequently attend;
- (c) Address period poverty in all communities, with a special focus on Indigenous and disadvantaged groups of women, and provide menstrual hygiene management support and safe and hygienic water, sanitation and hygiene facilities in all schools, hospitals and state-run facilities;
- (d) Adopt effective safeguards to ensure that artificial intelligence systems and algorithms do not perpetuate or condone gender stereotypes, discrimination or gender-based violence against women and mitigate the risks of harm and biased output of artificial intelligence systems in the healthcare system, and create a gender and human rights artificial intelligence and data commissioner within the department responsible for the implementation of the Artificial Intelligence and Data Act to address gender bias from the development to the dissemination of artificial intelligence in healthcare....

Indigenous women and girls

41. The Committee recognizes the policies at the federal, provincial and territorial levels aimed at improving and guaranteeing the rights of Indigenous women and girls. Nevertheless, the Committee is concerned about:
 - (a) The overrepresentation of Indigenous women in the penitentiary system of the State party and their increased likelihood to experience discrimination in the criminal and penitentiary system, including solitary confinement;
 - (b) The correlation between the presence of extractive industries in Indigenous communities and increased rates of gender-based violence, sex trafficking and intimate partner violence, as well as the disruption of traditional ways of life of Indigenous women and the displacement and environmental degradation caused by these projects;
 - (c) The link between the presence of extractive industries in Indigenous communities and conflicts over land and resources and the criminalization of the actions of Indigenous women human rights defenders to protect their lands.
42. With reference to its general recommendation No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party:
 - (a) Develop effective accountability mechanisms to investigate, prosecute and sanction human rights violations against women in the penitentiary system and provide comprehensive reparations to affected women. It urges the State party to strengthen existing accountability mechanisms within the Correctional Service of Canada by enhancing transparency, independent oversight and victim support services. In addition, it recommends the establishment of clear procedures for reporting and addressing complaints of women in the penitentiary system, ensuring that investigations are thorough, impartial and timely and that those responsible are held accountable;

- (b) Prevent, address, sanction and eradicate all forms of gender-based violence against rural and Indigenous women and girls, including environmental, spiritual, political, structural, institutional and cultural violence, that are attributable to extractive industries, and ensure that Indigenous women and girls have timely and effective access to both non-Indigenous and Indigenous justice systems, including protection orders and prevention mechanisms when needed;
- (c) Strengthen its legal framework and establish effective mechanisms to ensure that the activities of mining companies and extractive industries are subject to the free, prior and informed consent of and adequate benefit-sharing with affected Indigenous women;
- (d) Ensure Indigenous women are fully consulted and able to give their free, prior and informed consent in decisions affecting their lands and resources and prevent and protect Indigenous women from gender-based violence in the context of extractive industries;
- (e) Develop, in consultation with Indigenous women human rights defenders, effective mechanisms to prevent the criminalization of their actions to protect their lands and ensure that Canadian extractive companies operating domestically and abroad are held accountable for human rights violations.

Follow-up to concluding observations

52. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs ... 26 ... above.

2. Chile, CEDAW/C/CHL/CO/8, 31 October 2024

E. Principal areas of concern and recommendations Status and visibility of the Convention, the Optional Protocol thereto and the Committee's general recommendations

9. The Committee acknowledges the efforts of the State party in enhancing the visibility and accessibility of the Convention, the Optional Protocol thereto and the Committee's previous concluding observations. However, the Committee notes with concern that women, especially ... Indigenous ... women ... are often not aware of their rights under the Convention and the remedies available to claim them.
10. The Committee recommends that the State party:
 - (a) Continue to raise awareness among women of their rights under the Convention and the legal remedies available to them to claim violations of such rights and ensure that information on the Convention, the Optional Protocol thereto and the Committee's general recommendations is accessible to all women in accessible formats;
 - (b) Consider establishing a comprehensive mechanism for the implementation of the present concluding observations and involve non-governmental organizations promoting women's rights and gender equality in the work of the mechanism, taking into account the four key capacities of a national mechanism for reporting and follow-up, namely engagement, coordination, consultation and information management;
 - (c) Ensure that the Convention, the Optional Protocol thereto, the Committee's jurisprudence and its general recommendations are made an integral part of systematic capacity-building for judges, prosecutors, law enforcement

officials and lawyers, with a view to enabling them to directly apply or invoke the provisions of the Convention in court proceedings or interpret national legislation in the light of the Convention.

Legislative framework and definition of discrimination against women

11. The Committee remains concerned:
 - (a) That the Anti-Discrimination Law (Law No. 20,609, adopted in 2012) does not explicitly prohibit multiple and intersecting forms of discrimination....
12. Recalling the links between articles 1 and 2 of the Convention and target 5.1 of the Sustainable Development Goals, to end all forms of discrimination against all women and girls everywhere, the Committee recommends that the State party:
 - (a) Fully incorporate the Convention into the domestic legal order and adopt anti-discrimination legislation ensuring formal and substantive equality addressing both direct and indirect discrimination in the public and private spheres, as well as intersecting forms of discrimination faced by disadvantaged groups of women and girls, such as ... Indigenous [women] ... in line with articles 1 and 2 of the Convention....

Women's access to justice

15. The Committee notes with concern:
 - (a) Persistent barriers faced by women in gaining access to justice, particularly for ... Indigenous [women]...;
 - (b) The insufficient availability and accessibility of free legal aid, particularly for rural women, Indigenous and Afrodescendent women, refugee and migrant women, women with disabilities and lesbian, bisexual, transgender and intersex women;
 - (c) The lack of continuous awareness and capacity-building programmes for the judiciary and law enforcement officials on women's human rights and gendersensitive investigation and interrogation methods.
16. The Committee, recalling its general recommendation No. 33 (2015) on women's access to justice, recommends that the State party:
 - (a) Strengthen measures to remove barriers to women's access to justice, particularly for ... Indigenous [women]..., including by providing legal aid services and interpretation in Indigenous languages;
 - (b) Strengthen and institutionalize legal aid and public defence schemes that are accessible, affordable and, if necessary, free of charge and responsive to the needs of women, in particular systemically disadvantaged women, and ensure that such services are provided in a timely and effective manner....

Temporary special measures

21. The Committee commends the State party for implementing temporary special measures to achieve gender parity in elections, increase women's representation on boards of public State-owned enterprises, including through the launch of the "50:50 by 2030" initiative, and to ensure equal representation of women in leadership positions within the judiciary and legal profession. However, it notes with concern that the State party has not adopted comprehensive temporary special measures to accelerate the achievement of substantive equality of women and men in other areas where women are underrepresented or disadvantaged. The Committee acknowledges the inclusion of a provision in Law No. 20,820 that allows the Ministry

of Women and Gender Equity to propose temporary special measures. However, it notes with concern the limited implementation and enforcement of the Law, particularly with regard to disadvantaged groups of women, including women with disabilities, older women, rural women, Indigenous and Afrodescendent women, lesbian, bisexual, transgender and intersex women, and migrant, refugee and asylum-seeking women.

22. The Committee recommends that the State party adopt temporary special measures, in line with article 4(1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, such as quotas, preferential recruitment, hiring and promotion and gender-responsive public procurement, with time-bound targets, as a necessary strategy to accelerate the achievement of substantive equality of women and men in all areas under the Convention where women are underrepresented or disadvantaged, in particular ... Indigenous [women] The Committee also recommends that the State party strengthen the implementation and enforcement of Law No. 20,820, ensuring that the Ministry of Women and Gender Equity effectively proposes and oversees the implementation of temporary special measures.

Trafficking

27. The Committee notes of the State party's efforts to strengthen its legal and policy framework to combat trafficking in women and girls, including through the National Action Plan against Trafficking in Persons 2023–2026. However, it notes with concern:
- (a) Reports of human trafficking networks operating in the State party that subject transgender women to extortion and sexual exploitation, in particular migrant transgender women;
 - (b) The prevalence of different forms of trafficking in women and girls, including for sexual exploitation, forced marriage, domestic servitude, forced labour in agriculture, mining and street vending, as well as the sale of children, pimping and the persistent exploitation of child labour, particularly affecting girls in child protection centres, Indigenous women and girls and refugee, asylum-seeking and migrant women and girls....
28. With reference to its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, and recalling its previous concluding observations ... the Committee recommends that the State party:
- (a) Intensify efforts to combat all forms of trafficking and exploitation of women and girls by providing capacity-building for judges, prosecutors, police officers and other law enforcement officials, border police, healthcare providers and other first responders on the early identification of victims of trafficking and their referral to appropriate services and on gender-sensitive investigation and interrogation methods, and ensure the implementation of the instructions for the police on early identification of trafficking victims;
 - (b) Strengthen labour inspections to eliminate child labour, especially in sectors where girls are most at risk, strengthen the protection of girls in care institutions to prevent their exploitation and trafficking and ensure that perpetrators are prosecuted and adequately punished....

Equal participation in political and public life

29. The Committee commends the State party on its feminist diplomacy and efforts to promote women's political roles at the international level. However, it notes with concern:
- (a) That women's political representation is 35 per cent in the Chamber of Deputies and 26 per cent in the Senate, and that only 17 per cent of mayors are women, due in part to delays in adopting statutory quotas for regional and local elections, as well as the failure to implement the 2015 electoral reform law;
 - (b) The limited representation of disadvantaged groups of women in decision-making positions, particularly ... Indigenous [women]....
30. Recalling its general recommendations No. 40 (2024) on the equal and inclusive representation of women in decision-making systems and No. 23 (1997) on women in political and public life, as well as target 5.5 of the Sustainable Development Goals, on ensuring women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life, the Committee recommends that the State party:
- (a) Introduce statutory quotas requiring political parties to ensure 50:50 parity, subject to fines in case of non-compliance, for the nomination of candidates at elections to the National Congress and provincial and local councils, promote the appointment of ... Indigenous [women] ... to decision-making positions in political and public life;
 - (b) Provide capacity-building on political leadership and campaigning skills, as well as access to campaign financing, to women candidates standing for election or to public office, including Indigenous women....

Education

33. The Committee commends the State party for the adoption of Law No. 21,675, which promotes non-sexist education and integrates a gender perspective in educational plans. The Committee also notes positively the initiatives for inclusive education. However, the Committee notes with concern:
- (a) The persistence of gender stereotypes in textbooks and the lack of systematic capacity-building for teachers on women's rights and gender equality;
 - (b) Insufficient data on the implementation and monitoring of inclusive education, particularly for ... Indigenous girls....
34. In the light of its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party:
- (a) Eliminate gender stereotypes from textbooks, curricula and pedagogy at all levels of education, and that school curricula, academic programmes and professional training for teachers include education on women's rights and gender equality;
 - (b) Strengthen measures to ensure inclusive education for all girls, including ... Indigenous girls....

Health

37. The Committee notes the announcement made by the delegation that the State party is considering decriminalizing abortion without restrictions. However, the Committee notes with concern: (d) Reports of obstetric violence, especially against ... Indigenous women....

38. In accordance with its general recommendation No. 24 (1999) on women and health and targets 3.1 and 3.7 of the Sustainable Development Goals, on reducing global maternal mortality and on ensuring universal access to sexual and reproductive healthcare services, the Committee recommends that the State party: ... (d) Prevent and protect women from obstetric violence, strengthen capacity-building programmes on women's human rights and gender-responsive treatment for medical practitioners and ensure that women who are victims of obstetric violence have effective access to justice and adequate reparations....

Women human rights defenders

43. The Committee notes with concern:

- (a) The inadequate response of the State party to allegations of rape and serious permanent injuries due to excessive use of force against women human rights defenders during the October 2019 social demonstrations;
- (b) The low investigation, prosecution and conviction rates in these cases and the lack of accountability for senior Carabineros commanders;
- (c) Reports of excessive use of force by State agents against Mapuche women in Biobío, La Araucanía, Los Ríos and Los Lagos;
- (d) The absence of disaggregated data on the use of force against Mapuche women.

44. The Committee urges the State party to:

- (a) Without delay, investigate all alleged human rights violations against women human rights defenders during the 2019 protests, prosecute and adequately punish perpetrators, including responsible Carabineros commanders and other members of the security forces, and provide adequate reparations to the victims;
- (b) Provide capacity-building to law enforcement personnel, including on gender-sensitive protocols for crowd control, to prevent the excessive use of force against peaceful protestors;
- (c) Engage in meaningful dialogue with Mapuche women and their representatives to address the root causes of the Mapuche conflict, including through the Presidential Commission for Peace and Understanding, establish an independent mechanism to investigate allegations of excessive use of force against Mapuche women, and ensure effective reparations;
- (d) Ensure the collection of disaggregated data on the use of force against Mapuche women and provide such data in its next periodic report.

Indigenous women and girls

45. The Committee commends the State party for its efforts to preserve Indigenous languages and cultures through educational initiatives, as well as the Indigenous training and specialization subsidy programme, which provides university scholarships for Indigenous students. However, it remains concerned that Indigenous women face intersecting forms of discrimination, racial hatred, gender-based violence, poverty and marginalization. It also notes with concern that:

- (a) The State party remains one of the few countries in Latin America where Indigenous peoples are not recognized in the Constitution, and efforts to address this in the 2022 draft constitution were rejected by referendum;
- (b) Indigenous communities, including Indigenous women, lack legal title to and face forced evictions from lands traditionally occupied or used by them.

46. With reference to its general recommendation No. 39 (2022) on the rights of Indigenous women and girls and recalling its previous concluding observations ... the Committee urges the State party to:

- (a) Fully recognize Indigenous peoples in the Constitution and expedite the establishment of a ministry for Indigenous Peoples and strengthen dialogue with Indigenous women to ensure their full participation in decision-making at all levels;
- (b) Strengthen measures to formally recognize Indigenous women's collective and individual land tenure and ownership, eliminate discriminatory norms and customs that limit their access to land ownership and ensure their free, prior and informed consent, equitable benefit-sharing and meaningful participation in decision-making processes in relation to the use of the natural resources and lands traditionally occupied or used by them.

Women in detention

51. The Committee notes with concern: ... (b) The overrepresentation of foreign women and Aymara, Quechua and Mapuche and other Indigenous women sentenced under drug laws...; (e) The difficulties that ... Indigenous women in detention face in gaining access to sexual and reproductive health services, particularly for women living with HIV.

52. The Committee recommends that the State party: ...

- (b) Conduct a comprehensive study on the factors contributing to the overrepresentation of foreign and Indigenous women sentenced for drug-related offences, develop culturally appropriate and gender-responsive prevention and intervention programmes and ensure access to free legal aid and interpretation services for these women throughout the judicial process; ...
- (e) Develop specific protocols to ensure adequate conditions and protection of ... Indigenous women ... in detention, ensure their access to sexual and reproductive health services, including HIV treatment, and provide training to penitentiary staff....

Climate change and disaster risk reduction

53. The Committee welcomes the State party's efforts to incorporate a gender perspective in its climate change adaptation and disaster risk reduction policies, particularly through the 2022 Framework Law on Climate Change. However, it remains concerned about:

- (a) Women's unequal access to and use of water resources and their reliance on water distribution by cistern trucks;
- (b) Reports of environmental degradation caused by agribusiness and mining activities, which have severely affected traditional access to water resources for rural and Indigenous communities. The Committee is particularly alarmed by the escalating conflicts between these industries and rural and Indigenous women environmental human rights defenders, who face heightened risks of violence, intimidation and criminalization as they strive to protect their lands, natural resources and traditional livelihoods;
- (c) The lack of gender-responsive criteria in environmental impact assessments under Law No. 19,300, particularly regarding the mental, emotional and spiritual health of women and their communities;

- (d) The absence of specific gender-responsive and territorially relevant indicators in sectoral plans related to the Framework Law on Climate Change.
54. In accordance with its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party review its climate change adaptation and disaster risk reduction strategies, taking into account the negative effects of climate change on the livelihoods of women, and ensure that women and men are equally represented in the development, adoption and implementation of legislation, policies and programmes on climate change, disaster response and disaster risk reduction, in particular by:
- (a) Developing and implementing a comprehensive, gender-responsive water management strategy that addresses the root causes of unequal access to and use of water resources, with particular attention to the needs of rural women, Indigenous women and women living in poverty;
 - (b) Ensuring that agribusiness and mining companies operating within its territory respect environmental standards and do not impede access to water and other natural resources essential for the realization of women's rights, particularly those of rural and Indigenous women and conduct thorough, impartial and effective investigations into all reported cases of threats, intimidation and violence against women environmental human rights defenders, ensuring that perpetrators are brought to justice and victims have access to effective remedies and adequate protection;
 - (c) Amending Law No. 19,300 and its regulations to include gender-responsive criteria in environmental impact assessments, considering women's roles as custodians of the environment and caregivers;
 - (d) Developing and implementing gender-responsive and intersectional indicators for sectoral plans under the Framework Law on Climate Change;
 - (e) Increasing climate change and disaster risk management literacy and awareness among communities, women and girls, including ... Indigenous [women] ... to enable them to participate effectively in climate change-related decision-making and the development of adaptation strategies and actions that build women's and girls' resilience to the impact of climate change.

3. Japan, CEDAW/C/JPN/CO/9, 30 October 2024

Gender stereotypes

25. The Committee notes with appreciation that the fifth basic plan for gender equality addresses the need to eliminate gender stereotypes by promoting awareness of unconscious gender bias and challenging norms. It remains concerned, however: ...
- (d) About persisting gender stereotypes against ethnic minorities, such as Ainu....
26. Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, as revised, and its previous recommendations ... the Committee recommends that the State party: ... (d) Draft a national policy and implement comprehensive and sustainable measures to ensure that gender stereotypes against women and girls from ethnic minority groups, such as Ainu ... are effectively addressed throughout all sectors of the State party.

Equal participation in political and public life

35. The Committee notes the awareness-raising efforts undertaken by the national

Government, local governments and private companies to promote and encourage the participation of women in political and public life. It nevertheless notes with concern: (a) The continued underrepresentation of women in decision-making positions in political and public life, in particular in the National Diet and at the ministerial level, in local governments, as well as in the judiciary, the diplomatic service and in academia; ... (e) The underrepresentation of women with disabilities and ethnic and other minority women, such as Ainu ... in decision-making systems that affect their lives.

36. Recalling its general recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems, as well as target 5.5 of the Sustainable Development Goals, on ensuring women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life, the Committee recommends that the State party: (a) Adopt more temporary special measures, such as statutory quotas, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25, in order to accelerate women's full and equal participation in elected and appointed positions; ... (e) Take specific measures, including temporary special measures, to promote the representation of ethnic and other minority women, such as Ainu ... in decision-making systems that affect their lives.

Employment

39. The Committee notes with concern: ... (e) That women, including Indigenous women ... experience discrimination and harassment in the workplace....
40. In accordance with target 8.5 of the Sustainable Development Goals, on achieving full and productive employment and decent work for all women and men, the Committee recommends that the State party: ... (e) Monitor the situation of women in the labour market and increase the number of women in formal employment by ensuring that companies provide more opportunities for women to gain access to full-time and regular employment and by extending benefits to non-regular workers, the majority of whom are women....

Disadvantaged groups of women

47. The Committee is concerned that Ainu ... women face ongoing intersecting forms of discrimination, which limits their access to education, employment and health. ...
48. The Committee recommends that the State party intensify its efforts to eliminate intersecting forms of discrimination against Ainu ... women, ensuring their equal access to employment, health and participation in public life.

4. New Zealand, CEDAW/C/NZL/CO/9, 30 October 2024

B. Positive aspects

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, such as the adoption and establishment

of the following: ... (c) Kia Toipoto (Public Service Action Plan 2022–2024), which is a public sector initiative that is aimed at reducing the gender, Māori, Pasifika and ethnic pay gaps, building on the Gender Pay Gap Action Plan 2018–2021; (d) Te Mahere Whai Mahi Wahine (Women’s Employment Action Plan), which is aimed at improving employment pathways for marginalized women, including Māori women, Pasifika women, women with disabilities and lesbian, transgender and intersex employees....

E. Principal areas of concern and recommendations

Women’s access to justice

10. The Committee positively notes the increase in the threshold for eligibility to receive legal aid and the allocation of 140 million New Zealand dollars (\$NZ) to support access by Māori and Pasifika women and women with disabilities. It notes with concern that 67 per cent of female prison inmates are Māori women, notwithstanding the fact that they constitute only 20 per cent of the wider population. The Committee also notes with concern the cuts to the budget for cultural reports provided to judges and judicial officers to support court proceedings, which pose additional barriers for Māori and other minority women in civil and criminal proceedings before domestic courts, in addition to the lack of confidence in the judiciary, women’s limited awareness of their right to a fair trial and of existing laws protecting them and their justiciability, as well as the lack of attention or gender sensitivity among authorities.
11. The Committee reiterates its previous recommendation to address the intersecting forms of discrimination faced by Māori women that underlie their overrepresentation in prisons and to provide alternatives to detention. Recalling its general recommendation No. 33 (2015) on women’s access to justice, the Committee recommends that the State party continue to improve the accessibility of legal aid for disadvantaged groups of women, such as Māori and other minority women, including by reinstating funding for the provision of cultural reports. The Committee also reiterates its previous recommendation to disseminate information about the legal remedies available to women to claim their rights, in particular in rural areas, and to strengthen gender sensitivity in the judiciary through training and increasing female representation.

Gender-based violence against women

20. ... The Committee is, however, gravely concerned about information brought before it that shows an increase over the last five years in incidents of family violence and intimate partner violence, with the highest rates among Māori and Pasifika women, ethnic and religious minority women and women with disabilities. It further notes with concern the findings of the New Zealand Crime and Victims Survey in 2023, which show that 93 per cent of sexual assault cases are unreported.
21. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that the State party: ... (e) Strengthen protection from gender-based violence against women, including through enhanced law enforcement, for disadvantaged groups of women, including Māori and Pasifika women, ethnic and religious minority women and women with disabilities.

Education

30. The Committee notes with concern the recent reduction in funding for key

educational programmes, including a \$NZ 107 million cut to the Ka Ora, Ka Ako (Healthy School Lunches Programme). It is also concerned at the significant barriers that women with disabilities and girls face in terms of access to education, with 34 per cent lacking qualifications compared with 15 per cent in the case of women without disabilities, which is exacerbated by the shortage of essential support staff, such as speech therapists and teacher aides. Notwithstanding the progress made in improving rural broadband access, girls in rural and remote rural schools and Māori medium schools continue to face a gender digital gap and shortage of Māori-speaking teachers.

31. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party promote the importance of women's and girls' education at all levels as a basis for their empowerment and:
- (a) Ensure the allocation of adequate human, technical and financial resources for key educational programmes, including the Ka Ora, Ka Ako (Healthy School Lunches Programme), and transport assistance for Māori medium schools and women and girls in rural areas; ...
 - (c) Address the gender digital divide, improve equal access to reliable and affordable Internet services, broadband and online learning equipment, as well as access to science, technology, engineering and mathematics education for women and girls, in particular rural and Indigenous women and girls; ...
 - (e) Take measures to promote the teaching of Pasifika and Indigenous languages and address the shortage of Māori-speaking teachers at all levels of education.

Employment

32. The Committee notes with concern: (a) The persistent gender wage gap, in particular for Māori, Pasifika and migrant women, with the gap reaching up to 20 per cent in the case of Māori women....
33. The Committee recommends that the State party: (a) Effectively enforce the principle of equal pay for work of equal value in order to narrow and eventually close the gender pay gap, including for Māori, Pasifika and migrant women, by: (i) conducting regular labour inspections; (ii) applying gender-neutral analytical job classification and evaluation methods; (iii) conducting regular pay surveys; and (iv) encouraging employers to publish a narrative with their gender pay gap data, with a view to better understanding the reasons behind the gender wage gap, and to take appropriate remedial measures....

Health

34. The Committee notes with appreciation that the State party has decriminalized abortion, expanded breast and cervical cancer screening and established telehealth services to enhance access to safe abortion for rural women. It also notes the steps taken by the State party to facilitate the return of former midwives to practice. However, the Committee notes with concern: ... (c) That the closure of the Māori Health Authority may limit access to culturally appropriate health services for Māori women....
35. Recalling its general recommendation No. 18 (1991) on disabled women and general recommendation No. 39 (2022) on the rights of Indigenous women and girls, respectively, the Committee recommends that the State party:
- (a) Continue to expand access to health services, including by reinstating

dedicated health services, for women from minority groups who are most at risk of inaccessibility or stigma and discrimination by healthcare authorities and service providers, in particular rural women, migrant women and Māori women;

...

- (d) Develop formal clinical guidelines for ensuring culturally appropriate healthcare, in accordance with international standards, ensuring the effective participation of disadvantaged groups of women who are at risk of racial discrimination in healthcare settings, including Māori, Pasifika and migrant women, in the formulation and implementation of such guidelines....

Economic empowerment of women

36. ... While noting positive initiatives, such as Global Women and the Champions for Change programme to achieve a 40 per cent women, 40 per cent men and 20 per cent any gender representation in leadership, the Committee remains concerned at the lack of disaggregated data on gender and the intersectional representation of women across economic sectors. It also notes with concern that poverty rates are higher among Māori and Pasifika women, women with disabilities and non-national and ethnic minority women and that older women are at particular risk of poverty, with the current gender pension gap amounting to 25 per cent on average.

37. The Committee recommends that the State party:

- (a) Apply an intersectional lens to its analysis of the outcomes of the implementation of measures taken in response to the COVID-19 pandemic to ensure the equal enjoyment by women of economic and social benefits, recognizing the adverse effects of intersecting forms of discrimination based on age, disability, remoteness, ethnicity or descent on the economic empowerment of women; ...
- (c) Increase budget allocations for the implementation of policies and programmes for the economic empowerment of older women, women with disabilities, rural women, Māori and Pasifika women and non-national and ethnic minority women, including measures to address poverty, illiteracy, unpaid work, access to healthcare, housing and social and economic benefits.

Climate change and disaster risk reduction

38. The Committee notes that the Supreme Court recently allowed a claim to proceed concerning the alleged damage caused by seven extractive industries. It also notes with appreciation the State party's continued overseas development assistance and implementation of climate change adaptation and disaster risk reduction strategies in the Pacific region. However, the Committee notes with concern the disproportionate impact of climate change and natural disasters on women in the State party, in particular rural women and women in poverty, who face heightened risks of food insecurity, displacement and limited access to resources.

39. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party develop a comprehensive national strategy to address the gender-specific impacts of climate change and the specific and unique needs of women and girls in terms of disaster risk reduction. It urges the State party to ensure the effective participation of women who are most at risk of the adverse impacts of climate change and natural disasters, including rural women and women in poverty, in decision-making on the development and implementation of climate change mitigation and disaster risk reduction policies

and programmes, while increasing climate change and disaster risk mitigation literacy among women.

Māori women

42. The Committee notes with concern the withdrawal by the State party of its support for the United Nations Declaration on the Rights of Indigenous Peoples and the steps that it has taken to implement the Te Tiriti (Treaty of Waitangi), which may be seen as a reinterpretation of the provisions in the Declaration.
43. Recalling its general recommendation No. 39, the Committee calls upon the State party to reaffirm its commitment to the United Nations Declaration on the Rights of Indigenous Peoples and ensure that its national policies and legislation are aligned with the principles and provisions of the Declaration and include a gender perspective. It recommends that the State party ensure that the free, prior and informed consent of Indigenous women is obtained before the approval of any project or legislative measure that affects their lands, territories and resources, including through meaningful consultations and their participation in decision-making processes through their own representative institutions. The Committee also recommends that the State party recognize the role of Indigenous women as custodians of Indigenous culture, promote the cultural rights and identity of Indigenous women and protect their right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas.

Data collection and analysis

46. The Committee notes the adoption of the Data and Statistics Act 2022 and acknowledges the State party's responsibility to uphold the principles of the Te Tiriti (Treaty of Waitangi) and to ensure that diverse groups of women contribute to decision-making on data collection and analysis. It is concerned, however, at the lack of reliable data on the situation of women, in particular disadvantaged groups of women, in some private and public spheres, including in political, economic, social and cultural life. The Committee acknowledges the findings resulting from the Waitangi Tribunal's Health Service and Outcomes Inquiry (Wai 2575), which is an inquiry into the response of the Crown to the health inequities experienced by the Māori, and that data are a cultural and economic resource for Indigenous Peoples, existing data and data infrastructure do not meet the needs of Indigenous Peoples and insufficient measures have been taken to protect women who have shared their personal data against the risks associated with e-commerce and cross-border data flows.
47. Recalling its general recommendation No. 9 (1989) on statistical data concerning the situation of women, the Committee recommends that the State party carry out an assessment of its tools for collecting data, take steps to address any weaknesses in data collection and improve data verification, diversify data collection and allow individuals to report anonymously on the basis of the principle of self-identification. In line with the principles of the Te Tiriti (Treaty of Waitangi) and data sovereignty, the Committee also recommends that the State party take steps to ensure the effective participation of Māori women across data collection and production and to ensure their access to personal data and data governance and security. The Committee also recommends that the State party guarantee the effective participation of Indigenous women and ethnic and ethnolinguistic minority women in the development and implementation of intellectual property and privacy protections

for personal data in cross-border and e-commerce transactions.

Follow-up to the concluding observations

50. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 21 (b), 35 (d), 37 (a) and 43 above.

5. Malaysia, CEDAW/C/MYS/CO/6, 6 June 2024

Constitutional and legislative framework and definition of equality and non-discrimination

12. The Committee remains concerned about the absence of anti-discrimination legislation explicitly prohibiting discrimination against women by State and nonState actors, covering intersecting forms of discrimination ... and a comprehensive definition of discrimination against women covering direct and indirect discrimination in both the public and private spheres. The Committee also notes with concern the long delays in the consultative process with civil society organizations, in particular women's rights organizations, concerning the Anti-discrimination Against Women Bill (formerly the Gender Equality Bill), which has been pending since 2019.
13. The Committee recommends that the State party:
 - (a) Accelerate the adoption of the Anti-discrimination Against Women Bill and ensure that it includes a comprehensive definition of discrimination against women covering direct and indirect discrimination in the public and private spheres, as well as intersecting forms of discrimination, in accordance with articles 1 and 2 of the Convention, the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and target 5.1 of the Sustainable Development Goals, to end all forms of discrimination against all women and girls everywhere;
 - (b) Expedite the consultative process with women's rights organizations on the Anti-discrimination against Women Bill and ensure the systematic and meaningful representation of women's organizations, including those representing ... Indigenous women ... in the formulation, adoption and implementation of draft laws and policies on gender equality....

Temporary special measures

20. The Committee notes that the State party has adopted temporary special measures in the areas of education and health care. However, it notes with concern the lack of progress resulting from the temporary special measures addressing women's underrepresentation in other areas, such as political and public life and employment.
21. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party:
 - (a) Adopt temporary special measures and establish time-bound targets, monitoring and evaluation mechanisms, to accelerate the achievement of substantive equality of women and men in all areas covered by the Convention where women, including ... Indigenous women ... are underrepresented or disadvantaged, including in political and public life and employment;

- (b) Systematically collect data on the impact of temporary special measures and include such data in its next periodic report.

Harmful practices

- 24. The Committee reiterates its concern about the persistence of female genital mutilation among Muslim communities reinforced by a non-binding fatwa on female circumcision issued by the Malaysian National Council of Islamic Religious Affairs in 2009, as well as among some Indigenous communities. In that regard, the Committee notes with concern reports that female genital mutilation is practised on more than 95 per cent of Muslim girls and that it has serious effects on the health of many of them.
- 25. The Committee stresses that female genital mutilation cannot be justified on religious grounds and constitutes a harmful practice to exert control over the bodies and sexuality of women and girls is in violation of the Convention, irrespective of whether or not these practices are performed within or outside a medical institution. Recalling its previous recommendation ... the Committee recommends that the State party:
 - (a) Criminalize all forms of female genital mutilation, ensuring that such criminalization cannot be overruled by fatwas or other rulings issued by religious or clerical authorities, in accordance with joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices and target 5.3 of the Sustainable Development Goals;
 - (b) Conduct awareness-raising and educational campaigns aimed at promoting understanding of the criminal nature of and the need to eliminate female genital mutilation, in particular among medical staff, parents, community leaders, religious scholars, men and boys, allocate sufficient resources and adopt a systematic monitoring and evaluation framework of such activities.

Gender-based violence against women

- 26. The Committee welcomes the amendments to the Domestic Violence Act 1994 and the Penal Code (2023). It also notes the adoption of the Anti-Sexual Harassment Act 2022, the law on anti-stalking through the amendments to the Criminal Procedure Code (2023) and the issuance of the Guidelines for Conducting Domestic Violence Cases to address gender-based violence against women and girls. It further notes with appreciation the efforts made to simplify applications for a protection order, and expand the number of shelters and crisis centres for victims of domestic violence, including in rural areas. However, the Committee notes with concern: ...
 - (b) The barriers deterring Indigenous, asylum-seeking and refugee women who are victims of sexual and other forms of gender-based violence from seeking access to justice and medical treatment....
- 27. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and in line with the State party's Human Rights 75 pledge to promote human rights literacy to eliminate violence against women, the Committee recommends that the State party: (a) Intensify awareness-raising among Indigenous and refugee communities, as well as the general public, on the criminal nature of all forms of gender-based violence, including domestic and sexual violence, and on the need to enable all women to report such cases without fear of reprisals, stigmatization or revictimization....

Equal participation in political and public life

32. The Committee notes with concern that, while recent trends indicate an increase in the representation of women in political life, such progress has been slow and from a low baseline. In particular, the Committee is concerned about women's low representation in the Parliament (13.5 per cent) and the Senate (18 per cent) and underrepresentation in decision-making positions in political and public life, including in the cabinet, local government, the judiciary and the diplomatic service, including as regards Indigenous women....
33. The Committee, recalling its previous recommendation ... and its general recommendations No. 23 (1997) on women in political and public life and No. 25 (2004) on temporary special measures, recommends that the State party:
- (a) Take targeted measures, including temporary special measures, such as quotas, to reach parity between women and men and increase the representation of Indigenous women ... in decision-making positions in political and public life;
 - (b) Conduct awareness-raising campaigns to promote understanding that women's equal representation in decision-making is a human right and an essential condition for achieving political stability and sustainable development in the State party;
 - (c) Abolish any regulation that prevents women from being elected as heads of villages and take targeted measures, including temporary special measures, such as quotas, to reach parity between women and men within local councils, including in rural areas.

Nationality

34. The Committee notes the steps taken by the State party to review its reservation to article 9 (2) of the Convention, including proposed amendments to the Federal Constitution that seek to grant Malaysian women the right automatically to confer their nationality to their children born abroad on the same basis as Malaysian men. It also welcomes the decision of the State party not to proceed with the proposed amendments to Section 19B Part III of the Second Schedule and Section 1(e) Part II of Second Schedule of the Federal Constitution that would have the effect of limiting access to citizenship for stateless children born in Malaysia, abandoned and adopted children, children born out of wedlock and Indigenous children. ...
35. Recalling its previous recommendation ... and its general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee urges the State party to: (a) Amend the Federal Constitution to remove discriminatory provisions and enable Malaysian women to transmit their nationality to their foreign spouses and their children on an equal basis with men and make the amendments retroactive....

Education

36. The Committee welcomes the efforts of the State party to increase women's representation in leadership positions in higher education institutions, combat bullying and sexual harassment in schools, meet the educational rights of girls and women with special needs, and ensure the continuity of education during the coronavirus disease (COVID-19) pandemic. ...
37. The Committee recommends that the State party: ... (c) Ensure equal access to digital education for disadvantaged girls and women, such as Indigenous girls and women ... to narrow the digital divide, in line with the Digital Education Policy for the period 2023–2030....

Employment

38. The Committee ... welcomes the measures taken by the State party to increase women's representation in decision-making positions in the private sector. The Committee nevertheless notes with concern that:
- (a) The State party interprets article 11 of the Convention as "a reference to the prohibition of discrimination on the basis of equality between men and women only", thereby excluding intersecting forms of discrimination against women; ...
 - (f) Indigenous women and foreign spouses of Malaysian citizens face limited access to employment....
39. The Committee recommends the State party: (a) Withdraw its interpretative declaration concerning article 11 of the Convention, address intersecting forms of discrimination against women, facilitate access to formal employment by ... Indigenous women....

Rural and other disadvantaged groups of women

44. The Committee welcomes the launch of the Rural Development Policy 2030, which includes a specific chapter on rural women that establishes a 30 per cent quota for rural women's representation on the Village Development and Security Committee and the Orang Asli Village Development and Security Committee. However, it notes with concern that most Indigenous women and girls living in rural areas lack access to decision-making in their communities and to basic services, such as education, economic opportunities, health services, water and electricity.
45. Recalling its previous recommendation ... and in line with its general recommendations No. 34 (2016) on the rights of rural women and No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party:
- (a) Ensure that the National Strategic Plan for the period 2023–2026 of the Department of Orang Asli Development and relevant policies in Sabah and Sarawak address intersecting forms of discrimination faced by Indigenous women and girls;
 - (b) Ensure that Indigenous women and girls have adequate access to decision-making in their communities, as well as to basic services, such as education, economic opportunities, health services, water and electricity.

Climate change and disaster risk reduction

52. The Committee welcomes the initiatives aimed at green growth and advancing climate action implemented by the Malaysian Green Technology Corporation. However, it notes with concern:
- (a) Reports of river water contamination in Indigenous areas, which disproportionately affect Indigenous women and girls;
 - (b) Challenges Indigenous women and girls face in maintaining their traditional lifestyle, with adverse health impacts, due to climate change and territorial loss, coupled with changes in their food systems;
 - (c) The lack of a gender perspective in policies and programmes on climate change, disaster risk reduction and transition to renewable energy.
53. The Committee recommends that, in line with its general recommendations No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context

of climate change and No. 39 (2022) on the rights of Indigenous women and girls, the State party review its climate change and disaster response strategies, taking into account the negative effects of climate change on the livelihoods of women, especially rural and Indigenous women, and ensure that women are meaningfully involved in the development, adoption and implementation of legislation, policies and programmes on climate change, disaster response and disaster risk reduction by, in particular:

- (a) Collecting disaggregated data on the impact of climate change and natural disasters on women and girls, including rural and Indigenous women and girls;
- (b) Ensuring the incorporation of a gender perspective in climate change and disaster risk reduction strategies, renewable energy legislation, financing and programmes in order to address the specific and unique needs of women and girls and build their resilience and effective adaptation to climate change;
- (c) Taking measures to address the specific impact of climate change on women's livelihoods and access to resources, and ensuring their economic empowerment in the transition to a green economy.

6. Rwanda, CEDAW/C/RWA/CO/10, 6 June 2024

Access to justice

11. The Committee notes the State party's efforts in providing physical and virtual legal aid services and legal education to women in the communities and raising awareness of gender-based violence and women's rights, including through non-state legal aid service providers. However, it notes with concern the persistent barriers to women's and girls' access to justice, including access to justice for rights violations against women in conflict situations, in particular, the underutilization of formal justice systems by women facing rights abuses and seeking legal redress; the limited access to information among women about their rights under the Convention and domestic law and how to claim them; the limited knowledge among ... Batwa women, of available legal aid services; the preference to not report abuse and remain silent; ... and the limited capacity on the part of the judiciary and law enforcement officials to apply the Convention directly in legal proceedings or to interpret national legislation in conformity with the Convention.
12. Recalling its general recommendation No. 33 (2015) on women's access to justice, the Committee recalls the State party's obligation to ensure that women's rights are protected against violations by all components of plural justice systems. It recommends that the State party: ...
 - (d) Increase awareness-raising campaigns and women's rights and legal literacy among communities and women, including ... Batwa women, to educate them on women's rights under the Convention, regional women's rights instruments and national legal and policy frameworks to empower them to claim their rights and dismantle patriarchy that perpetuates discriminatory stereotypes that promote gender inequality....

Temporary special measures

21. The Committee commends the State party's implementation of temporary special measures to increase the representation of women in political life, notably the introduction of mandatory 30 per cent quotas for women candidates and of 30 per

cent reserved seats for women in the Chamber of Deputies and the Senate. The Committee is nonetheless concerned at the lack of temporary special measures to accelerate the achievement of the substantive equality of women and men in areas where women are underrepresented or disadvantaged, such as education and employment, and to address inequalities faced by disadvantaged groups of women, such as ... Batwa women....

22. The Committee recommends that the State party adopt temporary special measures, such as quotas, to increase the representation of women in employment sectors where they are currently underrepresented, including in leadership and decision-making positions, in line with article 4 (1) of the Convention and general recommendation No. 25 (2004) on temporary special measures. The State party should also adopt targeted temporary special measures to accelerate the achievement of the substantive equality of women and men in areas where women are underrepresented or disadvantaged, such as education and employment, and to address inequalities faced by disadvantaged groups of women, such as ... Batwa women.... It also recommends that the State party shift its approach from numerical quotas to achieving meaningful parity in all spheres of political and public life, including in decision-making positions.

Batwa women

43. The Committee takes note of the State party's policy to refrain from categorizing groups on the basis of ethnicity following the genocide. However, it notes with concern that the former forest-dwelling Batwa women and girls continue to face intersecting forms of discrimination and marginalization and that the lack of targeted measures for Batwa women and girls results in a failure to adequately address their needs.
44. Recalling its previous concluding observations ... the Committee recommends that the State party collect data on the specific situation of Batwa women with a view to assessing their lived realities and the intersecting forms of discrimination that they face, and adopt targeted measures including temporary special measures to address the stigma faced by Batwa women and girls and facilitate their full integration into the wider society, notably by ensuring the fulfilment of Batwa women's rights in multiple domains, including education, employment and health care, as well as the right to participate in political and public life.

7. Brazil, CEDAW/C/BRA/CO/8-9, 6 June 2024

Positive aspects

...

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, such as the adoption or establishment of the following: (a) The Ministry of Women, the Ministry of Indigenous Peoples and the Ministry of Racial Equality, in 2023....

Principal areas of concern and recommendations Visibility of the Convention, the Optional Protocol thereto and the Committee's general recommendations

8. The Committee notes that the Convention is referred to as part of the national legal framework in various guiding documents and tools. However, it notes with

concern the limited awareness among women, in particular among ... Indigenous women [and] Quilombola women ... of their human rights under the Convention and the remedies available to claim them.

9. The Committee recommends that the State party intensify its efforts to widely disseminate and raise awareness of the Convention, the Optional Protocol thereto and the Committee's general recommendations in languages used in the State party, including Indigenous languages, in particular among ... Indigenous women [and] Quilombola women, ... and to educate women on their human rights under the Convention and the legal remedies available to claim those rights.

Women's access to justice

10. The Committee notes the efforts of the State party to facilitate women's access to justice through targeted policies. However, the Committee notes with concern several obstacles in access to justice faced by ... Indigenous women [and] Quilombola women, ... such as language barriers ... and, in remote and underserved areas, legal and transportation costs and limited access to information on available remedies in cases of intersecting forms of discrimination, which prevent victims from bringing complaints.
11. The Committee, in line with its general recommendation No. 33 (2015) on women's access to justice, recommends that the State party strengthen access to justice for ... Indigenous women [and] Quilombola women ... including by ... deploying mobile courts to remote areas, providing free legal aid and interpretation services, reimbursing transportation costs and disseminating information about the legal remedies available to victims to claim their rights.

Temporary special measures

18. The Committee takes note of the State party's efforts to introduce temporary special measures to increase the representation of women in political and public life. However, it notes with concern the limited use of temporary special measures in other areas where women, in particular... Indigenous women [and] Quilombola women ... are underrepresented and disadvantaged, including in political, public, social and economic life and in relation to education, employment, health care and social security. The Committee is also concerned about the limited assessment of the impact of existing temporary special measures on women's equal and inclusive representation to evaluate how effectively these measures have contributed to the achievement of substantive equality between women and men.
19. The Committee recommends that the State party expand the use of temporary special measures, including quotas, special scholarships, affirmative procurement and financial incentives for hiring women and establish time-bound targets to accelerate the achievement of substantive equality between women and men in all areas covered by the Convention where women, in particular rural women, women with disabilities, Indigenous women, Quilombola women, women of African descent and lesbian, bisexual, transgender and intersex women, are underrepresented or disadvantaged, including in political, public, social and economic life and in relation to education, employment, health care and social security, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures.

Gender-based violence against women

22. The Committee recognizes the National Policy for Combating Violence against Women and notes that the Women Living without Violence programme has been reinstated, prioritizing the restructuring of the Call 180 hotline and the establishment of new units of the House of Brazilian Women. It also notes that femicide has been defined as a form of qualified homicide. The Committee is concerned, however, about the high prevalence of gender-based violence against women and girls in the State party. In particular, it notes with concern: ... (d) The escalation of killings of Indigenous women and adolescent girls in Mato Grosso do Sul...
23. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and target 5.2 of the Sustainable Development Goals, to eliminate all forms of violence against all women and girls in the public and private spheres, the Committee urges the State party to: ... (d) Accelerate the establishment of House of Indigenous Women facilities in all Indigenous territories across the State party, with dedicated service provision and protocols to combat gender-based violence through informative materials, talks and workshops in Indigenous languages and training for professionals of the Women's Protection Network on cultural aspects and the rights of Indigenous Peoples...

Trafficking and exploitation of prostitution

24. The Committee notes the adoption of Law 13.344 in 2016 aligning the definition of the crime of trafficking in persons with international standards and the announcement by the State party of the launch of the fourth National Plan to Combat Trafficking in Persons in 2023. However, the Committee notes with concern: ... (c) The heightened risk of sex trafficking and exploitation of prostitution for Indigenous women, women of African descent, rural women, migrant women and transgender women...
25. Recalling its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, the Committee recommends that the State party: ... (c) Reinforce programmes and plans for alternative income and decent work with a specific focus on Indigenous women ... who are otherwise at risk of trafficking and/or exploitation in prostitution...

Equal participation in political and public life

26. The Committee takes note of the efforts of the State party aimed at increasing the participation of women in political and public life, including the More Women in Power project and the Multi-year Plan 2024–2027. However, the Committee notes with concern: ... (c) The limited impact of existing temporary special measures to achieve substantive equality between women and men in political and public life, in particular those for ... Indigenous [and] Quilombola [women]...

Women human rights defenders

28. The Committee is deeply concerned at the targeted threats, attacks, harassment, intimidation, including online, and killings of women human rights defenders, women journalists, women environmental activists and women community leaders in favelas. It is particularly concerned about attacks against Indigenous women [and] Quilombola women ... in the context of land demarcation and titling.
29. The Committee urges the State party to:
 - (a) Protect all women human rights defenders, with a particular focus on Indigenous women [and] Quilombola women ... in the context of land demarcation and titling, from any threats, attacks, harassment, intimidation, killings and criminalization of their legitimate work and prosecute and adequately punish

- perpetrators of such violent acts, including public officials;
- (b) Strengthen the human rights defenders' protection programme, especially in rural areas, to ensure that women human rights defenders and activists can freely carry out their legitimate work and exercise their rights to freedom of expression, peaceful assembly and association;
- (c) Adopt legislation to criminalize online violence, cyberattacks and disinformation campaigns, with a particular focus on online gender-based violence.

Education

30. The Committee takes note of the efforts of the State party to combat school dropout among girls, such as the "Pé-de-Meia" savings programme, school meals programmes and other incentives. However, it notes with concern: (a) The high dropout rates among schoolgirls, especially rural, Indigenous, Quilombola and Afrodescendent girls, due to poverty, engagement in unpaid domestic work, early pregnancy and child marriage....
31. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education and target 4.1 of the Sustainable Development Goals, to ensure by 2030 that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes, the Committee recommends that the State party: (a) Intensify efforts to increase the inclusion and effective retention and reinsertion of girls in school, in particular at the secondary level, with special attention to ... Indigenous [and], Quilombola ... girls, including through scholarships....

Employment

32. The Committee welcomes the ratification by the State party of the Domestic Workers Convention, 2011 (No. 189), of the International Labour Organization, its implementation of the National Strategy for Female Entrepreneurship and the adoption of the law on equal pay for equal work. However, it notes with concern: ...
 - (c) The disproportionate share of unpaid domestic, care and support responsibilities undertaken by women, in particular ... Indigenous women, preventing them from participating equally in the workforce and public life, as well as from having sufficient rest to maintain their well-being; ...
 - (e) The limited employment opportunities in the State party for ... Indigenous women [and] Quilombola women....
33. In line with target 8.5 of the Sustainable Development Goals, which is to achieve full and productive employment and decent work for all women and men, including for young people and person with disabilities, and equal pay for work of equal value, the Committee recommends that the State party: ...
 - (c) Implement without delay the National Care Policy and ensure that it is gender-, disability- and age-responsive and that it addresses the specific needs and rights of women of African descent and Indigenous women, in consultation with them; and promote the equal sharing of family and domestic responsibilities between women and men, including by introducing equal parental leave and flexible working arrangements and by increasing the availability of affordable, quality and human rights-based childcare services and support services for persons with disabilities and older persons; ...
 - (e) Increase its targeted measures to promote the formal employment of women

with disabilities, rural, Indigenous and Quilombola women and women of African descent, migrant women and lesbian, bisexual, transgender and intersex women....

Health

34. The Committee notes the repeal of Decree 2.561 of 2020, which instructed health professionals to report cases of legal abortion to the police and the adoption of the Menstrual Dignity programme in 2023. However, it notes with concern: ...
- (b) That the maternal mortality rate has increased sharply, disproportionately affecting ... Indigenous women living in rural areas and in the northern and north-eastern regions of the State party;
 - (c) That traditional and naturopathic health systems, ancestral knowledge, cosmology and Indigenous practices are not recognized or integrated into the federal health-care system, negatively affecting access to health care by Indigenous women.
35. In line with general recommendation No. 24 (1999) on women and health and targets 3.1 and 3.7 of the Sustainable Development Goals, to reduce global maternal mortality and ensure universal access to sexual and reproductive health-care services, the Committee recommends that the State party: ...
- (b) Strengthen measures to counter the alarming rate of maternal mortality, including by improving access to prenatal and postnatal care and emergency obstetric services provided by skilled birth attendants throughout the territory of the State party and address its root causes, such as obstetric complications, early pregnancy and unsafe abortions;
 - (c) In line with general recommendation No. 39 (2022) on the rights of Indigenous women and girls, recognize and incorporate Indigenous traditional and naturopathic health systems, ancestral knowledge, cosmology and practices into the health-care system, recruit Indigenous shamans, healers and midwives and hire female doctors for gynaecological care in Indigenous areas.

Economic empowerment of women

36. The Committee welcomes the measures taken by the State party to promote the economic empowerment of women, including through the “Bolsa Família” family allowance programme. However, it notes with concern the disproportionately high poverty levels and limited access to economic and social benefits of ... Indigenous and Quilombola women....
37. The Committee recommends that the State party strengthen efforts to reduce poverty among women, with a particular focus on disadvantaged groups of women, promote their access to low-interest loans without collateral and their participation in entrepreneurial initiatives to empower them economically and provide them with opportunities to acquire the skills necessary to participate fully in economic life.

Indigenous women, Quilombola women and women of African descent

40. The Committee notes with concern that Indigenous and Quilombola women ... face intersecting forms of discrimination and are economically and socially disadvantaged. It also notes with concern:

- (a) That Indigenous Peoples and persons of African descent, in particular Indigenous and Quilombola women, lack titles to their lands and face forced removals from lands traditionally occupied or used by them and the exploitation of those lands by private non-State actors, such as extractive industries and infrastructure developers, without consultation, their free, prior and informed consent or adequate benefit-sharing;
 - (b) The planned adoption of the “Marco Temporal” (temporal framework) doctrine, which would limit the recognition of ancestral lands of Indigenous Peoples only to the lands they were occupying on the day of the promulgation of the Constitution, namely 5 October 1988. This doctrine has reportedly been used to nullify administrative demarcation processes concerning Indigenous lands;
 - (c) The limited protection of Quilombola women as a disadvantaged group in the legal framework, excluding them from the Single Health System, education and other social benefits and exposing them to political and other gender-based violence, including femicides; ...
 - (e) The problem of transnational crime and its effects on Indigenous women in border areas, in particular in the Rio Negro area, along the border with Colombia and Venezuela (Bolivarian Republic of);
 - (f) The threats to the mental health and physical integrity of Indigenous and Quilombola women ... in relation to the increase in alcohol consumption and its harmful use in their communities.
41. With reference to its general recommendation No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party:
- (a) Protect Indigenous women [and] Quilombola women ... from the illegal occupation of and forced evictions from lands traditionally occupied or used by them, strengthen procedural safeguards against forced evictions and reparations for victims, provide for adequate sanctions and require the free, prior and informed consent of their communities and adequate benefit-sharing for any economic activities on their traditional lands;
 - (b) Refrain from adopting any legislation to enact the “Marco Temporal” doctrine and reject it in the jurisprudence of the competent courts, increase public awareness about its adverse effects on Indigenous and Quilombola women and girls and ensure the promotion and protection of their rights, in particular with regard to the demarcation of their ancestral territories without any temporal restrictions;
 - (c) Ensure that Quilombola women are explicitly recognized as a disadvantaged group in need of special protection in national legislation, provide them with the same rights as other such groups, including access to the Single Health System, education and other essential social services, remove any legal and bureaucratic barriers preventing them from accessing those services and raise awareness among them about their human rights and the remedies available to claim those rights; ...
 - (e) Promote actions for territorial protection, oversight and the strengthening of monitoring bodies and Indigenous policy to combat organized crime and international drug trafficking within Indigenous territories, which are threatening the good life of Indigenous communities, including Indigenous women and girls;
 - (f) Ensure the provision of mental health services, including treatment for substance abuse and rehabilitation services in rural areas and Indigenous communities.

Women with disabilities

46. The Committee notes with concern that women and girls with disabilities, especially those belonging to Indigenous ... and Quilombola communities, face intersecting forms of discrimination in the State party. ...
47. The Committee recommends that the State party strengthen the legal protection of women with disabilities, provide them with adequate access to physical infrastructure, information and communications technologies, justice, education, employment and health services, and ensure that safeguards under the Maria da Penha Law and other relevant laws and women's hotlines are accessible and effectively protect women and girls with disabilities from gender-based violence.

Climate change and disaster risk reduction

50. The Committee notes with concern:
- (a) That climate change has a deleterious impact on rural, Indigenous and Quilombola women and women of African descent, who face natural disasters, such as landslides and flooding, and often lack the conditions required to increase their climate resilience, since climate change results in the loss of their ecosystems, community habitats, livelihoods and ancestral knowledge and in the disruption of food and water supplies;
 - (b) That the State party has only signed but not ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) of 2018.
51. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party review its climate change and disaster response strategies, taking into account the negative effects of climate change on the livelihoods of women, and ensure that women and men are equally represented in the development, adoption and implementation of legislation, policies and programmes on climate change, disaster response and disaster risk reduction, in particular by:
- (a) Ensuring the participation of rural, Indigenous, Quilombola and Afrodescendent women in decision-making related to extractive activities, economic initiatives, development, investment, tourism, climate mitigation and adaptation programmes and conservation projects, and that any use of their territories is subject to consultation and their free, prior and informed consent and adequate compensation;
 - (b) Expediting the ratification of the Escazú Agreement, in accordance with its pledge in the context of the Human Rights 75 campaign.

8. Central African Republic, CEDAW/C/CAF/CO/6, 20 February 2024

Temporary special measures

23. The Committee notes with appreciation the adoption of the gender parity law (Act No. 16.004) in November 2016, which provides for a 35 per cent quota for the

representation of women on electoral lists and appointments to public office, as well as for the establishment of a national observatory for parity. However, the Committee observes with concern reports about the lack of enforcement of quotas for electoral lists of political parties; that temporary special measures have yet to be applied in other areas of political and public life, in the fields of education and employment and in relation to economic empowerment; and the lack of temporary measures to promote the equal representation of women facing intersecting forms of discrimination, such as women with disabilities, older women, rural women, pygmy women, Muslim women, internally displaced women and refugee women.

24. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party: (d) Adopt temporary special measures to ensure equal representation of ... indigenous women ... in all areas where they are underrepresented or face intersecting forms of discrimination.

Nationality

35. The Committee notes the progress made by the State party in restoring birth registration services, including the establishment of birth registration units across its territory and the increase in the number of registered births in Bangui, Bimbo and Begoa. Nonetheless, it notes with concern: ... (c) The barriers faced by women belonging to religious minorities and by indigenous and nomadic women in accessing birth registration and birth certificates for their children and obtaining and identity documents.
36. Recalling its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recommends that the State party: ... (b) Facilitate the access of Muslim, indigenous and nomadic women to birth registration and birth certificates for their children, and to identity documents.

Rural women

45. The Committee notes with concern that rural women have limited access to land ownership and control, property and productive resources owing to discriminatory customary laws and practices. It also notes with concern the lack of information about measures to ensure the equal participation of women in decision-making on water resource management and rural development plans. It is furthermore concerned about the impact of gold, diamond and other extractive activities, as well as of the farmerherder conflict in border areas due to desertification, deforestation and climate change, on rural women's safety and livelihoods.
46. The Committee, recalling its general recommendation No. 34 (2016) on the rights of rural women, recommends that the State party:
- (a) Ensure the access of rural women to land ownership and control and to property, including by ensuring that land parcels are registered under the names of both spouses, facilitating and providing capacity-building on women's economic rights for judges, cadastral registrars, traditional authorities and community leaders, and addressing discriminatory customary laws and practices;
 - (b) Expedite the adoption of the agricultural policy and the Agropastoral Land Code and ensure that rural women participate on an equal basis in their implementation and monitoring, as well as in decision-making on strategies related to food security and the use of land and other resources;

- (c) Adhere to the Guiding Principles on Business and Human Rights, endorsed by Human Rights Council in its resolution 17/4 of 16 June 2011, and apply due diligence to hold extractive industries accountable for violations of the human rights of rural and indigenous women in the exploitation of natural resources.

9. Nicaragua. CEDAW/C/NIC/CO/7-10, 14 February 2024

Women human rights defenders

11. The Committee notes with concern: (a) Legislative reforms in the State party that discriminate against women on the basis of their political opinion, hampering women's political participation owing to intimidation and fear of arrest and gender-based violence; the shrinking civic space; and excessive restrictions on the legitimate work of women human rights defenders, including Indigenous women....

Women's access to justice

17. The Committee notes the establishment of 61 special police units for women and family bureaux (consejerías familiares) within the executive branch. However, it notes with concern: (a) The lack of independence of the judiciary and the Office of the Attorney General and judicial gender bias, which undermine women's access to justice for the purpose of filing complaints of gender-based violence, and that more than 50 per cent of proceedings in cases of gender-based violence, including sexual violence, are discontinued or result in acquittals....
18. Recalling its general recommendation No. 33 (2015) on women's access to justice, the Committee recommends that the State party:
 - (a) Ensure the independence of judges and accountability of prosecutors and police officers in cases of gender-based violence, eliminate judicial gender bias and provide systematic and mandatory capacity-building for judges, prosecutors, the police and other law enforcement officers on women's rights and gender equality to eliminate judicial gender bias and patriarchal attitudes;
 - (b) Raise awareness among women about their rights under the Convention and the remedies available to claim them, targeting in particular women belonging to disadvantaged groups, including Indigenous women....

National machinery for the advancement of women

19. The Committee notes that the State party has a Ministry of Women's Affairs, as well as gender units in government departments. However, it notes with concern:
 - (a) That the budgetary allocations for the national machinery for the advancement of women are insufficient for the fulfilment of its mandate;
 - (d) The lack of measures to ensure that women living in the autonomous Caribbean regions benefit from public programmes to promote gender equality and non-discrimination;
 - (e) The lack of consultation of the national machinery for the advancement of women with civil society organizations, in particular women's organizations.
20. Recalling the guidance provided in the Beijing Declaration and Platform for Action, in particular regarding the conditions necessary for the effective functioning of national machineries, the Committee recommends that the State party:
 - (a) Increase the human, technical and financial resources for the national machinery

for the advancement of women, including the Ministry of Women's Affairs and local components, ensuring that the resources correspond to their mandates and activities; ...

- (c) Adopt a comprehensive national strategy on gender equality and women's rights and ensure the active participation of women's organizations, including in the autonomous regions and at the municipal level;
- (d) Designate gender focal points in the Caribbean autonomous regions to ensure the implementation of gender equality policies and address situations of marginalization and historical inequalities faced by women in those areas;
- (e) Ensure regular consultations of the national machinery for the advancement of women with women's organizations of plural backgrounds, including organizations representing ... Indigenous women....

Temporary special measures

- 23. The Committee notes with concern the limited awareness among the general public and members of the National Assembly, as well as public officials in the State party, about the purpose and non-discriminatory nature of temporary special measures. It also notes with concern the lack of information on specific legislation providing for temporary special measures, in accordance with article 4(1) of the Convention, to achieve substantive equality of women and men.
- 24. Recalling its general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party raise awareness about the purpose and non-discriminatory nature of temporary special measures and adopt and enforce legislation on temporary special measures, for example, in decision-making systems at all levels, education and employment, to accelerate substantive equality of women and men in all areas where women are underrepresented or disadvantaged, including Indigenous women ... and regularly monitor and evaluate the effectiveness of such measures.

Stereotypes and harmful practices

- 25. The Committee notes with concern:
 - (a) Legislation, public policies and practices, including the paradigm of Marianismo, in accordance with which women should fulfil qualities of the Virgin Mary, the Catholic religious icon, which reinforce patriarchal attitudes and discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society;
 - (b) The prevalence of gender stereotypes in public discourse and the absence of a national strategy and awareness-raising campaigns to eliminate gender stereotypes.
- 26. Recalling its previous recommendations ... and drawing attention to joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, as revised, the Committee recommends that the State party:
 - (a) Adopt and implement a comprehensive strategy to eliminate discriminatory stereotypes on the roles and responsibilities of women and men in the family and in society, in cooperation with the media and using social media;
 - (b) Conduct awareness-raising campaigns among public officials, Indigenous and

community leaders, teachers, girls and boys about women's rights and gender equality.

Gender-based violence against women

27. The Committee acknowledges the amendment of the Criminal Code in 2017, increasing penalties for gender-based violence against women. However, it reiterates its concern about the persistence of gender-based violence against women, including sexual violence, in the State party. It notes with concern: ...
- (c) Information about impunity for gender-based violence, including rape and other forms of sexual violence, against Indigenous women living in the North and South Caribbean Coast Autonomous Regions, women journalists, women in detention, including for political reasons, women human rights defenders, women whose children or other family members were killed during the crackdown on political protests in 2018 and lesbian, bisexual and transgender women;
 - (d) Reports of gender-based violence, attacks, physical, psychological and sexual violence, disappearances, internal displacement, and forced eviction from and illegal occupation of their traditional lands to which Indigenous women were subjected in the North Caribbean Coast Autonomous Region....
28. Recalling its previous recommendations ... and in line with its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, and target 5.2 of the Sustainable Development Goals on the elimination of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation, the Committee recommends that the State party:
- (a) Adopt and implement a national strategy for the prevention of all forms of gender-based violence against women and collect data on the prevalence of gender-based violence against women, disaggregated by age, relationship between victim and perpetrator and other sociodemographic characteristics; ...
 - (c) Ensure that all cases of femicide are investigated and that perpetrators are prosecuted and adequately sentenced and amend the definition of femicide (article 9 of Act No. 779 of 2012 reforming the Criminal Code) to ensure that it includes all cases of gender-based or gender-related killings;
 - (d) Prosecute and adequately sentence perpetrators of gender-based violence against women human rights defenders, women journalists, women in detention, including women detained in the context of the 2018 protests and women whose children or other family members were killed during the crackdown on these protests, and lesbian, bisexual and transgender women, and provide victims with appropriate remedies, including reparations;
 - (e) Ensure the prosecution of cases of attacks, physical, psychological and sexual violence, disappearances, internal displacement and forced evictions and the punishment of perpetrators and provide women victims with expeditious and accessible judicial and non-judicial remedies;
 - (f) Issue, enforce and monitor compliance with protection orders, impose penalties in case of non-compliance and provide support services for victims of gender-based violence, including adequately funded shelters, psychosocial counselling and rehabilitation services, including for women and girls with disabilities....

Equal participation in political and public life

31. The Committee notes that more than half of the members of the National Assembly are women. However, it notes with concern: ... (b) The low representation of Indigenous women and women of African descent in local governance, reportedly owing to racism and discriminatory stereotypes....
32. Recalling its general recommendation No. 23 (1997) on women in political and public life, as well as Sustainable Development Goals target 5.5, which is to ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life, the Committee recommends that the State party: ...
 - (b) Adopt temporary special measures, such as statutory quotas and a gender parity system, in line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, to ensure the equal representation of women, including ... Indigenous women ... in particular at decision-making levels, in the National Assembly, regional and municipal legislative bodies, the Government, the public service and the foreign service....

Education

35. The Committee notes with concern:
 - (a) The lack of information about comprehensive science-based sexuality education in the State party;
 - (b) The high dropout rates among Indigenous women and girls and women and girls of African descent in the North Caribbean Coast Autonomous Region at the primary and secondary levels of education and their limited access to higher education;
 - (c) The digital gap between rural and urban areas in relation to education programmes, affecting ... Indigenous women ... and the setback to the educational attainment of girls and women due to the COVID-19 pandemic....
36. In the light of its general recommendation No. 36 (2017) on the right of girls and women to education, the Committee recommends that the State party:
 - (a) Amend its legislation to provide for comprehensive science-based and age-appropriate sexuality education at all levels of education, including on responsible sexual behaviour and the prevention of early pregnancies and sexually transmitted diseases;
 - (b) Promote school enrolment, attendance and retention of girls and women, especially at the secondary and higher levels; address the root causes of school dropout among girls, including child marriage, early pregnancy and stereotypes about the roles of women and men in the family and in society; ensure that young mothers can return to school following childbirth, with a view to completing their education; and adopt temporary special measures to ensure retention of Indigenous girls and girls of African descent in education, as well as access of girls and women to grants, scholarships and loans to facilitate their access to higher education; ...
 - (f) Adopt targeted measures to promote professional reinsertion and formal employment of women following the COVID-19 pandemic, including with respect to Indigenous women....

Health

39. The Committee notes with concern:

- (a) The lack of sufficient coverage of health services and medicine shortages, which exert an impact especially on women in the Caribbean autonomous regions and women with disabilities, as well as the prevalence of malaria and dengue fever and HIV/AIDS in the State party; (b) The maternal mortality rates among ... Indigenous women ... and deficiencies in the identification and reporting of cases of maternal deaths...

40. In the context of its general recommendation No. 24 (1999) on women and health and its statement on sexual and reproductive health and rights, adopted at its fifty-seventh session in 2014, the Committee recalls that unsafe abortion is a leading cause of maternal morbidity and mortality. The Committee reiterates its previous recommendations ... and recommends that the State party:

- (a) Increase budgetary allocations to ensure women's access to affordable health-care services and medicines, in particular for Indigenous women and girls...

Economic empowerment

41. The Committee remains concerned about: ... (d) The lack of information about the coverage of Indigenous women ... under the programmes to improve nutrition and productivity in the coastal Caribbean regions.

42. The Committee recommends that the State party: ... (d) Adopt and implement programmes to support the participation of Indigenous women ... in the Caribbean autonomous regions in agricultural production, fishing and forestry ... and ensure the sustainability of such programmes.

Rural women, climate change and disaster risk reduction

43. The Committee notes with concern:

- (a) The adverse effects of State concessions for the exploitation of natural resources, including mining and logging and deforestation, on the livelihoods of and climate risk faced by rural women and girls, women and girls of African descent and Indigenous women and girls;
- (b) Reports on criminalization and draconic reprisals and threats against women environmental activists, including women and girls of African descent and Indigenous women and girls;
- (c) The high rate of deforestation of the Bosawas biosphere reserve, the second largest in the world, and the climate risk implications, as a result of State concessions to individuals and large corporations, illegal settlements in forested areas, indiscriminate logging, mining and invasive cattle ranching and extraction of natural resources without the free, prior and informed consent of the women and peoples of these regions;
- (d) The lack of a gender perspective in the climate change and disaster risk reduction strategies of the State party;
- (e) The lack of collaboration and consultation with Indigenous women and girls and women and girls of African descent to address the risks of destruction of the Bosawas biosphere reserve...

44. In line with its general recommendations No. 34 (2016) on the rights of rural women and No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party:

- (a) Regulate the activities of extractive and logging industries and ensure that

large-scale and other projects for the exploitation of natural resources are subject to environmental impact assessments, benefit-sharing agreements and the free, prior and informed consent of the affected local populations, including rural and Indigenous women;

- (b) Ensure that women whose health and rights are affected by extractive industry projects have access to justice, adequate compensation and health care;
- (c) Urgently introduce policies to rehabilitate and prevent further destruction of the Bosawas biosphere reserve in consultation with Indigenous women and women of African descent;
- (d) Adopt and implement, as expeditiously as possible, policies and plans relating to disaster risk reduction and climate change that explicitly include a gender perspective and take into account the particular needs of women, in particular rural women, women of African descent and Indigenous women; adhere to the Paris Agreement on climate change of 12 December 2015; and involve women in the formulation and implementation of policies and action plans on climate change and disaster response and risk reduction;
- (e) Establish a permanent regional round table with rural women, women of African descent and Indigenous women that provides for dialogue, information, collaboration and consultation concerning ways and measures to protect the Bosawas biosphere reserve. Collaboration mechanisms should be formal, periodic and take into consideration appropriate measures to facilitate free expression of women's views....

Indigenous women and women of African descent

45. The Committee notes with concern:

- (a) That Indigenous women and women of African descent face intersecting forms of discrimination and have limited access to education, employment, economic opportunities, health care and decision-making processes in the State party;
- (b) The high risk of gender-based violence, including killings, sexual violence and forced evictions of Indigenous women, in particular the Wilu Indigenous women in the Bosawas reserve and the Mayangna Sauni Indigenous territory;
- (c) The lack of information on any progress made by the State party in land demarcation and issuance of land titles to Indigenous peoples and the impact of non-recognition of Indigenous lands on the livelihoods of Indigenous women.

46. Recalling its general recommendation No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party:

- (a) Develop comprehensive anti-discrimination legislation and policies aimed at addressing intersecting forms of discrimination against Indigenous women and girls and women and girls of African descent and adopt targeted measures, including temporary special measures, in line with article 4(1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, to promote their access to decision-making, education, employment, economic opportunities and health care, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples...;
- (b) Ensure adequate protection of Indigenous women and girls, such as the Wilu Indigenous women in the Bosawas reserve and the Mayangna Sauni Indigenous territory, from gender-based violence, including killings, sexual violence and forced evictions from their lands; investigate, prosecute and adequately punish

such acts; and provide effective remedies and reparations to victims;

- (c) Apply Act No. 717, adopted in 2010, creating the Fund for the Purchase of Land with Gender Equity for Rural Women in Nicaragua and ensure that Indigenous women have access to land titles and collective ownership and control of land, water, forests, fisheries, aquaculture and other resources that they have owned, occupied or otherwise used or acquired.

Women and girls with disabilities

51. The Committee notes with concern:

- (a) The lack of information about legislation, policies and programmes to promote inclusion of women and girls with disabilities in the State party and eliminate physical and other barriers that prevent them from accessing education, employment, health care and social protection, including in places of detention and rural communities, communities of people of African descent and Indigenous communities;
- (b) Intersecting forms of discrimination against women with psychosocial disabilities, including stigmatization, deprivation of legal capacity and institutionalization in psychiatric hospitals without their free and informed consent.

52. Recalling its general recommendation on No. 18 (1991) on disabled women, the Committee recommends that the State party, with the participation of women and girls with disabilities through their representative organizations: (a) Ensure that legislation and policies address the situation of women and girls with disabilities and that they have access to inclusive education, employment, health care and social protection, including in places of detention ... and Indigenous communities....

10. Jamaica, CEDAW/C/JAM/CO/8, 15 November 2023

Climate change and disaster risk reduction

40. The Committee welcomes the State party's commitment to a gendered approach to climate change, including the adoption of the Gender and Climate Change Strategy and Action Plan in 2022 and the creation of a network of climate change focal points. However, it notes with concern that women are disproportionately affected by the impact of climate change with regard to natural disasters and the loss of livelihoods, particularly in agricultural production and the blue economy, food insecurity, water scarcity, lack of access to sexual and reproductive health services and the increased risk of gender-based violence and exploitation due to climate-induced migration from rural to urban areas.

41. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party:

- (a) Address the needs of women, including women with disabilities, rural women, older women and Indigenous women, in the context of climate change and disaster risk reduction, focusing on access to sexual and reproductive health services and prevention of and protection from gender-based violence and loss of livelihoods;
- (b) Provide effective gender budgeting for initiatives under the Gender and Climate Change Strategy and Action Plan, including those aimed at financing and encouraging a sustainable blue economy, to ensure that such initiatives are

fully inclusive of women, promote women's empowerment and support the climate change agenda to help women and girls adapt effectively to climate change and disasters.

11. Guatemala, CEDAW/C/GTM/CO/10, 14 November 2023

Introduction

3. The Committee commends the State party on its high-level delegation, which ... included representatives of Congress, the Constitutional Court, the Presidential Commission on Discrimination and Racism against Indigenous Peoples, ... the Office for the Defence of Indigenous Women's Rights, the Indigenous Development Fund and the Permanent Mission of Guatemala....

Positive aspects

4. The Committee welcomes the progress achieved since the consideration in 2017 of the State party's previous reports in undertaking legislative reforms....
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, such as the adoption or establishment of the following: (a) National Plan for the Prevention and Eradication of Violence against Women for the period 2020-2029; (b) Policy on access to justice for Indigenous persons for the period 2017-2025, improving Indigenous women's access to justice, and the establishment by the Public Prosecution Service of the Indigenous Peoples Secretariat to implement, monitor and evaluate the policy....

Principal areas of concern and recommendations

Context

8. The Committee notes the outcomes of the democratic elections announced on 28 August 2023 by the Supreme Electoral Tribunal of Guatemala. It also notes that the new President and Vice-President of Guatemala were elected as a result of peaceful and free elections, with active participation of women, in particular Indigenous women, following an electoral campaign based on the promise of reversing regressive trends in women's rights and providing opportunities to women and other groups that have been historically marginalized. ...
9. The Committee recommends that the State party guarantee the safety, non-prosecution, freedom of peaceful assembly and freedom of expression of all women in the women's movement, Indigenous women and women human rights defenders at all times and that it respect the rule of law and safeguard democracy.

Visibility of the Convention, the Optional Protocol thereto and the Committee's general recommendations

10. The Committee notes the 43 court decisions referring to the Convention issued between 2017 and 2022, as well as other dissemination efforts and capacity-building activities relating to the Convention undertaken by the State party. However, it notes with concern women's limited awareness of their human rights and the remedies available to claim them, in particular among ... Indigenous women [and] Garifuna women....
11. The Committee recommends that the State party intensify its efforts to widely disseminate and raise awareness of the Convention, the Optional Protocol thereto and the Committee's general recommendations in languages used in the State

party, including Indigenous languages, in particular among ... Indigenous women [and] Garifuna women ... and to educate women on their rights under the Convention and the legal remedies available to claim those rights.

Definition of equality and non-discrimination

12. The Committee notes the decision of the Constitutional Court in case No. 5592020 upholding women's right to non-discrimination in the workplace and in family relations. It remains concerned, however, about the absence of a comprehensive definition of the term "discrimination against women" in its legislation, in line with articles 1 and 2 of the Convention, as well as of comprehensive anti-discrimination legislation and adequate sanctions. It notes with concern the limited implementation of existing laws and policies to address intersecting forms of discrimination against women, in particular ... Indigenous women [and] Garifuna women....
13. Reiterating its previous recommendations ... the Committee urges the State party to adopt a comprehensive definition of discrimination against women covering direct and indirect discrimination in the public and private spheres, as well as intersecting forms of discrimination, in line with articles 1 and 2 of the Convention, the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and target 5.1 of the Sustainable Development Goals, which is to end all forms of discrimination against all women and girls everywhere.

Women's access to justice

14. The Committee notes the efforts of the State party to facilitate women's access to justice through targeted policies. However, the Committee notes with concern: ... (b) Barriers to access to justice faced by Indigenous women [and] Garifuna women ... such as legal illiteracy, judicial bias and limited access to information on available remedies for complaining about intersecting forms of discrimination....
15. The Committee, in line with its general recommendation No. 33 (2015) on women's access to justice, recommends that the State party: ... (b) Strengthen access to justice for Indigenous women [and] Garifuna women ... including by addressing linguistic barriers, ensuring that courts are accessible and disseminating information about the legal remedies available for claiming their rights....

National machinery for the advancement of women and gender mainstreaming

18. The Committee notes with concern the State party's reluctance to adopt draft law No. 4977 to elevate the Presidential Secretariat for Women to the rank of a ministry. It remains concerned about the limited resources, authority and capacity of as well as the coordination among the different institutions with a mandate to promote women's rights, including the Office for the Defence of Indigenous Women's Rights and the National Coordination Office for the Prevention of Domestic Violence and Violence against Women. It notes with concern the insufficient budget allocations for institutional strengthening, coordination and the implementation of policies such as National Plan for the Prevention and Eradication of Violence against Women.
19. Recalling its previous concluding observations ... the Committee recommends that the State party elevate the Presidential Secretariat for Women to ministerial rank, strengthen its mandate and allocate adequate resources to it. It also recommends strengthening the human, technical and financial resources of the Office for the Defence of Indigenous Women's Rights and the National Coordination Office for

the Prevention of Domestic Violence and Violence against Women and ensure enhanced coordination among them.

Stereotypes

22. The Committee acknowledges the measures taken by the State party to implement the national communication policy, which requires that all information campaigns, including audiovisual materials, be reviewed before being disseminated to ensure that they contain no discriminatory gender stereotypes. However, the Committee notes with concern the persistence of discriminatory gender stereotypes relating to the roles and responsibilities of women and men in the family and in society, which exacerbate the high levels of violence against women and girls in the State party, including femicide, sexual and domestic violence and sexual harassment.
23. Reiterating its previous concluding observations ... the Committee recommends that the State party:
 - (a) Ensure the implementation of the National Plan for the Prevention and Eradication of Violence against Women 2020-2029 and its guidelines on social and gender norms, including by allocating adequate resources for the effective implementation and monitoring and evaluation of the Plan;
 - (b) Strengthen measures, including awareness-raising and education campaigns targeting political, religious and Indigenous leaders, teachers, girls and boys, and women and men, to eliminate stereotypes regarding the roles and responsibilities of women and men in the family and in society and promote equal sharing of domestic responsibilities between women and men;
 - (c) Ensure that measures to address gender stereotypes are implemented with a particular focus on Indigenous women [and], Garifuna women...;
 - (d) Assess the effectiveness of the measures taken to eliminate discriminatory gender stereotypes and provide information on the results achieved in its next periodic report.

Gender-based violence against women

24. The Committee notes the establishment of special courts for femicide and other forms of violence against women in 17 departments of the State party, as well as a mechanism for the immediate search for missing women (the Isabel-Claudina alert system). The Committee is deeply concerned, however, about the prevalence of gender-based violence against women and girls in the State party. It notes with concern in particular:
 - (a) The sharp increase in femicides, cases of rape, incest, assault and other sexual crimes and domestic violence, as well as the disappearances of women and girls;
 - (b) The lack of adequate resources to implement the Comprehensive Care Model for Women Victims of Violence and for victim protection measures;
 - (c) The precarious financial situation of the Comprehensive Support Centres for Women Survivors of Violence relating to the provision of essential victim support services, due to recurrent delays in the transfer of funds and their limited geographical coverage;
 - (d) The limited geographical coverage of the remote services for filing complaints about gender-based violence against women, which are not accessible in many languages used in the State party, and the costs involved, preventing many

victims from bringing complaints, especially rural women, Indigenous women ... and Garifuna women...;

- (e) The increased incidence of HIV/AIDS among women and girls resulting, inter alia, from sexual violence and assault, in particular against Indigenous women....
25. Recalling its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices and target 5.2 of the Sustainable Development Goals, which is to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and other types of exploitation, the Committee urges the State party to:
- (a) Strengthen measures to prevent, prosecute and punish cases of gender-based violence against women, including by issuing and effectively enforcing protection orders, and impose adequate deterrent penalties for non-compliance with such orders;
- (b) Allocate adequate human, technical and financial resources to the Public Prosecutor's Office to adequately implement the Comprehensive Care Model for Women Victims of Violence and for the protection of victims;
- (c) Accelerate the transfer of the corresponding funds for the Comprehensive Support Centres for Women Survivors of Violence, adopt a dedicated budget line to ensure sustainable funding and increase the number of adequately funded Comprehensive Support Centres for Women Survivors of Violence providing comprehensive victim support services across the State party;
- (d) Increase the geographical and linguistic coverage and reduce the costs for victims of the remote services for filing complaints about gender-based violence against women, prioritizing areas of high incidence;
- (e) Ensure that women victims of sexual violence have immediate and free access to medical treatment, including post-exposure prophylaxis to prevent HIV and other sexually transmitted infections....

Trafficking and exploitation of prostitution

26. The Committee notes that the Secretariat against Sexual Violence, Exploitation and Trafficking in Persons operates one specialized temporary shelter for women victims of trafficking and their children if they are subject to court-ordered protection measures. However, the Committee notes with concern: (a) The lack of preventive measures and low prosecution and conviction rates in cases of trafficking in persons, in particular women and girls, for purposes of sexual exploitation and forced labour in the State party, as well as the heightened risk of sex trafficking for Indigenous women [and] Garifuna women ... and internally displaced women....

Equal participation in political and public life

28. The Committee notes with concern:
- (a) That only 32 out of 160 members of Congress are women and that only 12 out of 340 mayors are women, in each case including only one Indigenous woman;
- (b) That the 2023 election process posed numerous challenges for participation of women, particularly Indigenous women, who expressed concern about the limited availability of information on the electoral process in their languages

and the negative portrayals of Indigenous women, girls and children in election campaigns;

- (c) The lack of effective temporary special measures to achieve substantive equality of women and men in political and public life, in particular as regards women from disadvantaged groups, including Indigenous and Garifuna woman and women of African descent;
 - (d) Reports of discriminatory messages, threats, intimidation and violence against women in politics or women holding public positions, who are frequently exposed to a climate of fear.
29. In line with its general recommendation No. 23 (1997) on women in political and public life, the Committee recommends that the State party strengthen its efforts to promote women's equal representation in Congress, occupancy of government posts, the judiciary and the public service at the national, State and local levels by adopting targeted measures, including temporary special measures, such as gender parity quotas and preferential recruitment of women to the public service, in particular at decision-making levels, and amending the Electoral and Political Parties Law to require gender parity in the structures of political parties and on electoral lists and provide for adequate sanctions in case of non-compliance; and prevent, protect women candidates from political violence and prosecute and adequately punish perpetrators.

Women human rights defenders

30. The Committee is deeply concerned at the targeted attacks, harassment, intimidation, criminalization and cases of reprisals directed against women human rights defenders in judicial functions, as exemplified by the cases of former prosecutor Virginia Laparra and Claudia Gonzalez, former member of the International Commission against Impunity in Guatemala, who sought to ensure the rule of law and fight impunity and corruption in the State party.
31. The Committee urges the State party to eradicate the arbitrary use of criminal law, including for arrest warrants and pretrial detention, as reprisals against women human rights defenders in judicial functions to obstruct their legally mandated work; and to refer the cases of Virginia Laparra and Claudia Gonzalez for retrial and immediately release them pending trial, as has been called for by other United Nations mechanisms.
32. The Committee reiterates its concern about attacks, gender-based violence and killings, intimidation, stigmatization, criminalization, illegal detention and defamation campaigns targeting women human rights defenders, including ... Indigenous women environmental activists...
33. The Committee urges the State party to protect all women human rights defenders from any attacks, gender-based violence, harassment, intimidation and other reprisals for their legitimate work and prosecute and adequately punish perpetrators of such violent acts, including public officials and to ensure that women human rights defenders and activists can freely carry out their legitimate work and exercise their rights to freedom of expression, peaceful assembly and association.

Education

34. The Committee remains concerned about the low educational attainment of girls,

whose schooling is equivalent to 5.3 years on average and the high illiteracy rate (48 per cent) among Indigenous women. ...

35. Recalling its general recommendation No.36 (2017) on the right of girls and women to education and Sustainable Development Goals target 4.1 which is by 2030, to ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes, the Committee recommends that the State party: (a) Intensify efforts, through the Ministry of Education, to increase the inclusion and effective retention and reinsertion of girls in school, in particular at the secondary level, with special attention to Indigenous girls, including through scholarships and free school meals....

Employment

36. The Committee notes the efforts of the State party to address sexual harassment and abuse in the workplace. However, it notes with concern: ... (b) The limited employment opportunities in the State party for ... Indigenous women [and] Garifuna women....
37. The Committee recommends that the State party promote access of women to formal employment, including ... Indigenous and Garifuna women....

Health

38. The Committee notes with concern regression in women's access to sexual and reproductive rights in the State party, in particular: ... (c) Certain provisions in draft law No. 6153 on support of the dignification of gestational death, such as the obligation of medical personnel to establish a prenatal deaths registry which could potentially be used to prosecute women who have undergone an abortion and lack of an intersectional perspective to address the realities faced by Indigenous women....
39. In line with its previous concluding observations ... general recommendation No. 24 (1999) on women and health and targets 3.1 and 3.7 of the Sustainable Development Goals, which are, respectively, by 2030, to reduce the global maternal mortality to less than 70 per 100,000 live births and, by 2030, to ensure universal access to sexual and reproductive healthcare services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes, the Committee recommends that the State party: ... (d) Amend public policies, including the Public Policy on Protection of Life and the Institutional Framework of the Family 2021–2032, to ensure that adolescents have access to information on family planning in accessible formats and Indigenous languages, as well as to affordable modern contraceptives.

Economic empowerment of women

40. While the Committee welcomes the measures taken by the State party to promote women's economic empowerment, including through the Social Bonus, Family Bonus and Life programmes, it nevertheless notes with concern: (a) The absence of access to social security for self-employed women and informal sector workers; ... (c) The lack of protection of the collective intellectual property rights of Indigenous women, which have been violated in the case of the Mayan weavers, whose designs and fabrics have been used for commercial purposes without their consent and without any financial compensation;
41. The Committee recommends that the State party:

- (a) Revise the social security/national insurance system to include self-employed women and women in the informal sector;
- (b) Urgently approve the Women's Economic Development Act and continue to promote women's economic empowerment by ensuring that women have access to entrepreneurship opportunities, low-interest loans without collateral, other forms of financial credit, cash transfers, adequate food, water and sanitation, and social protection;
- (c) Urgently adopt draft law No. 6136 for the protection of collective intellectual property relating to textiles and clothing of Indigenous peoples and communities....

Disadvantaged groups of women Indigenous women, Garifuna women and women of African descent

44. The Committee notes with concern that Indigenous women, Garifuna women and women of African descent, who account for 44 per cent of the State party's population, face intersecting forms of discrimination, including economic and social inequalities. It is concerned about cases of forced evictions of Indigenous women and women of African descent from lands traditionally occupied or used by them and the exploitation of those lands by private, non-State actors.
45. In the light of general recommendation No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party protect Indigenous women, Garifuna women and women of African descent from illegal occupation and forced evictions from lands traditionally occupied or used by them, strengthen procedural safeguards against forced evictions and reparations for victims, provide for adequate sanctions and ensure that they participate equally in benefit sharing decision-making processes regarding the use of traditional lands.

Women with disabilities

50. The Committee notes with concern that women and girls with disabilities, especially Indigenous women, face intersecting forms of discrimination and violations of their rights in the State party, such as not being able to marry or have children, separation from their children and forced sterilization. It also notes with concern that women with disabilities have limited access to physical infrastructures, information and communications technology, justice, education, employment and health care.
51. The Committee recommends that the State party prohibit the forced sterilization and separation from their children of women with disabilities and strengthen the legal protection of women with disabilities, ensure that they have access to physical infrastructures, information and communications technology, justice, education, employment and health care, including by implementing the Law on Persons with Disabilities, approving draft law No. 5529 on the promotion of work, employment and entrepreneurship for persons with disabilities and enforcing Decree No. 3-2020, which recognizes and approves the sign language of Guatemala.

Climate change and disaster risk reduction

52. The Committee notes with concern:
- (a) That climate change has a differentiated impact on Indigenous women, as it results in the loss of their ecosystems, community habitats and livelihoods and the disruption of food and water supply and ancestral knowledge; ...
 - (c) That the State party has only signed but not ratified the Regional Agreement

on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) of 2018.

53. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party:
- (a) Ensure the participation of Indigenous women in consultation processes related to extractive activities, economic initiatives, logging, development, investment, tourism, climate mitigation and adaptation programmes, and conservation projects and that any use of their territories is subject to their free, prior and informed consent and adequate compensation;
 - (b) Include a gender perspective in national policies and action plans on climate change and disaster risk reduction and ensure the meaningful participation of women from diverse backgrounds in the formulation and implementation of such policies;
 - (c) Expedite the ratification of the Escazú Agreement.

12. Philippines, CEDAW/C/PHL/CO/9, 14 November 2023

Principal areas of concern and recommendations

General context

9. The Committee notes with appreciation the State party's commitment to mainstreaming gender equality and women's rights in its legislative, regulatory and policy frameworks and the Women's Priority Legislative Agenda for the nineteenth Congress. It is concerned, however, about the high levels of violence and insecurity aggravated by natural disasters and the coronavirus disease (COVID-19) pandemic, which have had a negative impact on women's human rights and the rule of law in the State party. The Committee notes with concern the inadequate progress made in addressing the situation of disadvantaged and marginalized groups of women and girls in all areas of their lives. Those women and girls – in particular Indigenous ... women ... – are facing historical and intersecting forms of discrimination.
10. The Committee urges the State party to uphold its commitment to human rights, the consolidation of the rule of law, access to justice and respect for freedom of expression. It calls upon the State party to strengthen the Convention's legal weight and application across the country for the benefit of all women, particularly Indigenous ... women....

Legislative framework

13. The Committee is concerned at the absence of comprehensive antidiscrimination legislation to protect disadvantaged and marginalized groups of women facing intersecting forms of discrimination in the State party, in particular Indigenous ... women.... The Committee is also concerned that several anti-discrimination laws, in particular the Comprehensive Non-Discrimination Bill and the Sexual Orientation and Gender Identity Expression Equality Bill, have been pending for a long time.
14. The Committee recommends that the State party: (a) Accelerate the adoption of the Comprehensive Non-Discrimination Bill and ensure that it covers direct and indirect discrimination in the public and private spheres, as well as intersecting forms of discrimination, in accordance with articles 1 and 2 of the Convention, the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and target 5.1 of the Sustainable

Development Goals, which is to end all forms of discrimination against all women and girls everywhere....

Access to justice

15. The Committee notes the State party's efforts to harmonize customary and indigenous judicial systems with the provisions of the Convention. It also notes the issuance by the Supreme Court of the Organic Guidelines on the Use of Gender-Fair Language in the Judiciary and Gender-Fair Courtroom Etiquette. It is concerned, however, by persisting barriers to women's access to justice, including threats to the independence of the judiciary, legal illiteracy among many women and girls, financial constraints, lack of legal representation and the risk of their being subjected to sexual violence, especially in rural and remote areas and for women and girls belonging to disadvantaged and marginalized groups.
16. Recalling its general recommendation No. 33 (2015) on women's access to justice and the State party's obligation to ensure that women's rights are protected against violations by all components of plural justice systems, the Committee recommends that the State party:
 - (a) Strengthen the reform of the justice system, ensuring a greater recognition of the status of victims and the introduction of a principle of accountability;
 - (b) Ensure that women have access to affordable or, if necessary, free legal aid services, particularly women in rural and remote areas and those belonging to disadvantaged and marginalized groups, and disseminate information on the mechanisms and procedures for seeking remedies for violations of the rights of women and girls;
 - (c) Enhance awareness among women and girls, in particular rural women and women and girls with disabilities, of their rights under the Convention and the remedies available to them for claiming those rights, in cooperation with civil society organizations;
 - (d) Provide training for the judiciary and law enforcement officials on women's human rights and gender sensitive interrogation and investigation methods and address judicial gender bias.

Temporary special measures

23. The Committee is concerned at the limited use of temporary special measures in other areas where women, including rural women and women with disabilities, Bangsamoro women and Indigenous women, are underrepresented and disadvantaged, such as decision-making systems at all levels, education and employment.
24. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party:
 - (a) Adopt temporary special measures and establish time-bound targets to accelerate the achievement of substantive equality of women and men in all areas covered by the Convention where women, including ... Indigenous ... women, lesbian ... are underrepresented or disadvantaged, such as in decision-making systems at all levels, education and employment;
 - (b) Systematically collect data on the impact of temporary special measures and

include such data in its next periodic report.

Women human rights defenders, land and environmental defenders and journalists

35. The Committee is concerned at the State party's denial of the use of the AntiTerror Act (2020) to legitimize the targeting of government critics, environmental defenders, human rights defenders and journalists, including through "red-tagging", as exemplified by the case of Nobel Prize laureate Maria Ressa, leading to intimidation, hate speech, threats, physical assault, harassment, arrest and detention of women human rights defenders, women journalists and activists, in particular those advocating for land rights, protection of the environment and the rights of Indigenous and Bangsamoro women....
36. The Committee recommends that the State party:
- (a) Ensure that women human rights defenders, women journalists and activists, including Maria Ressa and in particular those advocating for land rights, protection of the environment and the rights of Indigenous women, rural women, lesbian, bisexual, transgender and intersex women and Muslim women, can freely carry out their advocacy for women's human rights and exercise their rights to freedom of expression, peaceful assembly and association free from harassment, surveillance or undue restrictions, including arbitrary arrest and arbitrary prosecution, and when they engage or seek to engage with the Committee;
 - (b) Investigate and prosecute all acts of harassment, gender-based violence and discrimination, and intimidation and reprisals against women human rights defenders, including online, and ensure their constitutional right (under article 3.1 of the Constitution) to due process of law and the equal protection of the laws; provide remedies and reparations to victims; and establish a specific registry of such incidents, with disaggregated data and publicly available statistics;
 - (c) Raise awareness of the contribution of women human rights defenders, activists and journalists to the realization of women's rights.

Education

39. The Committee notes with concern: (a) Cases of dropout among girls in secondary education, attributable to early pregnancies, child marriage and child labour, in particular in rural areas, and aggravated by the negative impact of the COVID-19 pandemic, as well as the lack of 23-22260 11/19 CEDAW/C/PHL/CO/9 information on the impact of the Alternative Learning System Act (2020) on the access of women and girls to education, in particular in Indigenous communities and in the outer islands....

Economic and social benefits

45. The Committee notes with appreciation the adoption of the Gender Equality and Women's Empowerment Plan for 2019–2025. The Committee is concerned, however: (a) That the COVID-19 pandemic and natural disasters in 2022 (tropical storm Megi) and 2021 (typhoon Rai) have accelerated the feminization of poverty and the marginalization of disadvantaged groups of women, in particular women heads of households in rural areas, women and girls with disabilities, Indigenous ... women ..., who often face challenges in accessing economic and social benefits....

Rural, Indigenous women and disadvantaged women

47. The Committee notes with concern that according to the Household Survey (2022), only 6 per cent of rural women own land alone or jointly. The Committee is particularly concerned at:
- (a) The limited access of rural and Indigenous women to education, employment and health care, financial credit and modern farming technologies and their underrepresentation in decision-making and leadership positions;
 - (b) The lack of consultations with rural and Indigenous women on large-scale projects, such as tourism and agro-industrial and construction projects undertaken by foreign investors and private enterprises on Indigenous lands and using their natural resources, as well as the adverse impact of climate change, including natural disasters, loss of crops and food and water insecurity, on rural and Indigenous women;
 - (c) The forced eviction and displacement of Indigenous women and girls, labour exploitation with serious health consequences, and sexual violence and trafficking related to business and development projects on Indigenous lands;
 - (d) The intimidation, harassment and threats against rural and Indigenous women environmental activists.
48. Recalling its general recommendations No. 34 (2016) on the rights of rural women, No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change and No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party:
- (a) Intensify efforts to ensure service delivery in rural areas to promote access of rural and Indigenous women to health care, including sexual and reproductive health services; decision-making; leadership positions; education; formal employment; social protection; housing and adequate water and sanitation; and modern farming technologies, including knowledge on food harvesting techniques, preservation, storage, processing, packaging, marketing and entrepreneurship;
 - (b) Ensure that economic activities, including logging, development, investment, tourism, extractive mining and climate mitigation and adaptation programmes, and conservation projects, are implemented in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the undertaking of adequate consultation processes;
 - (c) Prevent, address, sanction and eradicate all forms of gender-based violence against rural and Indigenous women and girls, including environmental, spiritual, political, structural, institutional and cultural violence, that are attributable to extractive industries and ensure that Indigenous women and girls have timely and effective access to both non-Indigenous and Indigenous justice systems, including protection orders and prevention mechanisms when needed;
 - (d) Ensure the right to a fair trial; prevent, investigate and punish all forms of political violence against rural and Indigenous women politicians, candidates, human rights defenders and activists at the national, local and community levels; and recognize and respect ancestral forms of organization and the election of representatives;
 - (e) Ensure that rural women are able to participate effectively in planning and decision-making related to rural infrastructure and services, as well as in the planning, adoption, budgeting, implementation, monitoring and evaluation of agricultural and rural development policies.

Climate change and disaster risk reduction

51. The Committee notes that the State party ranked first in the World Risk Index in 2022. It also notes the efforts undertaken by the Climate Change Commission under the National Strategic Framework and Programme on Climate Change. However, it is concerned that women, in particular ... Indigenous women ... are disproportionately affected by climate change, cyclones and loss of biodiversity, as they often live in exposed areas and lack the coping mechanisms necessary to increase their climate change resilience.
52. The Committee recommends that, in line with its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the State party review its climate change and disaster response strategies, taking into account the negative effects of climate change on the livelihoods of women, especially rural women, and ensure that women are meaningfully involved in the development, adoption and implementation of legislation, policies and programmes on climate change, disaster response and disaster risk reduction by, in particular:
- (a) Collecting disaggregated data on the impact of climate change and natural disasters on women and girls;
 - (b) Ensuring the incorporation of gender sensitivity in climate change and disaster risk reduction legislation, policies, financing and programmes to address the specific and unique needs of women and girls and build their resilience and effective adaptation to climate change;
 - (c) Increasing climate change and disaster risk management literacy and awareness among communities, women and girls, including rural women and women with disabilities, to empower them with the knowledge needed to demand their rights and effectively participate in climate change-related decision-making and the development of adaptation and loss and damage strategies and actions which build the resilience of women and girls with respect to the impacts of climate change;
 - (d) Supporting women to ensure their active participation in the creation and operation of new funding arrangements for responding to loss and damage, as decided during the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in 2022.

Marriage and family relations

53. The Committee welcomes the adoption of the Act Prohibiting the Practice of Child Marriage and Imposing Penalties for Violations Thereof (Republic Act No. 11596) in 2021. However, it notes with concern: (a) The lack of implementation of the Repealing Clause of Republic Act No. 11596 at the subnational/regional level, particularly in the Bangsamoro Autonomous Region in Muslim Mindanao, where the practice of child marriage is recognized in Indigenous systems and sharia law....
54. Recalling its general recommendation No. 21 (1994) on equality in marriage and family relations and its general recommendation No. 29 (2013) on the economic consequences of marriage, family relations and their dissolution, the Committee recommends that the State party:
- (a) Reinforce the implementation and applicability of the Repealing Clause of Republic Act No. 11596 at the subnational/regional level and ensure synergies during and after the transitory period of the National Commission on Muslim

Filipinos and the National Commission on Indigenous Peoples and other agencies, including the Department of Social Welfare, to ensure the full compliance with the Act;

- (b) Amend the discriminatory legal provisions to ensure women's equal rights in marriage and family relations...

13. Uruguay, CEDAW/C/URY/CO/10, 14 November 2023

Definition of equality and non-discrimination

9. The Committee notes the adoption by the State party of Act No. 19.846 on equality and non-discrimination between women and men. However, it notes with concern the limited implementation of laws and policies in place to address intersecting forms of discrimination against women, in particular ... Indigenous women...
10. The Committee recommends that the State party effectively implement legislation that prohibits discrimination against women, covering direct and indirect discrimination in the public and private spheres, and intersecting forms of discrimination, in line with articles 1 and 2 of the Convention, the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and target 5.1 of the Sustainable Development Goals to end all forms of discrimination against all women and girls everywhere.

Temporary special measures

17. The Committee commends the State party for the adoption of Act No. 19.846 on equality and non-discrimination between women and men, which outlines the need to take temporary special measures to accelerate the achievement of substantive equality between women and men. It notes that special scholarships are available for students of African descent. ... It also notes with concern: ... (c) The limited use of such measures in areas where women are underrepresented or disadvantaged, such as political and public life, education and employment, in particular women of African descent, Indigenous women, rural women, women with disabilities, migrant women and lesbian, bisexual, transgender and intersex women.
18. In line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, the Committee recommends that the State party:
 - (a) Adopt temporary special measures and establish time-bound targets to accelerate the achievement of substantive equality between women and men in all areas covered by the Convention where women, including women of African descent, Indigenous women, rural women, women with disabilities, migrant women, and lesbian, bisexual, transgender and intersex women, are underrepresented or disadvantaged, such as in political and public life, education and employment;
 - (b) Raise public awareness about non-discrimination and build the capacity of relevant public officials on the use of temporary special measures to achieve substantive equality between women and men;
 - (c) Systematically collect data on the impact of temporary special measures and include such data in its next periodic report.

Stereotypes and harmful practices

19. The Committee welcomes the measures taken by the State party to eliminate gender stereotypes, in particular the introduction of the “Caring with equality” seal in public and private early childhood centres, the Quality with Gender Equity Model in public institutions and private companies, and education campaigns on gender equality. However, it notes with concern the persistence of discriminatory gender stereotypes in the State party about the roles and responsibilities of women and men in the family and in society. The Committee also notes with concern the absence of a comprehensive strategy to address stereotypical portrayals of women – including ... Indigenous women ... – in the media, the education system and political and public discourse.
20. The Committee recommends that the State party:
 - (a) Strengthen its measures, including awareness-raising and education campaigns, throughout the State party, targeting political, Indigenous and religious leaders, teachers, girls and boys, and women and men, to eliminate discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society;
 - (b) Design and implement a comprehensive strategy, with a dedicated budget and time-bound targets and objectives, aimed at eliminating discriminatory stereotypes of women in the media, the education system and political and public discourse;
 - (c) Adopt a regulatory framework to combat gender stereotyping in the media and advertising, including through a gender-specific code of ethics for media professionals that promotes positive images of women and girls.

Education

31. The Committee notes with concern: (a) Reports that Indigenous girls, girls of African descent, rural girls, girls living in poverty, pregnant girls and young mothers have limited access to education...
32. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education and its previous recommendations (CEDAW/C/URY/CO/8-9, para. 32), the Committee recommends that the State party: (a) Promote the enrolment, attendance and retention of girls and women in school, especially at the secondary level and above, in particular for Indigenous girls....

Employment

33. The Committee commends the State party on the measures taken to ensure equal opportunities for women and men in the labour market, including the review of all public employment services, the implementation of the Quality with Gender Equity Model and the adoption of Act No. 19.530 on breastfeeding rooms. ...
34. The Committee recommends that the State party:
 - (a) Increase women’s access to employment in the formal economy, including by dismantling gender stereotypes about the traditional roles of women, conduct awareness-raising campaigns on gender equality targeting employers, provide incentives to hire women and adopt temporary special measures, such as quotas, to promote women’s equal participation in the labour market;
 - (b) Enforce the full implementation of and raise awareness about Act No. 19.973 and establish employment retention schemes specifically designed to promote

access to formal employment by disadvantaged groups of women, including ...
Indigenous women....

Rural women

39. The Committee welcomes the measures adopted by the State party to improve rural women's access to land ownership and control, including the adoption of the National Gender Plan in Agricultural Policies, the introduction of co-ownership of land allocated by the National Settlement Institute through Act No. 19.781 and the inclusion of women as producers in the family production registry. However, the Committee notes with concern that rural women still have limited access to land ownership and use in the State party.
40. The Committee recommends that the State party:
 - (a) Ensure that women and men in rural areas have equal access to land ownership and use, including through awareness-raising campaigns to dismantle patriarchal attitudes and gender stereotypes;
 - (b) Ensure that rural women, including Indigenous women, participate meaningfully in decision-making related to rural infrastructure and services, as well as in the planning, adoption, budgeting, implementation, monitoring and evaluation of agricultural and rural development policies.

Indigenous women

43. The Committee notes with concern the limited efforts of the State party to uphold the principle of self-identification in determining the status of Indigenous women and girls. It also notes with concern the limited access of Indigenous women to education and their underrepresentation in decision-making and leadership positions in political and public life in the State party.
44. Recalling its general recommendation No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party:
 - (a) Collect data, including but not limited to data on sex, age, Indigenous origin, status or identity, ethnicity and disability status, and cooperate with Indigenous women and their organizations, as well as academic institutions and non-profit organizations, to promote self-identification and recognition of the status of Indigenous women and girls as rights-holders;
 - (b) Ensure that Indigenous women and girls have full access to all levels of education by addressing discriminatory stereotypes and ensuring that they receive education on their Indigenous heritage, history and culture;
 - (c) Promote the meaningful participation of Indigenous women and girls in political and public life, including in decision-making positions, within local authorities and on the National Council for Racial Equity.

14. Bolivarian Republic of Venezuela, CEDAW/C/VEN/CO/9, 31 May 2023

Definition of equality and non-discrimination

11. The Committee notes ... with concern that there is limited implementation of the laws and policies in place to address intersecting forms of discrimination against ... Indigenous women....
12. The Committee recommends that the State party adopt the law against all forms of discrimination without delay and ensure the effective implementation of legislation that prohibits discrimination against women, covering direct and indirect

discrimination in the public and private spheres, as well as intersecting forms of discrimination, in line with articles 1 and 2 of the Convention, the Committee's general recommendation No. 28 (2010) on the core obligations of State parties under article 2 of the Convention, and target 5.1 of the Sustainable Development Goals on ending all forms of discrimination against all women and girls everywhere.

Women's access to justice

13. The Committee notes that the Public Prosecutor's Office has established 73 offices across the country with competence to handle matters related to women's rights, including one office specialized in femicide. Nevertheless, the Committee notes with concern:
 - (a) The economic barriers to women's access to justice and the limited availability of free legal aid;
 - (b) Barriers to access to justice faced by Indigenous women ... such as legal illiteracy and the lack of information on available remedies to complain about intersecting forms of discrimination;
 - ...
 - (d) That the State party denounced the American Convention on Human Rights in 2012, thereby excluding the jurisdiction of the Inter-American Court of Human Rights.
14. The Committee, in line with its general recommendation No. 33 (2015) on women's access to justice, recommends that the State party:
 - (a) Expand public legal aid services that are adequately funded to ensure free legal aid to women without sufficient means for criminal, civil and administrative proceedings relating to gender-based violence and discrimination against women;
 - (b) Strengthen access to justice for Indigenous women ... including through addressing linguistic barriers, making courts accessible and disseminating information about the legal remedies available to claim their rights;
 - ...
 - (d) Reconsider its withdrawal from the American Convention on Human Rights, with a view to restoring the jurisdiction of the Inter-American Court of Human Rights.

Temporary special measures

21. The Committee notes with concern the lack of information on the use of temporary special measures by the State party to achieve substantive equality of women and men in all areas where women are underrepresented or disadvantaged, in particular temporary special measures relating to Indigenous women....
22. The Committee recalls its previous concluding observations (CEDAW/C/VEN/CO/7-8, para. 15) and recommends that the State party adopt temporary special measures, in line with article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, to accelerate the achievement of substantive equality of women and men in all areas covered by the Convention where women are underrepresented or disadvantaged, including in political, public and economic life, education, employment, health care and social security, with special attention to Indigenous women....

Gender stereotypes

23. The Committee acknowledges the measures taken by the State party to eliminate gender stereotypes, such as the monitoring activities of the National Commission on Telecommunications; the issuance by the Supreme Court of Justice of rulings Nos. 359 and 884, which prohibit, respectively, the publishing of images that contain explicit or implicit sexual content promoting prostitution and the publishing of pornography that contains references to website addresses that can be freely accessed by children and adolescents; and the adoption in 2021 of the Act on the Promotion and Use of Gender-sensitive Language. However, the Committee notes with concern the persistence of discriminatory gender stereotypes about the roles and responsibilities of women and men in the family and in society in the State party.
24. The Committee recommends that the State party:
- (a) Strengthen its measures, including awareness-raising and education campaigns throughout the State party, targeting political, religious and Indigenous leaders ... to eliminate discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society, and promote the equal sharing of family responsibilities between women and men;
 - (b) Ensure that all intervention measures to address gender stereotypes are conducted through an intersectional lens, with a particular focus on women of African descent, Indigenous [women]....

Trafficking and exploitation of prostitution

27. The Committee notes the establishment of National Prosecutor's Office No. 95 with jurisdiction for trafficking in persons, in particular women and girls, to, within and from the State party. However, the Committee notes with concern:
- (a) The limited measures to prevent, prosecute and punish cases in the State party of trafficking in persons, in particular women and girls, for purposes of sexual exploitation and forced labour, as well as the heightened risk of sex trafficking for Indigenous ... women and girls in border areas;
 - (b) Allegations of contemporary forms of slavery, including sex trafficking and child labour in mining areas, particularly in the Orinoco Mining Arc and along the borders with Brazil and Colombia, in the context of the presence of non-State armed and criminal groups linked to extraction activities....
28. Recalling its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, the Committee recommends that the State party:
- (a) Combat forced recruitment and trafficking in women and girls by irregular armed groups, particularly in the Orinoco Mining Arc and along the borders with Brazil and Colombia, investigate all allegations of contemporary forms of slavery, and prosecute and adequately punish perpetrators, while ensuring that women and girls who have been trafficked and exploited for prostitution are protected....

Education

33. The Committee notes with concern:
- (a) The so-called "education blackout" or technological gap and limited Internet access for women and girls, exacerbated by the coronavirus disease (COVID-19) pandemic, which intensified existing gender inequalities in the State party, particularly for rural and Indigenous girls....

34. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education and target 4.1 of the Sustainable Development Goals, to ensure by 2030 that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes, the Committee recommends that the State party:
- (a) Take measures to remove barriers to women's access to the Internet and recognize their equal right to access information and telecommunications technologies in all parts of the State party and increase the number of community centres with training programmes on information and communications technologies and digital skills targeting rural, Indigenous girls...

Employment

35. The Committee notes the Act on the Promotion and Development of New Enterprises. However, it notes with concern:
- (a) The high unemployment and self-employment rates among women and their concentration in the informal economy;
 - (b) The limited employment opportunities for Indigenous [women and girls] ... in the country...
36. The Committee recommends that the State party promote women's access to formal employment, including for Indigenous women ... and ratify the Violence and Harassment Convention, 2019 (No. 190), of the International Labour Organization.

Health

37. The Committee takes note of article 66 of the Act on Women's Right to a Life Free from Violence, which criminalizes obstetric violence as a form of gender-based violence against women, and the National Plan for Humanized Childbirth. However, it notes with concern: ... (g) The hazards posed by mercury contamination to women in the State party and reports of mercury poisoning in rural areas inhabited by Indigenous persons, such as in the Orinoco Mining Arc, and the health impact of this on citizens, including women and children.
38. In line with its previous concluding observations ... , general recommendation No. 24 (1999) on women and health and targets 3.1 and 3.7 of the Sustainable Development Goals, to reduce global maternal mortality and ensure universal access to sexual and reproductive health-care services, the Committee recommends that the State party: ... (g) Investigate reports of and urgently institute measures to prevent the incidence of mercury poisoning in the Orinoco Mining Arc and any other hazardous areas.

Rural women

41. The Committee notes with concern: ... (c) The limited access of rural women, including Indigenous women, to scarce medical, social and other services.
42. In line with its general recommendation No. 34 (2016) on the rights of rural women and target 5.a of the Sustainable Development Goals, to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property ... in accordance with national laws, the Committee recommends that the State party: ... (c) Ensure that rural women, especially those in remote areas, have access to the medical, social and other services to which they are entitled.

Disadvantaged groups of women

Indigenous women and women of African descent

43. The Committee notes the Apacuana Programme, on the social inclusion of Indigenous women from an ethnic and gender perspective, developed in 2017 by the National Institute for Women. However, it notes with concern cases of forced evictions of Indigenous women and women of African descent from lands traditionally occupied or used by them and the use of those lands by private, non-State actors.
44. With reference to its general recommendation No. 39 (2022) on the rights of Indigenous women and girls, the Committee recommends that the State party:
- (a) Protect Indigenous women and women of African descent from land occupation and eviction from lands traditionally occupied or used by them, strengthen legal and procedural safeguards against forced evictions, and ensure benefit-sharing and their meaningful participation in decision-making processes regarding the use of traditional Indigenous lands;
 - (b) Investigate all forms of gender-based violence against Indigenous women, including forced evictions from and illegal occupation of their lands, prosecute and adequately punish perpetrators and provide redress for the material and immaterial harm suffered by the Indigenous women concerned.

Climate change and disaster risk reduction

51. The Committee notes the methodology for incorporating a gender perspective from a human rights-based approach in environmental programmes, published by the State party in cooperation with the United Nations Development Programme. However, it notes with concern:
- (a) That women, in particular ... Indigenous women ... are disproportionately affected by climate change, the loss of natural resources and mercury contamination, as they often live in exposed areas and lack the necessary conditions to increase their climate resilience;
 - (b) That the State party has not ratified nor acceded to the Minamata Convention on Mercury of 2013 or the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) of 2018;
 - (c) The lack of protection from intimidation, harassment and reprisals for women environmental human rights defenders, many of whom are Indigenous women.
52. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party:
- (a) Include a gender perspective in national policies and action plans on climate change and disaster risk reduction and ensure the meaningful participation of women in the formulation and implementation of such policies;
 - (b) Ratify the Minamata Convention on Mercury and the Escazú Agreement;
 - (c) Ensure the protection of women environmental rights defenders, especially Indigenous women, from intimidation, harassment and reprisals.

15. Norway, CEDAW/C/NOR/CO/10, 2 March 2023

Gender-based violence against women

30. The Committee welcomes the many initiatives of the State party to address gender-based violence against women, including the sixth action plan against domestic violence, the expansion of the rehabilitation services for perpetrators of gender-based violence against women, family counselling services, the Alternative to Violence programme, the development of an educational programme for service providers that work with perpetrators of gender-based violence, and the existence of an interministerial working group to combat domestic violence. The Committee is concerned, however, about the continued high rate of gender-based violence against women and its significant underreporting. It also notes with concern that: ... (j) Although Sami women face different forms of gender-based violence within and outside the Sami community, there is insufficient knowledge of Sami language and culture among law enforcement officials and health professionals, and that the Sami crisis centre in the Sami traditional territory was closed in 2019....
31. The Committee recommends that the State party, in close consultation with women's groups and experts on gender-based violence prevention, increase efforts towards the prevention of gender-based violence against women, including by: introducing teachings about zero tolerance for violence into the school curriculum at all levels and training teachers accordingly; conducting large-scale awareness-raising campaigns in the media on zero tolerance for violence, on recognizing aggressive behaviour and on where to seek help; ensuring sufficient support structures are in place for women wishing to leave an aggressive spouse; and setting up programmes for perpetrators of gender-based violence aimed at non-recurrence. The Committee furthermore recommends that the State party: ... (g) Conduct research into the disproportionate risk of gender-based violence against Sami women to prevent and address the gender-based violence they experience within and outside their community, provide capacity-building to law enforcement officials on Sami language and culture, and allocate sufficient human, technical and financial resources to re-establish the Sami crisis centre....

Equal participation in political and public life

34. The Committee notes with appreciation the number of programmes developed for women who are underrepresented and belong to disadvantaged groups owing to discriminatory structures, institutions and systems, in particular with regards to Sami women and women with disabilities. The Committee is concerned, however, that this approach is based on a model of service provision only rather than effective empowerment. This limited effective empowerment is visible in the underrepresentation of Sami women, women with disabilities and other minority women in the decision-making systems of the State party.
35. The Committee recommends that the State party adopt an empowerment model rather than a model of service provision only and allocate the necessary resources and develop quotas to ensure true empowerment of women from every group and their full representation in the decision-making systems of the State party.

Employment

40. The Committee welcomes that 76 per cent of women in the 20–66 age group are in formal employment in the State party, which is among the highest participation rates in the world. It also notes with appreciation that according to 2019 data, in

companies where the State party had an ownership share, the average number of women Chief Executive Officers at the executive level and on boards was at 41 per cent and above 46 per cent, respectively. The Committee further welcomes the instauration of flexible working arrangements; the new initiative to encourage employers to provide full rather than part-time jobs, parental leave schemes and childcare facilities; as well as the job opportunity programme aimed at increasing the employment rate among minority women. The Committee is concerned, however, that: ... (e) Women belonging to underrepresented groups, who are disadvantaged and marginalized because of discriminatory structures, institutions and systems and include ... Sami women ... face barriers to integrate into the labour market.

41. The Committee recommends that the State party: ... (c) Provide training and support programmes, combined with the active involvement of and incentives for employers, to facilitate access to the job market by women belonging to underrepresented groups, who are disadvantaged or marginalized because of discriminatory structures, institutions and systems, with a view to promoting their autonomy.

Health

46. The Committee notes with appreciation the high quality of health care in the State party. It also welcomes the appointment of a public committee to produce a report on women's health and health from a gender perspective and to submit its recommendations in 2023, following which a new strategy on women's health will be developed. The Committee furthermore welcomes the opening, in 2020, of a Sami health clinic in Karasjok. The Committee notes with concern, however, that: ... (b) According to the Norwegian Institute of Public Health, Sami women are disproportionately affected by mental health conditions....
47. The Committee recommends that the State party: ... (b) Conduct research into the disproportionately high rate of mental health issues among Sami women and develop preventive solutions and ensure that Sami women have access to gender-sensitive and appropriate mental health care....

Climate change

48. The Committee welcomes the general recognition by the State party of the disproportionate impact of climate change on women and girls, and its general willingness to increase its knowledge on this matter and gender-sensitive climate change mitigation measures. It notes with concern, however, that:
 - (a) The gender dimensions of climate change are not addressed in the State party's climate action plan for the period 2021 to 2030;
 - (b) The State party has further expanded its oil and gas industry, including by granting 47 new oil and gas exploration permits in January 2023, including in the Arctic, where temperatures rise particularly fast, and despite the European Union's aim to ban extraction in the Arctic;
 - (c) The greenhouse gas emissions of the State party's extraction industry undermine its obligations to ensure the substantive equality of women with men, as climate change disproportionately affects women, especially those in situations of poverty, as they are more reliant on natural resources for their livelihoods than men and have fewer resources to deal with natural hazards.

49. The Committee recalls general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change and recommends that the State party:
- (a) Review its climate change and energy policies, in particular its policy on the extraction and export of oil and gas, as well as the activities of related State-owned companies and private companies, taking into account the disproportionate negative impact on women and girls both within and outside its territory, with a view to radically reducing greenhouse emissions in line with the Paris Agreement on climate change;
 - (b) Adopt relevant legislation, with a monitoring mechanism, to ensure that businesses are held accountable for the impact of their activities on women's human rights and environmental degradation;
 - (c) Set up a mechanism to ensure meaningful and equal participation of women and girls, in particular from the Sami community, in the development of climate change adaptation and reduction strategies....

16. Costa Rica, CEDAW/C/CRI/CO/8, 2 February 2023

Positive Aspects

4. The Committee welcomes the progress achieved since the consideration in 2017 of the State party's seventh periodic report (CEDAW/C/CRI/7) in undertaking legislative reforms, in particular the adoption of the following: ... (f) Law No. 9710 on protecting the right to nationality of Indigenous persons and guaranteeing the integration of Indigenous persons living in border areas, in 2019....

Definition of equality and non-discrimination

11. The Committee notes the State party's efforts to strengthen its legal and regulatory framework to give effect to the principles of equality of women and men and of non-discrimination. However, it notes with concern the limited implementation of laws and policies in place to address intersecting forms of discrimination against women, in particular women affected by poverty, Indigenous women, women of African descent, women with disabilities, migrant women and rural women.
12. The Committee recommends that the State party adopt and ensure the effective implementation of legislation that prohibits discrimination against women, covering direct and indirect discrimination in the public and private spheres, and intersecting forms of discrimination, in line with articles 1 and 2 of the Convention, the Committee's general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, and target 5.1 of the Sustainable Development Goals on ending all forms of discrimination against all women and girls everywhere.

Women's access to justice

13. The Committee notes the adoption of Law No. 9593 (2018) on Access to Justice for Indigenous Peoples and the recruitment of seven legal professionals to the Department for Women's Affairs of the National Institute for Women providing free legal aid to women without sufficient means. Nevertheless, the Committee notes with concern:
- (a) Economic barriers to women's access to justice and the limited availability of free legal aid;

- (b) Barriers to access to justice faced by Indigenous women, women of African descent, migrant, refugee and asylum-seeking women and women with disabilities, such as legal illiteracy and the lack of information on available remedies to complain about intersecting forms of discrimination.
14. The Committee, in line with its general recommendation No. 33 (2015) on women's access to justice, recommends that the State party: ... (b) Strengthen access to justice for Indigenous women, women of African descent, migrant, refugee and asylum-seeking women and women with disabilities, including through legal literacy campaigns, addressing linguistic barriers, accessible courts and disseminating information about the legal remedies available to claim their rights.

National machinery for the advancement of women and gender mainstreaming

15. The Committee notes with concern: ... (c) The lack of collaboration of the national machinery for the advancement of women with women's civil society organizations.
16. The Committee recommends that the State party: ... (c) Ensure effective coordination and consultation between the national machinery and women's civil society organizations, including those representing Indigenous women, women of African descent and women with disabilities, in the adoption and implementation of public policies and programmes for the advancement of women and integrate a human rights-based approach and an intersectional gender perspective in those policies.

National human rights institution

17. The Committee notes with concern: (a) The drastic cut in the resources of the Ombudsperson Office for Women within the Office of the Ombudsperson of Costa Rica, further undermining its capacity to promote and protect the rights of women, including women and girls with disabilities and Indigenous ... women...

Temporary special measures

19. The Committee notes the affirmative action in favour of people of African descent envisaged in Law No. 10120 of 2 February 2022. However, it notes with concern the lack of information on the use of temporary special measures to achieve substantive equality of other disadvantaged groups of women, such as Indigenous women....
20. The Committee recalls its previous concluding observations (CEDAW/C/CRI/CO/7, para. 13) and recommends that the State party: (a) Raise awareness of the non-discriminatory nature of temporary special measures among politicians, public officials and the general public; (b) Adopt temporary special measures in line with article 4(1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures, to accelerate the achievement of substantive equality of women and men in all areas covered by the Convention where women are underrepresented or disadvantaged, including in political, public and economic life, education, employment, health care and social security, and to address intersecting forms of discrimination against Indigenous ... women....

Stereotypes

21. The Committee acknowledges the measures adopted by the State party to eliminate gender stereotypes, such as awareness-raising and educational campaigns in the framework of the national policy for effective equality of women and men in Costa Rica for 2018–2030, to sensitize public officials on gender equality. However, the

Committee is concerned about the persistence of discriminatory gender stereotypes about the roles and responsibilities of women and men in the family and in society in the State party.

22. The Committee recommends that the State party: ... (b) Ensure that all intervention measures to change societal stereotypes are conducted through an intersectional lens, so that they combat stereotypes against ... Indigenous ... women.

Trafficking and exploitation of prostitution

25. The Committee notes the national policy against human trafficking (2020–2030) of the National Coalition against the Smuggling of Migrants and Trafficking in Persons, the national action plan against commercial sexual exploitation of children and adolescents (2022–2025) and the establishment of regional task forces to promote law enforcement coordination in trafficking cases. However, the Committee notes with concern: (a) That the State party is a country of origin, transit and destination for trafficking in persons, in particular women and girls, for purposes of sexual exploitation and forced labour, as well as the heightened risk of sex trafficking for Indigenous ... women and girls in the Pacific coastal zones....

Education

29. The Committee acknowledges the country's high literacy rate of 98 per cent and the establishment of community centres to increase access to technology and digital literacy by communities and takes note of initiatives such as Puente al Desarrollo, Avancemos and Crecemos to reduce the digital gender divide and address the feminization of poverty. However, it notes with concern: (a) The so-called “education blackout” or technological gap and limited Internet access for women and girls, exacerbated by the coronavirus disease (COVID-19) pandemic, which intensified existing gender inequalities in the State party, particularly in rural areas; (b) The lack of measures to meet women's and girls' needs to develop science, technology, engineering and mathematics and digital skills, including for rural, migrant, refugee and Afrodescendent girls and women and women and girls with disabilities.
30. Recalling its general recommendation No. 36 (2017) on the right of girls and women to education and target 4.1 of the Sustainable Development Goals, to ensure by 2030 that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes, the Committee recommends that the State party: (a) Approve and implement without delay the Connectivity Law to address barriers to women's access to the Internet and recognize their right to connectivity and to access information and telecommunications technologies in all parts of the State party, and increase the number of community centres in rural areas to take technology and digital literacy/ skills closer to rural, Indigenous, Afrodescendent, migrant and refugee women and women with disabilities....

Employment

31. The Committee notes that the revised Labour Code (2022) now provides for eight days of paid paternity leave for the private sector, as well as the adoption of Law No. 9677 (2019) for the Protection of Equal Pay for Women and Men and the recent introduction of the national care policy for 2021–2031, which seeks to progressively implement a system of care for persons in situations of dependency. However, the Committee notes with concern: ... (d) The limited employment opportunities for rural women, women with disabilities, Indigenous women....

32. The Committee recommends that the State party:
- (a) Progressively expand the public care system, including through gender-responsive budgeting and redistributive fiscal measures, in order to reduce women's disproportionate burden of unpaid care work;
 - (b) Promote women's access to formal employment, including for ... Indigenous ... women, and extend social protection schemes to women employed in the informal economy;
 - (c) Strengthen initiatives to promote women's equal representation in the private sector, including by providing financial incentives for private companies to adhere to the Gender Equality Seal, the Gender Parity Initiative and the Women's Empowerment Principles, as well as for the recruitment of women to leadership positions, including in non-traditional sectors;
 - (d) Establish employment retention schemes specifically targeted at promoting access by women facing intersecting forms of discrimination, including ... Indigenous ... women, to formal employment....

Health

33. The Committee notes the decrease in the number of early pregnancies in the State party and welcomes the adoption of technical guidelines for the therapeutic termination of pregnancy (2019). However, it remains deeply concerned at: (d) The non-incorporation of the childbirth traditions of Indigenous women into obstetric practice in the State party.
34. In line with its previous concluding observations (CEDAW/C/CRI/CO/7, para. 31), general recommendation No. 24 (1999) on women and health and targets 3.1 and 3.7 of the Sustainable Development Goals, to reduce global maternal mortality and ensure universal access to sexual and reproductive health-care services, the Committee recommends that the State party: ... (d) Ensure the availability of childbirth traditions of Indigenous women in obstetric practice throughout the State party.

Indigenous women and women of African descent

37. The Committee notes that Law No. 9710 (2019) on protecting the right to nationality of Indigenous persons and guaranteeing the integration of Indigenous persons living in border areas guarantees nationality to the border people of Ngäbe Buglé. However, it notes with concern:
- (a) Cases of forced evictions of Indigenous women and women of African descent from lands traditionally occupied or used by them and the dispossession of such lands by private non-State actors;
 - (b) That dispossession of Indigenous lands, increased gender-based violence, intimidation and threats against Indigenous women undermine their social role in the transmission of Indigenous scientific knowledge, food sovereignty and the possibility of developing their entrepreneurial skills;
 - (c) That Indigenous women and girls have limited access to education, adequate water and sanitation, electricity and culturally appropriate health services in the State party.
38. The Committee recommends that the State party:
- (a) Take resolute action against land dispossession and forced evictions of Indigenous women and women of African descent from lands traditionally occupied or used by them, strengthen legal and procedural safeguards to

protect them, and ensure their meaningful participation in decision-making processes regarding the use of traditional Indigenous lands;

- (b) Investigate all forms of gender-based violence against Indigenous women, including forced evictions and dispossession of lands, prosecute and adequately punish perpetrators and provide redress for the physical and psychological abuse suffered by Indigenous women, and increase their entrepreneurship opportunities;
- (c) Increase the number of qualified teachers, including women, and improve educational infrastructure in Indigenous communities, ensuring that schools have separate hygiene facilities for girls and boys, and extend adequate water and sanitation, electricity and culturally appropriate health services to areas where Indigenous and Afrodescendent women and girls live.

Climate change and disaster risk reduction

45. The Committee notes the national biodiversity strategy for 2016–2025, the national climate change adaptation policy for 2018–2030 and the national decarbonization plan for 2018–2050. However, it notes with concern:

- (a) That women, in particular ... Indigenous women ... are disproportionately affected by climate change and the loss of natural resources, as they often live in exposed areas and lack the conditions necessary to increase their climate resilience; ...
- (c) The lack of protection for women environmental human rights defenders, many of whom are Indigenous women;
- (d) The limited awareness of the gender impact of climate change in the State party, as women are active conservation agents involved in the sustainable management of forest resources and agricultural systems but are unable to access the payments for environmental services programme.

46. Recalling its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State party:

- (a) Include a gender perspective in national policies and action plans on climate change and disaster risk reduction and ensure the meaningful participation of women in the formulation and implementation of such policies; ...
- (c) Ensure the protection and human rights of women environmental human rights defenders, especially in Indigenous communities;
- (d) Review mechanisms to ensure that women conservators can also access environmental credits through the payments for environmental services programme system.

Marriage and family relations

47. The Committee notes the adoption of the amendment to the Family Code on shared family responsibilities, the recognition of domestic and unpaid care work in divorce proceedings and the new paternity leave provisions. It is concerned, however, about the high percentage of births to girls and adolescents in which the father is not declared or his age is not registered, suggesting a problem of sexual abuse or acts by adults with children, criminalized in Law No. 9406 on improper unions.

48. The Committee recommends that the State party amend Law No. 9406 on improper relations to ensure that births to girls and adolescents are fully reported with the father's details, and expand the National Child Care and Development Network to enable rural, Indigenous ... women to access its care services.

B. VIEWS ADOPTED UNDER OP I

1. **María Elena Carbajal Cepeda et al v. Peru, CEDAW/C/89/D/170/2021, 25 October 2024 (unoff. Transl.)**

| | |
|---|---|
| <i>Communication submitted by:</i> | María Elena Carbajal Cepeda et al. (represented by Christian Felipe Berndt Castiglione) |
| <i>Alleged victims:</i> | María Elena Carbajal Cepeda, Gloria Basilio Huamán, Florentina Loayza Cárdenas, Rosa Loarte Sobrado and Elena Rojas Caballero |
| <i>State party:</i> | Peru |
| <i>Date of communication:</i> | 24 September 2020 |
| <i>Date of adoption of the decision:</i> | 4 October 2024 |
| <i>Subject:</i> | Forced sterilization, lack of reparation, lack of investigation |
| <i>Procedural issues:</i> | Competence <i>ratione temporis</i> ; competence <i>ratione materiae</i> ; exhaustion of domestic remedies |
| <i>Articles of the Convention:</i> | 2, 3, 10 (h), 12, 14 and 24 |
| <i>Articles of the Optional Protocol:</i> | 4.1, 4.2 (c) |

1. The authors of the communication are María Elena Carbajal Cepeda (born in 1970), Florentina Loayza Cárdenas (born in 1978), Rosa Loarte, Elena Rojas Caballero (born in 1969) and Gloria Basilio Huamán (born in 1971). The authors claim that the State party has violated their rights under articles 2, 3, 12, 14 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women by the forced sterilization to which they were subjected between 1996 and 1997 as part of a State birth control policy. The Optional Protocol entered into force for the State party on 9 April 2001. The authors are legally represented.

Summary of Facts

General Context

- 2.1 In 1995, the National Population Policy Act was amended to authorize the use of voluntary surgical contraception or female and male sterilization procedures. These procedures were promoted through comprehensive campaigns or so-called “health festivals”; and incentives were offered to health personnel who practiced this type of intervention. Female sterilization interventions intensified between 1995 and 2000. In 1997 alone, 109,689 tubal ligation procedures were performed¹.
- 2.2 On 6 February 1996, ministerial resolution No. 071-96-SA-DM approved the Reproductive Health and Family Planning Programme (1996-2000), the mission of which was “to improve the state of reproductive health of men and women at all stages of their lives through the promotion, prevention, treatment and rehabilitation of the highest possible quality”. For the implementation of this program, the use of voluntary surgical contraception was mainly used, which would have been carried out without having the adequate infrastructure, specialized medical personnel, as well as the due informed consent of the people operated on. Many women under the age of 25 or without children would also have been sterilized. More than 300,000 women (93 per cent of the total), most of them indigenous, were reportedly sterilized without their consent, especially those in low-income and rural sectors of the State party. To a lesser extent, men, mostly indigenous, would have also been subjected to vasectomies.

- 2.3 In 2001, a Congressional Subcommittee of Inquiry concluded that between 1993 and 1999, 314,605 forced sterilizations were carried out on women and 24,563 men, through the establishment of goals, incentives and incentives, through festivals and campaigns whose purpose was to privilege voluntary surgical contraception without obtaining informed consent, and through coercion. On August 9, 2002, Congressman Héctor Chávez Chuchón filed a constitutional complaint and a criminal complaint against former President Alberto Fujimori with the Provincial Prosecutor's Office of the Office of the Special Prosecutor for Crimes against Human Rights, and file 10-2002 was initiated on January 27, 2003, and was archived in 2004 for lack of evidence. In 2005, the case was reopened following the submission of new evidentiary material by the National Human Rights Commission. In 2009, it was archived again due to the statute of limitations on the criminal action. At the same time, on August 13, 2003, Senator Dora Núñez Dávila filed another constitutional complaint for crimes against humanity, including torture, serious injuries, kidnapping, and illicit association against the former president and the former Ministers of Health. In July 2006, after the constitutional hearing had expired, the material from the investigations carried out in the Congress of the Republic was accumulated in file 18-2002. On June 18, 2007, the Provincial Prosecutor ordered the investigation to be extended.
- 2.4 On October 10, 2003, the State party signed a friendly settlement agreement with the Inter-American Commission on Human Rights (IACHR) with the next of kin of María Mamérita Mestanza Chávez, a victim of forced sterilization who died a few days after the procedure was carried out. In that agreement, the State party recognized its international responsibility and undertook to adopt a series of measures of material and moral reparation and to initiate an exhaustive investigation aimed at punishing those responsible for the forced sterilization of María Mamérita Mestanza Chávez, which was allegedly committed in the context of a massive and systematic government policy against poor women, indigenous women and in rural areas. In 2004, the Attorney General's Office opened an investigation into the forced sterilization of María Mamérita Mestanza Chávez, which was shelved in 2009. In 2011, the Attorney General's Office ordered the reopening of the investigation, arguing that the archive did not constitute *res judicata* since the investigations had not classified the crimes as crimes against humanity. After several files and reopenings, the investigation is still pending. On the other hand, on June 2, 2023, the Inter-American Commission on Human Rights referred to the Inter-American Court of Human Rights the case of Celia Ramos Durand, who would have died in 1997 after sterilization without consent carried out within the framework of the Reproductive Health and Family Planning Program. After several files and reopenings, the investigation is still pending.
- 2.5 In 2016, the Supraprovincial Criminal Prosecutor's Office specializing in Human Rights and Interculturality initiated investigation No. 14-2016 to clarify the forced sterilizations carried out between 1993 and 2000 in the various health centres, hospitals and medical posts, located in different departments of the State party, as well as the identification of those responsible for the alleged commission of the crime against life, the body and health, in a context of serious human rights violations. In 2019, the Prosecutor's Office initiated investigation 59-2019 against those responsible for medical personnel, nurses and any other health personnel who participated as direct perpetrators of serious human rights violations. On November 22, 2022, the Prosecutor's Office presented the court with a request for the expansion of the complaint in the investigation stage, which sought to expand the order to open the investigation of December 11, 2021, and the incorporation of 2,626 alleged aggrieved parties from file 59-2019, against Alberto Fujimori and his former Ministers of Health. Likewise, the Prosecutor's Office proposed receiving

preventive statements from 2,582 alleged aggrieved victims, mostly indigenous, who live in remote areas of the country. In 2023, the Supraprovincial Criminal Court returned the request for extension to the prosecutor's office and on August 25, 2023, through an amparo process, the Constitutional Law Chamber resolved to declare null and void the order opening the investigation of December 2021. On June 24, 2024, Chile's Supreme Court decided to expand the extradition request of former President Alberto Fujimori, including the forced sterilizations of women as serious human rights violations.

- 2.6 At the same time, on 6 November 2015, by Supreme Decree No. 006-2015-JUS, the State party declared the priority care of victims of forced sterilizations between 1995 and 2001 to be of national interest and provided for the creation of a register of victims. On December 4, 2015, through Ministerial Resolution No. 0319-2015-JUS of the Ministry of Justice and Human Rights, the Registry of Victims of Forced Sterilizations was created, whose objective is to provide legal assistance, psychological and social accompaniment and comprehensive health care to victims of forced sterilization. In 2018, the State party set up the "Working Group on the Problem of Persons Affected by Forced Sterilizations in the Period 1995–2001" and in 2020 it formed the "Multisectoral Working Group to Analyze and Propose Mechanisms to Address the Problems of Persons Affected by Forced Sterilizations Between 1995–2001." On November 16, 2022, the Superior Court of Justice of Lima, Fifth Specialized Constitutional Court, recognized the constitutional right to reparation and ordered the Ministry of Justice to implement a reparations policy for women victims of forced sterilization registered in the Registry of Victims of Forced Sterilizations, guaranteeing effective participation, and coordination of victims' associations and organizations in their design, creation and implementation.

María Elena Carbajal Cepeda Case

- 2.7 On September 18, 1996, María Elena Carbajal, originally from La Libertad, Chepén, who was then 26 years old, went alone to the María Auxiliadora Hospital in Lima to give birth to her fourth child. María Elena asked to see her newborn, but hospital officials denied this, saying that she already had four children and that this should be the last. Days later she was told that her son would only be returned to her if she agreed to be sterilized. The author points out that her newborn son was hidden from her and that she received so much pressure that she ended up agreeing. She adds that she was traumatized with a second-degree prolapse. Her husband abandoned her in the hospital when he found out about the sterilization and after the separation, she faced serious financial problems. Soon after, she experienced physical and emotional discomfort. At the age of 31, after a hysterectomy, doctors informed her that the low hormone production was due to sterilization, so she was subjected to hormone replacement treatment that caused repeated nervous breakdowns, and that forced her to interrupt the treatment, being diagnosed with osteoporosis, arthritis and early menopause. With few resources and a low level of education, María Elena was not fully aware of what had happened and assumed that sterilization was common and legal. Ignorant of her rights and without financial means, she did not take legal action against the state. In 2017, as a result of an event in the municipality, he understood that forced sterilization was a crime. On July 18, 2017, she was registered in the Registry of Victims of Forced Sterilizations and was subsequently included in investigation No. 14-2016, through resolution No. 111 dated September 11, 2018. She currently serves as president of the Association of Victims of Forced Sterilization of Lima and Callao.

Florentina Loayza Cárdenas Case

2.8 In 1997, 19-year-old Florentina Loayza lived with her husband and son in the Huancavelica mountains, at an altitude of more than 3,500 meters. In April of that year, public officials arrived to deliver food to the poorest women, Florentina went to the health center in Paucarbamba, where the food was supposed to be distributed. However, upon arrival, they were locked up and doctors announced that the women on the list would be operated on for free before receiving the food. Realizing that it was a sterilization, Florentina tried to escape, but was forcibly retained, announcing “they don’t leave here anymore because they are on the list.” She affirms that she did not sign any document and that when she asked about the reason for the sterilizations, they replied, “it is that since you are of the age, you are going to be full of children”, adding that “it was a small cut” and that the ligation would only last five years. Since the operation, Florentina has experienced severe pain in her belly. After learning about the sterilization, her husband abandoned her because he wanted to have more children. Motherhood is highly valued in her community, and her only son was constantly harassed for not having siblings. At the time of the events, she did not file legal action as she mistakenly assumed that she could have children again after five years. On November 29, 2017, through resolution No. 66, she was incorporated into investigation No. 14-2016 and after giving a statement to the Prosecutor’s Office, she was registered in the Registry of Victims of Forced Sterilizations and receives psychological support.

Rosa Loarte Sobrado Case

2.9 During a health campaign in Pichgas, Huánuco, in October 1996, 35-year-old Rosa Loarte was intercepted by medical practitioners who took her and a group of women to the “La Unión” medical center, approximately two hours away from her village. They were told that they should all go, without indicating that they would be operated on. Her 8-year-old daughter and baby waited outside the Center. She claims to be illiterate and has not signed anything. She was asleep and when she woke up, the nurses told them: “now if you are not going to have children anymore, we will cure you.” When she woke up, Rosa felt strong pains in her belly, but the officials immediately sent her home, having to walk with her baby. She did not receive post-operative care. A month after the operation she moved to Lima, she did not file any complaint. After learning that she had been sterilized, her husband abandoned her. In 2016, some women in her village informed her that they were gathering information to file a complaint. On December 20, 2016, she was registered in the Registry of Victims of Forced Sterilizations and on November 15, 2018, she was incorporated into investigation No. 14-2016, by resolution No. 127. Rosa says she feels intense pain in her torso and pain in her spine, but she has not received treatment.

Elena Rojas Caballero Case

2.10 In 1996, Elena Rojas, 30 years old, a resident of the Dos de Mayo district, Huánuco, was held with her sister by nurses, who asked her if she received social benefits, and ordered her to get on the bus “so that they can be linked in La Unión, so that they do not reproduce, that they do not have many children, if they do not have surgery we are not going to give the benefits of ‘Glasses of Milk’ and ‘Together’”. They were forced into a truck along with other women. At the La Unión medical center, Elena was forced to sign a document “for medicines.” Later she was anesthetized and when she woke up, she felt intense pain in her belly and weakness, they reiterated that she had been operated “so that they do not increase”, but without knowledge that this was a sterilization or that it was permanent. She was sent home after four

hours without medication or instructions. He did not receive any postoperative control. After learning of the sterilization, her husband abandoned her, telling her that she “had allowed herself to be operated on”, so she had to go to work in the jungle. Six months later, Elena began to suffer from intense pain and was diagnosed with uterine cancer, but she did not have the resources for a proper operation, so she had to beg to pay for it. Finally, a doctor agreed to operate on her, but she did not have post-operative care due to lack of resources. Currently, she continues to have intense pain and lives in a very precarious situation, without knowledge or means to initiate legal action. She says she received a document in Huánuco to register as a victim, but having changed her residence to Lima in 2016, the various prosecutors’ offices she went to in Lima told her that they had no competence. On February 6, 2017, she was registered in the Registry of Victims of Forced Sterilizations.

Gloria Basilio Huamán Case

2.11 In 1996, Gloria Basilio, from Huánuco, reports having been constantly harassed by nurses during health campaigns, who told her that her husband, being a farmer, was not going to be able to support his children, that “in the countryside women grow like rabbits, like guinea pigs, and they do not take care of themselves.” Despite her refusal, in July 1996, when she was 25 years old, a couple of nurses picked her up along with other women stating that it was an order from the President and the Ministry of Health, and that they could not disobey. Frightened, Gloria got into the trucks with other women and was transferred to the medical center of La Unión. There they asked her to sign a document to receive food for her children. The means and infrastructure were inadequate, with “practicing doctors sharpening knives and cutting us like animals, cutting our bellies open and letting the blood spill, like a sheep slaughterhouse, on the floors.” After suffering a nervous breakdown, Gloria was held tightly and anesthetized. She received no post-operative treatment, stating that she was left with permanent trauma. Later, she was diagnosed with 20 cm cysts in her ovaries and had to travel to Lima for treatment, currently suffering from uterine detachment. This experience affected her self-esteem, rendering her “a dry woman”, and also damaged her relationship with her husband, who does not forgive her for having sterilized herself. Gloria did not take legal action due to her lack of knowledge and financial resources. In 2017, during a trip to Huánuco, other women told her that she could register in the Registry of Victims of Forced Sterilizations, being later registered in Lima.

Complaint

- 3.1 The authors allege that the forced sterilization to which they were subjected violated their rights under articles 2, 3, 12, 14 and 24 of the Convention, in the light of general recommendations No. 19 (1992) on violence against women, No. 24, 1999), on women and health, No. 33 (2015) on women’s access to justice, No. 34 (2016) on rural women’s rights, and No. 35 (2017) on gender-based violence against women, updating the Committee’s general recommendation No. 19.
- 3.2 The authors submit that the communication is admissible under article 4(e) of the Optional Protocol, since, although the events occurred prior to the entry into force of the Optional Protocol, the consequences continue to occur even after its ratification. They maintain that the State party, despite having recognized in 2003 that the forced sterilizations of women committed between 1996 and 2001 represented serious human rights violations, has not carried out sufficiently diligent investigations to identify and punish those responsible, and has not implemented any measures to enable the authors and their families, obtain comprehensive reparation.

- 3.3 The authors allege that they were recruited through the use of violence, deception or coercion by State agents, sterilized without their consent, that the benefits and risks of these interventions were not explained to them or offered alternatives, that they did not receive post-operative medical assistance, all of which caused serious consequences for their physical and mental health. The authors also allege that they belong to a vulnerable sector of the population, as they are mostly rural and indigenous women, that the forced sterilizations affected their life projects and that the immaterial damage in turn responds to a cultural context in which sterility is assumed to be a “punishment”, which affects the status of women in their communities, in violation of articles 2, 3, 12, 14 and 24 of the Convention.
- 3.4 The authors allege that they suffer serious physical and psychological consequences as a result of the sterilizations, and that the State party violated their rights under articles 12 and 14, read in the light of articles 2 (c), (d) and (g) of the Convention, by failing to protect their right to health, by failing to take into account the particular needs of the rural and indigenous population in access to sexual health, and by failing to take into account the particular needs of the rural and indigenous population in access to sexual health, and by failing to take into account the particular needs of the rural and indigenous population to reproductive health, by not having guaranteed free, prior and informed consent in a manner adapted to their language and customs, by not having received post-operative medical treatment, by not having adopted measures to prevent the violation of these rights, or to ensure their comprehensive reparation. The authors add that the State party failed in its duty to guarantee them a life free from violence.
- 3.5 The authors also allege that the Reproductive Health and Family Planning Programme did not guarantee effective protection through national courts or any other type of institution, allowing the systematic exercise of abuse of power over women. The authors submit that, in addition to being officially registered as victims of forced sterilization, the State party recognized its international responsibility and assumed the obligation to investigate and punish criminally those responsible for all forced sterilizations and to make full reparation for the damage caused. In addition, the authors allege that the practice of forced sterilizations carried out between 1993 and 2001 in the State party constitutes crimes against humanity, and that, as such, there is an ex officio obligation on the part of the State party to investigate all such forced sterilizations committed. They allege that remedies have not been effective in adequately investigating, determining responsibility, and punishing those allegedly responsible for crimes against humanity for the forced sterilizations. In the same way, the authors allege that they are in a situation of vulnerability, [being indigenous] and some of them illiterate, so that the State has a reinforced duty to initiate criminal proceedings in view of the social and cultural context to which they belong. Despite the fact that María Elena Carbajal Cepeda, Florentina Loayza Cárdenas and Rosa Loarte Sobrado were included in investigation No. 14-2016, the deadlines have been excessive, the investigations have been archived and reopened on several occasions and, 24 years later, there is still no significant progress. Finally, the authors allege that the State party has not implemented measures that would enable them and their families to obtain full reparation in violation of articles 3 and 24, read in the light of article 2 of the Convention, since the State party has not created the necessary conditions for women to exercise their human rights, nor access to comprehensive reparation for the violations suffered.
- 3.6 The authors allege that in 2007 and 2014, the Committee reiterated its concern about the lack of investigation and prosecution, as well as the difficulties faced by women

victims of forced sterilization, in accessing relevant remedies. Other international bodies, such as the Human Rights Committee and the Human Rights Council, have made similar recommendations.

- 3.7 The authors request: (a) compensation in the amount of \$17,046 to each of them for material and non-material damage; (b) the adoption of the necessary measures for the investigation of the facts relating to the forced sterilizations of the authors in order to punish those responsible for criminal proceedings; (c) to provide psychological assistance to the authors and their relatives as direct and indirect victims in the present communication; (d) the creation of a trust for the payment of primary, secondary, university and/or technical education for the authors' children;

Discussion of the Committee Consideration of admissibility

- 7.1 In accordance with rule 64 of its rules of procedure, the Committee is called upon to decide whether the communication is admissible under the Optional Protocol.
- 7.2 The Committee notes the State party's argument that the events occurred prior to the entry into force of the Protocol. The Committee also notes the authors' arguments that, despite the State party's acknowledgement since 2003 that the forced sterilizations committed between 1996 and 2001 amounted to serious violations and despite the initiation of several criminal investigations after the entry into force of the Protocol, investigations into the authors' forced sterilizations remain unresolved and the alleged victims remain without full reparation. The Committee notes that both the initiation of criminal investigations into the authors' forced sterilizations and their entry in the Register of Victims of Forced Sterilizations post-entry into force of the Protocol and that the authors' allegations relate mainly to the lack of investigation and reparation, which remain pending after the entry into force of the Optional Protocol. The alleged failure to fully acknowledge its responsibility and the alleged failure by the State party to comply with its obligations to provide the authors with fair and adequate reparation therefore occurred after the State party had recognized the Committee's competence under the Optional Protocol. Accordingly, it declares the communication *ratione temporis* admissible under article 4, paragraph 2 (e), of the Optional Protocol.
- 7.3 The Committee takes note of the State party's observations regarding the failure to exhaust domestic remedies. The Committee recalls that, in accordance with article 4.1 of the Optional Protocol, it will not consider a communication unless it has satisfied itself that all available domestic remedies have been exhausted or that the processing of such remedies is unreasonably prolonged or unlikely to result in effective redress. The Committee notes that both parties submit that the present case does not concern sterilization *per se*, but rather the authors' right to effective investigation and adequate reparation. The Committee should also ensure that resources were available to the authors. The Committee notes the State party's argument that the alleged lack of judicial impartiality at the time of the facts is based on generic and subjective assessments, that the authors could have filed civil and administrative complaints, as well as a criminal complaint and *amparo* for discrimination, that these are the appropriate remedies for obtaining redress and that there is no evidence to conclude that the authors were in a real circumstance, tangible and verifiable, that would prevent their access to domestic remedies.
- 7.4 The Committee also notes that, according to the authors, since they were not adequately informed about the type of intervention to which they were subjected, they were initially not fully aware of their forced sterilization or that it constituted a crime. The Committee notes that, at times, legal remedies are not actually available

to the alleged victims, either for a legal reason or for a de facto situation. In this regard, the Committee recalls that, in accordance with its General Recommendation No. 39 [paras. 26 and 30], justiciability, availability, accessibility, provision of resources to victims, among others, are necessary components to ensure access to justice with an intersectional and intercultural gender perspective. For indigenous and rural women, the remoteness of their territories, illiteracy and lack of knowledge about existing laws and judicial remedies constitute an obstacle to access to justice. The Committee notes that, moreover, in the present case the authors did not have access to information before, during, or after their intervention. The Committee also notes the difficulties faced by the authors, rural women with limited resources and victims of forced sterilization, in accessing the relevant remedies at the time, that the criminal proceedings have not provided a guarantee of reparation and that they do not have any other judicial mechanism to provide adequate reparation. The Committee notes that no victim is obliged to resort to multiple remedies to have exhausted domestic remedies. Moreover, since the grievance suffered by the authors of the communication clearly requires comprehensive reparation with a survivor-centred approach, which stems from the criminal proceedings, civil and administrative remedies alone would not have provided sufficient redress and would not have resulted in an effective remedy. In this regard, the Committee notes that, after being informed, between 2016 and 2017, of the violations to which they were subjected, three of the authors (María Elena Carbajal, Florentina Loayza and Rosa Loarte) went to the Prosecutor's Office and were included in investigation No. 14-2016.

- 7.5 The Committee notes the State party's argument that investigation No. 14-2016 is complex, involving at least 2,500 alleged victims from across the country, that it requires extensive efforts to gather evidence and testimony, and that, since it began in 2016, it cannot be considered to be unduly delayed. The Committee notes the authors' argument that, more than 24 years after their forced sterilization, and more than six years since their inclusion in the Register of Victims of Forced Sterilizations, they have not been redressed, none of the investigations underway since 2002 have made significant progress, some of which have been shelved on several occasions, and that the State party justified the delay only by pointing out that the investigation is complex and, therefore, still pending. The Committee also notes that the State party has not provided sufficient information on the specific measures taken or about obstacles that would have impeded progress in the case, and has not responded to the authors' allegations that the criminal investigations have exceeded reasonable time limits, without yielding significant progress or results. In view of the fact that the State party has failed to justify the alleged delay in investigation No. 14-2016, which has been pending for eight years, the Committee considers that the delays cannot be attributed to the complexity of the case or the number of victims and concludes that this remedy has exceeded reasonable time and should not be exhausted for the purposes of the admissibility of the present communication. Accordingly, the Committee considers that article 4, paragraph 1, of the Optional Protocol to the Convention is not an obstacle to the admissibility of the communication submitted on behalf of María Elena Carbajal, Florentina Loayza and Rosa Loarte.
- 7.6 The Committee takes note of the State party's argument that Gloria Basilio and Elena Rojas did not file a criminal complaint, despite the possibility of doing so and therefore have not yet been incorporated into inquiry No. 14-2016. In this regard, the authors maintain that the State party has had access to all the necessary information on their forced sterilization, and that the absence of a complaint by Gloria Basilio

and Elena Rojas has not prevented the State party from becoming aware of the violations. They also allege that the practice of forced sterilizations carried out between 1996 and 2001 in the State party constitutes crimes against humanity, and as such, there is an ex officio obligation to investigate. The Committee recalls that the purpose of the requirement of exhaustion of domestic remedies is to give the State party itself the opportunity to fulfil its duty to protect and fulfil the rights enshrined in the Convention. The Committee notes that, if they had lodged a complaint, Gloria Basilio and Elena Rojas would have been included in investigation No. 14-2016 as alleged aggrieved parties, as indicated by the State party. Having concluded that investigation No. 14-2016 has exceeded reasonable time limits (para. 7.5 above), and that there is insufficient progress in that investigation, the Committee considers that, if it had lodged a complaint, the effectiveness of the remedy and the results of the investigation in favour of Gloria Basilio and Elena Rojas would be the same as for María Elena Carbajal, Florentina Loayza and Rosa Loarte. The Committee recalls its jurisprudence according to which “mere doubt as to the effectiveness of remedies does not exempt a person from exhausting domestic remedies”. The Committee considers that, in this case, there is certainty that the existing remedies were unduly prolonged and therefore inefficient and concludes, therefore, that Gloria Basilio and Elena Rojas would be exempt from exhausting that remedy. Accordingly, the Committee considers that article 4, paragraph 1, of the Optional Protocol does not constitute an obstacle to the admissibility of the communication submitted on behalf of Gloria Basilio and Elena Rojas.

- 7.7 The Committee notes that, according to the State party, the communication is inadmissible under article 4, paragraph 2 (c), of the Optional Protocol for lack of substantiation, as the facts presented in the communication do not involve discrimination on the basis of sex because the Reproductive Health and Family Planning Programme was aimed at the general population. The Committee also notes that the lack of adequate investigation and reparation for victims of forced sterilizations are discriminatory against women. The Committee notes that at least 314,000 women (93 per cent), including the authors, and 24,000 men, mostly indigenous, from poor or rural areas, and/or illiterate, were sterilized as part of a family planning policy that prioritized surgical contraception on a massive scale with the intention of reducing the birth rate and reducing existing poverty levels. The Committee considers that the Committee’s determination as to whether the forced sterilizations constituted discrimination on the basis of sex, socio-economic status or membership in an ethnic group is directly related to the merits of the communication and therefore concludes that it is competent to examine them.
- 7.8 The Committee notes that the facts and the authors’ other allegations relating to the lack of access to health care services, family planning services in rural areas and guarantees for the exercise of rights and freedoms on an equal basis are ancillary allegations to the lack of prompt and thorough investigation, and the lack of adequate comprehensive reparation. Consequently, in the absence of any other question concerning the admissibility of the communication, the Committee declares it admissible insofar as it raises issues under article 2 read in the light of articles 3, 12, paragraph 1, 14, paragraph 2 (b) and 24 of the Convention. The Committee also considers that the authors’ allegations regarding the lack of information on their forced sterilization raise issues under article 10 (h) of the Convention and declares them admissible.

Consideration of the merits

- 8.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and the State party, in accordance with article 7.1 of the Optional Protocol.
- 8.2 The Committee notes the authors' allegations that they were victims of forced sterilizations by public officials in the context of a State policy aimed at birth control, without such violations having been investigated or redressed, despite having been recognized as victims in the Register of Victims of Forced Sterilizations. The Committee also notes the State party's argument that the Reproductive Health and Family Planning Programme does not in itself constitute discriminatory legislation, because it was not intended only for women, but for the population at large and that it did not privilege only voluntary surgical contraception but also promoted sexual and reproductive health in its entirety. It also notes that, according to the State party, voluntary surgical contraception was performed on both men and women and that it did not target a specific economic sector or ethnic group. The Committee also notes the authors' argument that 93 per cent of the sterilizations were performed on women and that the vast majority of them were indigenous, from low-income sectors and/or from rural areas, and that the very practice of forced sterilizations is discriminatory against women and one of the most severe forms of gender-based violence. It also notes that, according to the authors, their forced sterilizations took place as part of a systematic and widespread attack on women from rural areas, of peasant or indigenous origin, and that this policy had the effect of nullifying and replacing their reproductive autonomy. Finally, the Committee notes that male and female sterilization differ substantially in the nature of the intervention and with respect to the surgical risks involved, and that the risks associated with female sterilization are generally considered higher than those associated with male sterilization. The Committee notes, in particular, the context in which the authors were sterilized, namely by unskilled medical personnel and in inadequate sanitary conditions, which constitutes a form of discrimination on the basis of sex.
- 8.3 The Committee recalls that, in its general recommendation No. 35, it stated that violations of women's sexual and reproductive health and rights, such as forced sterilization (...), are forms of gender-based violence which, depending on the circumstances, may constitute torture or cruel, inhuman or degrading treatment. According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, "some women may suffer multiple forms of discrimination on the basis of their sex or other grounds related to their status or identity. A growing problem is the involuntary sterilization of women from ethnic and racial minorities, women from marginalized communities, and women with disabilities," and stated that "forced abortions and sterilizations practiced by State officials following coercive family planning laws or policies may constitute torture." In addition, the Special Rapporteur on violence against women and girls, its causes and consequences also established that "forced sterilization and forced abortion constitute crimes and are both forms of gender-based violence against women", and that it is an example of intersectional discrimination that tends to affect minority and indigenous and rural women more frequently. The Committee is aware that many women may be affected by intersectional forms of discrimination (i.e., inter alia, women of African descent, HIV-positive, destitute, women in detention, LGBTI). Such is the case for indigenous women with disabilities, who commonly experience the denial of their legal capacity, which leads to further human rights violations, including in the areas of access to justice, institutionalized violence, and forced sterilization.

- 8.4 The Committee notes the State party's argument that measures are in place to ensure the prior, free, full and informed consent of women in sexual and reproductive health interventions and that, on the basis of the information provided by the authors, it cannot be verified that they were in fact intervened under the Reproductive Health and Family Planning Programme or that they did not give their consent. For their part, the authors present a coherent and consistent account of how they were co-opted through coercion, pressure or deception, as part of campaigns, in clinics that had neither the infrastructure nor the specialized personnel, that they would have been operated on without their informed consent, that some of them did not know how to read and/or did not speak Spanish and lived in remote areas and in some cases did not understand the meaning of the intervention or that it was permanent. The Committee also notes that the authors have been registered in the Register of Victims of Forced Sterilizations since 2017, and that for this purpose they submitted documents proving that they had been sterilized within the framework of the Reproductive Health and Family Planning Programme, the Committee recalls that, following its general recommendation No. 24, quality health care services are those that are provided by guaranteeing the prior consent of the woman with full knowledge of the facts, in which their dignity is respected, their privacy is guaranteed and their needs and perspectives are taken into account. However, since 2002, the Committee has noted with concern numerous cases of sterilization carried out on women without their prior informed consent, using psychological violence or the promise of economic incentives, affecting women's right to decide the number and spacing of children. The Inter-American Court also stressed that sterilization without consent is a phenomenon that in various contexts and parts of the world has had a greater impact on women who are part of groups with a greater vulnerability to suffer this violation of human rights, either because of their socioeconomic position, race, disability or living with HIV. Although sterilization is a method used as contraception by both women and men, forced sterilizations disproportionately affect women because they are women, based on the perception of their primarily reproductive role and that they are not capable of making responsible decisions about their reproductive health and family planning, that they are not in a position to be "good mothers" or that it is not advisable for them to have offspring. Some health centers, in addition, hide information or deceive women into giving their consent to sterilization, acting with a "manifest lack of respect for their right to autonomy and choice as patients." The Committee notes that, as has been amply documented and recognized by the report of the Congressional Subcommittee of Inquiry (supra 2.3), the forced sterilizations performed in the 1990s against at least 314,000 women, mostly indigenous, from poor or rural areas, and/or illiterate, are part of a family planning policy that prioritized surgical contraception on a massive scale through health campaigns and the promotion of incentives for health personnel. The Committee also notes that, in the present case, the State party also failed to provide information regarding its informed consent and merely stated that it cannot prove that the authors were not sterilized against their will, since the facts in question are under investigation in criminal proceedings that are still ongoing.
- 8.5 The Committee notes the authors' allegations that the policies adopted in the State party have not enabled them to clarify the truth of the facts, punish those responsible and make full reparations to them, and that their inclusion in the Register of Victims of Forced Sterilizations amounts to more than their mere expression of will, since the State party thereby acknowledged that such violations occurred. The Committee further notes that the authors attested to the Registry of Victims of Forced Sterilizations that they had been sterilized between 1996 and 1997,

that they came from places where health campaigns were allegedly carried out as part of the Reproductive Health and Family Planning Programme, and that they all report physical and psychological sequelae consistent with the events described.

- 8.6 The Committee notes that in 2003, in the context of the Mamérita Mestanza case (supra 2.4), the State party acknowledged its responsibility before the IACHR; that in 2015, it declared the care of victims of forced sterilizations to be of national interest, in 2015, it also ordered the creation of the Registry of Victims of Forced Sterilizations; that in the following years, it created multisectoral tables and working groups recognizing that sterilizations constituted a serious violation of human rights; whereas in 2022, the Superior Court of Justice established the obligation to implement a policy of reparations for women registered in the Registry of Victims of Forced Sterilizations; and that the Prosecutor's Office initiated various criminal investigations into serious human rights violations, including investigation No. 14-2016 in which three of the perpetrators were allegedly included as alleged victims. However, the Committee notes that a reparation programme as ordered by the Court has not yet been implemented and that the State party has not provided information on the impact that the measures implemented have had on improving the authors' life projects, nor does it indicate to what extent the authors have been able to benefit from comprehensive reparation, including the collective impact it has on an indigenous and rural woman, having been sterilized. The Committee notes the State's argument that the authors' right to full reparation does not depend on their registration in the Register of Victims of Forced Sterilizations but on the outcome of criminal investigations, and that in 2014, the Committee expressed concern about the lack of reparation and compensation for victims of forced sterilizations. The Committee considers that the accumulation of facts in this case, in particular, all of which left physical and psychological consequences on the authors, are a form of gender-based violence against women and inter alia-based discrimination on the sex, gender, rural origin and socio-economic status of the authors.
- 8.7 In addition, the Committee takes note of the State's argument that criminal investigations are complex, with thousands of testimonies and evidence. The Committee also notes the authors' argument that, since at least 2002, the various complaints and investigations have been shelved and reopened on numerous occasions and that this reflects a lack of enhanced due diligence and that the criminal proceedings have not provided any guarantees or comprehensive reparations. In 2007, the Committee noted that the investigation and prosecution of all acts of violence against women is not being carried out and that remedies have not been provided for each victim. The Committee recalls that, under article 2 of the Convention, a State may be liable for private acts if it fails to take measures with due diligence to prevent violations of rights, or to investigate and punish acts of violence and compensate victims. The Committee notes that the proceedings have been returned, archived and closed on several occasions, revictimizing the authors and their families. In this context, the Committee recalls that, under article 2 (f), (b), (c) and (d), States parties are under an obligation to take appropriate measures to modify or abolish not only laws and regulations, but also customs and practices that constitute discrimination against women, in particular indigenous and rural women; that measures to prevent and combat discrimination against indigenous women and girls must also integrate an intersectional gender perspective that considers the multitude of factors that combine to exacerbate unequal treatment and that, "women's right of access to justice is essential for the realization of all rights protected under the Convention." The Committee considers that in the present case, the State party has failed to carry

out due diligence to clarify the facts relating to the authors' sterilizations; that the authors, despite being registered in the Register of Victims of Forced Sterilizations, have not received adequate comprehensive reparation, as the State party has not yet implemented a comprehensive reparation policy; and that the State has not taken adequate measures to guarantee the authors, with due diligence, a prompt and effective investigation, or adequate comprehensive reparation.

- 8.8 In view of the foregoing, acting under article 7, paragraph 3, of the Optional Protocol, the Committee finds that the facts before it disclose a violation of the authors' rights under article 2, read in conjunction with articles 3, 10 (h), 12, 14 and 24 of the Convention.
- 8.9 The Committee notes that forced sterilization, when widespread or systematic, constitutes a crime against humanity under the Rome Statute of the International Criminal Court. While such a finding is beyond the scope of the Committee, it notes that on 9 August 2024, the State party enacted a law preventing the prosecution of crimes against humanity committed before 1 June 2002. The Inter-American Court of Human Rights has urged the State party to annul the law, as it contravenes international law. The Office of the United Nations High Commissioner for Human Rights also issued a statement noting that the law "contravenes the country's obligations under international law."
9. In the light of the foregoing conclusions, the Committee makes the following recommendations to the State party:
- (a) In relation to female authors, and taking into account gender and intersectional discrimination; the complexity of the damage suffered; the potential stigmatizing effect of crimes and reparations; and the potential transformative effect of certain measures on the structure of gender exclusion:
- (i) Adequate financial compensation to the authors and their family members for the physical and psychological health damage suffered
 - (ii) Psychological assistance to the authors and their families
 - (iii) Take the necessary urgent measures to speed up investigation No. 14-2016 related to the forced sterilizations of the authors to clarify the facts, identify and punish those responsible.
- (b) In general:
- (i) Take appropriate measures to investigate any acts of forced sterilization committed within the framework of the Reproductive Health and Family Planning Programme (1996-2000).
 - (ii) Take appropriate measures to implement a comprehensive reparation programme, including compensation, for all women included in the Register of Victims of Forced Sterilisations.
 - (iii) Ensure that the legal framework is adequate to diligently address investigations and reparation processes.

• VI •

**Committee
Against Torture
and Other
Cruel, Inhuman
or Degrading
Treatment or
Punishment**

A. CONCLUDING OBSERVATIONS

1. Ecuador, CAT/C/ECU/CO/8, 16 August 2024

Positive Aspects

6. The Committee commends the State party's initiatives to modify its policies and procedures in order to afford greater human rights protection and to apply the Convention, including: ... (d) The approval of the Protocol on Intercultural Dialogue in the Judicial Branch and the Guide on Coordination and Cooperation between the Indigenous and Ordinary Justice Systems in Cross-jurisdictional Proceedings, through Decision No. 53, in 2023...

Harassment of human rights defenders and journalists at risk

35. The Committee recognizes the initiatives undertaken by the State party to protect human rights defenders, environmental defenders and journalists, such as the establishment of specialized protection mechanisms and investigation protocols. However, the Committee expresses its serious concern at the numerous acts of harassment, intimidation and threats recorded during the period under review against indigenous and Afrodescendent leaders and other persons who take action to defend their territories and the environment, as well as journalists and human rights defenders, including the threats and intimidation they face when they speak out against the actions of the security forces and the armed forces in and outside prisons and the criminalization of their work (arts. 2, 12, 13 and 16).
36. The State party should take the necessary measures to ensure that journalists, human rights defenders and indigenous and Afrodescendent leaders can carry out their legitimate work in an environment free from threats, reprisals, violence and other forms of harassment. The State party should ensure that all acts of harassment and attacks against journalists, human rights defenders and indigenous and Afrodescendent leaders are investigated promptly, thoroughly and impartially, in order that the perpetrators are prosecuted and duly punished and the victims receive reparation. Lastly, the State party should prevent and avoid the misuse of criminal law against such persons.

Indigenous justice

45. Although the Committee welcomes the measures taken by the State party to ensure coordination and cooperation between the indigenous and ordinary justice systems, as well as the advances in case law in this area, it remains concerned that no law on coordination between the two spheres of justice has been adopted to date (art. 2).
46. The Committee reiterates its previous recommendation and encourages the State party to adopt, as prescribed by article 171 (2) of the Constitution, a law on coordination between the indigenous and ordinary justice systems in order to ensure respect for fundamental rights and freedoms, including the prohibition of torture and ill-treatment, and to formalize and strengthen the right to access to justice for all Indigenous Peoples.

2. Honduras, CAT/C/HND/CO/3, 24 May 2024

Definition of torture

8. The Committee is of the view that the definition of torture added to article 216 of the Criminal Code pursuant to Legislative Decree No. 130-2017 largely corresponds to article 1 of the Convention and takes note of the ongoing revision to that definition. However, the definition does not expressly cover acts of torture inflicted at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Also of concern is that, under article 216, paragraph 2, of the Criminal Code, the maximum prison sentence for the commission of an act of torture by a public official is reduced from 15 years to 10. In addition, the circumstances enumerated in article 216, paragraph 5, which are aggravating depending on the identity of the victim, are limited to some groups of persons and do not take into account other groups of persons – for example ... Indigenous persons ... – who may find themselves in situations of vulnerability. That torture can be a crime of commission or omission is also unrecognized in the Criminal Code. Lastly, the Committee takes note of the State party's explanation concerning the application of article 216 of the Criminal Code to acts committed by members of the armed forces (arts. 1 and 4).
9. The State party should set in motion an amendment to article 216 of the Criminal Code to ensure that torture is defined exactly as in article 1 of the Convention. In particular, article 216 should make express mention of acts of torture committed at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The State party should also ensure that offences involving acts of torture are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention. The Committee recommends that the State party consider increasing the degree of culpability of a criminal act when the victims are people who may be in vulnerable situations, including lesbian, bisexual, gay and transgender persons, Indigenous persons and other national or ethnic minorities. The Committee requests the State party to include in its next periodic report information on cases in which article 216 of the Criminal Code has been applied to members of the armed forces under civilian jurisdiction.

Human rights defenders, social leaders and journalists

30. The Committee is seriously concerned about the many murders and attacks, enforced disappearances, threats, searches and other acts of intimidation to which human rights and land rights defenders, Indigenous leaders, Honduran leaders of African descent and journalists are subjected and about the criminalization of their work. It is also concerned about reports that the National System for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials is ineffective, that there are delays in the issuance and application of orders for the protection for human rights defenders and that the System does not have the financial and human resources it needs. In this regard, the Committee appreciates the information that the delegation provided on the strengthening of the Directorate General of the Protection System in 2024 to address the challenges that have been identified. The Committee is concerned about the delays in investigations and prosecutions in this connection, as evidenced by the case of Berta Cáceres (arts. 2, 12, 13 and 16).

31. The Committee urges the State party to take the necessary measures to ensure that human rights defenders, land rights defenders, Indigenous leaders and journalists need not fear being subjected to reprisals or attacks for their work and activities. In particular, the State party should continue to strengthen the relevant protection systems and ensure that they have the human, financial, technical and material resources they need to function properly; it should also ensure that the protection orders are issued and effective. In addition, it should make progress in the investigation of the murders, attacks and other human rights violations to which human rights defenders, Indigenous leaders, Honduran leaders of African descent and journalists are subjected and prosecute the perpetrators without delay. Lastly, the State party should stop misusing criminal law against human rights defenders.

Follow-up procedure

44. The Committee requests the State party to provide, by 10 May 2025, information on the action that it has taken in follow-up to the Committee's recommendations on judicial independence and access to justice; the supervision and administration of the prison system, violence and deaths in prisons; the protection of human rights defenders, Indigenous leaders, Honduran leaders of African descent and journalists (see paras. 13, 17 (a) and (b) and 31). The State party is also invited to inform the Committee of its plans to give effect, within the coming reporting period, to the remaining recommendations made in the concluding observations.

3. Costa Rica, CAT/C/CRI/CO/3, 19 December 2023

Positive aspects

...

5. The Committee also welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, in particular: ... (f) The adoption of Act No. 9593 of 2018 on Access to Justice for Indigenous Peoples...

Principal subjects of concern and recommendations

...

Trafficking in persons

32. The Committee appreciates the efforts made by the State party to combat trafficking in persons for the purposes of sexual exploitation and forced labour. In particular, it takes note of the work done by the Immediate Response Team, the conclusion of binational agreements aimed at promoting safe labour migration flows, and intelligence work to prevent trafficking. The Committee regrets, however, the shortcomings in identifying victims of trafficking, especially among migrants, that have been highlighted in several reports, and the higher incidence of trafficking cases detected among persons in vulnerable situations, including members of Indigenous Peoples.... In addition, it notes that the number of trafficking cases investigated and prosecutions brought is very small in comparison with the incidence of the problem in the State party. The Committee also expresses its concern at reported reductions in the budgets allocated to trafficking prevention and victim support programmes as a result of the financial austerity measures in effect since 2020 (arts. 2, 12, 13 and 16).

Violence against Indigenous persons, human rights defenders and environmental activists

38. The Committee remains concerned about reports documenting harassment and attacks against the lives and physical integrity of Indigenous persons, human rights defenders and environmental activists during the period under review. While noting the information provided by the delegation on the State party's efforts in this area, including the victim and witness protection programme and the prosecution brought for the murder of Indigenous leader Jehry Rivera, the Committee notes with concern that, according to various sources, other cases of attacks and murders, including that of Indigenous leader Sergio Rojas in 2019, have reportedly been dismissed or remain unresolved (art. 16).
39. The State party should continue to promote the necessary measures to prevent violence and protect the life and physical integrity of Indigenous persons, human rights defenders and environmental activists.

4. Denmark, CAT/C/DNK/CO/8, 8 December 2023

Definition and criminalization of torture

8. While noting recent efforts by the State party to implement previous recommendations of the Committee regarding the inclusion of a specific provision in its Penal Code to criminalize torture as a distinct offence, including the establishment of an expert committee tasked with this matter, the Committee is concerned that neither the Danish Penal Code nor the Military Criminal Code contain such a provision. The Committee is similarly concerned that neither Greenlandic nor Faroese criminal law contain a similar provision. Drawing the attention of the State party to general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee recalls that, by naming the offence of torture as distinct from other crimes, States parties will directly advance the overarching aim of preventing torture and ill-treatment by, inter alia, alerting everyone, including perpetrators, victims and the public, to the special gravity of the crime of torture; strengthening the deterrent effect of the prohibition itself; and enhancing the ability of responsible officials to track the specific crime of torture (arts. 1, 2, 4 and 16).
9. The Committee reiterates its previous recommendations⁴ that torture be made a punishable offence per se and emphasizes the importance of including a definition of torture that fully encompasses that provided in the Convention.

National preventive mechanism

10. The Committee is concerned that, although the State party ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 2004, and despite the applicability of the Optional Protocol to the territories of both the Faroe Islands and Greenland, the State party's national preventive mechanism still lacks a mandate to carry out preventive visits in Greenland. The Committee is also concerned that, of the visits carried out, only a small percentage are unannounced (arts. 2, 11 and 16).
11. The State party should ensure that the national preventive mechanism is endowed with a sufficient mandate to carry out visits to all places of detention, including their installations and facilities, both within its territory and under its jurisdiction.

Forced and involuntary contraception implants in Greenland

34. The Committee is concerned over reports of forced and involuntary contraception implanted in Greenlandic women and girls dating back to the 1960s. While noting that the State party has established an inquiry commission to investigate these allegations, the Committee is concerned that the temporal mandate of the commission does not extend beyond 1991 (arts. 2, 12–14 and 16).
35. The State party should ensure that all allegations and complaints of forced or coerced contraception implants, including those which occurred after 1991, are impartially investigated, that the persons responsible are held accountable and that adequate redress is provided to the victims.

5. New Zealand, CAT/C/NZL/CO/7, 24 August 2023

Positive aspects

...

6. The Victims' Rights Code, in 2015. The Committee further welcomes the State party's initiatives to amend its policies and procedures in areas of relevance to the Convention and to ensure greater protection of human rights, including: ...
 - (d) The establishment, in 2018, of the Royal Commission of Inquiry into historical abuse in State care and in the care of faith-based institutions;
 - (e) The adoption, in 2018, of the Safe and Effective Justice Programme, which is aimed at reforming the criminal justice system, and the adoption, in 2020, of the Te Ao Mārama – Enhancing Justice for All programme;
 - (f) The establishment, in 2018, of a stand-alone agency to strengthen engagement between Maori and the Government (Te Arawhiti – Office for Maori Crown Relations);
 - (g) The release, in 2017, of the Waitangi Tribunal report, Tū mai te Rangī!, aimed at addressing the disparity in reoffending rates between Maori and non-Maori;
 - (h) The establishment, in 2017, of the Oranga Tamariki – Ministry for Children, with a child-centred operating model and increased focus on the needs of Maori children....

Principal subjects of concern and recommendations

...

Customary law and domestic application of the Convention

10. Notwithstanding the delegation's explanations regarding the importance of customary law, or tikanga Maori, in New Zealand and its influence on common law, the Committee is concerned about a lack of clarity regarding the relationship of customary law with international legal norms in general and with provisions of the Convention in particular (art. 2).
11. The State party should guarantee the rights set forth in the Convention to all persons within its territory and should take all measures necessary to ascertain the compatibility of traditional and customary norms with the Convention, ensuring, in the case of a conflict between them, that appropriate steps are taken to ensure that the Convention prevails. It should also ensure that the provisions applied by all courts in the State party are in harmony with the Convention.

Gender-based violence, in particular violence against Maori and Pasifika women and girls

19. While noting the various measures taken by the State party to address gender-based violence, including the adoption of Te Aorerekura – the National Strategy to Eliminate Family Violence and Sexual Violence and its associated Action Plan (2021–2023) and the establishment of the Minister for the Prevention of Family Violence and Sexual Violence and the Te Puna Aonui Interdepartmental Executive Board for the Elimination of Family Violence and Sexual Violence, the Committee remains seriously concerned about:
 - (a) The persistent high level of violence against women and girls, including family violence and sexual violence, which disproportionately affects Maori women...;
 - (b) The lack of comprehensive legislation criminalizing all forms of gender-based violence;
 - (c) Underreporting and the high rate of recidivism, in particular within the Maori community;
 - (d) The lack of systematic specialized capacity-building programmes on the strict application of legal provisions on gender-based violence and on gender-sensitive investigation methods for judges, prosecutors, law enforcement officials and social welfare personnel (arts. 2 and 16).
20. The State party should redouble its efforts to prevent and combat all forms of violence against women by, inter alia:
 - (a) Adopting comprehensive legislation criminalizing all forms of gender-based violence and ensuring that all cases of gender-based violence, in particular against Maori women, women belonging to ethnic minority groups and women with disabilities, and especially those involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately and that the victims receive redress, including adequate compensation;
 - (b) Strengthening capacity-building for judges, prosecutors, law enforcement officials and social welfare personnel on gender-sensitive responses to gender-based violence, including domestic violence;
 - (c) Continuing to conduct public awareness-raising programmes to promote understanding of the criminal nature of gender-based violence against women and take the measures necessary to encourage and facilitate the lodging of complaints by victims and to address effectively the barriers that may prevent women from reporting acts of violence against them;
 - (d) Ensuring that survivors of gender-based violence, including domestic violence, have access to safe and adequately funded shelters and receive culturally appropriate medical care, psychosocial support and legal assistance adapted to the special needs of Maori women and girls and women and girls belonging to ethnic minority groups;
 - (e) Allocating adequate resources for the implementation of Te Aorerekura – the National Strategy to Eliminate Family Violence and Sexual Violence and its Action Plan (2021–2023).

Pretrial detention

29. While taking note of the information provided by the State party on the measures taken to address the issue of pretrial detention, the Committee is concerned that pretrial detention is still frequently used in New Zealand and that no maximum time limits for pretrial detention are stipulated in law. It is also concerned that the number of persons being held in pretrial detention has increased during the period under review, which has largely been driven by increases in the rate of pretrial detention of Maori people (arts. 2, 11 and 16).
30. The State party should ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods of time, taking into account the principles of necessity and proportionality, in particular for minors. It should also intensify efforts to significantly reduce the number of pretrial detainees by making more use of alternatives to detention, in particular with regard to Maori and Pasifika adults and children, in accordance with the Tokyo Rules and the Bangkok Rules.

Indigenous Peoples in the criminal justice system

31. While noting the numerous strategies, programmes and initiatives to reduce the disproportionately high number of Maori in the prison system and to improve their conditions of detention, the Committee is concerned that Maori, including women and young people, continue to be disproportionately affected by incarceration, reportedly representing about 50 per cent of the total prisoner population, while constituting 17 per cent of the total population of New Zealand. In this respect, the Committee notes that the delegation acknowledged that a transformational change was required to reverse this trend and that, in order to achieve that change, the State party needed to implement comprehensive measures that included legislative and policy reforms. The Committee remains, however, concerned, that access to culturally sensitive legal assistance services, including interpretation and translation services, for marginalized and disadvantaged peoples, such as Maori and Pasifika, remains insufficient (arts. 2, 11 and 16).
32. The State party should increase its efforts to reduce the disproportionately high number of Maori in prisons and to reduce recidivism, including by identifying its underlying causes, by revising regulations and policies leading to the high rates of incarceration of Maori and by enhancing the use of non-custodial measures and diversion programmes. It should take all measures necessary to give judges the discretion to reduce sentences or to rely on alternatives to incarceration on the basis of relevant individual circumstances. It should also give due consideration to the recommendations contained in the Waitangi Tribunal report, *Tū mai te Rangī*, which are aimed at addressing the disparity in reoffending rates between Maori and non-Maori. Moreover, the State party should intensify its efforts to eliminate direct and indirect discrimination against Maori in the administration of justice, including through human rights training programmes for law enforcement officials, the judiciary and penitentiary personnel. Finally, it should ensure that adequate, culturally sensitive, qualified and accessible legal services are available to Maori.

Juvenile justice

37. While noting the various measures taken by the State party to improve the situation of children in conflict with the law, including the establishment of Aroturuki Tamariki – the Independent Children’s Monitor and the Children and Young People’s Commission, in 2019 and in 2022, respectively, and the adoption of the Child and Youth Well-Being Strategy, in 2019, the Committee remains concerned about:

- (a) The very low age of criminal responsibility, which is set at 10 years;
 - (b) Reports that children aged 14 to 17 years can be remanded in police custody after their first court appearance in the youth justice system for an indeterminate duration pending transfer to another facility;
 - (c) Reports that children do not always have access to legal assistance, which is mandatory, from the outset of their deprivation of liberty and that they are sometimes interrogated without the presence of a lawyer;
 - (d) The persistence of disproportionately high numbers of Maori children in the juvenile justice system and the disproportionately high number of Maori young people who die by suicide in institutions;
 - (e) Reports that children in detention are frequently subjected to verbal abuse and racist remarks and restrained in ways that are potentially dangerous;
 - (f) The practice of keeping children in solitary confinement;
 - (g) Children's lack of awareness about their rights and how to report abuses (arts. 2, 11 and 16).
38. The State party should bring its child justice system fully into line with the Convention and:
- (a) Raise the minimum age of criminal responsibility, in accordance with international standards;
 - (b) Repeal the practice of remanding children into police custody and reduce the proportion of children in secure youth justice residences who are on remand, including by investing in the development of community-based residences and strengthening the availability and use of non-custodial measures;
 - (c) Actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences, such as probation or community service;
 - (d) Ensure that all children have access to mandatory legal assistance from the outset of their deprivation of liberty and that they are never interrogated without the presence of a lawyer;
 - (e) Ensure that detention conditions comply with international standards, including with regard to access to education and health services, and, for pretrial detention, that detention is reviewed on a regular basis with a view to its withdrawal;
 - (f) Take all measures necessary to reduce the incarceration rate of Maori children and ensure that their detention undergoes regular judicial review;
 - (g) Explicitly prohibit the use of force, including physical restraints, and of pepper spray and spit hoods against children under supervision and promptly investigate all cases of abuse and ill-treatment of children in detention and adequately sanction the perpetrators;
 - (h) Immediately end the practice of solitary confinement for children in detention, including informal solitary confinement;
 - (i) Provide children in conflict with the law with information about their rights, ensure that they have access to effective, independent, confidential and accessible complaint mechanisms and legal aid and protect complainants from any risk of reprisals.

Psychiatric institutions

41. While noting the measures taken by the State party to improve the situation of persons with disabilities detained in psychiatric institutions, including the publication, in 2023, of the Guidelines for Reducing and Eliminating Seclusion and Restraint under the Mental Health (Compulsory Assessment and Treatment) Act 1992 to shift practices towards a seclusion-free environment in mental health facilities; the establishment, in 2018, of the Government Inquiry into Mental Health and Addiction; and the adoption, in 2016, of the New Zealand Disability Strategy 2016–2026 and its related action plans, the Committee is concerned about:
- (a) Legislation that allows for involuntary detention and compulsory treatment on the basis of impairment, including the Substance Addiction (Compulsory Assessment and Treatment) Act 2017;
 - (b) The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, which includes extensions to compulsory care orders and exposes persons with intellectual disabilities to detention for periods of time exceeding the maximum length of the sentence to which they would be liable in the criminal justice system;
 - (c) The continued and, in some cases, prolonged use of solitary confinement, seclusion, physical and chemical restraints and other restrictive practices on persons with psychosocial or intellectual disabilities, in particular Maori, in health and disability places of detention;
 - (d) The lack of effective, independent, confidential and accessible channels for lodging complaints (arts. 2, 11 and 16).
42. The State party should:
- (a) Consider repealing any legislation, including the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, that enables deprivation of liberty on the basis of impairment and that enables forced medical interventions for persons with disabilities, in particular Maori persons with disabilities and persons with intellectual or psychosocial disabilities;
 - (b) Consider repealing provisions within the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 that allow for persons with disabilities to be detained for periods of time exceeding the maximum length of the sentence to which they would be liable in the criminal justice system;
 - (c) Prohibit the use of solitary confinement for persons with psychosocial or intellectual disabilities, including children, and ensure that instruments of restraint and force are used in accordance with the law, under appropriate supervision, for the shortest time possible and only when strictly necessary and proportionate...

Historical abuse in State care and in the care of faith-based institutions

47. While noting the establishment, in 2018, of the Royal Commission of Inquiry into historical abuse in State care and in the care of faith-based institutions and that some survivors have received ex gratia payments and apologies from the State party, the Committee expresses its profound concern about the findings in the Royal Commission of Inquiry's interim report on progress (December 2020), its interim report on redress (December 2021) and its report into abuse allegedly perpetrated at the State-run Child and Adolescent Unit at Lake Alice Hospital (December 2022), which revealed the extent of the physical, psychological and sexual child abuse

perpetrated in State care and in the care of faith-based institutions. The Committee is seriously concerned that some of the recommendations arising from the inquiry have not yet been implemented, that no individual has been held accountable for the numerous allegations of torture and ill-treatment in State care and in the care of faith-based institutions, and that victims identified through the inquiry have not been awarded full redress, including compensation and rehabilitation. While noting that the State party has completed the prosecution and trial of an alleged perpetrator of abuse at Lake Alice Hospital, the Committee is concerned that the State party has failed to implement the Committee's decisions under article 22 of the Convention regarding the cases of *Zentveld v. New Zealand* and *Richards v. New Zealand* and to conduct prompt and impartial investigations, proceed with prosecutions and provide adequate compensation and rehabilitation for the torture and ill-treatment suffered by the two complainants at Lake Alice Hospital (arts. 2, 13, 14 and 16).

48. The State party should urgently:

- (a) Implement the recommendations of the Royal Commission of Inquiry in order to provide victims of torture and ill-treatment in State care and in the care of faith-based institutions with full redress, including compensation and the means for as full a rehabilitation as possible;
- (b) Implement the Committee's decisions under article 22 of the Convention concerning the cases of *Zentveld v. New Zealand* and *Richards v. New Zealand*, including by conducting prompt, thorough, impartial and independent investigations into all allegations of torture and ill-treatment made by the complainants, prosecuting the alleged perpetrators and, if convicted, punishing them with appropriate penalties, providing the complainants with access to full redress, including fair compensation and rehabilitation, and intensifying its efforts to disseminate the content of the Committee's decisions widely.

6. Brazil, CAT/C/BRA/CO/2, 12 June 2023

B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party: ... (k) The International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), on 25 July 2002....
6. The Committee commends the State party's recent initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular the following: ... (d) The adoption of guidelines for the judiciary on dealing with cases involving indigenous peoples in conflict with the law, in 2019....

Indigenous and Quilombola communities

19. The Committee is concerned about:

- (a) High levels of violence against Indigenous and Quilombola communities, including killings, often taking place in the context of the defence of their lands or as a result of their work as indigenous human rights defenders;
- (b) Indigenous and Quilombola women being subjected to endemic levels of violence, including threats, intimidation, harassment, sexual violence, ill-treatment and femicide;

- (c) The lack of protection from violent attacks against Indigenous and Quilombola communities and pervasive impunity for these crimes;
- (d) 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 (arts. 2, 12–14 and 16).

20. The State party should:

- (a) Take steps to prevent and address the root causes of violence against Indigenous Peoples and Quilombolas, including women, in full consultation with Indigenous and Quilombola communities and women, and to prevent killings and raids by local ranchers or illegal loggers;
- (b) Carry out timely and effective investigations into all incidents of violence against Indigenous Peoples and Quilombolas, including human rights defenders and women, ensuring accountability among perpetrators and the provision of remedies to victims;
- (c) 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.

Gender-based violence

41. While acknowledging the legislative and other measures taken by the State party to prevent and combat gender-based violence against women and the fact that the Supreme Court issued a ruling on the legal controversies around the constitutionality of Law No. 11.340/2016 (Maria da Penha Law) on domestic and family violence against women, the Committee remains concerned about compliance with both the verdicts of the Supreme Court and the Maria da Penha Law by judges at the local level. It is also concerned about:

- (a) The high levels of gender-based violence against women, in particular AfroBrazilian, Indigenous and Quilombola women, including those who identify as LGBT persons, particularly in the form of femicide, and weaknesses in the measures taken by the State party, including the national plan to combat femicide;
- (b) The low number of prosecutions and convictions and the leniency of the penalties imposed, and the lack of expertise within the judiciary on domestic and family violence cases;
- (c) The failure to provide adequate redress for victims and the insufficiency of the resources allocated to victims support programmes;
- (d) The lack of up-to-date disaggregated statistical data on gender-based violence in all its forms, and on the resolution of these cases, including prosecutions, sentences and convictions of the perpetrators and victim compensation awards (arts. 2 and 16).

42. The State party should:

- (a) Ensure that all cases of gender-based violence, especially those cases involving actions or omissions by State authorities or other entities that engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately, and that the victims receive redress, including adequate compensation;

- (b) Provide mandatory training to judges, prosecutors and lawyers on the prosecution of gender-based violence, as well as on the Maria da Penha Law and on its constitutionality, as stated in the verdicts of the Supreme Court, to judges, public prosecutors and law enforcement personnel, and conduct awareness-raising campaigns
- (c) on all forms of violence against women;
- (d) Strengthen its judicial system to ensure that women, in particular AfroBrazilian, Indigenous and Quilombola women, including those who identify as LGBT persons, have effective access to justice and facilitate women's access to justice by increasing both the number of specialized courts dealing with domestic and family violence cases and judges with expertise in these cases;
- (e) Maintain statistics, disaggregated by age and ethnic origin or nationality of the victim, on complaints, investigations, prosecutions, convictions and sentences relating to gender-based violence.
- (f) Allocate the necessary human, technical and financial resources to ensure effective implementation of the National Pact to Combat Violence against Women;
- (g) Ensure that shelters for women victims of violence are established throughout the territory of the State party, and that victims of gender-based violence receive the medical treatment, psychosocial support and legal assistance they require.

Trafficking

43. While taking note of the State party initiatives to address trafficking in persons, such as the adoption, in 2016, of Law No. 13.344, amending the Criminal Code, which provides for the prevention and suppression of national and international trafficking in persons and the measures to assist the victims, and the third National Plan to Combat Trafficking in Persons, in 2018, the Committee is concerned at the lack of information about the extent of the phenomenon of trafficking. It is particularly concerned about:
- (a) The high vulnerability of Afro-Brazilian and indigenous men, women and children to trafficking for the purposes of forced labour, sexual exploitation or domestic servitude;
 - (b) The fact that the State party has not yet adopted comprehensive anti-trafficking legislation;
 - (c) The low rates of prosecutions and convictions in trafficking cases;
 - (d) The lack of information on the early identification and referral of victims of trafficking to the appropriate social and legal services (arts. 2, 12–14 and 16).
44. The State party should continue and strengthen its efforts to combat trafficking in persons. In that respect, it should:
- (a) Consider adopting a comprehensive law against trafficking in persons, in line with the Palermo Protocol, enforce the existing legislative framework and promptly, thoroughly and effectively investigate, prosecute and punish with appropriate penalties trafficking in persons and related practices, ensuring the allocation of all means required for such purpose;
 - (b) Establish national mechanisms to coordinate efforts towards preventing and combating internal and international trafficking in persons and protecting victims;

- (c) Encourage reporting by raising awareness of the risks of trafficking among vulnerable communities and train judges, law enforcement officials and immigration and border control officers in the early identification of victims of trafficking and their referral to appropriate social and legal services;
- d) Strengthen its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and the adoption of joint measures with respect to the prosecution and punishment of traffickers.

Human rights defenders

45. The Committee welcomes the adoption of the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists, in 2018, and the launch of the Information System on Threatened Human Rights Defenders in 2014. However, it is concerned by reports of death threats, intimidation, harassment, violent attacks and killings carried out against human rights defenders, in particular Afro-Brazilian, Indigenous and Quilombola human rights defenders, including women, environmental rights defenders, journalists, community leaders, trade unionists, and LGBT activists during the reporting period. It is also concerned by the absence of specific legislation to protect human rights defenders and that the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists has been allocated inadequate budgetary resources and has not been able to provide meaningful protection to human rights defenders facing threats. It is further concerned by the misuse of drug and counter-terrorism legislation to criminalize human rights defenders. The committee regrets the low number of convictions for the acts mentioned above (arts. 2, 12, 13 and 16).

46. The State party should:

- (a) Take all necessary steps to prevent, investigate and punish accordingly all forms of threats, harassment, violent attacks and killings against human rights defenders and provide adequate redress to the victims or their families;
- (b) Adopt specific legislation to protect human rights defenders, provide additional funding for the Programme for the Protection of Human Rights Defenders, Communicators and Environmentalists and consult with affected groups on how the Programme can effectively meet their needs;
- (c) Take effective measures to ensure that drug and counter-terrorism laws do not criminalize the work of human rights defenders.

Sexual and reproductive health, including abortion

49. The Committee is concerned about: (a) The high rate of maternal mortality, in particular among Afro-Brazilian, Indigenous and Quilombola women ... (arts. 2 and 16).

50. The State party should: (a) Continue its efforts aimed at enhancing women's access to sexual and reproductive health with a view to effectively reducing the maternal mortality rate, in particular among Afro-Brazilian, Indigenous and Quilombola women and girls...

7. Colombia, CAT/C/COL/CO/6, 7 June 2023

State response to violence in the context of the armed conflict and criminal activity

18. While taking note of the efforts made by the State party, in particular the work of the Special Investigation Unit of the Attorney General's Office; the reactivation in 2022 of the National Commission on Security Guarantees, which is tasked with developing and implementing a policy for dismantling criminal organizations; and the talks undertaken with some of them, the Committee is concerned by: ...
- (d) Reports that illicit activities continue to be one of the main causes of violence in regions affected by the conflict, particularly sexual violence against women and girls and other people participating in illicit crop substitution programmes, and of forced internal displacement, especially of Indigenous communities and Afro-Colombians....

Human rights defenders, social leaders and journalists

36. While noting the ongoing efforts to formulate a comprehensive policy aimed at protecting and preventing the risks faced by these persons and the plans to restructure the National Protection Unit of the Ministry of the Interior, the Committee expresses its serious concern at the numerous murders and attacks, threats, surveillance and other acts of intimidation suffered by human rights defenders, social, Indigenous and Afro-Colombian leaders and journalists and the scant progress made in carrying out effective investigations (arts. 2, 12, 13 and 16).
37. The Committee urges the State party to take the necessary measures to ensure that human rights defenders, social leaders and journalists are free to carry out their work and activities without fear of reprisals or attacks. In particular, the State party should make sure that the competent protection mechanisms have the human and material resources necessary for them to function properly and that protection measures are implemented effectively. It should also move forward in the investigation of murders and harassment of human rights defenders, social leaders and journalists and attacks against them and should ensure that alleged perpetrators are prosecuted, that those found guilty are duly punished and that redress is provided to victims or their families.

• VII •

**Sub-Committee
on Prevention of
Torture and other
Cruel, Inhuman
or Degrading
Treatment or
Punishment**

A. PUBLIC REPORTS

1. Guatemala, CAT/OP/GTM/ROSP/1, 11 September 2024 (unoff. transl.)

V. Situation of persons deprived of liberty

C. Prisons

...

8. Situation of vulnerable groups

(a) Indigenous population

102. The Subcommittee noted with concern that there is no disaggregation of information on indigenous persons. Except for an education program at the Pavón Penal Farm in a Mayan language, there are no services provided in languages other than Spanish and there is no differential system.

103. The SPT recommends strengthening existing means of communication for indigenous persons and that, where necessary, interpretation services be provided. The State party should provide a human rights-based prison service so that indigenous persons can maintain their practices and customs with the fewest possible obstacles.

2. Australia, CAT/OP/AUS/ROSP/1, 20 December 2023

VI. Persons deprived of their liberty

A. Overarching issues

...

2. Labelling and revolving-door justice

64. The Subcommittee received information on high rates of recidivism, along with information regarding labelling, profiling and overpolicing of Indigenous and minority groups. The Subcommittee is concerned that social policies to address root causes of criminality are insufficiently addressed and that primary, secondary and tertiary approaches to crime prevention are largely absent from or ineffective in the State party's criminal justice policy. These challenges disproportionately affect Indigenous, minority and migrant communities and are magnified in rural and urban-poor communities, which may lack access to adequate social services and high-quality education and often experience fragility due to social issues such as alcoholism, damaged family units and intercommunity conflict.

B. Populations in situations of vulnerability

...

3. Indigenous Peoples

104. The Subcommittee noted the severe overrepresentation of Aboriginal and Torres Strait Islander peoples in prisons and in police watch-houses, with information received indicating that, despite comprising only 2 per cent of the population, Indigenous People comprise approximately 28 per cent of the adult prison

population of Australia. The Subcommittee noted that, in at least one juvenile detention centre visited, the entire population was Indigenous. The Subcommittee also received frequent reports that overpolicing of Indigenous communities, profiling, discrimination and prejudice contributed to those disproportionate incarceration rates. The Subcommittee is concerned that policies to tackle criminality in Indigenous communities fail to take into account core contributing factors and lack a needs-based approach to crime prevention. In this regard, the Subcommittee highlights its observation that many Indigenous detainees interviewed had themselves been victims of physical or sexual violence.

105. The Subcommittee recommends that the State party review its policies relating to Indigenous communities in the criminal justice system, including by paying due regard to the 2018 recommendations of the Australian Law Reform Commission's inquiry into the incarceration of Aboriginal and Torres Strait Islander peoples, and of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, and that it implement social and crime prevention schemes to reverse the overincarceration of members of Indigenous communities.
106. Notwithstanding the observed overrepresentation of Indigenous groups in prisons and police watch-houses, the Subcommittee did not encounter any members of Indigenous communities in the mental health facilities it visited, despite high rates of mental health conditions and intellectual disabilities among the Indigenous inmates it met.
107. The Subcommittee recommends that the State party increase outreach to Indigenous communities on mental health conditions and intellectual disabilities and provide adequate resources to allow for early diagnosis and treatment, including for those who have already entered the criminal justice system.
108. The Subcommittee observed that the majority of prisons are located near urban centres, meaning that imprisoned members of Indigenous communities are often detained far from their families, communities and areas of cultural relevance. It is concerned that elevated incarceration rates of Indigenous groups have resulted in the mass relocation of Indigenous Peoples to urban areas, introducing new varieties of social harms into Indigenous communities. This has a detrimental effect on Indigenous communities overall, contributing to increased criminality and recidivism.
109. The Subcommittee recommends that the State party increase its recourse to non-custodial measures for members of Indigenous communities, using incarceration as a last resort, and that it seek to implement the provisions contained in the Tokyo Rules.

B. GENERAL COMMENTS

1. No. 1 on article 4 of the Optional Protocol (places of deprivation of liberty), CAT/OP/GC/1, 4 July 2024

IV. Practical implementation of article 4

A. Places of deprivation of liberty visited by the Subcommittee and national preventive mechanisms

Persons in situations of vulnerability

56. The Subcommittee is mindful of the various settings in which persons in situations of vulnerability, including ... Indigenous Peoples... Aside from such places as prisons and remand centres, there are specific settings where people are or may be deprived of their liberty, including but not limited to schools and institutions that engage in the care of children, military camps, social care facilities, institutions for persons with disabilities or for persons with drug or alcohol use disorders, drug use treatment centres, orphanages, children's homes, institutions for the educational supervision of children, psychiatric hospitals, mental health centres, shelters, hostels and migration detention centres. Moreover, in the case of children, there are settings in which they are or may be deprived of their liberty for reasons related to their, or their parents', migration status, regardless of the name and reason given to the child's deprivation of liberty, or the name of the facility or location where the child is deprived of liberty. All such places fall under article 4 of the Optional Protocol and therefore under the mandate of the Subcommittee and national preventive mechanisms.
57. The Subcommittee notes that many persons with disabilities are presumed to be unable to live independently, or that support to live independently is not available or is tied to specific living arrangements. Although there may be no legal or administrative order confining such persons to a certain facility, the lack of support compels them to remain in living situations that deprive them of their liberty and may subject them to harmful practices. This form of disability-specific deprivation of liberty can occur in family homes and in institutional arrangements, including social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, child welfare institutions, group homes, rehabilitation centres, forensic psychiatric settings, albinism hostels, leprosy colonies, religious communities, family-type homes for children and prayer camps.
58. Therefore, when considering whether a particular place, facility or setting is a place of deprivation of liberty within the meaning of article 4 of the Optional Protocol, it is important that national preventive mechanisms and the Subcommittee ascertain the presence of reasonable accommodation arrangements and support for persons with disabilities. If reasonable accommodation and support are unavailable, the place, facility or setting should be considered a place of deprivation of liberty.

• VIII •

**Committee
on the Rights
of Persons with
Disabilities**

A. CONCLUDING OBSERVATIONS

1. Denmark, CRPD/C/DNK/CO/2-3, 8 October 2024

Positive aspects

...

5. The Committee ... commends the government of Greenland for its adoption of an action plan on compliance with the Convention for the period 2024–2034.

Principal areas of concern and recommendations

A. General principles and obligations (arts. 1–4)

7. The Committee is concerned that the Convention is not explicitly incorporated into the laws of Denmark, the Faroe Islands and Greenland. It is equally concerned at the reluctance by the State party's courts to take the Convention fully into account in all judgments relating to the rights of persons with disabilities.
8. Recalling its previous recommendations, the Committee recommends that the State party ensure that the Convention is incorporated into the laws of Denmark, the Faroe Islands and Greenland, and take measures to further improve the direct application of the Convention by the courts and administrative bodies, including by making training on the Convention, the Committee's jurisprudence and its general comments an integral part of systematic capacity-building for all judges.
11. The Committee is concerned that no new national action plan on persons with disabilities has yet been put in place in Denmark, and that the proposed action plan would cover the fields of labour market and education only. The Committee notes with concern ... that the new action plan in Greenland lacks ambition and is vague, particularly in terms of implementation. It is also concerned about the lack of awareness about the Convention among national, regional and municipal authorities.
12. The Committee recommends that the Government, the government of the Faroe Islands and the government of Greenland adopt action plans on disability that cover all rights and substantive areas under the Convention, including the fundamental changes required under, among others, articles 12, 14, 15, 19 and 24, and establish specific objectives, measurable targets, an adequate budget and indicators to evaluate progress in the implementation of the action plans. It also recommends that the State party strengthen periodic training about the Convention among national, regional and municipal authorities.

Specific rights (arts. 5–30) Equality and non-discrimination (art. 5)

17. The Committee notes with concern that:
 - (a) The Act on Prohibition of Discrimination on Grounds of Disability (Act No. 688 of 8 June 2018) explicitly states that it does not impose any obligation to provide reasonable accommodation or to ensure accessibility, and the revision thereto in 2020 introduced a duty of reasonable accommodation in day care and in primary schools only; ...
 - (c) The Act on Equality and Anti-Discrimination, in Greenland, does not enshrine the right to reasonable accommodation or mandatory rules on accessibility.

18. Recalling its general comment No. 6 (2018) on equality and non-discrimination, targets 10.2 and 10.3 of the Sustainable Development Goals and its previous recommendation, the Committee recommends that:

- (a) The Government amend the Act on Prohibition of Discrimination on Grounds of Disability to recognize the denial of reasonable accommodation as a form of discrimination, introduce an obligation to provide reasonable accommodation and ensure accessibility in all aspects of life, in compliance with the Convention;
...
- (c) The government of Greenland amend the Act on Equality and Anti-Discrimination to explicitly establish the duty to provide reasonable accommodation and ensure accessibility.

Freedom from exploitation, violence and abuse (art. 16)

47. The Committee is concerned about:

- (a) The prevalence of many forms of violence against children and adults with disabilities in institutions, including social care and psychiatric institutions, particularly the prevalence of gender-based violence and the high incidence of sexual violence against women and girls with disabilities;
- (b) The lack of accessible shelters, and of accessible procedures to obtain or retain services for persons with disabilities, including personal assistance, while residing in shelters, for all persons with disabilities, especially women and girls with disabilities;
- (c) The inadequate implementation of the legal and policy frameworks to prevent and respond to exploitation, violence and abuse, including gender-based violence and abuse, across the Kingdom of Denmark.

48. Recalling its statement of 25 November 2021 on the elimination of gender-based violence against women and girls with disabilities,¹¹ the Committee recommends that the Kingdom of Denmark, in close consultation with and with the active involvement of persons with disabilities, including women and girls with disabilities, including Indigenous women and girls with disabilities, through their representative organizations:

- (a) Further develop and implement comprehensive and effective action plans on violence prevention and response across the Kingdom of Denmark that are underpinned by the principles and standards enshrined in the Convention, including through measures for law and policy reform and development, the inclusion of culture-, gender- and age-specific requirements, responses that address all forms of violence against children and adults with disabilities in all settings, including in institutions, community awareness-raising strategies, access to justice and the establishment of accessible culture-, gender- and age-appropriate support and rehabilitation; ...

Protecting the integrity of the person (art. 17)

49. The Committee is concerned that legal and policy frameworks across the Kingdom of Denmark allow for sterilization, contraception and abortion in the case of women and girls with disabilities under guardianship without their personal consent, including sections 109 and 110 of the Health Act.

50. The Committee recommends that the State party amend legal and policy frameworks across the Kingdom of Denmark to prohibit sterilization,

contraception and abortion in the case of women and girls with disabilities without their free and informed personal consent.

51. The Committee is concerned that insufficient support is being provided to women with disabilities, in particular women with disabilities in institutions, to participate in all aspects of the inquiry in Greenland into the practice of involuntary insertion of intrauterine devices and to seek redress, and that the inquiry is examining the issue up to 1991 only.
52. The Committee recommends that the State party provide reasonable accommodation and disability-specific support to women with disabilities, including women with disabilities in institutions, to participate in all aspects of the inquiry in Greenland into the practice of involuntary insertion of intrauterine devices and to seek redress, and extend the scope of the inquiry to the present day.

Living independently and being included in the community (art. 19)

...

57. The Committee is concerned that:
 - (a) A large number of persons with disabilities in Greenland either have to choose to move to Denmark to seek adequate psychosocial and other support or are referred to residential facilities in Denmark by the authorities, owing to the lack of specialized support and qualified staff in Greenland, with the risk of being increasingly disconnected from their family, language and culture;
 - (b) Persons with disabilities in Greenland, in particular persons with intellectual and/or psychosocial disabilities, who are sentenced to detention in a psychiatric institution are often sent to an institution in Denmark, rendering visits by friends and family a near impossibility.
58. The Committee recommends that Greenland:
 - (a) Further improve its efforts to provide quality support to persons with intellectual and/or psychosocial disabilities in Greenland, rendering it unnecessary to relocate persons with disabilities to Denmark, and ensure that the measures taken are culturally appropriate, considering that the vast majority of the population in Greenland is Inuit;
 - (b) Provide community-based housing and appropriate support and ensure access to justice on an equal basis with others.

Freedom of expression and opinion, and access to information (art. 21)

59. The Committee notes with concern that:
 - (a) Access to sign language interpretation is difficult owing to the shortage of sign language interpreters, and professionals working in nursing homes and residential facilities are not systematically trained in Danish Sign Language, limiting the possibilities for persons with hearing impairments to express themselves and participate in everyday life;
 - (b) There are insufficient resources, particularly financial resources, for promoting and enhancing the knowledge and use of Braille.
60. The Committee recommends that the Kingdom of Denmark:
 - (a) Take measures to guarantee the right of access to interpretation in Danish Sign Language in Denmark, Greenlandic Sign Language in Greenland and Faroese Sign Language in the Faroe Islands, especially through the training of a sufficient

number of sign language interpreters, and provide the requisite funding for the use of Danish Sign Language; and to ensure training in Danish Sign Language for professionals working in nursing homes and residential facilities;

- (b) Take measures to ensure adequate funding for promoting, preserving and enhancing the knowledge and use of Braille, especially through the introduction of common teaching methods.

Respect for privacy (art. 22)

- 61. The Committee is concerned that no efforts have been made to amend the Psychiatric Act, under which psychiatric hospitals are allowed to transfer strictly private and confidential information to third parties without the consent of the person concerned.
- 62. Recalling its previous recommendations, the Committee urges Denmark to amend the Psychiatric Act so as to prohibit the transfer of the private and confidential information of patients in psychiatric hospitals to third parties without the consent of the person concerned, in order to comply with the principle of respect for privacy. It recommends that the Faroe Islands and Greenland adopt analogous legislation.

Adequate standard of living and social protection (art. 28)

- 73. The Committee is concerned about the decreasing number of persons with disabilities who receive financial benefits covering additional disability-related expenses under section 100 of the Social Services Act, and about the termination of such benefits upon reaching retirement age. It is also concerned that, under the Social Services Act, persons with disabilities older than 67 years are not entitled to be granted 15 hours of personal assistance per month for activities outside the home, even though such assistance may continue if it was granted before the person concerned reached the age of 67 years.
- 74. The Committee recommends that, in close consultation with and with the active involvement of persons with disabilities, through their representative organizations:
... (b) The Faroe Islands and Greenland enact analogous legislation.

Participation in cultural life, recreation, leisure and sport (art. 30)

- 77. The Committee is concerned about the lack of measures to ensure that persons with disabilities enjoy access to cultural material, television programmes, films, theatre and other cultural activities, in accessible formats, and access to places of cultural performances or services, such as theatres, museums, cinemas, libraries, tourism services and sport services.
- 78. The Committee recommends that the Kingdom of Denmark, in close consultation with and with active involvement of persons with disabilities, through their representative organizations:
 - (a) Ensure that persons with disabilities have access to cultural material, television programmes, films, theatre and other cultural activities, in accessible formats, and access to places of cultural performances or services, such as theatres, museums, cinemas, libraries, tourism services and sport services;
 - (b) Improve on its efforts to ensure that persons with disabilities, particularly children with disabilities, can effectively exercise their right to participate in cultural life, recreation, leisure and sport on an equal basis with others.

79. The Committee is concerned that the Faroe Islands and Greenland have not yet ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

80. The Committee recommends that the Faroe Islands and Greenland ratify and implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.

Statistics and data collection (art. 31)

...

83. The Committee is concerned at the very scarce statistical data in the Faroe Islands and Greenland on persons with disabilities, including women and children with disabilities, the barriers that they encounter and their living conditions.

84. The Committee recommends that the Faroe Islands and Greenland, in close consultation with and with the active involvement of persons with disabilities, through their representative organizations, systematically develop systems for collecting data and statistics and conducting research with regard to persons with disabilities, the barriers that they encounter and their living conditions, for use as a basis for formulating and implementing policies that give effect to the Convention.

National implementation and monitoring (art. 33)

87. The Committee is concerned about:

- (a) The limited extent to which a coordination mechanism has been implemented in the Faroe Islands and in Greenland;
- (b) The uncertainties as to whether the new monitoring mechanism in the Faroe Islands, due to begin operation on 1 January 2025, is in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and whether persons with disabilities, through their representative organizations, will be fully involved and able to participate;
- (c) The lack of a monitoring mechanism in Greenland that is in compliance with the Paris Principles in which persons with disabilities through their representative organizations can fully participate.

88. Recalling its guidelines on independent monitoring frameworks and their participation in the work of the Committee,¹⁶ the Committee recommends that:

- (a) The Faroe Islands and Greenland establish focal points to effectively coordinate the implementation of the Convention within their respective governments;
- (b) The Faroe Islands apply to the Global Alliance of National Human Rights Institutions for accreditation with A status of its newly created monitoring mechanism;
- (c) Greenland establish a mechanism to monitor implementation of the Convention that is in compliance with the Paris Principles, and apply to the Global Alliance of National Human Rights Institutions for accreditation with A status of its newly created monitoring mechanism.

2. Sweden, CRPD/C/SWE/CO/2-3, 29 April 2024

Situations of risk and humanitarian emergencies (art. 11)

25. The Committee is concerned about the following: ... (b) The extent to which the climate policy framework is disability-inclusive, including for Sami people with disabilities....
26. Recalling the Sendai Framework for Disaster Risk Reduction 2015–2030 and the Guidelines on the Inclusion of Persons with Disabilities in Humanitarian Action, the Committee recommends that the State party, in close consultation with and with the active involvement of persons with disabilities, through their representative organizations: ... (b) Take measures to ensure that the implementation of the climate policy framework is disability-inclusive, including for Sami people with disabilities, and consistent with the United Nations Framework Convention on Climate Change....

3. Costa Rica, CRPD/C/CRI/CO/2-3, 23 April 2024

Children with disabilities (art. 7)

13. The Committee notes with concern: ... (b) The persistence of poverty among children with disabilities, particularly Indigenous children with disabilities and children with disabilities living in rural and remote areas....
14. The Committee recalls its joint statement with the Committee on the Rights of the Child on the rights of children with disabilities (2022), and targets 16.2 and 16.7 of the Sustainable Development Goals, and recommends that the State party: ... (b) Take immediate action to reduce poverty among children with disabilities, paying particular attention to Indigenous children with disabilities and children with disabilities living in rural and remote areas....

Access to justice (art. 13)

23. The Committee notes with concern: (a) Limited access to justice for persons with disabilities, particularly ... Indigenous persons....
24. The little training received by judges on access to justice for persons with The Committee, recalling the International Principles and Guidelines on Access to Justice for Persons with Disabilities of 2020 and target 16.3 of the Sustainable Development Goals, recommends that the State party: (a) Take measures to remove all barriers to access to justice for persons with disabilities in general and for women, children, Indigenous persons ... and to inform these groups of the remedies available to them to file complaints and obtain redress....

Education (art. 24)

39. The Committee is concerned at:
 - (a) The lack of a strategic framework for the implementation of an inclusive education system that takes into account regional disparities and Indigenous territories, with goals, timelines and funding for its finalization....
40. The Committee, recalling its general comment No. 4 (2016) on the right to inclusive education and targets 4.5 and 4.a of the Sustainable Development Goals, urges the State party to:

- (a) In consultation with organizations of persons with disabilities, adopt a strategic framework for the implementation of an inclusive education system, taking into account regional disparities and Indigenous territories, with goals, timelines and funding for its finalization....

Habilitation and rehabilitation (art. 26)

43. The Committee notes with concern:

- (a) The existence of only one rehabilitation centre, located in the capital, and the lack of habilitation and rehabilitation facilities available to persons with disabilities living in other regions of the State party;
- (b) The lack of information on the implementation of community-based rehabilitation programmes focused on developing the capacities of persons with disabilities, including the lack of paediatric rehabilitation programmes.

44. The Committee recommends that the State party:

- (a) Ensure the provision of habilitation and rehabilitation services to all persons with disabilities, including Indigenous persons ... regardless of their age, sex, origin or socioeconomic status, throughout the national territory....

Adequate standard of living and social protection (art. 28)

47. The Committee is concerned about the high level of poverty among persons with disabilities and the lack of information on social security measures specifically designed for persons with disabilities, particularly women and children, Indigenous persons, persons of African descent and persons living in rural or remote areas.

48. Taking into account the relationship between article 28 of the Convention and target 1.3 of the Sustainable Development Goals, the Committee recommends that the State party develop a national plan that specifically addresses the high level of poverty among persons with disabilities, with a particular focus on ... Indigenous persons ... including its financing and a time schedule for its implementation, and put it into effect and monitor its implementation. It also recommends that the State party provide, in its next periodic report, information on the non-contributory pensions available to persons with disabilities over the age of 65 years, or those under 65 who are unable to work, including the amount paid to each beneficiary and the number of persons with disabilities currently benefiting from such pensions, disaggregated by gender.

4. Nicaragua, CRPD/C/NIC/CO/1-3, 22 March 2024 (unoff. transl.)

Specific rights (arts. 5 to 30)

Equality and non-discrimination (art. 5)

8. The Committee is concerned to: ... a) The lack of information on the results of the “specific measures” (CRPD/C/NIC/3, para. 29) taken by the State party to eliminate all forms of discrimination based on disability, including gender, intersectional, multiple and association discrimination....
9. In line with its general comment No. 6 (2018) on equality and non-discrimination, the Committee recommends that the State party: (a) Enact, as soon as possible, legislation against all forms of discrimination, incorporating multiple and intersectional forms of discrimination, including discrimination against indigenous persons with disabilities, the concept of reasonable accommodation in different

areas and recognizing the denial of reasonable accommodation as discrimination on the basis of disability...

Women with disabilities (art. 6)

10. Despite the fact that the State party has been recognized by international organizations for its progress in reducing gender inequality, including the Ministry of Women's Affairs and the "Comprehensive Law against Violence against Women" (Law 779), the Committee notes with concern:
 - (a) The few cross-cutting measures that promote and protect the rights of women and girls with disabilities;
 - (b) The absence of legislation recognizing indirect discrimination on the basis of sex and gender, as well as of measures to prevent and eliminate multiple discrimination and violence against women with disabilities, in particular that experienced by women with intellectual, psychosocial or multiple disabilities, indigenous women with disabilities and those living in rural areas...
11. Recalling its general comment No. 3 (2016) on women and girls with disabilities, as well as targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals, the Committee recommends that the State party:
 - (a) Mainstream the human rights approach to disability in its gender equality laws and policies, and incorporate a gender perspective into disability laws and policies, with the effective participation of women and girls with disabilities and their representative organizations;
 - (b) Establish clear policies against discrimination against women and girls with disabilities, and mechanisms for complaints, follow-up, investigation and, where appropriate, punishment and restoration....

Children with disabilities (art. 7)

12. The Committee notes with concern: (a) The persistence of poverty among children with disabilities, in particular indigenous children and those living in rural and remote areas....
13. Recalling its 2022 joint statement with the Committee on the Rights of the Child on the rights of children with disabilities, the Committee recommends that the State party: (a) Take immediate action to combat the situation of poverty in which children with disabilities find themselves, with particular attention to the situation of indigenous children with disabilities and those living in rural and remote areas....

Situations of risk and humanitarian emergencies (art. 11)

20. The Committee acknowledges the State party's efforts in developing Guidelines on Risk Management for Persons with Disabilities, but is concerned: ... c) The information received about criminalization, reprisals and threats against women environmental activists, including ... indigenous women and women with disabilities....
21. In accordance with the Sendai Framework for Disaster Risk Reduction 2015-2030, the Committee recommends that the State party: ... c) Immediately cease criminalization, reprisals and threats against women environmental activists, including ... indigenous women and women with disabilities.

Access to justice (art. 13)

24. The Committee notes with concern:

- (a) The limited progress made in establishing physical accessibility, information and communication in all places of justice in the country, including in rural areas, the lack of sufficient Nicaraguan sign language interpreters for judicial proceedings for deaf persons, and the limited training of judges on access to justice for persons with disabilities throughout the country;
- b) That the Comprehensive Law against Violence against Women (Law 779) is not intersectional, since it does not specify women and girls with disabilities, LGBT persons, indigenous women with disabilities, that it does not contemplate the crime of trafficking in persons and that it prioritizes mediation in cases of violence against women....

25. Recalling the 2020 International Principles and Guidelines on Access to Justice for Persons with Disabilities and target 16.3 of the Sustainable Development Goals, the Committee recommends that the State party:

- (a) Take urgent measures to ensure physical, information and communication accessibility at all sites of access to justice, including sufficient LSN interpreters, Braille and easy-to-read documents, as well as training for all judges throughout the country, including rural areas;
- (b) Establish a protocol for access to justice for persons with disabilities, with age- and gender-appropriate procedural adjustments in civil proceedings, in all courts of the country, including rural areas, establishing due process, reasonable accommodation and free legal representation for persons with disabilities throughout the process for all; including persons with disabilities detained for political reasons whose procedural guarantees must be respected as a priority....

Protection from exploitation, violence and abuse (art. 16)

30. The Committee is concerned that:

- a) During the period 2018-2019, the practice of physical aggression against detainees predominated, and that from 2019 to the present psychological aggression, prolonged isolation techniques and sensory overexposure have been incorporated, and that it is unknown how many people with disabilities have been subjected to such attacks;
- b) Since 2015 there has been violence and colonization campaigns in the north of the country, against indigenous populations and that it is unknown how many indigenous people with disabilities have been affected; ...
- e) That the Comprehensive Law against Violence against Women (Law 779) is not intersectional, since it does not specify women and girls with disabilities, LGBT persons, indigenous women with disabilities, that it does not contemplate the crime of trafficking in persons and that it prioritizes mediation in cases of violence against women.

31. In line with targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals and its Declaration of 24 November 2021 calling for action to eliminate gender-based violence against women and girls with disabilities, the Committee recommends that the State party, in close consultation and active collaboration with persons with disabilities and their representative organizations:

- (a) Establish a monitoring mechanism, on the basis of the Optional Protocol to the Convention against Torture, especially of persons with disabilities, in

places of detention in order to prevent physical or psychological aggression, prolonged isolation techniques, sensory overexposure or any other practice considered torture under international law against detainees, documenting how many persons with disabilities, especially women have been subjected to these practices;

- (b) Take urgent action to prevent indigenous persons with disabilities from being affected by exploitation, violence and abuse; ...
- (e) Amend Law 779 to include the crime of trafficking in women, specifying women and girls with disabilities and indigenous women with disabilities, LGBT persons with disabilities, eliminating the requirement for mediation and prioritizing prosecution in cases of gender-based violence against women.

Education (art. 24)

- 50. The Committee is concerned to: ... (d) The lack of information on progress in the training and education of teachers in urban schools and those located in rural or indigenous communities.
- 51. Recalling its general comment No. 4 (2016) on the right to inclusive education and targets 4.5 and 4.a of the Sustainable Development Goals, the Committee urges the State party, in close consultation and active collaboration with persons with disabilities and their representative organizations: ... c) Place special emphasis on rural and indigenous areas to provide them with the digital tools that allow them a better education, including for students with disabilities....

Health (art. 25)

- 52. The Committee notes with concern: ... (c) The high rates of maternal mortality among women without sufficient means, rural women, women with disabilities, indigenous women, etc.
- 53. Taking into account the relationship between article 25 of the Convention and targets 3.7 and 3.8 of the Sustainable Development Goals, the Committee recommends that the State party: ... (c) Investigate and address the causes of high maternal mortality rates, including the training of rural and indigenous midwives....

5. Paraguay, CRPD/C/PRY/CO/2-3, 17 October 2023

Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

- 11. The Committee is concerned about:
 - (a) The failure to adopt a bill on all forms of discrimination that contains a crosscutting obligation not to discriminate against persons with disabilities and that is gender- and age-sensitive, provides for mechanisms for the filing of discrimination-related complaints and prescribes penalties for persons who discriminate, in line with pillar 6.3 of the National Action Plan for the Rights of Persons with Disabilities;
 - (b) The continuing discrimination against persons with disabilities and the lack of mechanisms for victims of discrimination on the basis of disability to file complaints or obtain reparation.
- 12. In line with its previous concluding observations and its general comment No. 6 (2018) on equality and non-discrimination, the Committee recommends that the State party:

- (a) Adopt, as soon as possible, a law against all forms of discrimination that covers multiple and intersecting forms of discrimination, including discrimination against Indigenous persons with disabilities, includes the concept of reasonable accommodation in different settings and recognizes the denial of reasonable accommodation as discrimination on the basis of disability;
- (b) Establish accessible and effective procedures, including judicial, administrative and complaints procedures, for victims of discrimination on the basis of disability and ensure that victims receive reparation and perpetrators are punished.

Women with disabilities (art. 6)

- 13. Despite the efforts made by the State party, as seen in the adoption of relevant legislation, the Committee notes with concern: ... (d) The lack of measures to prevent and eliminate multiple discrimination and violence against women with disabilities, particularly women with intellectual, psychosocial or multiple disabilities, [and] Indigenous women with disabilities....
- 14. The Committee, recalling its previous concluding observations,⁵ its general comment No. 3 (2016) on women and girls with disabilities and targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals, recommends that the State party: ... (e) Expand the scope of the Gender Observatory to include data on women and girls with disabilities, especially Indigenous women with disabilities....

Children with disabilities (art. 7)

- 15. The Committee notes with concern: (a) The persistent poverty among children with disabilities, particularly Indigenous children with disabilities and children with disabilities living in rural and remote areas....
- 16. The Committee, recalling its 2022 joint statement with the Committee on the Rights of the Child on the rights of children with disabilities, recommends that the State party: (a) Provide for immediate action to reduce poverty among children with disabilities, paying particular attention to the situations of Indigenous children with disabilities ... and reinforce the Abrazo Programme....

Freedom from exploitation, violence and abuse (art. 16)

- 31. The Committee is concerned about: (a) The standstill in the implementation of the action lines under pillar 14 of the National Plan for the Rights of Persons with Disabilities relating to the protection of persons with disabilities, especially Indigenous persons, women and children, against exploitation, violence and abuse....
- 32. The Committee, in line with targets 5.1, 5.2 and 5.5 of the Sustainable Development Goals and its statement of 24 November 2021, in which it called for action to be taken to eliminate gender-based violence against women and girls with disabilities, recommends that the State party: (a) Increase its efforts to make progress on the action lines under pillar 14 on protection against acts of exploitation, violence and abuse, particularly those targeting persons with disabilities, especially Indigenous persons, women and children with disabilities....

Freedom of expression and opinion, and access to information (art. 21)

- 39. The Committee is concerned about: (a) The lack of measures to ensure that all public information, including information from the health and emergency services, the National Police and the violence response services, is available in modes and formats that are accessible, especially to blind persons, deafblind persons and persons with intellectual disabilities....

40. The Committee recommends that the State party: ... (c) Provide the Relay Centre with sufficient resources to enable it to perform its functions effectively, including with respect to running the online interpretation system, and ensure that the system is available 24 hours a day, seven days a week, including to Indigenous persons who are deaf and deaf persons living in remote and rural areas....

Education (art. 24)

43. The Committee is concerned that: ... (h) The limited outcomes of the Indigenous Peoples' Multilingual Education Plan 2013–2018 and the little progress made in the capacity-building and training of teachers working in schools located in Indigenous communities under Act No. 5136/13, on inclusive education....

44. The Committee, recalling its general comment No. 4 (2016) on the right to inclusive education and targets 4.5 and 4.a of the Sustainable Development Goals, urges the State party to: ... (h) The limited outcomes of the Indigenous Peoples' Multilingual Education Plan 2013–2018 and the little progress made in the capacity-building and training of teachers working in schools located in Indigenous communities under Act No. 5136/13, on inclusive education....

Health (art. 25)

45. The Committee notes with concern: ... (c) The centralization of health services for persons with disabilities and the failure to take action on pillar 12, on the right to health, of the National Action Plan for the Rights of Persons with Disabilities, which affects persons with disabilities, especially Indigenous persons with disabilities....

46. The persistence of the medical model of disability in Act No. 7018/2022 on Taking into account the links between article 25 of the Convention and targets 3.7 and 3.8 of the Sustainable Development Goals, the Committee recommends that the State party: ... (c) Implement the necessary measures to decentralize health services so that they are accessible to persons with disabilities, especially those living in remote and rural areas, and place a special focus on the care of Indigenous persons with disabilities....

Adequate standard of living and social protection (art. 28)

49. The Committee is concerned about: (a) The rate of poverty among Indigenous persons with disabilities, which has not decreased despite the inclusion of persons with disabilities in the module for the inclusion of Indigenous families in the Tekoporã Programme because of the insufficient budgetary allocations for social programmes....

50. The lack of a budget for the assignment of personal assistants to people who Taking into account the links between article 28 of the Convention and target 1.3 of the Sustainable Development Goals, the Committee recommends that the State party: (a) Increase the budget allocated to social programmes and the amounts provided in order to achieve a real reduction in poverty among persons with disabilities, especially Indigenous persons with disabilities....

6. Peru, CRPD/C/PER/CO/2-3, 29 November 2023

Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

10. The Committee is concerned about:
- (a) The persistence of discrimination, despite the laws prohibiting all forms of discrimination, in all areas of the lives of persons with disabilities, in particular the refusal to provide reasonable accommodation in the public and private sectors, in violation of the Convention and the right to equality;
 - (b) The lack of information, including disaggregated data, on the situation of women and girls with disabilities, Indigenous persons with disabilities ... and on the impact of legislation and public policies on their rights under the Convention.
11. Recalling its general comment No. 6 (2018) on equality and non-discrimination, the Committee recommends that the State party:
- (a) Develop a comprehensive anti-discrimination framework for persons with disabilities that covers State and non-State actors and provides protection from direct and indirect discrimination, denial of reasonable accommodation, harassment and intersectional discrimination. The Committee also recommends that the State party provide effective legal remedies and redress for all forms of discrimination, including sanctions and compensation, and that it develop clear procedures and set aside sufficient financial resources for the provision of reasonable accommodation. In addition, it recommends that the State party instruct the National Consumer Protection Authority and the National Institute for the Defence of Competition and Protection of Intellectual Property to initiate ex officio proceedings to monitor discrimination on grounds of disability in the private sector;
 - (b) Ensure that data-collection systems and assessments of the impact of legislation and policies include indicators and disaggregated data concerning the situation of ... Indigenous persons ... with disabilities.

Children with disabilities (art. 7)

14. The Committee is concerned about:
- (a) The large number of children and adolescents with disabilities living in institutions administered by the National Comprehensive Family Welfare Programme and in rural and remote areas;
 - (b) The few records concerning day care for children with disabilities kept by the national childcare programme known as Cuna Más, the objective of which is to enhance the development of children under 36 months of age in localities characterized by poverty and extreme poverty;
 - (c) The significant inequality gaps in the provision of health services, early diagnoses, access to therapy and rehabilitation and access to assistive technologies and devices to improve the quality of life of children and adolescents with disabilities;
 - (d) The limited participation of children and adolescents with disabilities in the advisory councils of children and adolescents throughout the State party.
15. Recalling its 2022 statement made jointly with the Committee on the Rights of the Child, the Committee recommends that the State party:
- (a) Ensure that children and adolescents with disabilities, especially those living in rural and remote areas, in Indigenous communities and in migrant and

refugee communities, are afforded effective and appropriate protection, care and support and are included in the community;

- (b) Allocate the financial and human resources to expand the coverage of Cuna Más with a view to enhancing child development, ensuring the incorporation of a disability perspective, as well as the creation and implementation of permanent staff training systems, thereby guaranteeing the efficiency and quality of care for children with disabilities....

7. Argentina, CRPD/C/ARG/CO/2-3, 7 December 2023

Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

11. The Committee is concerned about:

- (a) Act No. 23.592 of 1988 prohibiting discrimination, which does not recognize multiple and intersecting forms of discrimination or the denial of reasonable accommodation as a form of discrimination on the basis of disability; ...
- (c) The lack of a national anti-discrimination plan with a disability perspective that addresses the situation of persons with disabilities who experience multiple and intersecting forms of discrimination, including Indigenous persons with disabilities;
- (d) The lack of accessible complaint and redress mechanisms for victims of discrimination on the basis of disability.

12. The Committee, in line with its general comment No. 6 (2018) on equality and non-discrimination, recommends that the State party:

- (a) Enact a new anti-discrimination law that covers multiple and intersecting forms of discrimination, including discrimination against Indigenous persons and the concept of reasonable accommodation in different settings, and that recognizes the denial of reasonable accommodation as discrimination on the basis of disability; (b) Step up actions to prevent and eliminate barriers that result in discrimination against persons with disabilities, including the individual provision of reasonable accommodation in all areas of life, in both the private and the public spheres;
- (c) Adopt the national anti-discrimination plan and ensure that the plan covers the situation of persons with disabilities who face multiple and intersecting forms of discrimination, such as ... Indigenous persons with disabilities...;
- (d) Establish accessible and effective mechanisms, including judicial and administrative procedures, for victims of discrimination on the basis of disability, and ensure that redress is provided and perpetrators are sanctioned.

· IX ·

Committee
on Enforced
Disappearances

1. Report on requests for urgent action submitted under article 30 of the Convention, CED/C/25/2, 3 November 2023

D. Developments since the end of the twenty-fourth session

...

1. General trends

...

(c) Lack of a differential approach

18. The Committee remains concerned at the absence of information from the States parties concerned as to how they have implemented the Committee's recommendations that they adopt a differential approach in cases involving ... members of Indigenous communities ... in accordance with principle 4 of the Guiding Principles for the Search of Disappeared Persons.

2. Specific trends by country

32. The Committee remains concerned about the perilous and vulnerable situation of environmental and other human rights defenders in Mexico. In this regard, the Committee continued to follow up on the disappearance, in January 2023, of two defenders of Indigenous peoples' rights, Ricardo Arturo Lagunes Gasca and Antonio Díaz Valencia. The Committee voiced its concern about information it received regarding the lack of cooperation between the authorities responsible for the search and investigation of the case and recalled the need to ensure that information obtained during the investigation informed the search process. The Committee reiterated that the State party should ensure that, during the search and investigation, sufficient weight was accorded to the hypothesis that the human rights work of the disappeared human rights defenders, including their opposition to the expansion of the extractive industries in the area, could be a possible motive for their disappearance.

· X ·

Human Rights Council

A. RESOLUTIONS

1. Biodiversity and human rights, A/HRC/RES/57/28, 11 October 2024

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments, and reaffirming the importance of the Convention on Biological Diversity,

Reaffirming the importance of the Rio Declaration on Environment and Development and its principles in addressing biodiversity loss and environmental degradation and their adverse impact on the enjoyment of human rights by all,

Recalling the 2030 Agenda for Sustainable Development and the pledge contained therein to leave no one behind, including, inter alia, Sustainable Goals 14, on conserving and sustainably using the oceans, seas and marine resources, and 15, on halting biodiversity loss,

Recalling also the Kunming-Montreal Global Biodiversity Framework, adopted at the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity, including section C thereof, which calls, inter alia, for the implementation of the Framework, including its vision, mission, goals and targets, to be consistent with a human rights-based approach and Conference of the Parties decisions 15/5, on the monitoring framework for the Kunming-Montreal Global Biodiversity Framework, 15/6, on mechanisms for planning, monitoring, reporting and review, 15/7, on resource mobilization, and 15/8, on capacity-building and development and technical and scientific cooperation,

Recalling further Human Rights Council resolution 48/13 of 8 October 2021 and General Assembly resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment,

Recalling the United Nations Declaration on the Rights of Indigenous Peoples, in which it is recognized that respect for Indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment, and recognizing that the failure to protect biodiversity and environmental degradation have adverse human rights consequences, as well as a negative impact on the preservation of traditional knowledge and the cultural heritage, expressions, identities and quality of life of Indigenous Peoples, as well as other biodiversity-dependent communities,

Acknowledging that the loss of biodiversity and the decline in ecosystem services can have a negative impact on the enjoyment of the right to a clean, healthy and sustainable environment, which has adverse effects, both direct and indirect, on the effective enjoyment of all human rights, as well as for the safeguarding of the needs and interests of future generations,

Recognizing that the adverse effects of climate change, environmental degradation and biodiversity loss often result from and contribute to reinforcing existing patterns of discrimination and inequality, particularly among persons in vulnerable situations,

Recognizing also that human rights defenders working on environmental matters, referred to as environmental human rights defenders, make a positive, important and legitimate contribution to the promotion and protection of all human rights, and expressing deep concern about the multiple and intersecting forms of violence and discrimination against environmental human rights defenders, particularly women, girls and Indigenous defenders,

Taking note of international instruments such as the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, for the protection of environmental defenders, and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement), for the protection of environmental human rights defenders,

Taking note also of the guidance on integrating human rights in national biodiversity strategies and action plans of the United Nations Environment Management Group,

Looking forward to more ambitious commitments at the sixteenth meeting of the Conference of the Parties to the Convention on Biological Diversity, to be held in Cali, Colombia, from 21 October to 1 November 2024, consistent with its focus on achieving peace with nature,

1. Requests the Office of the United Nations High Commissioner for Human Rights to increase its support, technical assistance and capacity-building for States, with their consent, to implement approaches that integrate the promotion and protection of human rights in the context of conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising from the utilization of genetic resources, taking into account a gender-responsive approach and building on its previous work in this area, including by working with national human rights institutions, national mechanisms for implementation, reporting and follow-up, Indigenous Peoples representatives and other stakeholders, as well as with United Nations country teams, in accordance with obligations under international human rights law, and requests the Secretary-General to further strengthen the dedicated capacity of the Office of the High Commissioner at the regional level to provide such increased support;
2. Encourages the strengthening of means of implementation, as well as of all forms of technical and scientific cooperation, to contribute to the full and effective implementation of the Kunming-Montreal Global Biodiversity Framework;
3. Requests the United Nations High Commissioner for Human Rights, in consultation with States, the special procedures of the Human Rights Council, the United Nations Environment Programme, the Secretariat of the Convention on Biological Diversity and other relevant international organizations and intergovernmental bodies, including the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, to conduct a global analytical study on the implementation of a human-rights based approach into the goals and targets of the Kunming-Montreal Global Biodiversity Framework, in line with the provisions of the Convention, consistent with the considerations set out in section C of the Framework and taking into consideration the outcomes of the sixteenth meeting of the Conference of the Parties to the Convention, to be submitted to the Council at its sixty-first session, and also requests that the High Commissioner make the report available in accessible formats, including in easy-to-read versions;

4. Encourages the Office of the High Commissioner to cooperate with other relevant United Nations organizations and bodies, including the United Nations Environment Programme and the Secretariat of the Convention on Biological Diversity, as well as with Indigenous Peoples, people of African descent, peasants, rural and local communities, environmental human rights defenders, women, and persons and groups in vulnerable situations, including older persons, persons with disabilities, youth and children, on advancing human rights-based biodiversity action.

2. Human Rights and Indigenous Peoples, A/HRC/RES/57/15, 11 October 2024

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 achieving the ends of 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 that, since its adoption, the United Nations Declaration on the Rights of Indigenous Peoples has positively influenced the drafting of several constitutions and statutes at the national and local levels and contributed to the progressive development of international and national legal frameworks, jurisprudence and policies as the Declaration applies to Indigenous Peoples,

Appreciating the current efforts being made to promote, protect and fulfil the rights of Indigenous Peoples, recalling the commitment made at the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples to consider ways to enhance the participation of Indigenous Peoples' representatives and institutions duly established by themselves in meetings of relevant United Nations bodies on issues affecting them, and welcoming Assembly resolution 71/321 of 8 September 2017,

Acknowledging the importance of the participation of Indigenous Peoples' representatives and institutions duly established by themselves in the meetings of various United Nations organs and their subsidiary bodies, in particular the Human Rights Council and its Expert Mechanism on the Rights of Indigenous Peoples, and the Permanent Forum on Indigenous Issues, which contributes to the sustainability of discussions and decisions adopted by the United Nations on matters concerning Indigenous Peoples,

Recalling the outcome document of the Dialogue Meeting on Enhanced Indigenous Peoples' Participation at the United Nations organized by Indigenous organizations and institutions and held in Quito from 27 to 30 January 2020,

Recalling also the summary report prepared by the Office of the United Nations High Commissioner for Human Rights on the half-day intersessional interactive dialogue held on 15 July 2019 on ways to enhance the participation of Indigenous Peoples' representatives and institutions in meetings of the Human Rights Council on issues affecting them, the report of the Office of the High Commissioner of the intersessional round table held on 16 July 2021 on ways to enhance the participation of Indigenous Peoples' representatives and institutions in meetings of the Council on issues affecting them, and the report of the Office of the High Commissioner of the four-day expert workshop held from 21 to 24 November 2022 on possible ways to enhance the participation of Indigenous Peoples in the work of the Council,

Acknowledging the importance of the United Nations Voluntary Fund for Indigenous Peoples for supporting the participation of Indigenous Peoples' representatives and institutions duly established by themselves in meetings concerning them and the forthcoming fortieth anniversary of the establishment of the Fund,

Taking note of the study of the Expert Mechanism on the Rights of Indigenous Peoples entitled "Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration", and encouraging States to consider implementing the advice therein,

Taking note also of the report of the Special Rapporteur on the rights of Indigenous Peoples entitled "Indigenous persons with disabilities", encouraging States to consider the recommendations contained therein, and recognizing the efforts made by the Special Rapporteur to engage Indigenous Peoples in the preparation of annual thematic and country visit reports,

Taking note further of the report of the Office of the High Commissioner on the annual half-day panel discussion on the rights of Indigenous Peoples held on 27 September 2023, concerning the impact of certain development projects on the rights of Indigenous Peoples, in particular the impact on Indigenous women,

Recalling general recommendation No. 39 (2022) on the rights of Indigenous women and girls, of the Committee on the Elimination of Discrimination against Women, as well as general comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, of the Committee on the Rights of the Child, encouraging States to consider the advice therein, and encouraging States, the treaty bodies, the Office of the High Commissioner and other stakeholders to continue to make joint efforts to translate them into Indigenous languages, while recognizing that general recommendation No. 39 (2022) has already been translated into six Indigenous languages,

Recalling also that the focus of the International Day of the World's Indigenous Peoples in 2024 was protecting the rights of Indigenous Peoples in voluntary isolation and initial contact, while acknowledging that those Indigenous Peoples face unique, often overlooked, challenges to preserving their way of life,

Noting the adoption on 24 May 2024 by the World Intellectual Property Organization of the Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge,

Stressing the need to pay particular attention to the rights and needs of Indigenous women, children, young persons, older persons, persons with disabilities and persons in vulnerable situations, and to intensify efforts to prevent and eliminate all forms of violence and discrimination in this regard, as set out in the United Nations Declaration on the Rights of Indigenous Peoples and the outcome document of the World Conference on Indigenous Peoples, which was adopted by consensus by the General Assembly in 2014,

Expressing its concern that Indigenous Peoples experience disproportionately high levels of violence and rates of incarceration and disability, driven by multiple factors, including exposure to dangerous working conditions, environmental pollution, systemic poverty, racism and discrimination, as well as lower standards of living, malnutrition and lack of access to or poor quality of available health services, especially in remote areas,

Recognizing the increasing impacts of climate change, biodiversity loss and environmental pollution on the enjoyment by Indigenous Peoples of their rights and their ways of life, including Indigenous Peoples in voluntary isolation and initial contact, and that they are among the first to face the direct consequences of climate change, biodiversity loss and environmental pollution owing to their close relationship with and protection of the environment and its resources, while welcoming the role of Indigenous Peoples and their knowledge, and particularly the engagement of Indigenous women and girls, who have faced the adverse impacts of climate change with resilience, in achieving the objective of the United Nations Framework Convention on Climate Change, the purpose and goals of the Paris Agreement and the targets and goals of the 2030 Agenda for Sustainable Development,

Recalling the preamble to the Paris Agreement and to decision 1/CP.21 on the adoption of the Paris Agreement⁸ acknowledging that States should, when taking action to address climate change, respect, promote and consider their respective obligations on the rights of Indigenous Peoples, paragraph 135 of decision 1/CP.21 recognizing the need to strengthen knowledge, technologies, practices and efforts of Indigenous Peoples related to addressing and responding to climate change, and paragraph 36 of the outcome document of the World Conference on Indigenous Peoples,

Recognizing that failing to consider the rights of Indigenous Peoples in the context of the just transition to sustainable energy systems could lead to further injustices, marginalization and discrimination, as well as the loss of their lands or territories and natural resources,

Urging States to recognize, respect and promote Indigenous Peoples' traditional economies, approaches led by Indigenous Peoples to ecosystem management and the right of Indigenous Peoples to the conservation and protection of the environment and the productive capacity of their lands or territories and resources, including water resources, as set out in the United Nations Declaration on the Rights of Indigenous Peoples, through their full and effective participation,

Mindful that Indigenous Peoples face significant barriers to the enjoyment of their right to the improvement of their economic and social conditions, including in the area of housing, as set out in article 21 of the United Nations Declaration on the Rights of Indigenous Peoples, owing to different factors, such as historical colonization and dispossession, disproportionately high rates of homelessness, and vulnerability to forced evictions, land-grabbing and the adverse impacts of climate change, and acknowledging the need to ensure that Indigenous Peoples enjoy the right to the improvement of their economic and social conditions, including in the area of housing, without discrimination,

Condemning all forms of repression and violence against Indigenous Peoples and reaffirming that, as set out in article 7 (2) of the United Nations Declaration on the Rights of Indigenous Peoples, 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,

Acknowledging that Indigenous Peoples' distinct political, legal, economic, social and cultural institutions and their customs, traditions, rules and legal systems include their own approaches to conflict prevention, conflict resolution, mediation and peacebuilding,

Emphasizing that transnational corporations and other business enterprises have the responsibility to respect all human rights and should put in place human rights due diligence processes to identify, prevent, mitigate and account for how they address their impact on human rights, as well as paying particular attention to their impact on collective rights of Indigenous Peoples, and reaffirming the primary responsibility of States to respect, protect and fulfil human rights and their duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including transnational corporations and other business enterprises, by, inter alia, regulating these business enterprises and ensuring access to effective remedies in cases of abuse,

Noting with appreciation the development or establishment of policies, platforms and mechanisms by the United Nations and other entities, as well as of the Indigenous Fellowship Programme by the Office of the High Commissioner, to enable the participation of Indigenous Peoples, while recognizing the need to make efforts to provide interpretation services for the representatives of Indigenous Peoples who do not speak any of the official languages of the United Nations,

Recognizing the importance of ensuring the full and effective participation of Indigenous Peoples in decision-making processes for the implementation of the Kunming-Montreal Global Biodiversity Framework, adopted by the Conference of the Parties to the Convention on Biological Diversity, and recalling that nothing in that framework may be construed as diminishing or extinguishing the rights that Indigenous Peoples currently have or may acquire in the future, as established in section C of that framework,

Bearing in mind the importance of supporting initiatives led by Indigenous Peoples and the empowerment and capacity-building of Indigenous women, young persons, older persons, persons with disabilities, persons in vulnerable situations and children, in accordance with their age and maturity, including for their full, equal, meaningful and effective participation in decision-making processes in matters that affect them directly, including policies, programmes and resources, where relevant, that target their well-being, in particular in the areas of universal and equitable access to quality public services, adequate housing, health services, mental health, food security and improved nutrition, including through small-scale and family farming and fishing, education, including intercultural and multilingual education, employment and skills development, and the transmission of languages and traditional knowledge, innovations and practices, and also the importance of taking measures to promote awareness and understanding of their rights,

Recalling resolution WHA76.16 entitled “The health of Indigenous Peoples” adopted on 30 May 2023 by the World Health Assembly at its seventy-sixth session and encouraging States to develop, fund and implement national health plans and strategies that are responsive to Indigenous Peoples’ needs and rights,

Recalling also Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007,

1. Acknowledges 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, in plain language and Easy Read formats, containing information on the relevant developments in human rights bodies and mechanisms and the activities undertaken by the Office of the United Nations High Commissioner for Human Rights at headquarters and in the field that contribute to the promotion of, respect for and full application of the provisions of the United Nations Declaration on

- the Rights of Indigenous Peoples, highlighting challenges and main achievements, and to follow up on the effectiveness of the Declaration;
2. Takes note of the stocktaking report compiling existing procedures on the participation of Indigenous Peoples at the United Nations, highlighting existing gaps and good practices, prepared by the Office of the High Commissioner, and encourages States to implement the recommendations therein;
 3. Welcomes the work of the Special Rapporteur on the rights of Indigenous Peoples, and strongly encourages all States to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by giving serious consideration to responding favourably to the requests of the mandate holder for visits, furnishing all available information requested in his or her communications and reacting promptly to his or her urgent appeals;
 4. Also welcomes the work of the Expert Mechanism on the Rights of Indigenous Peoples, including its annual report and its intersessional activities;
 5. Requests the Secretary-General and the Office of the High Commissioner to continue to provide all human, technical and financial assistance necessary for the Expert Mechanism to fulfil its mandate fully and effectively, including webcasting services for its annual meetings, with access to real-time translation, as well as the timely translation into all official languages of the United Nations and distribution of its reports to the Human Rights Council and the pre-session translation of its studies and reports, in accordance with Council resolution 33/25 of 30 September 2016;
 6. Strongly encourages all relevant stakeholders, including States and Indigenous Peoples, to attend and participate actively in the sessions of the Expert Mechanism, to submit contributions to its studies and reports and to engage in dialogue with it, including during its intersessional activities;
 7. Acknowledges the efforts of States, Indigenous Peoples, United Nations entities and other stakeholders to engage with the Expert Mechanism under its current mandate, and strongly encourages them to continue to do so, including to facilitate dialogue, when agreeable to all parties, and to provide technical assistance and advice in order to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, as well as the implementation by States of accepted recommendations and concluding observations related to Indigenous Peoples arising from the universal periodic review and the treaty bodies, respectively;
 8. Encourages all parties to consider the Expert Mechanism's initiation of country engagements at the request of States and Indigenous Peoples, to seize the opportunity for dialogue provided by such requests and to facilitate country engagement mission arrangements to enable the Expert Mechanism to implement its mandate comprehensively;
 9. Urges States and invites other public and/or private potential donors to contribute or to increase their contributions 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 and to support 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;
 10. Recalls the proclamation of the period 2022–2032 as the International Decade of Indigenous Languages to draw attention to the critical loss of Indigenous Peoples' languages and the urgent need to preserve, revitalize and promote Indigenous Peoples' languages, including sign languages, and to take urgent steps to that

end at the national and international levels, including by funding and developing policies for training and certifying interpreters in Indigenous Peoples' languages and by promoting the effective and meaningful participation of Indigenous Peoples in leading and holding activities to mark the Decade at the national and international levels;

11. Takes note of the Global Action Plan for the International Decade of Indigenous Languages, and calls upon States and United Nations entities, in particular the United Nations Educational, Scientific and Cultural Organization, to take concrete measures to implement it at the local and national levels, in conjunction with Indigenous Peoples, including by seeking to ensure the full and meaningful participation of Indigenous Peoples in the design and subsequent implementation of strategies, initiatives, policies and legislation and by engaging in fruitful and sustained dialogue with other relevant stakeholders;
12. Recalls the right of Indigenous Peoples to establish their own media in their own languages and to have access to all forms of non-Indigenous media without discrimination, as set out in article 16(1) of the United Nations Declaration on the Rights of Indigenous Peoples, and calls upon States to promote and examine national policies, practices and funding programmes on Indigenous media, including on capacity-building and content production in Indigenous languages by Indigenous content producers and media professionals, especially Indigenous women, to tackle harmful online content and conduct against Indigenous Peoples in non-Indigenous media, including with and by hate speech and misinformation and disinformation, and to foster international cooperation, knowledge-sharing and cooperation among Indigenous media and other partners, including mainstream media and Governments;
13. Recognizes the efforts made to translate the United Nations Declaration on the Rights of Indigenous Peoples into more than 42 Indigenous languages to date and encourages States to continue to translate and interpret it into and disseminate it in Indigenous languages, including Indigenous sign languages, as appropriate, and to cooperate with the Office of the High Commissioner, the Special Rapporteur on the rights of Indigenous Peoples and the Expert Mechanism to translate their reports and make them accessible to Indigenous Peoples, including by producing them in plain language and Easy Read formats;
14. Decides that the theme of the annual half-day panel discussion on the rights of Indigenous Peoples, to be held during the sixtieth session of the Human Rights Council, will be the rights of Indigenous Peoples in the context of a just transition to sustainable energy systems, including in relation to critical minerals, and requests the Office of the High Commissioner to encourage and facilitate the participation of Indigenous women and youth in the panel, to make the discussion fully accessible to and inclusive for persons with disabilities, and to prepare a summary report of the discussion for submission to the Council prior to its sixty-second session;
15. Also decides to continue to discuss and develop further steps and measures necessary to enable and to facilitate the participation of Indigenous Peoples' representatives and institutions duly established by themselves in the work of the Human Rights Council, and in this regard notes with appreciation the participation of States, relevant United Nations agencies, funds and programmes, international organizations, Indigenous Peoples from the seven Indigenous sociocultural regions, national human rights institutions and civil society organizations in the first two-day intersessional meeting of the Council on concrete ways to enhance

- the participation of Indigenous Peoples in the work of the Council, held on 18 and 19 July 2024, and looks forward to the second two-day intersessional meeting, to be held on 17 and 18 October 2024, as well as the report of the discussions and outcomes of the meetings to be presented to the Council at its fifty-ninth session;
16. Invites again the United Nations Voluntary Fund for Indigenous Peoples, within the Fund's rules and established procedures, to facilitate the participation of Indigenous Peoples' representatives and institutions duly established by themselves in the above-mentioned intersessional meeting, promoting balanced gender and intergenerational representation, as well as equitable representation of all seven sociocultural Indigenous regions and their subregions, including by making efforts to provide interpretation services for representatives of Indigenous Peoples who do not speak any of the official languages of the United Nations;
 17. Encourages the Expert Mechanism to continue its discussions on the issue of enhancing the participation of Indigenous Peoples' representatives and institutions duly established by themselves in the relevant meetings of the Human Rights Council on issues affecting them;
 18. Notes that some States continue to strengthen their legal and constitutional frameworks, both at the national and local levels, for the full recognition of Indigenous Peoples as subjects of law;
 19. Calls upon States to give due consideration to the rights of Indigenous Peoples and to all forms of violence and discrimination, including multiple and intersecting forms of discrimination, faced by Indigenous Peoples, in fulfilling the commitments undertaken in the 2030 Agenda for Sustainable Development and in the formulation of relevant international and regional programmes, as well as national action plans, strategies and programmes, applying the principle of leaving no one behind;
 20. Urges States to take appropriate measures to protect Indigenous children, in particular girls and young persons, from all forms of violence, and to ensure that all human rights violations and abuses against them are investigated, that perpetrators are held accountable, that appropriate preventive measures are put in place and that there is access to effective remedies and reparations;
 21. Also urges States to take appropriate measures to ensure the continued improvement of the economic and social conditions of Indigenous persons with disabilities and to ensure and promote the full realization of their human rights, on an equal basis with others and without discrimination of any kind, in collaboration with Indigenous persons with disabilities and their representative organizations;
 22. Further urges States to duly recognize, observe and enforce existing treaties, agreements and other constructive arrangements concluded between States and Indigenous Peoples in order to advance and achieve the realization of the rights of Indigenous Peoples, and encourages new ones as a method for implementing the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples;
 23. Calls upon States to engage Indigenous Peoples meaningfully in transitional justice processes and in peace agreement negotiations, peacebuilding initiatives, constructive arrangement processes and conflict resolution mechanisms in matters that may affect them, and encourages the Office of the High Commissioner and other United Nations agencies, funds and programmes, in coordination with States, to provide capacity-building and training for Indigenous Peoples to enable their effective participation in those processes, negotiations and mechanisms;

24. Acknowledges the efforts made by the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues to improve complementarity and to avoid duplication among their reports, encourages them to strengthen their ongoing cooperation and coordination and ongoing efforts to promote the rights of Indigenous Peoples, including in treaties and the United Nations Declaration on the Rights of Indigenous Peoples, including the follow-up to the World Conference on Indigenous Peoples, and invites them to continue to work in close cooperation with all Human Rights Council mechanisms and the human rights treaty bodies, within their respective mandates;
25. Requests the President of the Human Rights Council to organize the participation of Indigenous Peoples' representatives and institutions duly established by themselves from the seven Indigenous sociocultural regions, in consultation with the Expert Mechanism on the Rights of Indigenous Peoples and with the support of the Office of the High Commissioner, for the interactive dialogues with the Special Rapporteur on the rights of Indigenous Peoples and with the Expert Mechanism on the Rights of Indigenous Peoples as of the sixtieth session of the Council, acknowledging that this participation does not prejudge the outcome of the ongoing discussions on concrete ways to enhance the participation of Indigenous Peoples in the work of the Council, and emphasizing the unique character of this participation, based on the United Nations Declaration on the Rights of Indigenous Peoples;
26. Encourages the development of a process and a mechanism to facilitate the international repatriation of Indigenous Peoples' cultural objects and human remains, in cooperation with Indigenous Peoples and through the continued engagement of the United Nations Educational, Scientific and Cultural Organization in particular, the World Intellectual Property Organization, the Expert Mechanism on the Rights of Indigenous Peoples, the Special Rapporteur on the rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues, States and all other relevant parties in accordance with their mandates;
27. Reaffirms that the United Nations treaty bodies are important mechanisms for the promotion and protection of human rights, notes the increasingly frequent references to the United Nations Declaration on the Rights of Indigenous Peoples in their work and encourages States to give serious consideration to their recommendations, including those regarding Indigenous Peoples, in the application of the treaties;
28. 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 achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, during their reviews;
29. Calls upon States to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples by, inter alia, engaging in good faith and sustained dialogue with Indigenous Peoples and with civil society, academia, local governments, United Nations bodies and other relevant stakeholders, as well as by adopting and implementing measures, including national action plans, legislation or other frameworks, as required, in consultation and cooperation with Indigenous Peoples, taking into account the use of their languages, and welcomes the fact that several States have developed or are in the process of developing national and subnational action plans, policies and legislation for the implementation of the Declaration with

the full and meaningful participation of Indigenous Peoples, as well as mechanisms for monitoring and funding measures for their implementation;

30. Encourages active consultation and cooperation with Indigenous Peoples in achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples and the implementation of the outcome document of the World Conference on Indigenous Peoples, including at the local, regional and global levels, and invites the General Assembly to consider holding a high-level plenary meeting on the occasion of the twentieth anniversary of the Declaration, during its eighty-second session, and to evaluate the implementation of the outcome document of the World Conference on Indigenous Peoples;
31. Calls upon States in all regions 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, taking into account its contribution to the promotion and protection of the rights of Indigenous Peoples;
32. Calls upon States to apply capitalization to the term “Indigenous Peoples” in official documents and in the official languages of the United Nations, as applicable;
33. 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 of such institutions developing and strengthening their capacities, as appropriate, to fulfil that role effectively;
34. Encourages States, according to their relevant national context and characteristics, to collect and securely disseminate data disaggregated by ethnicity, income, gender, age, race, migratory status, disability, geographical location or other factors, as appropriate, in order to develop, monitor, assess and improve the impact of laws, policies, strategies, programmes and services aimed at improving the well-being of Indigenous Peoples and individuals, to combat and eliminate all forms of violence and discrimination, including multiple and intersecting forms of discrimination, against them, to support work towards the achievement of the Sustainable Development Goals and the 2030 Agenda and to work with Indigenous Peoples to strengthen technologies, practices and efforts related to addressing and responding to climate change, biodiversity loss and environmental pollution;
35. Reaffirms the importance of promoting the political, social and economic empowerment of Indigenous women and girls, including Indigenous women and girls with disabilities, by, inter alia, ensuring access to inclusive and equitable quality education, including intercultural and multilingual education, and through meaningful participation in the economy, of addressing the barriers and the multiple and intersecting forms of discrimination that they face, as well as all forms of violence, including sexual and gender-based violence, and of promoting their full, equal and meaningful participation in relevant decision-making processes at all levels and in all areas while respecting and protecting their traditional and ancestral knowledge, noting the importance of the United Nations Declaration on the Rights of Indigenous Peoples for Indigenous women and girls, and encourages States to give serious consideration to the above-mentioned recommendations, as appropriate;
36. Condemns the increase in cases of intimidation, harassment and reprisals against Indigenous human rights defenders and Indigenous leaders, including Indigenous women, as well as Indigenous Peoples’ representatives attending United Nations

meetings or interacting with the United Nations at the country level, and special procedure mandate holders working on the rights of Indigenous Peoples, and urges States to take measures to put a stop to such acts, investigate all allegations, provide effective remedies and prevent their recurrence, while expressing its concern at the practice of some countries, including those hosting meetings on Indigenous issues, of intentionally or in a discriminatory manner delaying or denying entry visas to special procedure mandate holders or Indigenous Peoples' representatives, or applying additional travel restrictions to them that interfere, inter alia, with their ability to participate in or return from such meetings;

37. Urges States, in conjunction with Indigenous Peoples, to take all measures necessary and emergency responses, with a gender perspective, to ensure the rights, protection and safety of Indigenous Peoples and Indigenous human rights defenders and leaders, including Indigenous women human rights defenders, and to ensure that all human rights violations and abuses against them are investigated, that the perpetrators are held accountable, that appropriate preventive measures are put in place, and that there is access to effective remedies and reparation, including guarantees of non-recurrence;
38. Decides to remain seized of the matter.

B. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES: ADVICE AND REPORTS

1. Country Engagement Mission: Australia. Advisory Note, April 2024

I. Context and purpose of the mission

1. Under its revised mandate, EMRIP assists Member States and Indigenous Peoples in achieving the ends of the UN Declaration on the Rights of Indigenous Peoples (the Declaration). It provides for technical assistance upon the request of States, Indigenous Peoples and other stakeholders, including the private sector, pursuant to paragraph 2 of Human Rights Council resolution 33/25. Under this mandate, EMRIP can provide technical advice regarding “the development of domestic legislation and policies relating to the rights of Indigenous Peoples. The EMRIP provides this advice in response to a request from the Noongar Family Safety and Wellbeing Council with respect to the contemporary removal of Aboriginal children. The request is based on the understanding that certain legislative frameworks and policies do not align with the key articles of the Declaration, including the right to self-determination (Articles 3, 4) non-discrimination (article 2, 22), the prohibition against forced assimilation (Article 8) and removal of people from traditional lands and territories (Articles 7, 10).

II. Framework

5. The EMRIP provides this advice based on information received orally and in writing from the parties and others with whom EMRIP engaged during the Mission as well as background information on the specific context of the Western Australia legal system, and recommendations of the UN human rights treaty monitoring bodies and other human rights experts.
6. This advice is grounded in the rights protected under the Declaration, which was endorsed by the State in 2009, and other international standards pertaining to Indigenous Peoples, including provisions of the international human rights treaties.

In this regard, EMRIP considers relevant recommendations of the UN human rights treaty bodies and the Special Rapporteur on the Rights of Indigenous Peoples, among others.

7. The Expert Mechanism shares the deep concern of the United Nations Committee on the Elimination of Racial Discrimination regarding the high proportion of Indigenous children in contact with the criminal justice system, and that Indigenous children face a higher risk of being removed from their families and placed in alternative care facilities, many of which are not culturally appropriate and in which, too often, they also face abuse. The Expert Mechanism aligns itself with the recommendations issued to Australia in 2017, where the Committee recommended that the State party: a) Ensure adequate, culturally appropriate and accessible legal services for Indigenous Peoples, including by increasing funding to Aboriginal and Torres Strait Islander legal services and Aboriginal family violence prevention legal services; (b) Effectively address the overrepresentation of indigenous children in alternative care, including by developing and implementing a well-resourced national strategy in partnership with Indigenous Peoples, increase investment for Aboriginal family support services at state and territory levels, and ensure that well-resourced Indigenous community-led organisations can provide child and family support services with a view to reducing child removal rates; (c) Potentially establish commissioners for Indigenous children in each state and territory.
8. The Expert Mechanism also agrees with the Committee's recommendation that the State party accelerate its efforts to implement the self-determination demands of Indigenous Peoples, as set out in the "Uluru Statement from the Heart" of May 2017, including by establishing meaningful mechanisms that enables their effective political participation and entering into good faith treaty negotiation with them. The Committee also requests that the State party increase support, including financial support, to Indigenous-led programmes and organisations providing services to Indigenous Peoples, which is necessary to enable them to discharge their functions effectively. The Expert Mechanism notes with regret the private members bill, first introduced by Lidia Thorpe in March 2022, that would provide measures to enact the Declaration in Australian law, was not passed.
9. Furthermore, the Expert Mechanism agrees with the view of the Special Rapporteur on the Rights of Indigenous Peoples, that the prolonged impacts of intergenerational trauma from the Stolen Generations in Australia, disempowerment and entrenched poverty continue to inform Aboriginal and Torres Strait Islanders' experiences of child protection interventions. This includes the grief and helplessness felt by parents and children owing to their separation, and the link this has to high rates of mental illness and substance abuse. In the view of the Expert Mechanism, the described situation fully applies to the State of Western Australia today.

III. Advice

21. The EMRIP sets out its advice below under four main themes: Self-Determination; Forced assimilation; Discrimination (and the 2021 Amendment); and Removal of children and six related themes of Culture and Assessment of risk; Trauma; Children deprived of a family environment, Out-of-home care facilities, Dandjoo-Bidi-ak Pilot Court, and Aboriginal and Women Legal Services - Indigenous Women.
22. A great variety of other issues raised but not dealt with in detail here include the existence of disproportionate poverty rates between Aboriginal and non-Aboriginal people, the unacceptable disproportionate incarceration rates for Indigenous youth,

or gender-based violence among Aboriginal and Torres Strait islander peoples. This advice is not intended to give exhaustive guidance on a child protection framework but to focus on a few broad areas of particular relevance raised by the parties during the Mission.

1. Self Determination

23. The fundamental right of the Declaration is the right to self-determination recognized in article 3: “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.” The right to self-determination is manifested in articles 4, 5, 18, 19, 20 and 33 of the Declaration, which expounds on its implementation at the domestic level. Without article 3, none of the other rights can be wholly fulfilled.
24. The pivotal and fundamental right of self-determination should influence, direct and underscore any plan, policy or organisation particularly when considering the wellbeing of Indigenous children. The right to self-determination is the most important right in relation to Indigenous children as “culture is reproduced through children and this magnifies the connection between principles of self-determination and Indigenous children’s cultural care, their wellbeing and their communities’ wellbeing.” Thus, realisation of the right to self-determination is critical for Indigenous Peoples when addressing child welfare. Equally important is the requirement for government departments, such as the Department of Communities responsible for out-of-home care, to support and meaningfully facilitate this right of self-determination for Indigenous Peoples.
25. It is acknowledged that the coalition of Peak Bodies, an alliance of over eighty Indigenous peak bodies formed following discussions of fourteen Aboriginal Community Controlled Organisations (ACCOs), demonstrates important elements of self-determination, especially in terms of their focus on community-level decision-making. EMRIP views community-level decision-making as a positive step that will likely dramatically improve outcomes for Indigenous children and families. However, EMRIP also notes that Peak Bodies and ACCOs are organised as NGOs, not Indigenous Peoples’ representative (i.e. self-government) institutions, and this structure calls into question how Indigenous issues are represented and advocated more generally. In addition, the reliance on discretionary government funding raises questions of independence and places Peak Bodies at the whim of the Commonwealth government and their inclination towards mainstream rather than Indigenous programs.
26. It is, however, acknowledged that additional support for Peak Bodies will not require legislative change and as a member of Council tasked with overseeing the National Policy on Closing the Gap, the Peak Bodies will have a seat at the table. These are both positive and welcome developments. However, EMRIP is of the view that a seat at the table is only one voice that cannot be considered as meaningful participation in decision making in matters that would affect their rights, as affirmed in article 18 of UNDRIP.
27. This is even more urgent when the Family Matters Report notes that the overrepresentation in out-of-home care has increased in every state and territory over the last 10 years, with the highest over-representation in 2019 in Western Australia. In addition, the Report notes that nationally, 4,289 Aboriginal and Torres Strait Islander children were admitted to out-of-home care in 2018-19 at a rate of 13

per 1,000 children, which is nearly nine times the rate of entry for non-Indigenous children. This situation of increasing out-of-home care statistics, under the status quo, for Indigenous children, is alarming.

28. Considering the above, although the ACCOs and Peak Bodies demonstrate important community-led components of self-determination, given that this issue is one that impacts directly on children and more widely on the family structure, the central component of communities, EMRIP advises that consideration toward self-governing, Indigenous centred bodies and representative institutions, that provide a broader reach, be considered and supported over time. This is consistent with UNDRIP recognition of the right of Indigenous peoples to their own representative institutions.
29. EMRIP welcomes the Southwest Native Title Settlement framework as a commitment between the WA Government and the Noongar people to a set of principles and priorities aimed at improving the Noongar community development opportunities and potentially, self-government. Consistent with the right of self-determination, EMRIP supports the Southwest Native Title Settlement framework as a positive starting point that, with improved capacity, could potentially lead to enhanced self-determination for the Noongar peoples, over time. As examples from other countries show, Indigenous representative and self-governing institutions provide the strongest basis for self-determination in decision-making and for delivering economic, social and cultural benefits directly to Indigenous Peoples, leading to improved outcomes for children, families and communities.
30. In view of the disappointing results, and a missed opportunity, from the recent referendum on an Indigenous Voice to parliament, together with the discontinuance of the United Nations Declaration on the Rights of Indigenous Peoples Bill in the Senate, it is paramount that the fundamental rights of the Indigenous Peoples are still meaningfully recognised and respected.
31. State government-led child-welfare measures by their nature are inherently colonial. The best long-term avenue to addressing the overrepresentation of Indigenous children in care is to support an approach that is not only community-centric but also grounded in the right of self-determination.
32. EMRIP notes the recent law reforms in WA include recognition of Aboriginal Representative Organisations (ARO) and the future role of designated bodies in Aboriginal child protection decision-making, although it is limited to engagement after the decision to remove an Indigenous child is actually made. In this regard, EMRIP can also refer to good practices in other countries. For instance, in Aotearoa, New Zealand this has been achieved with the introduction of Te Ara Matua. A tribal entity, Ngāti Kahungunu Iwi Incorporated launched Te Ara Mātua, a bespoke iwi-led partnership between a government organisation, Oranga Tamariki and iwi, which assists iwi and local organisations to be more involved in decision-making from the outset when families require intervention and support. In the United States, national legislation, in the form of the Indian Child Welfare Act (1978), provides tribal governments with jurisdiction over child custody matters and encourages transfer of court proceedings to Tribal Courts. In Canada, the federal Act respecting First Nations, Inuit and Métis children, youth and families, became law in 2019. The purpose of the Act is threefold, to: “affirm the inherent right of self-government, which includes jurisdiction in relation to child and family services; to set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children; and contribute to the implementation of the United Nations

Declaration on the Rights of Indigenous Peoples.” In February 2024, the Supreme Court of Canada explicitly cited the Declaration and upheld the constitutionality of this Act (2024 SCC 5), which provides a framework for Indigenous governments to assume direct control over child and family services, including passing their own child welfare laws.

2. Forced assimilation

33. The Declaration includes numerous provisions on protection against discriminatory and adverse treatment of Indigenous Peoples on cultural grounds as well as positive measures to support Indigenous Peoples’ cultures. The Declaration unequivocally provides for Indigenous Peoples, including children, and individuals the right not to be subjected to forced assimilation or destruction of their culture (art 8). In addition, that Indigenous peoples have the right to practise and revitalise their cultural traditions and customs and the right to maintain, control, protect and develop their culture (art 31). The corresponding obligation on the State is to take effective measures to recognize and protect the exercise of these rights.

A. Culture, culturally appropriate prevention and intervention and assessment of risk

34. EMRIP recognises the collective element of Indigenous Peoples’ right to culture, noting that “the strong communal dimension of Indigenous Peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”
35. EMRIP recognises that ‘culture’ is at the heart of the West Australian Aboriginal Empowerment Strategy and that ‘cultural’ appropriate training is now required for Department of Communities staff. In this regard, EMRIP advises that attention should be paid not only to the accountability and review of how this initiative is implemented but how Indigenous languages, a key component of understanding Indigenous culture, is incorporated into the staff training. Similarly, and importantly, consideration should be given whether and how cultural indicators are applied and included into the risk assessment framework. EMRIP considers it would be of concern when a non-Indigenous concept of risk is exclusively applied to a cultural situation that involves Indigenous children.
36. EMRIP understands that the five elements of the Aboriginal child placement principle are prevention; partnership; placement; participation; and connections. However, there are instances when issues of conflict arise, in determining issues of home care placements. EMRIP advises that the application should be applied through a cultural lens rather than through a non-Indigenous lens. The right of the family to look after their own should not be dismissed on the grounds of conflict. From an Indigenous perspective, family and community are central. The Family Matters Report noted that Indigenous children need to grow up safe and cared for in family, community and culture, and connected to their languages and Country, and therefore, dismissing a family member from consideration as a possible placement for a child, due to conflict, is inconsistent with achieving and supporting connection to Country.

B. Trauma

37. As EMRIP noted in its 2016 Study on Right to Health and Indigenous Peoples, with a focus on children and youth, Indigenous Peoples continue to experience intergenerational trauma owing to the removal of children from families and residential schooling. The health impacts of such practices are profound and include mental illness, physical and sexual abuse, self-harm and suicide, and drug or alcohol addiction. It recommended that steps should be taken to preserve the integrity of Indigenous families in accordance with the rights of the child.³⁸ Indigenous Peoples often experience higher rates of mental health issues, such as depression, anxiety, and post-traumatic stress, due to historical and ongoing discrimination, violence and abuse including loss of cultural identity. These experiences can lead to intergenerational trauma which can include mental health issues across multiple generations. Individual trauma, including that associated with child separation, reverberates across communities and also across generations, as manifest in the Stolen Generations. Recent years have seen the rise of historical trauma to describe the long-term impact of colonisation, cultural suppression, and historical oppression of many Indigenous Peoples. Many mental health issues such as depression, substance abuse and suicide have been identified as connected to the historical colonisation and dispossession of Indigenous peoples, which has resulted in the fragmentation of Indigenous social, cultural, economic and political institutions. The need for systemic reform is critical.
39. EMRIP advises that State institutions, when dealing with matters of intergenerational and transgenerational trauma, particularly those relating to matters connected with child removals, be adequately trained to understand intergenerational trauma, the effect that loss of culture contributes to trauma and the importance of self-determination. EMRIP was informed how Aboriginal communities continue to suffer from the long-term effects of colonisation and the intergenerational trauma of the Stolen Generations. This trauma is compounded by continued high rates of removal of children from their families, poverty, violence against women, and failure of the state to ensure the rights of Indigenous peoples.

3. Discrimination - 2021 Amendment

40. EMRIP has heard the numerous reports on the prevalence of systemic racism against Aboriginal and Torres Strait Islander Peoples, which manifests itself in different ways, ranging from discrimination and structural racism in government agencies, including child protection agencies, to the administration of justice or discrimination in the involvement of non-Aboriginal families versus Aboriginal families in child protection decision making.
41. The 2021 amendments to the Western Australia Children and Community Services Act 2004, that are intended to better protect children and build stronger connections to family, are welcomed. In addition, it is acknowledged that these amendments are to implement the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse and the 2017 statutory review of the 2004 Act. EMRIP specifically welcomes the recognition of the principle of self-determination within the Statutory Review and highlighting that the key driver to the Department's reforms is to reduce the over representation of Aboriginal children in care. However, EMRIP notes that there is still a need to implement the changes in a way that the best interest of the child is applied in a non-purely formalistic way.

42. The severe impacts of colonisation on child protection matters must be addressed – and require a decolonising approach that will not only assist Aboriginal Peoples to heal and recover from past genocidal practices of assimilationist child removal laws, but also emphasise the key right of self-determination to support, lead and determine, child protection practices today, consistent with their right of self-determination. In Aotearoa, New Zealand, when considering how Oranga Tamariki (the government agency responsible for child protection matters) the Waitangi Tribunal in the He Pāharakeke, he Rito Whakakikīnga Whāruarua: Oranga Tamariki Urgent Inquiry (Wai 2915, 2021) report, found that several of Oranga Tamariki’s practices breached right of self-determination (tino rangatiratanga) to Māori and that the negative outcomes for Māori children in the child protection system were a result of those breaches.
43. EMRIP is concerned that when a child is taken into care, subject to a warrant, the first hearing prior to removal is ex parte and Aboriginal and Torres Strait Islander parents are not given notice of the hearing or a right to attend. At the hearing the Magistrate is only asked to consider if the warrant should be issued or is necessary based on written information provided to the court by the Department of Communities. There does not seem to be a check on the completeness of this information. If not, this appears to be prejudicial. EMRIP understands that there are instances where the risk to the child is so high that immediate action must be taken without notice, however EMRIP is aware of occasions when the Aboriginal and Torres Strait Islander family’s lawyer should be given notice of the hearing and allowed to take part. In addition, if the ex parte decision made in relation to warrants is made on a spontaneous basis then the first hearing after the warrant has been issued should afford an opportunity to argue for the return of the child on an interim basis similar to other jurisdictions such as Victoria. Although the first hearing following removal is not ex parte, EMRIP understands that many Aboriginal and Torres Strait Islander parents have not had sufficient time or emotional space to seek legal advice before the first court date and often the court will adjourn that first hearing to allow time to obtain legal advice. This creates further delays in returning Aboriginal and Torres Strait Islander children.
44. Given that the component of cultural competency is identified as vital to reach better outcomes in this amendment, it is unclear how the Department of Communities ensures that Department of Communities’ lawyers are trauma informed and culturally competent with the capacity to understand the impacts of poverty, trauma and the daily experiences of Aboriginal and Torres Strait Islander families. This is required to prevent perceptions and judgments based on bias, perceived deficits and moral failure rather than outcomes as a result of personal and intergenerational poverty, racism and disadvantage. To achieve this, EMRIP suggests a high level of training in these areas so Department of Communities’ lawyers have a deeper appreciation for the realities, needs and strengths of Aboriginal and Torres Strait Islander families.
45. EMRIP is concerned that Aboriginal and Torres Strait Islander mothers and families experiencing child removal are not guaranteed a right to legal representation within the legislation or Acts that govern the way the Children’s Court or child protection systems operate. EMRIP understands that until recently there have been extremely limited legal assistance options available to Aboriginal and Torres Strait Islander families. Although there are additional services available, resulting in greater access, this has not translated to a guarantee as services have limits across

such a large area. Subsequently, for Aboriginal and Torres Strait Islander peoples living in remote or regional Australia, there may be no legal support available (even by phone), but more fundamentally the court house may be operated infrequently and out of the local police station. This immediately discourages and provides an unsafe environment for Aboriginal and Torres Strait Islander peoples attending and taking part in the court proceedings, even if there was a lawyer there to assist them. This is problematic.

46. EMRIP understands that, proceedings in the Children's Court still largely utilise affidavits. This can disadvantage Aboriginal and Torres Strait Islander families, for three reasons. First, to draft and file a technically correct and legally persuasive affidavit, access to a legal representation is pivotal. Second, even if one has a lawyer to assist to complete an affidavit, the process can be traumatic particularly as it often occurs shortly after removal when Aboriginal and Torres Strait Islander families are acutely distressed. This can impact on the ability to fully engage with the process and provide the experience and wishes of the Aboriginal and Torres Strait Islander families to the court. Third, an affidavit is required to be 'sworn to be true' by certified professionals (lawyers, Justice of the Peace etc). The Aboriginal and Torres Strait Islander family might live in a very remote area and unable to access the technology required to print out the physical affidavit and then access an appropriately qualified person to 'swear' the affidavit. Collectively this raises access to justice issues. 47.

In order to meaningfully recognise the principle of self-determination within the Statutory Review and to reduce the over representation of Aboriginal and Torres Strait Islander children in care, a key driver to the Department of Communities' reforms, EMRIP strongly suggests that to achieve these amendments and to protect and support the rights of Aboriginal and Torres Strait Islander women and children, a significant increase in resourcing be provided to Indigenous legal services and women's legal services and, cultural competency become a central pillar for Department of Communities' lawyers and Department of Communities' staff. EMRIP also strongly suggests that legislative consideration be provided to ensure consistency with the fundamental rights within the Declaration, specifically the right of self-determination and the right to culture. 4. Removal of children - Children deprived of a family environment

48. Indigenous children are removed from their families at increasingly high rates in Western Australia. The prolonged impacts of intergenerational trauma from the Stolen Generations and disempowerment continue to inform Aboriginal and Torres Strait Islanders' experiences of child protection interventions. EMRIP was informed that Indigenous children are not heard or consulted in child protection interventions. However, Indigenous children are at a higher risk of removal from their families and in placement in out of home care facilities; away from their communities and countries, where they cannot maintain a connection to family and culture. In addition, Indigenous children are disproportionately represented in the criminal justice system. EMRIP advises that stronger engagement with the Aboriginal and Torres Strait Islander family and close community in decision-making processes around child protection is crucial.
49. In this regard, EMRIP advises that the Aboriginal and Torres Strait Islander Child Placement Principle, which recognises the knowledge and experience of Aboriginal and Torres Strait Islander people to make the best decisions concerning their children and recognises the importance of staying connected to their family, culture and countries, should be fully implemented in all child protection decision making

relating to Aboriginal children and families, including through the prevention of out-of-home care. In addition, EMRIP welcomes the Aboriginal Family-Led Decision-Making process, born as a pilot in 2021, while positive as it supports the right to self-determination, should be independently facilitated and long-term funded and not ignored. It should be implemented in partnership with Aboriginal organisations representing the affected communities, in addition to the work of ACCOS.

A. Out of Home Care Facilities

50. EMRIP finds that 'out-of-home care facilities' are devoid of any meaningful desire to understand and incorporate Indigenous orientated art and/or Indigenous role model figures and/or celebration of Indigenous sports and/or any Indigenous recipes and Indigenous cooking opportunities. It is well understood that culturally oriented activities such as art and sports can help reconnect with culture and Country. In addition, positive Indigenous role models can provide and foster a sense of belonging and pride. The lack of any inclination to include an 'Indigenous way of life' for Indigenous children in out of home care facilities does not protect their right to practise and revitalise their cultural traditions and customs and the right to maintain, control, protect and develop their culture. EMRIP found that some home care facilities were cold, grey, unwelcoming and barren, lacking any Indigenous presence, hardly a conducive environment for fostering Indigenous children. In addition, EMRIP understands that Aboriginal organisations are not supported to be an Out of Home care Facility.

B. Dandjoo-Bidi-ak Pilot Court

51. To ensure continuing success of Dandjoo-Bidi-ak EMRIP recommends allocating more resources to (a) support the families, in particular the mother, that attend, (b) provide appropriate information to families to limit any circular conversations that could lead the case back to the general court system, (c) facilitate adequate judicial support and training to enable clear and robust decisions from the court. Given the aim of the court is to provide a culturally safe environment to empower and support Aboriginal families who are in care and protection matters, any obstacles that limit the family participation, in particular the mother, should be addressed.

C. Aboriginal and Women Legal Services - Indigenous Women

52. The wraparound services employed by the Aboriginal Legal Services places the child at the centre. This approach is consistent with an Indigenous approach and also the right that particular attention is required to be paid to children and the State is required to take all steps to guarantee and protect against all forms of violence and discrimination (art 22). In view of this, EMRIP recommends that the work of the Aboriginal Legal Services not only continue but is better resourced to extend their reach. Understanding the important work undertaken by Women Legal Services and Aboriginal Family Legal Services within this area, EMRIP supports continued and increased funding.

IV. Recommendations

1. Indigenous community-level decision-making is a critical step in improved service delivery for Indigenous Peoples and should be supported by the Government of WA. However, consistent with the right of self-determination, EMRIP is also of the view that, in alignment with Articles 3 and 4 of the Declaration, legal jurisdiction over child welfare should eventually be housed in Indigenous Peoples' own

self-governing, representative institutions, whenever possible and appropriate. The Government of WA should work in cooperation with Indigenous Peoples to support both community-level decision-making service delivery models alongside the development and capacity-building of Indigenous Peoples' self-governing, representative institutions, particularly in view of the lost opportunity with the Voice Referendum, and the discontinuance of the United Nations Declaration on the Rights of Indigenous Peoples bill in the Senate.

2. Recalling the previous recommendation from the United Nations Committee on the Elimination of Racial Discrimination, EMRIP again recommends that an Indigenous Children's Commissioner be established for each State and Territory, in particular in Western Australia. EMRIP notes that a Children's Commissioner of Aboriginal descent is not a substitute for an Indigenous Children's Commissioner, and stresses the need for an Indigenous-specific Commissioner in each State and Territory.
3. Understanding the key role an Indigenous Children's Commissioner plays in monitoring, engaging and supporting the rights for Indigenous children, EMRIP recommends that certain and appropriate recommendations from the Commissioner be binding.
4. Acknowledging the potential to achieve more culturally appropriate and lasting outcomes, EMRIP recommends more resourcing and expansion of Dandjoo-Bidi-ak, Therapeutic Courts model within Western Australia. In addition, EMRIP recommends that more Indigenous judges be appointed as it is understood that this not only creates a certain amount of comfort for Indigenous Peoples but there is an expectation of an implicit cultural understanding.
5. Understanding the importance of how effective prevention can ameliorate the requirement for child removals, EMRIP recommends that more support and funding be applied in preventative stages rather than subsequent stages. Women's refuges and healing programs, culturally appropriate measures, maternal health supports, children and girl's empowerment programs, are all urgently needed.
6. Acknowledging the intention of the Department of Communities to include culture at the centre of, and within, their programs and policies, EMRIP recommends that more positions with decision-making roles are made available for Indigenous Peoples within the Department in all areas to ensure effective implementation.
7. Understanding the importance and impact an out-of-home environment can have on Indigenous children, EMRIP strongly recommends that a much more concerted effort is made to ensure the facilities are Indigenous friendly, not only in surroundings but also in the operation of the facility and forthcoming availability of Indigenous culture, cooking, art, sports, etc is prioritised. The WA State should support Indigenous peoples to develop and run indigenous out of home care as Indigenous peoples are best placed to ensure cultural safety for children in care.
8. EMRIP advises that the age for criminal liability be raised from ten years old and culturally appropriate and accessible legal services be available for Indigenous children. It is noted that this could be achieved with supporting the Dandjoo-Bidi-ak court initiative, supporting Aboriginal Legal Services, Aboriginal Family Legal Services and supporting Women's Legal Services. The effect of colonisation on Indigenous Peoples has created an uneven playing field particularly within the criminal justice system. Given the disproportionate incarceration rates of Indigenous youth and the alarming removal rates for Indigenous children, EMRIP recommends continued and increased resourcing of Aboriginal Legal Services and Women's Legal Services.

9. Given that the UN Declaration on the Rights of Indigenous Peoples captures fundamental rights, such as the right to self-determination (Articles 3, 4) non-discrimination (article 2, 22), the prohibition against forced assimilation (Article 8), removal of people from traditional lands and territories (Articles 7, 10) and a right to culture (Articles 11, 14, 15 and 31) EMRIP recommends that consideration be given to statutory implementation of these rights within relevant child protection legislation.
10. EMRIP supports the development of a national human rights act that references both the Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples. EMRIP also encourages states and territories, including Western Australia, to develop similar human rights legislation which include the recognition of Indigenous peoples' cultural rights.
11. More generally, having regard to the experiences in other countries that have convincingly demonstrated that outcomes for Indigenous children and families improve significantly, across the board, when jurisdiction of family/children's law matters is transferred to Indigenous Peoples' self-governing (i.e. representative) institutions, or at minimum, shared with those of the state, EMRIP underscores and recommends that Australia consider national legislation to support Indigenous Peoples' right of self-determination in child and family law matters within the states and territories and also encourages the states and territories to shift their overall approach in child welfare, through both legislation and policy, to one grounded in the right of self-determination of Indigenous Peoples rather than a state-led, service delivery model.
12. EMRIP welcomes, supports and encourages continued national, state and territorial-level work to advance the core elements of the Uluru Statement from the Heart and its commitment to Treaty, Truth and Voice. EMRIP also encourages Australia to pass implementing legislation that recognises the fundamental rights articulated in the United Nations Declaration on the Rights of Indigenous Peoples, including a review of existing laws and policies and the creation of a national action plan. In this regard, EMRIP recalls article 38 of the Declaration which strongly urges that, in consultation and cooperation with Indigenous Peoples, appropriate measures are undertaken, including legislative measures to realise the fundamental rights in the Declaration.

2. Expert Mechanism Advice No. 17 (2024): Constitutions, laws, legislation, policies, judicial decisions and other mechanisms through which States have taken measures to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples, in accordance with article 38 of the Declaration, A/HRC/57/62, 2 August 2024²⁶

1. The Expert Mechanism provides the following advice on the measures taken by States to achieve the ends of the United Nations Declaration within the context of their human rights obligations and responsibilities.
2. There is a general understanding that the Declaration synthesizes the spectrum of fundamental human rights already enshrined in various treaties and international jurisprudence in the context of Indigenous Peoples. The United Nations treaty bodies have frequently referred to the Declaration to interpret relevant provisions of these treaties in matters involving Indigenous Peoples. Similarly, the Declaration helps States interpret and understand their existing human rights obligations as a matter of international and domestic law.

²⁶ Full report: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F57%2F62&Language=E&DeviceType=Desktop&LangRequested=False>.

3. The Declaration has contributed to the development of – and reflects – general principles of international law or customary international law. The Declaration includes several key provisions that correspond to existing State obligations under customary international law.
4. States should operationalize the rights affirmed in the Declaration in ways that entail clear programmes of legal and policy reform, institutional action and reparations for past wrongs.
5. States should, in cooperation and collaboration with Indigenous Peoples, incorporate frameworks to implement the Declaration into domestic law. Implementing the Declaration will normally require States to adopt new laws or to amend existing legislation at the domestic level, as well as developing a regulatory framework, as provided in article 38 of the Declaration, which calls for appropriate legislative measures.
6. States should institute constitutional and other legal reforms and judicial actions to recognize and operationalize the rights of Indigenous Peoples under the Declaration at the local level. The legislative process should apply a comprehensive approach to synchronize different elements and levels of legislation and regulations in order to make them consistent.
7. Legal and institutional transformations required by the Declaration are usually not sufficiently addressed solely by enacting specific Indigenous laws and legislation. States should aim to transform laws, policies and structures in all areas affecting the fulfilment of Indigenous Peoples' rights.
8. While the legislative implementation of the Declaration is not always coupled with constitutional reforms, it does provide the judiciary with tools that they can use to maintain the relationship between justice and jurisprudence. The Declaration is progressively interpreted in national, regional and international jurisprudence and judicial decisions on Indigenous Peoples' rights. In the light of this, measures are needed to direct and support the judiciary in ensuring that domestic laws are interpreted and applied in a manner consistent with States' international human rights obligations. This includes judicial training on the Declaration and international law more widely, carried out in consultation and cooperation with Indigenous Peoples, and the appointment of more Indigenous judges.
9. In implementing article 38 of the Declaration, States should establish monitoring bodies that can build political momentum towards the advancement of the rights of Indigenous Peoples across society. States, in cooperation and collaboration with Indigenous Peoples, should carry out strategic planning and develop monitoring mechanisms and indicators to identify steps for the practical application of the human rights norms set out in the Declaration and for its effective implementation. States should create autonomous Indigenous-specific institutions to monitor the implementation of the Declaration and assess fulfilment of government responsibilities and obligations.
10. States should take steps to achieve the ends of the Declaration and the realization of the right of Indigenous Peoples to the recognition, observance and enforcement of the treaties, agreements and other constructive arrangements they have concluded with States or their successors. States should work in consultation and cooperation with Indigenous Peoples to establish fair and transparent mechanisms and processes through which treaties, agreements and other constructive arrangements can be successfully concluded.

11. In cases where States have initiated or concluded national inquiries, truth commissions and other processes or mechanisms for reconciliation, a fundamental step following up on such commissions is the analysis of action taken by States to respond to the final reports, conclusions and recommendations that may yield constructive examples of implementation of the Declaration.
12. States should provide their civil servants with comprehensive training on the provisions of the United Nations Declaration on the Rights of Indigenous Peoples and its implementation.
13. Indigenous Peoples should continue to build their own institutional capacity and expertise on their rights affirmed in the Declaration and on how to enforce them at the national, regional and international levels, including by participating in lawmaking work by expanding their opportunities to exercise legislative initiative and to participate directly in parliaments of all levels.
14. Indigenous Peoples should be able to engage with lawyers' groups when ongoing judicial reviews or litigation on Indigenous Peoples' rights exist, focusing on the use of the Declaration. In this regard, it is recommended that steps be taken to create the conditions and platforms for Indigenous Peoples and State authorities to discuss legal reforms. States should also assist Indigenous Peoples to initiate educational programmes together with other actors such as academia.

3. Expert Mechanism Advice No. 16: Impact of militarization on the rights of Indigenous Peoples, A/HRC/54/52, 8 August 2023

1. The Expert Mechanism provides the following advice regarding the causes and consequences of militarization and its impact on the rights of Indigenous Peoples within the context of States' human rights obligations and responsibilities. In this context, Indigenous Peoples are rights holders and States are the duty bearers, bound to uphold the human rights of Indigenous Peoples.
2. States should promote demilitarization of the lands, territories and resources of Indigenous Peoples, as a contribution to the realization of the collective right to live in freedom, peace and security as distinct peoples as well as to economic and social progress and development, understanding and friendly relations among nations and peoples of the world.
3. With respect to the presence of military forces in Indigenous lands and territories, States should be guided by article 30 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirms that military activities shall not take place in the lands or territories of Indigenous Peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the Indigenous Peoples concerned. "Public interest" does not constitute by itself a determinative factor and must comply with the principles of suitability, necessity and proportionality as defined within an overall framework of respect for human rights.
4. States should not undertake any militarization on the basis of public interest, without any legal and justifiable ground in terms of the associated restrictions on the rights of Indigenous Peoples. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument among those which might achieve the desired result; and they must be proportionate to the interest to be protected and defined within an overall framework of respect for human rights.

5. States should undertake consultation processes with the Indigenous Peoples concerned, even where sufficient public interest can be found. Furthermore, States should ensure that consultations are free from interference from government actors, companies or the military, and facilitate Indigenous Peoples' internal consensus building and decision-making practices, respecting their time frames, customary laws and representative structures. Free, prior and informed consent is required in cases where military activities may have significant impacts, as required by the Declaration.
6. States should ensure that Indigenous Peoples' territories are free of State military interventions and that military bases, camps and training centres established in Indigenous territories without Indigenous Peoples' free, prior and informed consent are removed immediately, consistent with articles 19 and 30 of the Declaration.
7. States should respect internationally recognized human rights standards on the use of force when using law enforcement officials in Indigenous lands and territories. When applicable, States should also respect international humanitarian law in situations of armed conflict taking place in Indigenous Peoples' lands. International human rights law continues to apply in situations of armed conflict.
8. States should protect Indigenous Peoples, especially Indigenous rights defenders, ensuring that they are not subject to intimidation, harassment, acts of violence, killings, enforced disappearances or criminal prosecution when asserting the rights of their peoples in situations where Indigenous lands are militarized and/or in situations of armed conflict.
9. Indigenous Peoples have the right to oppose and actively express opposition to development projects promoted by the State or third-party business interests. Indigenous Peoples should be able to oppose or withhold consent to development projects free from reprisals or acts of violence, or from undue pressures to accept or enter into consultations about them.
10. Companies should conduct due diligence to ensure that their actions will not violate or be complicit in violating Indigenous Peoples' rights, identifying and assessing any actual or potential adverse human rights impacts of a development project.
11. States should ensure that contentious issues between Indigenous Peoples, States and business enterprises arising in the implementation of major development projects are never handled primarily as a problem of national security or law and order, as that often leads to military or police action that may violate Indigenous Peoples' human rights. When a State determines that it is permissible to proceed with a development project that affects Indigenous Peoples without their consent, and chooses to do so, that decision should be subject to independent judicial review. States and corporations should adhere to the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.
12. States should ensure that Indigenous Peoples' rights are respected when expanding protected areas, mitigating climate change and carrying out conservation projects, which often feature high levels of militarization. Indigenous Peoples should be part of any decision-making in such situations.
13. Indigenous Peoples' rights, including their rights to health, to education and to practise their livelihoods, should act as a constraint on any military programmes targeting their territories. States should implement effectively the international human rights obligations to prevent, protect from and remedy the effects of exposure of Indigenous Peoples to toxics in the context of militarization.

14. States should protect the rights of women and girls to be free from violence resulting from militarization and should ensure effective remedies for women who have been victims of such violence.
15. States should ensure that Indigenous women are included in any consultation processes under article 30 of the Declaration. Indigenous women's role in protecting their communities from the impact of militarization should be recognized.
16. States should, acting in compliance with international human rights principles, take all steps necessary to properly investigate all allegations of violations of Indigenous Peoples' rights, particularly by government officials, such as border guards, the military and the police, in situations of conflict or militarization. Furthermore, States should ensure that perpetrators are prosecuted and brought to justice to ensure that such human rights violations do not recur.
17. In upholding their duty to protect, States must ensure that non-State armed groups and private military and security companies do not violate Indigenous Peoples' rights, including those under domestic and international law. States should refrain from cooperating with such groups in the militarization of Indigenous territories.
18. States should identify and abandon counter-insurgency programmes and counter-terrorism and national security laws that result in the violation of Indigenous Peoples' rights. Further, States should refrain from utilizing such laws to punish Indigenous human rights defenders. States should not use counter-terrorism or counter-insurgency programmes as a justification for military activities on Indigenous Peoples' lands.
19. States should establish effective and credible safeguard mechanisms to address human rights abuses against Indigenous Peoples in the context of militarization and conflict, particularly in Indigenous peoples' attempts to safeguard and use their homelands and territories, including those that transcend national borders and in the transition from conflict to post-conflict situations. Those mechanisms should be developed in cooperation with Indigenous Peoples, civil society actors and national human rights institutions.
20. States are encouraged to establish an independent commission of enquiry to investigate allegations of human rights violations against Indigenous Peoples perpetrated in the context of military operations into land and territories of Indigenous Peoples.
21. States are encouraged to enter into bilateral and regional agreements, including in situations of cross-border conflict or where international borders have been closed, to address cross-border issues, and to take effective measures to facilitate the implementation of the provisions contained in article 36 of the Declaration.
22. States should refrain from contaminating Indigenous territories with military waste, and should remedy the damage already caused to Indigenous lands and territories, to Indigenous Peoples' health and to their right to a healthy, clean and sustainable environment, from past polluting activities.
23. Indigenous Peoples should continue to build their own capacity on their rights affirmed in the Declaration and on how to enforce them at the national, regional and international levels, including in situations of contention between Indigenous Peoples, States and business companies, by – for example – making use of international human rights mechanisms such as the universal periodic review, the treaty bodies, including the complaint procedures, and the Working Group on business and human rights.

24. Indigenous Peoples should make full use of regional instruments such as the American Declaration on the Rights of Indigenous Peoples and regional mechanisms such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights in addressing human rights violations related to militarization on their lands.
25. States should consider Indigenous Peoples as partners and allies in conflict prevention, peacebuilding and peacekeeping, as well as maintaining a human rights agenda in any peace and security discussions. Indigenous Peoples should be involved in deliberations about peace and security at all levels.
26. Finally, in all situations where militarism affects Indigenous Peoples' lands and territories, the Expert Mechanism encourages States to engage with Indigenous Peoples in the spirit of the United Nations Declaration on the Rights of Indigenous Peoples, based on the principles of justice, democracy, respect for human rights, nondiscrimination and good faith.

4. Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: establishing effective monitoring mechanisms at the national and regional levels for the implementation of the Declaration, A/HRC/EMRIP/2023/3, 30 May 2023

I. Introduction

...

4. In the present report, the Expert Mechanism addresses efforts to implement the provisions of the United Nations Declaration on the Rights of Indigenous Peoples. It seeks to provide contextualized information on existing monitoring mechanisms for the implementation of the Declaration, including examples of the purpose and mandate of those mechanisms and how they could contribute to achieving the ends of the Declaration. Since the adoption of the Declaration by the General Assembly, in its resolution 61/295, on 13 September 2007, it has been overwhelmingly recognized as reflecting a global consensus on the rights of Indigenous Peoples, individually and collectively. The Declaration, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the American Declaration on the Rights of Indigenous Peoples make up a trilogy of international human rights instruments specific to Indigenous Peoples. Collectively, they represent the most extensive and comprehensive attainment of human rights standards pertaining to Indigenous Peoples. Like many human rights instruments, the chronic challenge is the extent to which it is being implemented.

IX. Conclusions and recommendations

76. Achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples requires both implementation and monitoring activities. Implementation involves carrying out legal and policy reforms to ensure local and national laws are consistent with the Declaration; monitoring entails examining their effectiveness in safeguarding the rights of Indigenous Peoples. The Declaration and its provisions should be recognized as the main legal framework for creating effective monitoring mechanisms at the national and regional levels to contribute to its implementation. The complementary and mutually reinforcing the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the American Declaration on the Rights of Indigenous Peoples should also be taken into account.

77. The Expert Mechanism recommends that States take concrete steps by adopting laws, constitutional reforms and policies to achieve the ends of the Declaration. They should also develop national action plans, administrative measures and strategies in consultation and cooperation with Indigenous Peoples. These plans should identify and specify the roles of different State entities and departments, include accountability mechanisms, and have specific steps and timelines. To oversee compliance with the Declaration, States should co-design with Indigenous Peoples independent mechanisms that review and monitor compliance, identify and report violations, provide guidance, raise awareness and strengthen the capacity of Indigenous Peoples. It is also crucial for States to commit to and provide adequate resources and capacity for the effective functioning of these mechanisms.
78. The creation of a distinct body or mechanism at the national level explicitly addressing the interrelated human rights of Indigenous Peoples is not only critical in and of itself but is also instrumental to the fulfilment of individual and collective rights, including the right to self-determination, cultural rights and the right to land, territories and resources. The full political engagement and financial commitment of States are therefore crucial. In accordance with article 32 of the Declaration, States should promote the establishment or strengthening of existing mechanisms for participation, consultation, and platforms for dialogue between States and Indigenous Peoples. Such mechanisms should be co-designed by representatives of the Indigenous Peoples concerned.
79. The Expert Mechanism recommends that States ensure respect for rights-based consultation, participation and co-development. The protocols by which Indigenous Peoples are engaged by the Government must uphold the highest standards and adherence to the rights affirmed in the Declaration, including free, prior and informed consent, and their application. States should ensure Indigenous-led monitoring is built from the ground up and allows for iterative capacity growth.
80. States must uphold the principles of trust, transparency, comprehensiveness and balanced assessment, involving Indigenous Peoples in all aspects of oversight, monitoring and evaluation of and reporting on the progress of implementation. To that end, States should consider establishing an independent, national oversight body the membership of which comprises representatives of both the State and Indigenous Peoples to monitor and report annually to relevant bodies and the public in adherence to the above principles. This necessitates the establishment of monitoring mechanisms that are autonomous, free of all political influence, sufficiently resourced and accountable to both Indigenous Peoples and society at large.
81. States should also provide monitoring capacity-building for both Indigenous Peoples and State and non-State actors. This includes training and support for data collection and analysis, and for understanding and applying international human rights standards and mechanisms. Indicators already used in other initiatives by States and non-State actors, such as the 2030 Agenda for Sustainable Development, may also be incorporated.
82. The Expert Mechanism recommends that regional human rights bodies enhance their existing monitoring mechanisms to ensure the protection and promotion of the individual and collective rights of Indigenous Peoples. This can be achieved by providing assistance to States in the evaluation of their laws, policies and constitutional frameworks concerning the rights of Indigenous Peoples, and ensuring that they comply with the Declaration and other relevant international human rights instruments.

83. To effectively evaluate the implementation of the Declaration in each regional context, regional human rights bodies should develop a monitoring framework that includes specific indicators. Indigenous Peoples should be involved in this process to provide their perspectives and experiences. The monitoring framework should also make recommendations to States, Indigenous Peoples and other stakeholders based on the Declaration, with the objective of protecting and promoting the rights of Indigenous Peoples.
84. Indigenous data sovereignty is crucial for Indigenous Peoples to exercise their rights to self-determination, autonomy and self-government in internal and local affairs, and their rights to participate in decision-making and to protect their cultures, in accordance with article 31 of the Declaration, which protects the rights of Indigenous Peoples to maintain, control, protect and develop their cultural heritage and traditional knowledge. In addition, data are an important economic resource for Indigenous Peoples, as outlined in articles 21 and 23. States should therefore give Indigenous Peoples access to government-held data to fulfil their obligation to consult and to ensure free, prior and informed consent, and to allow for the repatriation of indigenous data as directed by rights holders.
85. States should collect and disseminate data disaggregated by Indigenous identity, ethnicity, income, gender, age, race, migratory status, disability, geographic location or other factors, as appropriate, in order to monitor and improve the impact of development policies, strategies and programmes aimed at improving the well-being of Indigenous Peoples and individuals, to combat and eliminate violence and multiple and intersecting forms of discrimination against them, and to support work towards the achievement of the Declaration and the implementation of the 2030 Agenda.
86. The Expert Mechanism recommends that national human rights institutions establish a dedicated unit or team to monitor and assess the implementation of the Declaration. The unit should create a monitoring framework that defines indicators, benchmarks and evaluation methods. It should also consult with Indigenous Peoples to gather their perspectives, and collaborate with other stakeholders, including civil society organizations and academia. The unit should furthermore advocate for national laws and policies that specifically embrace and mirror the Declaration with the objective of implementing it comprehensively, and provide all the financial resources necessary to support that objective. Laws and policies, as well as mechanisms, should be developed to ensure that both State and non-State actors are held responsible for the implementation of the Declaration.
87. Recognizing the significant role that academia can play in implementation and monitoring, the Expert Mechanism calls for greater efforts to engage and facilitate knowledge exchange and mutual partnerships among Indigenous experts by means of academic exercises, such as workshops, consultations and other activities. It also calls for strengthened cooperation and expanded academic networks across regions to create synergy and to establish stronger collaboration with academia in developing effective mechanisms to monitor the implementation of the Declaration at the national and regional levels.
88. Indigenous Peoples should build their own capacity in compliance with the provisions of the Declaration to enable them to effectively monitor and advocate for the implementation of their rights at the national and regional levels. This may include the application of the provisions of the Declaration in their own laws, tribunals, courts or dispute resolution processes. Indigenous Peoples can take

advantage of opportunities like the OHCHR Indigenous Fellowship Programme, or seek grants from the United Nations Voluntary Fund for Indigenous Peoples to participate in and engage on human rights processes relevant to the rights of Indigenous Peoples.

89. The Expert Mechanism recommends that States commit to the empowerment of Indigenous Peoples by providing them with access to information, capacity-building, networking and cooperation opportunities at the domestic and international levels. The rights, perspectives and practices of Indigenous Peoples, including the right to participate directly in matters that affect them, must be recognized to ensure that they have both procedural and substantive means to participate fully in decision-making processes. Furthermore, Indigenous Peoples should have access to effective and culturally appropriate mechanisms for seeking recourse, redress and reparations in cases of rights violations, including access to legal aid and other forms of support.

C. EXPERT MECHANISM ON THE RIGHT TO DEVELOPMENT

1. Individual and collective dimensions of the right to development, A/HRC/57/40, 12 July 2024

I. Introduction

1. It is affirmed in the Declaration on the Right to Development that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development” (art. 2 (1)). That affirmation underscores the importance of the individual in the development process and the fact that the right to development is not only a collective right but also a personal one. In the Declaration, while the human person is placed at the centre of development, the collective aspects of the right are also underscored. It is recognized that “the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources” (art. 1(2)). This recognition serves to highlight the intricate interdependent nature of the right to development and the right to self-determination. The right to self-determination is defined in article 1(1) of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as the right of all peoples to “freely determine their political status and freely pursue their economic, social and cultural development”.
2. It is recognized in the Declaration on the Right to Development that States have obligations to realize the right to development of all individuals, as well as that of peoples, including by eliminating the obstacles thereto. Despite that clear emphasis, there remains a lack of clarity among some stakeholders on the precise nature, content and scope of this right and their corresponding duties in its application to individuals and peoples. Indeed, some States and non-State actors continue to contend that they recognize the right to development as an individual right only, even questioning the existence of the rights of peoples in international human rights law. Some stakeholders seek to justify that position on the ground that recognizing development as a collective right may be abused by States as a pretext on which to deny individual rights. Others agree that the right has a collective nature but are

not always clear on the definition of “peoples”, especially in its application to the right to development. Queries are often raised as to whether the term “peoples” refers to the entire population of a State or also to specific groups thereof and, in the latter case, what criteria should be used to determine which groups constitute a people for the purpose of the right to development. A related issue is whether States can be construed as rights holders in the context of international obligations regarding the right to development.

II. An integrated approach to human rights

5. The normative framework of the right to development emphasizes a developmental process through which all human rights can be fully realized, following an approach aligned with international human rights standards. It involves a holistic process aimed at realizing individual and collective human rights through adherence to international norms. This development process is focused on promoting equity and justice by enhancing living standards and empowering the individual and the entire population.
6. The essence of the right to development lies in an integrative approach, which seeks to amalgamate development and human rights, positioning the individual at the core of developmental processes while also recognizing that individual well-being is intrinsically connected with communal welfare. The right “acknowledges the collective dimension, an issue which is often overlooked in relation to human rights”. The collective dimension adds value by recognizing that individual empowerment often depends on broader collective social, economic and cultural conditions. The realization of the right to development necessitates a collective approach whereby States and international bodies must collaborate to create conditions that allow for the comprehensive development of societies. This collective approach is especially relevant in addressing systemic issues, such as poverty and inequality, that affect large groups and require coordinated efforts to resolve.
7. The right to development encompasses the rights of individuals to participate in, contribute to and enjoy economic, social and cultural development. At the same time, it reflects a recognition that achieving development often requires collective efforts and benefits whole communities and societies. This includes cooperation among States, at the international level, to create an environment conducive to development. While a distinction is often drawn between individual and collective rights in the literature, the separation is not so clear-cut in practical application. The realization of collective human rights is fundamentally linked to safeguarding individual human rights. This is especially true given that individuals exist within the fabric of communities, and any suppression of collective rights invariably has an impact on individual rights.
8. The inclusion of both individual and collective dimensions in the right to development, as articulated in the Declaration on the Right to Development, represents a comprehensive approach to human rights, in particular to development as a human right. This dual focus acknowledges that actual development transcends economic growth, encompassing the improvement of all dimensions of human well-being and dignity. By mandating States to devise policies aimed at benefiting all individuals and the population as a whole, the Declaration encourages a holistic development model that is grounded in human rights. This holistic approach to development is also expressed in the draft international covenant on the right to development, in which it is recognized that, as a collective right, development is a

right of all peoples, including Indigenous Peoples and certain local communities. In the draft covenant, the human- and people-centred perspective is reinforced as a foundational principle underpinning the right to development, and it is affirmed that “the individual and peoples are the central subjects of development and must be the active participants and beneficiaries of the right to development”.

9. The right to development epitomizes the indivisibility of human rights. It is recognized as a fundamental human right, ensuring that all individuals and peoples have the opportunity to benefit from the development process. This perspective emphasizes the primary role of States in facilitating development. It also stresses the importance of international cooperation and solidarity in achieving worldwide development goals, ensuring more inclusive and equitable progress for all members of the global community.

A. Individual and collective rights provisions

...

15. The right to development was prominently endorsed in the 1991 Rio Declaration on Environment and Development (principle 3) and in the 1993 Vienna Declaration and Programme of Action (part I, para. 10). Those two Declarations affirm each individual’s right to enjoy universal human rights and freedoms and collective rights as expressed in the principle of “equal rights and self-determination of peoples”. The affirmation of the individual and collective dimensions is also visible in the endorsement of the principle that the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The right to development was also reinforced by the United Nations Millennium Declaration, from which the Millennium Development Goals emanated. In that Declaration, States explicitly committed themselves to “making the right to development a reality for everyone” (para. 11) and to “the fight for development for all the peoples of the world” (para. 29). In the 2007 United Nations Declaration on the Rights of Indigenous Peoples, it is recognized that “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law” (art. 1), and the right of Indigenous Peoples to self-determination and development is also specifically recognized (arts. 3 and 23).

B. Interdependence of individual and collective rights

...

21. The interdependence of the individual and collective dimensions of the right to development becomes more evident when illustrated with specific rights provisions. For example, while the right to health is an individual right, its full realization is deeply connected with a nation’s development policies, which are collective in nature. Similarly, the right to education concerns not only individual access to schooling but also the availability and quality of educational infrastructure, which are products of collective investment and policy. The collective dimension of the right to development adds value through an acknowledgment that individual empowerment often depends on broader social, economic and cultural advancements. Development projects, such as building infrastructure or improving public health systems, illustrate how collective action can lead to the individual enjoying a higher quality of life. Furthermore, collective rights, such as

those of Indigenous Peoples to maintain their cultural heritage or of workers to form unions, illustrate the necessity of the collective dimensions of the right to development. These rights often require group recognition and action for their realization, highlighting how the development of a community can enhance the capabilities and rights of its individuals.

23. The scope of the right to development is recognized differently in different countries. Some acknowledge it solely as an individual right, while others prioritize the collective dimension. This diversity in recognition contributes to the ongoing debate and division surrounding the right to development, which is influenced not only by political factors but also by cultural differences. However, some States have adopted national and international development policies that recognize the interdependence of individual and collective dimensions by seeking a balance between the rights of individuals and those of people collectively.
24. In elaborating the interdependence of individual and collective rights in the conceptualization and operationalization of the right to development, it is recognized that balancing the individual's right to development with collective rights can lead to tensions and conflicts, especially when resources are limited. Prioritizing individual rights in areas such as health care and education might unintentionally harm broader community interests or development goals. Conversely, focusing on collective development, such as economic initiatives or infrastructure, may negatively affect marginalized individuals or members of Indigenous communities, causing issues such as social displacement, environmental harm and loss of cultural identity. Nonetheless, these tensions can be mitigated or resolved by ensuring the inclusive participation of all stakeholders in development processes, as prescribed in the Declaration on the Right to Development.
25. In situations in which there is a real or apparent conflict between an individual's right to development and the collective right of peoples to development, international human rights law provides guidance to establish admissible restrictions on the enjoyment and exercise of those rights. Limitations of rights are permitted under both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Under the International Covenant on Civil and Political Rights, only the individual rights to freedom of movement (art. 12), freedom to manifest religion or belief (art. 18), freedom of expression (art. 19), freedom of peaceful assembly (art. 21) and freedom of association (art. 22) are subject to limitations. It is now well settled that, for limitations of these individual rights to be considered legal, the limitation must be provided for by law, must be based on one of the grounds justifying limitations recognized by the relevant article of the Covenant, must pursue a legitimate aim and must be proportionate to that aim.
26. Although the grounds justifying limitations vary slightly among these provisions, they all include situations in which it is necessary to respond to a pressing public or social need. Examples include limitations of individual rights necessary to protect national security, public safety, public order, public health or morals, or the rights and freedoms of others. In such circumstances, international law permits the collective interests and welfare of society at large to outweigh the specific individual civil and political rights in question. Under the International Covenant on Economic, Social and Cultural Rights, all rights may be subject to limitations. Article 4 thereof prescribes that States parties to the Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the Covenant, the State may subject such rights only to such limitations as are determined by law

only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

27. The jurisprudence of regional courts relating to Indigenous Peoples is especially useful in determining how such guidelines can serve to resolve tensions between the individual and collective dimensions of the right to development. In *Yakye Axa Indigenous Community v. Paraguay*, the Inter-American Court of Human Rights observed that, when Indigenous communal property and individual private property rights are in real or apparent contradiction, the American Convention on Human Rights itself and the jurisprudence of the Court provide guidelines to establish admissible restrictions on the enjoyment and exercise of those rights, that is: (a) they must be established by law; (b) they must be necessary; (c) they must be proportionate; and (d) their purpose must be to attain a legitimate goal in a democratic society. It also observed that, “when they apply these standards to clashes between private property and claims for ancestral property by the members of Indigenous communities, the States must assess, on a case by case basis, the restrictions that would result from recognizing one right over the other”. In *Saramaka People v. Suriname*, the Inter-American Court used the same principles to determine that restrictions on the collective right to property of Indigenous Peoples are possible because article 21 of the American Convention on Human Rights stipulates that the use and enjoyment of property may be subordinated by law to the interests of society (for instance, in a case in which mining leases for private actors are necessary for the welfare of wider society). Although this jurisprudence attributes special importance to the communal property of Indigenous Peoples in view of its importance to their collective survival, it does provide guidance on resolving a general conflict between the individual and collective dimensions of the right to development.

E. Self-determination

35. Collective human rights, as exemplified by self-determination, are integral to the protection of individual rights, as no individual is an island separate from the community. The suppression of collective rights directly impinges upon individual liberties, a situation familiar to members of Indigenous Peoples, as their identities are inextricably linked with their collectives. Self-determination is an inherently collective right, with implications for individual rights as enshrined in international legal instruments. Article 1(1) of both International Covenants on Human Rights stipulates that: “All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.” The inclusion of the right to self-determination in both Covenants was seen as vital for realizing all other human rights. The Human Rights Committee has stressed that this right is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is telling that the very first paragraph of article 1 common to both Covenants relates to the right of peoples to self-determination and that all individual rights follow thereafter.
36. The Declaration on the Right to Development reinforces the principle that self-determination is an essential collective right. It asserts that the human right to development implies the full realization of the right of peoples to self-determination, which includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources (art. 1(2)). This principle empowers nations and their

citizens, as collectives, to oversee and utilize their natural resources. Originating in the decolonization movement, it was aimed at enabling newly sovereign States to manage their economies and resources without external influence. It reflects the dual focus of the right to development, on both individual autonomy and communal welfare.

37. The collective rights principle of self-determination inherent in the right to development is referenced in the United Nations Declaration on the Rights of Indigenous Peoples, in which it is noted that Indigenous Peoples have “suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests” (sixth preambular para.). Articles 3 and 4 of the Declaration affirm the right of Indigenous Peoples to self-determination and autonomy in matters relating to their internal affairs. The Declaration also emphasizes their right to improve their economic and social conditions without discrimination, in particular in the areas of education, employment, housing, health and social security.
38. Self-determination is, therefore, a cornerstone of collective rights for Indigenous Peoples. It encompasses their right to freely determine their political status and pursue their economic, social and cultural development. These rights recognize the collective nature of Indigenous communities, their distinct cultural heritage and their connection to their ancestral lands threatened by globalization, assimilation policies and external influences. The collective rights provisions of the Declaration on the Right to Development and the Declaration on the Rights of Indigenous Peoples ensure that Indigenous Peoples as distinct communities can maintain and transmit their cultural practices, languages and knowledge systems to future generations.
39. It may be said that the right to self-determination is a collective right essential for the fulfilment of individual human rights, with the individual being the primary recipient of these rights. The right to development hinges on the right to self-determination, which is more pertinent to collectives than to individual entities. In situations in which basic rights, such as the rights to health, water and food, are not fulfilled, both individual and community wellbeing are affected. For development to be meaningful and comprehensive, communities must be able to exercise their right to self-determine their development paths, in particular when basic human rights are lacking. The ultimate aim of the right to development is achieving freedom, which is the foremost goal and the principal means of development. The right to development empowers individuals to lead lives that they choose and find meaningful, directed by their own values. It is closely associated with freedom and self-determination, which are crucial for personal autonomy. Self-determination, therefore, extends beyond collective rights to involve the individual’s autonomy. However, although individual freedom is essential to asserting personal autonomy, an individual’s full potential can be realized only in the context of collective social freedoms.

F. Peoples’ rights

40. Peoples are recognized as rights holders in several international instruments. It is a notion that is intricately connected with the concept of “nations” in international law, as opposed to the political concept of “States”. The Charter of the United Nations begins with the words “We the peoples of the United Nations” and identifies that an objective of the United Nations is “to employ international machinery for the

promotion of the economic and social advancement of all peoples” (preamble). A principal purpose of the Organization, as stipulated in article 1, is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. Article 55 of the Charter stipulates that, “with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems ...; and universal respect for, and observance of, human rights and fundamental freedoms for all”. All States, under article 56 of the Charter, are obliged, individually and jointly, in cooperation with the Organization, to realize these purposes.

41. In addition to the recognition of the right of all peoples to self-determination in the International Covenants on Human Rights, the Declaration on the Right to Development and the Declaration on the Rights of Indigenous Peoples, the right of all peoples to development is also recognized in the latter two instruments. However, the term “peoples” is not defined in any of these instruments. This has understandably led to a lack of clarity over what the term means or whether there can even be a universal definition. It has been noted, for example, that the United Nations concept of “peoples” is fluid, adapting to the changing landscape of politics, society and culture influenced by globalization, migration and technology.
44. It is therefore far more useful to identify the key characteristics that may qualify a group as a “people”. Broadly speaking, in international law, the term “peoples” denotes distinct human collectives bound by shared cultural, ethnic, linguistic or historical traits, each possessing a collective consciousness. There is sparse, although important, guidance available in this regard.
45. In the final report and recommendations of the International Meeting of Experts on further study of the concept of the rights of peoples, hosted by the United Nations Educational, Scientific and Cultural Organization on 27–30 November 1989, for the purposes of peoples’ rights, the following were identified as among the characteristics inherent in a description (but not a definition) of a “people”:
 - (a) A group of individual human beings who enjoy some or all of the following common features: (i) a common historical tradition; (ii) racial or ethnic identity; (iii) cultural homogeneity; (iv) linguistic unity; (v) religious or ideological affinity; (vi) territorial connection; and (vii) common economic life;
 - (b) The group must be of a certain number, which need not be large (e.g. the people of micro-States) but which must be more than a mere association of individuals within a State;
 - (c) The group as a whole must have the will to be identified as a people or the consciousness of being a people, allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have that will or consciousness; and possibly
 - (d) The group must have institutions or other means of expressing its common characteristics and will for identity.
46. The African Commission on Human and Peoples’ Rights relied upon the guidance set out in the final report and recommendations in its judgment in *Kevin Mgwanga Gunme et al. v. Cameroon*, acknowledging Southern Cameroonians as a distinct

people based on their shared history, language and identity, which differentiated them from wider Cameroonian society.

47. In a study conducted under the aegis of the International Commission of Jurists in 1972, particular importance was placed on the consciousness of the group to be identified as a people.
48. In *Centre for Minority Rights Development (Kenya) and Minority Rights Group on behalf of Endorois Welfare Council v. Kenya*, the then Government of Kenya contended not only that the Endorois were not Indigenous, but also that they were not a “people”. After noting the absence of a universal definition of “people” and its own initial hesitation in interpreting that term, the African Commission on Human and Peoples’ Rights observed that “there is an emerging consensus on some objective features that a collective of individuals should manifest to be considered as ‘peoples’, viz. a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities they collectively enjoy ... or suffer collectively from the deprivation of such rights”. Clearly, all these features need not be cumulatively present in each case, nor is the presence of only one or two indicative of a people. For instance, due to colonization, some peoples may have lost their traditional language. This fact alone does not disqualify them. Similarly, the fact that individuals from many countries practise a common religion or speak a similar language does not make them a people. In addition, some features may have more weight than others in a given case. For example, a territorial connection with traditional lands and natural resources is especially important for Indigenous Peoples and their very survival.
49. This reinforces the importance of a case-by-case approach. It is essential not to conflate all “groups” with “peoples”, the latter being the recognized rights holders under international law. For instance, religious minorities in a State or local communities may or may not qualify as a distinct people, depending on their context. In circumstances in which they may not qualify, however, it would not necessarily follow that they cannot exercise or claim their right to development as a group, even though they may not be able to do so as a people. Common interests and the effects of development policies or practices that may affect different individuals of such communities cumulatively may justify common demands for the realization of their right to development, such as through class action suits.

2. Annual report of the Expert Mechanism on the Right to Development, A/HRC/54/41, 28 July 2023

III. Summary of proceedings

...

C. Focused thematic discussions

17. At its sixth session, the members of the Expert Mechanism engaged in a dialogue with members of the Expert Mechanism on the Rights of Indigenous Peoples to learn from the latter’s country engagement mandate, to exchange good practices and to discuss interlinkages between the United Nations Declaration on the Rights of Indigenous Peoples and the Declaration on the Right to Development. Dialogues were also held with representatives of civil society and of the least developed countries. At its seventh session, the Expert Mechanism held five focused thematic

discussions with a view to contributing to the processes in the lead-up to the high-level political forum on sustainable development convened under the auspices of the General Assembly (Sustainable Development Goals Summit), to be held in September 2023, and the Summit of the Future, to be held in September 2024. Dialogues centred on the right-to-development approach to relevant themes.

1. Interactive dialogue with the Expert Mechanism on the Rights of Indigenous Peoples

18. Five out of the seven members of the Expert Mechanism on the Rights of Indigenous Peoples participated in the dialogue. They considered their country engagement mandate as an opportunity to build dialogue between States and Indigenous Peoples on the implementation of the Declaration on the Rights of Indigenous Peoples. The mandate involved a series of steps to respond to requests, agree on terms of reference with relevant parties and carry out country visits, with specific deliverables, a technical advisory note and follow-up. The members of the Expert Mechanism on the Rights of Indigenous Peoples discussed their various activities, reports and studies and the ways in which they touched on the right to development and the right to economic self-determination, including through control over natural resources. Its previous studies had articulated the right to develop a particular way of life and traditional economic activities connected to the land as key in ensuring the survival and continued development of the cultural identity of Indigenous Peoples.
19. Regarding interlinkages between the two declarations, members of the Expert Mechanism on the Rights of Indigenous Peoples stressed the fundamental role of the right to development in realizing other rights, such as self-determination, and shared their concern about the lack of specific references to Indigenous Peoples in the Declaration on the Right to Development. This led Indigenous Peoples to rely on creatively applying their voices to the generic rights included thereof. Connecting the two declarations required the constant and active awareness of the context in which Indigenous rights should be promoted and protected and this could be done by the joint work of the two expert mechanisms.
20. In the ensuing discussion, representatives from Brazil, Mexico, the International Human Rights Association of American Minorities, the Women's Federation for World Peace International and Associazione Comunità Papa Giovanni XXIII took the floor. State representatives welcomed the synergy between the two expert mechanisms. One made an appeal to the participants not to lose sight of the particular connection of Indigenous Peoples to the land and natural resources. It was important not to overshadow discussions on Indigenous Peoples' rights, including their right to freely pursue their development, within the more general discussions on the right to development. A participant referred to the right to self-determination outside of domestic jurisdiction under international law and another regretted that the right to development had not been mobilized as much as the rights of Indigenous Peoples. She advocated for country engagement of the Expert Mechanism on the Right to Development that promoted knowledge of that right, was adequately resourced and included the participation of civil society as a priority.

IV. Expert Mechanism's contributions to the high-level political forum on sustainable development convened under the auspices of the General Assembly (Sustainable Development Goals Summit) and the Summit of the Future

...

B. Measuring progress beyond gross domestic product

57. The need to move beyond GDP as a measure of development has emerged from the understanding that relying on GDP for such measurement results in negative externalities and blind spots and inadequately addresses current challenges. Development measures based on GDP alone reward pollution, waste and inequalities. One of the most severe adverse consequences of economic growth has been extreme environmental degradation and biodiversity loss. Although long-term economic growth and well-being are threatened by these outcomes, the consumption of natural resources in the short term increases GDP. In response, both Our Common Agenda and target 17.19 of the Sustainable Development Goals call for the development of measurements of progress on sustainable development that complement GDP and support statistical capacity-building in developing countries. The Expert Mechanism welcomes the work of the High-level Panel on the Development of a Multidimensional Vulnerability Index for Small Island Developing States in this regard.
58. In the context of the right to development, development is undoubtedly understood as a multidimensional concept, reflecting all dimensions of human rights: civil, cultural, economic, political, social and, now, also environmental. Staunch support can therefore be found in the right to development for a system of measurement of development that includes indicators referring to all of those dimensions.
62. The right to development is a right held by individuals and peoples, including Indigenous Peoples. As a human right, development is self-determined by the rights-holders. They are entitled to the realization of their development by the duty bearers. Therefore, although development is always understood as multidimensional, its precise content is dependent upon the rights holders and may vary across territories and even within a single State. A universal measurement system should therefore allow space for localization, enabling rights holders to pursue their own development path.
63. The right to development is of particular relevance for the protection of rights holders that have not been accommodated by mainstream development policies at either the domestic or the international level. It is thus essential for the implementation of the right to development for there to be access to data on societal groups that are currently less able to participate in the fair distribution of the benefits resulting from development, as stated in the Declaration on the Right to Development. Only then can policy and legal measures at the international and domestic levels be designed to effectively address the obstacles that prevent the realization of the right to development.
64. The establishment of a multidimensional system of measurement of development does not settle the question of how that system would be used. GDP is used as a criterium for concessional financing, development cooperation and technology transfer. The right to development is a common concern of humanity and should be realized through the common but differentiated efforts of all countries. The

elaboration of a new measurement system for development should therefore be accompanied by measures that ensure that the system will be used in such a way as to contribute to an enabling international environment for the realization of the right to development.

VII. Conclusions

...

107. The Expert Mechanism notes the importance of differentiating Indigenous Peoples as rights holders from others in local communities on the basis of the specific significance of the right to self-determination and the right to free, prior and informed consent of Indigenous Peoples.

Annex II

Commentary on article 1 (1) of the Declaration on the Right to Development

Article 1 (1)

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

1. General introduction to the commentary

1. In 1986, the General Assembly adopted the Declaration on the Right to Development, by its resolution 41/128. The Declaration is not in itself legally binding. Nevertheless, many of its provisions are anchored in legally binding instruments, such as the Charter of the United Nations and the International Covenants on Human Rights. Some of its principles such as those relating to friendly relations and cooperation among States, self-determination and nondiscrimination are part of customary international law, and thus binding on all States.
2. The Declaration was adopted by an overwhelming majority of States. 146 member States voted in favour, one against and eight abstained. The Declaration has considerably affected the behaviour of States, the United Nations system, intergovernmental organizations and non-State actors. Since 1986, the Declaration has provided the normative underpinnings for a human and people centred approach to development.
3. The Declaration does not contain an implementation mechanism, nor does the text as such create a cause of legal action. These limitations have led to the adoption by the General Assembly and the UN Human Rights Council of resolutions requesting member States to conclude a legally binding instrument on the right to development that would ensure that the right to development is on a par with all other human rights.
4. On 18 May 2021, the Expert Mechanism on the Right to Development adopted a Statement supporting the elaboration of a legally binding instrument with a view to strengthening the effective operationalization and full implementation of the right to development. In the Statement, the Expert Mechanism takes position on the essential elements such an instrument should contain.
5. Pending the adoption and ratification of a legally binding instrument on the right to development, the Commentaries on the Declaration offer an opportunity to interpret the Declaration in the light of normative developments that have

occurred since its adoption. The Expert Mechanism adopts these commentaries with a view to contributing to the reinvigorating and mainstreaming of the right to development, and to encouraging civil society and grassroots organizations to use the right to development in their work.

6. EMRDT Commentary No. 1 addresses Article 1(1) of the Declaration.

II. Commentary No. 1 on article 1(1) of the Declaration on the Right to Development

...

A. Development as a human right

8. As a human right, development is self-determined: the rights holders determine the meaning of development. The meaning of development will therefore differ from context to context and may evolve over time.
10. Rules, policies, and practices pertaining to development at national and international levels shall seek to achieve socio-economic well-being within the boundaries set by ecological sustainability. 11. In no case shall development rules, policies and practices at national and international levels entail violations of civil, cultural, economic, environmental, political and social human rights.

C. The collective right to development

13. As a collective right, the right to development is a right of peoples including indigenous and other peoples. The concept of peoples has not been defined in international law, but guidance may be taken from a UNESCO Expert study describing a people as a group of individual human beings who enjoy some or all of the following common features: a common historical tradition; racial or ethnic identity; cultural homogeneity; linguistic unity; religious or ideological affinity; territorial connection, common economic life. The will to be identified as a people or the consciousness of being a people is equally an important characteristic (UNESCO International Meeting of Experts on further study on the concept of the rights of peoples. Final report and Recommendations, SHS-89/CONF.602/7, 22 February 1990, 7-8).
14. Peoples enjoy the right to pursue their own development path, including the right to ensure that natural resources are used sustainably and are when necessary rebuilt by all relevant actors in the interest of the well-being of the people.
15. Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. They have the right to be consulted and cooperated with in good faith through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing development measures that may affect them.
16. Similarly situated peoples that are not accommodated by dominant development paradigms also hold the right to development. They may be referred to in different countries by different terms, including as vulnerable and marginalized groups. They are entitled to active, free and meaningful participation in development measures that may affect them and in the fair distribution of the benefits resulting therefrom. The conditions of the participation process must be such that they make an objective difference to people's lives. As the African Commission on Human and Peoples' Rights has held when discussing participation: "The result of development should be empowerment of the (...) community. (...) The capabilities and choices of

the [community] must improve in order for the right to development to be realized” (African Commission on Human and Peoples Rights, Endorois, 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya, par. 283).

3. Duty to cooperate and non-State actors, A/HRC/54/84, 5 July 2023

III. Lessons from investor-State arbitration on foreign investment in mining

24. Mineral-resource extraction by foreign investors is a good testing ground for examining the implications of the duty to cooperate. A sustainability lens is increasingly being adopted to assess mining activities. As concerns are raised about the environmental and social consequences of mining, actors beyond the mining companies have become involved in societal debates on the industry.
25. Foreign investment in mining is typically dependent on a State institution granting a licence to operate, namely, permission to exploit the natural resources on part of the territory. Foreign investors are particularly active in sectors such as the extractive industry, bringing in capital, technology and knowledge. Customary international law provides a minimum standard of treatment that the host State must offer to the foreign investor; applicable international and bilateral investment treaties supply additional protection to the foreign investor. Such treaties also tend to favour dispute settlement by international arbitral tribunals, such as the International Centre for Settlement of Investment Disputes, which is one of the five World Bank Group organizations, rather than by domestic courts. States have widely ratified investment treaties.
26. In the mining sector, there is now widespread recognition that mining companies require not only a legal licence to operate, granted by the host State, but also a social licence to operate, granted by local communities, to avoid potentially costly conflict and exposure to social risks.
27. The idea that there needs to be an understanding between foreign investors and those living in affected communities resonates with human rights law and with the right to development. In the context of the Declaration on the Right to Development, local communities qualify as rights holders either as a peoples or as a group of human beings, depending on the factual circumstances.
28. Article 2 (3) of the Declaration on the Right to Development provides that States must ensure the active, free and meaningful participation of all individuals and the entire population (which necessarily includes local communities) in the formulation of national development policies. States also need to consult and cooperate in good faith with Indigenous Peoples to obtain their free, prior and informed consent on matters affecting the enjoyment of their own development. To fulfil these requirements, the State may well need to ensure that the investor obtains the support of those affected by its activity.
29. It is of interest to review two investor-State arbitration cases that revolved around the failure of the foreign investor to secure the support of local communities for its mining operations. The social conflicts that appeared – on both sides of the border between Bolivia (Plurinational State of) and Peru – were broadly similar in both cases: the State authorized the operations of a foreign investor in a remote area of the territory; at an early stage, local Indigenous communities opposed the investor’s activities, claiming an adverse social, environmental and human rights impact; the relationship between the investor and the communities gradually

deteriorated and protests increased; and violent incidents ensued. In response, the Government reversed its decision to authorize the mining company's activities. Subsequently, the foreign investor appealed to international arbitration to obtain fair compensation from the host State.

30. In *South American Silver Limited v. the Plurinational State of Bolivia*, the Permanent Court of Arbitration agreed with the Plurinational State of Bolivia that the reversing of the mining concessions granted to the foreign investor (the claimant) had been conducted for a social benefit, as required by the applicable bilateral investment treaty:

The indigenous communities' opposition to the Project is established as well as significant shortcomings in the management of the community relations programs that were identified by the Claimant's own advisors ... It has been equally established that the conflict existed with the communities and the ayllus, and that it caused acts of violence, including death of people ... In other words, the premises mentioned in the Reversion Decree as causes for Reversion have been proven and such premises include the protection of human rights – the right to life and the right to peace, both expressly mentioned in the Reversion Decree – and the protection of the communities and the ayllus against the difficulties resulting from the Project.

31. The Permanent Court of Arbitration further acknowledged that the reversion had in part resulted from the investor's mishandling of its relations with the local communities:

In this case, the Claimant knew, or should have known, that CMMK operated in an area inhabited by indigenous communities, under specific political, social, cultural, and economic conditions. CMMK's own advisors, as the Tribunal has already mentioned, warned of this situation, and recommended that certain measures be taken for the development of the Project. On the one hand, this implies that SAS, through CMMK, should develop the Project based on the special characteristics of the place where it operated. On the other hand, this supposes that Bolivia had a heightened duty of protection and oversight regarding the communities that inhabit the Project area.

32. The Permanent Court of Arbitration awarded compensation to the investor for the cost of its investment, but not for future profits, because it considered that the project's state of progress cast serious doubt on its economic viability.

33. In *Bear Creek Mining Corporation v. Republic of Peru*, the State argued that, if a community or important stakeholders did not accept a mining project on their land, it could not be imposed against their will (para. 263). The State also argued that the tribunal should deny compensation if it found that the investor had failed to obtain a social licence to operate (para. 264). Canada, the home State of the investor, intervening as a non-disputing State party, recognized that a State was not required to compensate an investment for any loss sustained by the imposition of non-discriminatory regulatory measures designed and applied to protect legitimate public welfare objectives (para. 338).

34. The arbitrators held that there was no clear definition of a social licence to operate in international law, but that all relevant international instruments required that consultations with Indigenous communities were to be made with the purpose of obtaining consent from all the relevant communities (para. 406). The majority held that, although the investor could have gone further in its outreach activities (para. 408), the State had been aware of the community discontent and of the investor's

outreach programme for a significant period of time and had not raised objections; hence, the investor's conduct could not be deemed insufficient (412). In his partially dissenting opinion, one arbitrator held that the investor's actions had contributed significantly to the social unrest. He argued that the investor had not been as fully prepared for the making of an investment in the lands of the communities of Indigenous Peoples as it should have been, and had failed to engage the trust of all affected communities because it had not taken the appropriate steps.

35. Compensation was awarded to the investor for investments made, but not for future profits, as the future of the project was considered too uncertain. The dissenting arbitrator felt that the compensation granted should have been halved, owing to the investor's contributory fault.
36. In its submission, the State argued that its role was to ensure that the affected communities were in fact consulted by private companies and to supervise those consultative processes to ensure that they were implemented by the company in conformity with the law. According to the Government, the State has the neutral role of an independent facilitator. States have the duty, however, to ensure that any actor that the State is in a position to regulate – such as a foreign investor that operates on its territory – does not impair the enjoyment of the right to development. This duty requires action that goes beyond the role of neutral facilitation.
37. In both *South American Silver Limited v. the Plurinational State of Bolivia* and *Bear Creek Mining Corporation v. Republic of Peru*, the joint efforts of the Government and the investor did not result in acceptance by the Indigenous communities of the investors' operations. The result was social conflict and the collapse of the foreign investors' projects. The disputes were settled in an international arbitration procedure to which the Indigenous Peoples, as holders of the right to development, had no access and that were entirely focused on the amount of compensation to be awarded by the Government to the investors.
38. Mining operations on both sides of the border between Bolivia (Plurinational State of) and Peru continue and the issues dealt with in the awards stay topical. Clearly, cooperation among the various stakeholders is necessary to design and implement mining operations by foreign investors in such a way that they benefit the right to development of affected Indigenous communities. Those stakeholders certainly include the actors most directly involved: the foreign investor, civil society organizations that are active in the area, the host State and Indigenous Peoples. In addition, the home State of the investor and intergovernmental organizations that promote human rights or facilitate foreign investment can usefully contribute to ensure that the cooperative effort results in a human rights compliant investment. In the light of the Permanent Court of Arbitration award in *South American Silver Limited v. the Plurinational State of Bolivia*, such a constructive cooperative effort should enable the foreign investor to develop its activity in full cognizance of the special characteristics of the place in which it is operating and enable the host State to comply with its heightened duty of protection towards the holders of the right to development.

V. Recommendations on the effective implementation of the duty to cooperate for non-State actors

...

B. Duty to consult and agree

65. In the context of the right to development, participation processes must be active, free and meaningful. When Indigenous Peoples are involved, they are entitled to free, prior and informed consent before development measures that affect them are adopted.
66. The same standards are pertinent for consultation processes undertaken by non-State actors that engage in activities that have an impact on the right to development.

D. WORKING GROUP ON THE RIGHT TO DEVELOPMENT

1. Draft international covenant on the right to development. Report by the Chair-Rapporteur of the Working Group on the Right to Development, Zamir Akram, A/HRC/54/50, 18 July 2023²⁷

Introduction

1. In its resolution 51/7, the Human Rights Council requested the Chair-Rapporteur of the Working Group on the Right to Development to submit a second revised draft convention on the right to development to the Working Group at its twenty-fourth session for intergovernmental negotiation and, following that process, to submit the final draft text of the convention to the Council.
5. On 22 May 2023, the drafting group adopted the revised draft text ad referendum. On 7 June 2023, the Chair-Rapporteur of the meeting submitted, on behalf of the drafting group, the third and final revised text to the Chair-Rapporteur of the Working Group.
6. The Chair-Rapporteur of the Working Group subsequently reviewed and endorsed the text. In the light of several and repeated proposals, and despite a divergence of views among the expert group members on this point, the Chair-Rapporteur decided to rename the final text “draft international covenant on the right to development”, for the reasons set out below.
7. The Human Rights Council agreed, in 2007, on a programme of work of the Working Group on the Right to Development that was to lead to raising the right to development to the same level as and on a par with all other human rights and fundamental freedoms. This was in line with the long-established view prevailing in the United Nations, which was reaffirmed in the Vienna Declaration and Programme of Action (para. 5) and in General Assembly resolution 60/251, creating

²⁷ See also *Draft international covenant on the right to development: consideration of comments and textual proposals*, A/HRC/54/50/Add.2, 4 September 2023, <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F54%2F50%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False> (stating, *inter alia*, at p. 45, that “3. With respect to [draft Article 17,] paragraphs 2 and 3, Colombia recommended that the language of ILO Convention 169 be employed instead of UNDRIP. The EDG pointed out during the 24th session of the Working Group that ILO 169 has been ratified by only 23 States whereas the UNDRIP, which was negotiated over 12 years, enjoys almost universal acceptance and has formed the basis for monitoring the progress by States in various mechanisms under the UN system. It would not be appropriate to revert back to the language of ILO Convention 169 which was specifically modified and enhanced during the drafting of the UNDRIP”).

the Human Rights Council, in which the Assembly reaffirmed that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing, and that all human rights must be treated in a fair and equal manner, on same footing and with the same emphasis. Lastly, “covenant” is the most appropriate denomination in view of the affirmation by the General Assembly, in its resolution 52/136, that the inclusion of the Declaration on the Right to Development in the International Bill of Human Rights would be an appropriate means of celebrating the fiftieth anniversary of the Universal Declaration of Human Rights. While there is no difference between covenant and convention legally, the use of the former solemnly emphasizes that there is no priority between human rights and that the right to development must be treated on the same footing and with the same emphasis as the two other sets of human rights, as contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

8. In submitting the present text, the Chair-Rapporteur of the Working Group recommends to the Human Rights Council that it transmit the draft international covenant, together with the commentaries, to the General Assembly and that it recommend that the Assembly, as the appropriate forum, convene an intergovernmental conference, under the auspices of the United Nations, with the mandate to consider the draft international covenant and conclude the text of an international legally binding instrument on the right to development as soon as possible.

Annex

Draft international covenant on the right to development

Preamble

The States Parties to the present Covenant,

...

Recalling also the provisions of all international human rights treaties, as well as other international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas,

...

Taking note of the regional human rights instruments that specifically recognize and reaffirm the right to development, including the African Charter on Human and Peoples' Rights, the Inter-American Democratic Charter, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Arab Charter on Human Rights, the Human Rights Declaration of the Association of Southeast Asian Nations, the American Declaration on the Rights of Indigenous Peoples, and the Abu Dhabi Declaration on the Right to Development,

...

Article 17

Indigenous Peoples

1. Indigenous Peoples, in exercise of their right to self-determination, have the right to freely pursue their development in all spheres, in accordance with their own needs and interests. They have the right to determine and develop priorities and strategies for exercising their right to development.

2. In accordance with international law, States Parties shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
3. States Parties shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

E. OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS²⁸

1. Text of the updated draft legally binding instrument with the textual proposals submitted by States during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, A/HRC/55/59/Add.1, 13 February 2024

Summary

The following text reproduces the updated draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises,¹ as well as the compilation of specific textual proposals, amendments, and expressions of support made by States during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

Preamble

The States Parties to this (Legally Binding Instrument),

...

(PP3) Recalling also the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, the Declaration on the Right to Development, the Durban Declaration and Programme of Action, the UN Declaration on Human Rights Defenders, the UN Declaration on the Rights of Indigenous Peoples, relevant ILO Conventions, and all other internationally agreed human rights Declarations, as well as the 2030 Agenda for Sustainable Development; (Brazil, Honduras, Malawi)

(PP14) Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons;

²⁸ <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>.

(PP14) Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable or marginalized situations, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons; (Panama, Chile) (PP14) Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons; (Mexico, Chile, Panama)

(PP14) Recognizing the distinctive and disproportionate human rights impact caused by business of business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable situation, as well as the need for a ~~business and~~ human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons; (United Kingdom, Panama)

(PP14) Recognizing the distinctive and disproportionate impact of **caused by** ~~business-related human rights abuses~~ on women and girls, children, indigenous peoples, peasants and other people working in rural areas, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons; (Bolivia, Mexico, Cuba, Ecuador, Peru, South Africa, Colombia, Indonesia)

(PP14) Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, **peasants and other people working in rural areas, local communities**, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable or marginalized situation, and emphasizing that the interest of different rights holders shall be fully respected in pursuing remedies for violations of their rights, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons; (China, Egypt)

(PP14) Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, **local communities**, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable **or marginalized** situations, **and emphasizing that the interest of different rights holders shall be fully respected in pursuing remedies for violations of their rights** as well as the need for a ~~business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons;~~ (Indonesia)

(Keep out reference to “local communities”: Mexico)

(PP14) Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, ~~indigenous peoples~~, **local or traditional communities**, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable **or marginalized** situations, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons; (Ghana)

...

Have agreed as follows:

...

Article 6.

Prevention

- 6.1 States Parties shall regulate effectively the activities of all business enterprises within their territory, jurisdiction, or otherwise under their control, including transnational corporations and other business enterprises that undertake activities of a transnational character.
- 6.2 State Parties shall adopt appropriate legislative, regulatory, and other measures to:
- (a) Prevent the involvement of business enterprises in human rights abuse;
 - (b) Ensure respect by business enterprises for internationally recognized human rights and fundamental freedoms;
 - (c) Ensure the practice of human rights due diligence by business enterprises; and,
 - (d) Promote the active and meaningful participation of individuals and groups, such as trade unions, civil society, non-governmental organizations, indigenous peoples, and community-based organizations, in the development and implementation of laws, policies and other measures to prevent the involvement of business enterprises in human rights abuse.
- 6.4 Measures to achieve the ends referred to in Article 6.2 shall include legally enforceable requirements for business enterprises to undertake human rights due diligence as well as such supporting or ancillary measures as may be needed to ensure that business enterprises while carrying out human rights due diligence:
- (a) Undertake and publish on a regular basis human rights impact assessments prior and throughout their operations;
 - (b) Integrate a gender and age perspective, and takes full and proper account of the differentiated human rights-related risks and adverse human rights impacts experienced by women and girls;
 - (c) Take particular account of the needs of those who may be at heightened risks of vulnerability or marginalization;
 - (d) stakeholders;
 - (e) Meaningful consult with potentially affected groups and other relevant Protect the safety of human rights defenders, journalists, workers, members of indigenous peoples, among others, as well as those who may be subject to retaliation; and
 - (f) Insofar as engagement with indigenous peoples takes place, undertake such process in accordance with the internationally recognized standards of free, prior, and informed consent.

Article 15. Institutional Arrangements

...

International Fund for Victims

15.7 States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument), to provide legal and financial aid to victims, taking into account the additional barriers faced by women, children, persons with disabilities, Indigenous peoples, migrants, refugees, internally displaced persons, and other vulnerable or marginalized persons or groups in seeking access to remedies. This Fund shall be established at most after (X) years of the entry into force of this (Legally Binding Instrument). The Conference of States Parties shall define and establish the relevant provisions for the functioning of the Fund.

· XI ·

**Special
Procedures
of the Human
Rights Council**

A. REPORTS OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

1. Indigenous persons with disabilities, A/HRC/57/47, 22 July 2024

Introduction

1. Worldwide, there are an estimated 1.3 billion persons with disabilities, or 16 per cent of the world's population.¹ While there is a lack of disaggregated global data on Indigenous persons with disabilities, it is estimated that they number more than 54 million. The rate of disability among Indigenous Peoples is higher because of many factors, including dangerous working conditions, lower standards of living and the poor quality of the medical services available to them.
2. Indigenous persons with disabilities often experience multiple forms of individual and structural discrimination that create barriers to the full enjoyment of their rights, based on their Indigenous identity and their disability. Intersecting layers of discrimination can limit their access to the justice system, development programmes and funds, education, employment, health care, communications, and transportation services. Owing to marginalization, poverty and "invisibility", Indigenous persons with disabilities are not always able to voice their concerns and exercise their rights.
3. The Special Rapporteur on the rights of Indigenous Peoples identified the theme of the present report after hearing directly from Indigenous persons with disabilities about the challenges that they face in exercising their rights. Pursuant to Human Rights Council resolution 51/16, the Special Rapporteur is to pay special attention to the human rights and fundamental freedoms of Indigenous persons with disabilities in carrying out his mandate.

Conclusions and recommendations

85. Disability among Indigenous Peoples is profoundly shaped by the colonial past and societal and environmental barriers rather than individual impairments alone. Colonization has imposed dominant narratives that narrowly focus on individual impairments, often disregarding the community-oriented, holistic perspectives inherent in Indigenous knowledge systems. This misalignment exacerbates the challenges faced by Indigenous persons with disabilities, who encounter significant cultural and linguistic barriers to accessing their fundamental rights.
86. The disproportionately high numbers of persons with disabilities among Indigenous Peoples are driven by multiple factors, including environmental pollution and systemic poverty. These issues are compounded by historical and ongoing racial discrimination, which hinders their participation in society on an equal basis with others. The lack of disaggregated data and culturally appropriate disability support services leads to misdiagnosis in health care and inadequate care, perpetuating the cycle of disadvantage.
87. Indigenous women with disabilities face unique challenges due to the intersectionality of discrimination based on gender, race and disability. They often face higher rates of violence and limited access to education and health-care

services, which underscores the need for culturally appropriate interventions in full consultation with them. Addressing the disparities in the promotion of the rights of Indigenous persons with disabilities requires a multifaceted approach that integrates Indigenous knowledge and practices into mainstream systems.

88. In addition, although the present report addresses the rights of Indigenous persons with disabilities, such rights cannot be understood or addressed comprehensively without taking into account the collective rights of Indigenous Peoples. Moving towards full equality involves, *inter alia*, promoting community-led initiatives, ensuring the availability of culturally appropriate services and fully implementing Indigenous Peoples' rights, including the rights to self-determination and lands, territories and resources.
89. It is also essential to respect the right of Indigenous persons with disabilities to consultation and free, prior and informed consent, including through their representative organizations, before adopting any legislation, policy or project that may affect them. As Indigenous persons with disabilities are disproportionately affected by the negative consequences of climate change and environmental pollution, it is necessary to adopt inclusive and accessible policies in consultation with them to mitigate these adverse effects.
90. In order to tackle the main challenges faced by Indigenous persons with disabilities in the realization of their rights, the Special Rapporteur makes the following recommendations to States, to be implemented in cooperation and coordination with Indigenous Peoples:
 - (a) Collect disaggregated data on Indigenous persons with disabilities to inform the development of appropriate legislation, policies and services;
 - (b) Adopt and implement legislation, policies and programmes, in consultation with Indigenous Peoples, that specifically recognize the rights of Indigenous persons with disabilities, ensuring compliance with international standards such as the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities. Ensure that all such laws, policies and programmes incorporate Indigenous knowledge and involve meaningful consultations with Indigenous persons with disabilities, including through their representative organizations, throughout the creation and implementation phases;
 - (c) Strengthen anti-discrimination laws to be inclusive of the rights of Indigenous persons with disabilities and ensure the strict enforcement of such laws to protect Indigenous persons with disabilities from intersectional discrimination;
 - (d) Provide the resources necessary to support the full and effective participation of Indigenous persons with disabilities in decision-making processes, ensuring their free, prior and informed consent in matters affecting them;
 - (e) Guarantee equal access to lands, territories and resources for Indigenous persons with disabilities, including Indigenous women with disabilities;
 - (f) Ensure full and fair compensation for environmental damage caused by extractive projects and other activities, including addressing the health impacts of environmental degradation and pollution on Indigenous persons with disabilities;
 - (g) Adopt and implement standards that conform to international human rights law for issuing permits for extractive projects, such as requirements to obtain health and environmental impact assessments and the free, prior

- and informed consent of affected Indigenous Peoples. Conduct specific impact assessments on Indigenous persons with disabilities, who are disproportionately affected by adverse environmental and health impacts;
- (h) Provide accessible, affordable and culturally appropriate health-care services to Indigenous persons with disabilities, including mental health and rehabilitation services in Indigenous territories. Tailor services, treatment standards and diagnosis procedures to meet their specific needs and respect their right to self-determination. Address the shortage of qualified health-care staff and facilities in remote areas;
 - (i) Abolish all forms of institutionalization, end new placements in institutions, refrain from investing in institutions for Indigenous persons with disabilities and promote the right of Indigenous persons with disabilities to self-determination, to live independently and to live in their Indigenous communities;
 - (j) Ensure access to inclusive, culturally appropriate and relevant education for Indigenous children with disabilities, including in Indigenous languages;
 - (k) Provide accessible legal aid and support services to Indigenous persons with disabilities, and ensure their access to justice;
 - (l) Promote training and employment programmes that are human rights-based and cater to the needs of Indigenous persons with disabilities, ensuring their economic independence and inclusion;
 - (m) Implement strict regulations to mitigate environmental pollution and hazardous working conditions that disproportionately affect Indigenous Peoples, particularly those related to extractive industries;
 - (n) Develop and implement training programmes for government officials, judicial and law enforcement personnel, health-care providers and educators on the rights and needs of Indigenous persons with disabilities;
 - (o) Support Indigenous-led initiatives, including Indigenous health-care systems, that promote the rights and needs of Indigenous persons with disabilities;
 - (p) Design national action plans and launch campaigns to combat stereotypes, stigma and racial discrimination against Indigenous persons with disabilities, promoting their rights and full inclusion, empowerment and full participation in society;
 - (q) Design and implement, in consultation with Indigenous women with disabilities, policies that address their specific needs, ensuring access to sexual and reproductive health services, protection from gender-based violence and opportunities for education and employment;
 - (r) Include the perspectives and needs of Indigenous persons with disabilities in the adoption of climate change mitigation and adaptation strategies;
 - (s) Provide the financial means necessary to develop accessible technologies and infrastructure that enhance the full participation and inclusion of Indigenous persons with disabilities in social, economic and political life. Ensure the availability of information in Indigenous languages and the accessibility of communication formats, particularly in health care, education and public services.

91. The Special Rapporteur recommends that businesses, donors and investors, including international development and finance institutions:

- (a) Include Indigenous persons with disabilities in regulatory frameworks on human rights due diligence that require the identification, prevention, mitigation and accounting for any human rights risks for Indigenous persons of disabilities of business or development projects. That includes assessing the potential social, environmental and cultural impacts of projects, as well as the human rights track record of project proponents and partners from the perspective of the rights of Indigenous Peoples and the rights of persons with disabilities;
 - (b) Secure the free, prior and informed consent of Indigenous Peoples before enacting or funding any projects that may affect their rights, including their rights to lands, territories and resources. Provide the resources necessary to support the full and effective participation of Indigenous persons with disabilities in all consultation processes;
 - (c) Require and conduct comprehensive and independent human rights and environmental impact assessments of business and development projects on Indigenous lands and resources on Indigenous persons with disabilities;
 - (d) Provide targeted training to staff and incentives for organizational learning to better understand and include the rights of Indigenous persons with disabilities in business and development projects due diligence and monitoring reports and documents.
92. The Special Rapporteur addresses the following recommendations to United Nations human rights mechanisms and entities:
- (a) The Committee on the Rights of Persons with Disabilities should develop a general comment on Indigenous persons with disabilities, in close consultation and cooperation with Indigenous Peoples;
 - (b) The United Nations and its bodies, funds and programmes should include the rights of Indigenous persons with disabilities in their respective areas of work;
 - (c) The United Nations and its bodies, funds and programmes should support the creation, strengthening and capacity-building of organizations of Indigenous persons with disabilities.

2. Mobile Indigenous Peoples, A/79/160, 16 July 2024

III. Mobile Indigenous Peoples

4. Mobile Indigenous Peoples are a distinct subset of Indigenous Peoples who self-identify as Indigenous under international law. Moving and changing residence strategically within extensive homelands, they typically occupy fragile ecosystems of high ecological value. Mobile peoples' lifestyles and livelihoods often depend on long-term cyclical patterns of subsistence, the use of common resources and management strategies that maintain biodiversity. They live on every continent and in all landscapes, including oceans, seas, rivers, mountains, grasslands, forests and deserts. The designation mobile Indigenous Peoples generally describes the specific subgroups of Indigenous Peoples mentioned below in terms that are sometimes used interchangeably.
5. The present report adopts the terminology "mobile" Indigenous Peoples over "nomad". Although "nomad" is still used and is being reclaimed as a form of empowerment, it may have negative connotations to a rootless population with no fixed identity, reflecting experiences of discrimination, marginalization and persecution.

6. The present report does not distinguish between pastoralists and herders. Pastoralists engage in the seasonal and regular movement of people with their livestock between geographical or climatic regions.⁵ Pastoralists and herders follow pasture and water over vast distances, year after year, taking advantage of seasonal variability to conserve and utilize resources to their fullest capacity. Not all pastoralists engage in transhumance (the seasonal droving of livestock), rather they may move herds short distances or follow irregular patterns of movement. Hunter-gatherers live by hunting, fishing and harvesting wild foods. Sea nomads and seafarers are marine-maritime-based Indigenous Peoples whose mobility spans over waters rather than lands. Sea nomads' subsistence livelihoods derive from sea and marine ecosystems, including spearfishing, gathering marine and forest products, and hunting coastal animals.
7. Many Indigenous Peoples living in voluntary isolation and initial contact move seasonally for sustenance, resources and rituals, reflecting deep material, social, cultural and spiritual ties to their territories. The physical and cultural survival of Indigenous Peoples living in voluntary isolation and initial contact is strongly linked to their territories. Indigenous Peoples living in voluntary isolation avoid external contact outside their communities, whereas Indigenous Peoples in initial contact are those who were previously living in isolation, before factors brought them into contact with the majority population. To identify the presence of Indigenous Peoples living in voluntary isolation and initial contact without exposing them to contact, specific studies must be carried out, which are scarce. The lack of data and studies is used to deny their presence and allow economic activities in their territories. While there are studies that indicate the presence of at least 40 Indigenous Peoples in voluntary isolation in Papua New Guinea, as well as some presence in India, Indonesia and Malaysia, among others, it is likely that a high number of Indigenous Peoples living in voluntary isolation and initial contact have not been identified. Their presence in Africa is not excluded, but reliable records are lacking. In America, "it is impossible to know how many indigenous peoples or persons remain in isolation, but some calculations refer to some 200 peoples and approximately 10,000 persons".

VI. Conclusions and recommendations

91. Mobile Indigenous Peoples experience multiple and systemic forms of discrimination and human rights violations on the basis of negative stereotypes about their mobile lifestyles, therefore their rights are often not protected under States' legal and policy frameworks.
92. Land insecurity remains at the heart of all inequalities for mobile Indigenous Peoples, including their lack of participation in decision-making processes. Increasing their participation not only requires that customary land tenure rights be secured, but also that mobility not be seen as problematic or subject to the control of other land users. Mobile Indigenous Peoples are rarely guaranteed political representation, which makes it difficult for them to engage in decision-making at the national, regional and local levels. Most States have failed to recognize their identity, Indigenous knowledge, governance institutions, legal systems, collective land administration and food systems in constitutions, laws and policies. Barriers to participation in political, social and economic life have a negative impact on mobile Indigenous Peoples' ability to access basic services such as education, health care and housing, which are not always compatible with their mobile lifestyles.

93. When States fail to recognize the collective identity, territorial rights and governance structures of mobile Indigenous Peoples, their lands are vulnerable to expropriation and exploitation, thereby violating their rights to self-determination, self-government and autonomy, among others. The ability of mobile Indigenous Peoples to travel throughout their territory is critical to their cultural identity, livelihoods, food security and physical survival. Those who defend their lands may be subjected to arbitrary detention, ill-treatment, extrajudicial killings and enforced disappearances. In many cases, the perpetrators operate with impunity and there is no restitution or reparations for the loss of lands, territories and resources.
94. Security of land tenure for mobile Indigenous Peoples is a key factor in enabling biodiversity conservation, sustainable land management and ecosystem restoration and in combating desertification. Mobile resource use, including hunting, gathering, rotational forest fallows, transhumance, herding and land-sharing, more often enhances rather than diminishes biodiversity and ecosystem resilience. As seasonal variability and unpredictability are exacerbated by climate change, the need for flexible mobility is critical.
95. Special attention should be paid to the situation of transboundary mobile Indigenous Peoples whose ancestral territories span national borders, as they encounter discrimination, displacement, a lack of recognition, restricted movement and limited access to basic services. The right to citizenship of sea nomads is particularly complicated and often denied by land-bordered States. Cross-border tensions can expose mobile Indigenous Peoples to armed conflicts, harassment from border security forces and other human rights abuses. Indigenous Peoples living in voluntary isolation and initial contact also face great challenges, including the risk of extinction, that require targeted responses by States.
96. The Special Rapporteur makes the following recommendations to be implemented in cooperation, coordination and with the participation of mobile Indigenous Peoples.
97. The Special Rapporteur recommends that States:
 - (a) Recognize mobile Indigenous Peoples' unique legal status. In the case of Indigenous Peoples living in voluntary isolation and initial contact, such recognition should include their unique legal status and recognition processes should employ non-invasive methodologies, sufficient resources and respect for precautionary and no-contact principles;
 - (b) Adopt appropriate measures to guarantee the rights to consultation and to free, prior and informed consent before adopting any legislation, policy or project that may impact mobile Indigenous Peoples; particular attention should be given to the participation of Indigenous women;
 - (c) Provide adequate resources to guarantee mobile Indigenous Peoples' full political participation, at all levels, by recognizing their institutions, legal systems, knowledge and patterns of mobility; and avoid imposing political structures that favour sedentarization and undermine Indigenous governance;
 - (d) Eliminate barriers to voting by reviewing and revising documentation and identification criteria for voter registration, regardless of residence, so as to accommodate the specific needs of mobile Indigenous Peoples, by making voter information available in Indigenous languages, hiring Indigenous poll workers and providing adequate accommodations for voting in remote areas;

- (e) Provide security of land tenure that recognizes and supports communally held and collective systems of land management and different forms of mobility; and adopt legal frameworks, in consultation with mobile Indigenous Peoples, that recognize and protect shared use resources and management systems;
- (f) Review the criteria for land titling and demarcations so as to adjust to the specific needs of mobile Indigenous Peoples; provide training to officials who oversee titling and demarcation processes on the rights of mobile Indigenous Peoples;
- (g) Establish intangible zones for Indigenous Peoples living in voluntary isolation and initial contact, where outsider access and economic activity are forbidden, as well as buffer zones surrounding them, where economic activity and access are permitted with protection measures;
- (h) Provide restitution for land dispossession and displacement through the return of lands, and where not possible, the provision of alternative lands, or fair and equitable compensation;
- (i) Ensure full and fair compensation for environmental damage caused by megaprojects and other activities;
- (j) Enact laws, policies and other safeguards, in compliance with international law, to protect against forced eviction and induced sedentarization, including through the provision of access to effective judicial recourse, restitution and fair compensation;
- (k) Consult and obtain free, prior and informed consent before adopting and implementing any projects that may affect mobile Indigenous Peoples;
- (l) Ensure that mobile Indigenous Peoples have the right to self-manage or co-manage communal lands within national parks, heritage sites and other protected areas; and support Indigenous-led conservation and tourism projects;
- (m) Design and implement, in consultation with mobile Indigenous Peoples, measures to protect marine ecosystems that accommodate the cultural needs and migration routes of sea nomads;
- (n) Design long-term projects in consultation with Indigenous Peoples to protect mobile ways of life and integrate them into States' development plans;
- (o) Develop climate adaptation strategies that enhance the resilience of mobile Indigenous Peoples, taking into account their dependency on natural resources;
- (p) Adopt a moratorium on the carbon market until the establishment of regulations in accordance with international legal standards on mobile Indigenous Peoples' rights; those regulations should govern the trading of carbon credits, thereby ensuring transparency and accountability in certification and implementation;
- (q) Strengthen legal protections for mobile Indigenous Peoples against arbitrary detention, extrajudicial killings and enforced disappearances and ensure accountability for these violations;
- (r) Harmonize national laws to protect the rights of mobile Indigenous Peoples who move across borders, recognizing their multi-nationality and collective rights to lands, territories and resources;
- (s) Address statelessness among mobile Indigenous Peoples by ensuring access to civil registration and plurinational citizenship, among other measures;
- (t) Facilitate and expedite bilateral and multilateral agreements to ensure the mobility of Indigenous Peoples across borders;

- (u) Develop strategies to mitigate the impact of inter-State and interstate conflicts on mobile Indigenous Peoples, including measures to ensure protection from armed conflict, human smuggling, drug trafficking, child military recruitment, forced displacement and harassment by border security forces;
 - (v) Adopt transitional justice and post-conflict policies that engage mobile Indigenous Peoples, that reflect their concepts of justice and reconciliation and that ensure accountability for violations suffered;
 - (w) Collect data disaggregated by gender, age and disability so as to safeguard the rights of mobile Indigenous Peoples and to inform the development of appropriate legislation, policies and services;
 - (x) Address infrastructure gaps in remote areas by providing culturally appropriate mobile schooling and medical services, without requiring settlement in fixed locations and regardless of nationality or stateless status;
 - (y) Adopt policies in consultation with mobile Indigenous Peoples that address their specific needs, reflecting cultural and territorial requirements to prevent socioeconomic marginalization;
 - (z) Develop a comprehensive approach to education that includes equitable access, infrastructure investment and tailored technology;
 - (aa) Provide targeted support for those migrating to or forcibly relocated to urban areas, including language assistance, culturally relevant education, access to traditional foods and measures to combat discrimination;
 - (bb) Support sustainable livelihoods by protecting and promoting mobile Indigenous Peoples' practices and knowledge and creating economic opportunities that are aligned with their skills and cultural heritage.
98. The Special Rapporteur recommends that the United Nations and regional and intergovernmental bodies:
- (a) Update the guidelines for the protection of Indigenous Peoples in isolation and initial contact in order to expand the geographical focus and to address the specific situation of Indigenous Peoples in initial contact;
 - (b) Update the African Union Policy Framework for Pastoralism of 2010 to reflect contemporary challenges including climate change, fortress conservation and armed conflict;
 - (c) Encourage international and regional cooperation to uphold the rights of mobile Indigenous Peoples, through the sharing of best practices and supporting cross-border mobility and access to fundamental rights.
99. The Special Rapporteur recommends that the private sector:
- (a) Adopt policies and guidelines on mobile Indigenous Peoples' rights that are consistent with international human rights standards;
 - (b) Follow human rights due diligence processes aimed at identifying, preventing, mitigating and redressing the actual or potential impact on mobile Indigenous Peoples' human rights, including through the implementation of measures to prevent and redress harm;
 - (c) Ensure that mobile Indigenous Peoples are correctly identified and recognized, based on the principle of self-identification, in order to secure their free, prior and informed consent before adopting projects that may affect their lands, territories, resources and livelihoods;

- (d) Adapt existing and future carbon crediting and certification schemes in order to comply with international legal standards on mobile Indigenous Peoples' rights.

3. Visit to Denmark and Greenland, A/HRC/54/31/Add.1, 11 September 2023

I. Introduction

1. In the present report, the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, reviews the situation of the Inuit Indigenous Peoples in Denmark and Greenland (Kalaallit Nunaat), drawing on the information that he received in the context of his visit from 1 to 10 February 2023. He thanks the Governments of Denmark and Greenland for having invited him and for their excellent cooperation.

IV. Conclusions and recommendations

90. The Special Rapporteur welcomes the openness and cooperativeness of the Governments of Denmark and Greenland. He emphasizes the unique implementation model of the right to self-determination of Indigenous Peoples by Greenland and Denmark, reflected in the self-governance of Greenland, and looks with interest at the constitutional discussions in Greenland and their further developments, in particular concerning the implementation of international human rights standards in relation to Indigenous Peoples.
91. The Inuit people in Denmark and Greenland still face many challenges in fully enjoying their individual and collective rights. Structural racism against Inuit people is often the result of the legacy of colonialism and the lack of policies and remedies to address it. The Special Rapporteur considers it a priority for the Governments of Denmark and Greenland to embrace a process to achieve truth and reconciliation, with the full participation of Inuit people in Denmark and Greenland, in the design of effective remedies and policies.
92. The Special Rapporteur recommends that Denmark and Greenland take the actions set out below, within their fields of competence, in collaboration, cooperation and consultation with Indigenous Peoples.

Institutional and legal framework

93. The Special Rapporteur recommends that, within their fields of competence, Denmark and Greenland:
 - (a) Withdraw the territorial exclusions to the following international treaties: the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Paris Agreement and the Aarhus Convention and give them prompt and full implementation;
 - (b) Implement fully the right to self-identification and withdraw the declaration made in connection with the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), in which Denmark considers Inuit in Greenland the only Indigenous People in the sense of the Convention;
 - (c) Implement the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the United Nations Declaration on the Rights of Indigenous Peoples to ensure that Inuit fully enjoy the rights under these instruments in Denmark and Greenland and strengthen knowledge, at all levels of the government, administrative and judicial systems, of the international human rights of Indigenous Peoples in Greenland and Denmark;

- (d) Collect disaggregated data on Inuit people in Denmark and Greenland to inform legislation, policy and programmes in all fields, including education, health, justice, gender equality, violence against Indigenous women and children, equality for persons with disabilities, and prison and probation services.

Inuit Greenlanders in Denmark

94. The Special Rapporteur recommends that Denmark:

- (a) Review urgently the procedures for out-of-care assessments in relation to Inuit children from Greenland; ensure that relevant legislation is made available in Greenlandic; address structural prejudices within social authorities by strengthening training for staff; and, in particular, strengthen interaction with Inuit community organizations in Denmark in order to establish and support more Inuit foster families in Denmark. Specifically, the Special Rapporteur urges Denmark to explicitly adopt procedures, as has been done in other countries, that give priority placement of Indigenous children in foster homes within their communities over non-Indigenous placements;
- (b) Review Danish school curricula at all levels to incorporate the teaching of Inuit history, culture, sciences and world views; and strengthen dialogue with Inuit student associations in Denmark in order to consult them on the design of measures to increase retention rates among Inuit students;
- (c) Collect statistics on the number of Inuit children living in Denmark and their access to education in their mother tongue and take appropriate and effective measures, including online education, to guarantee them effective access to mother-tongue education;
- (d) Ensure effective, accessible and adequate remedies to address discrimination and racism against Greenlanders by Danish authorities; guarantee that the composition of the Board of Equal Treatment (Ligebehandlingsnævnet) and the National Social Appeals Board (Ankestyrelsen) is representative of the diversity of the population; and seek to include members and perspectives from Greenland;
- (e) Support the creation of a representative forum for Greenlanders in Denmark, which could present their concerns and play an advisory role in the development and review of policies and programmes that affect them;
- (f) Ensure access to interpretation and translation of relevant documents in Greenlandic when in contact with Danish authorities and provide intercultural diversity competency training, including knowledge of Indigenous Peoples' rights, for staff working in health, education and social services, the police, the judiciary and prisons in Denmark in order to combat biases and racism;
- (g) Ensure interpretation in Greenlandic languages before judicial authorities and translation of information regarding laws and judicial procedures and train legal personnel on international human rights standards on Indigenous Peoples.

Impact of colonization on Inuit people in Greenland and reconciliation measures

95. The Special Rapporteur recommends that, within their fields of competence, Denmark and Greenland:

- (a) Provide adequate financial and human resources to carry out, without further delay, the impartial investigation into the historical relationship between Denmark and Greenland and the investigation into the use of IUDs; guarantee

the full participation and consultation of Inuit people, in particular Indigenous women, in the definition of the mandate, procedure and terms of reference of these two mechanisms, as well as in the design of effective and culturally appropriate means of reconciliation and redress in Denmark and Greenland; and ensure a focus on human rights and the rights of Indigenous Peoples in ongoing and future historical investigations;

- (b) Extend the scope of the investigation into IUDs to include cases after 1991.

Right to self-determination and self-governance

96. The Special Rapporteur recommends that, within their fields of competence, Denmark and Greenland:

- (a) Strengthen education at all levels, including higher and professional education and education in Greenlandic languages, to train the necessary professionals in all relevant fields, including health, justice and social services; and review the school curricula at all levels to incorporate the teaching of Inuit history, culture, sciences and world views;
- (b) Consult in good faith and obtain free, prior and informed consent before adopting legislation, action plans or administrative acts that may affect Inuit communities;
- (c) Provide adequate and culturally appropriate information in Greenlandic languages to Inuit people, including in the north and east, on international standards on the rights of Indigenous Peoples, including the right to self-identification.

Impact of development projects

97. The Special Rapporteur recommends that Greenland:

- (a) Consult in good faith with Inuit communities and obtain their free, prior and informed consent before adopting any project that may affect them, including tourism, mining and conservation projects;
- (b) Ensure that environmental and social impact assessments comply with international human rights standards on Indigenous Peoples and guarantee that Inuit people receive information in their languages and in a culturally appropriate manner;
- (c) Provide access for all Inuit communities adversely affected by development projects to effective remedies and accountability mechanisms, including access to judicial forums to dispute claims, and concrete and timely assistance to mitigate adverse environmental and cultural consequences;
- (d) Take appropriate steps to implement the Guiding Principles on Business and Human Rights and consider the entry into force in Greenland of the Danish Act on the Mediation and Complaints-Handling Institution for Responsible Business Conduct.

Military activities and pollution

98. The Special Rapporteur recommends that Denmark:

- (a) Provide, in close cooperation with Greenland, adequate financial and human resources to identify and remove all military waste left in Greenland and prevent environmental pollution and health risks to its population;

- (b) Provide, in accordance with international human rights standards on Indigenous Peoples, adequate and culturally appropriate remedies for the forced displacement of Inughuit people due to the construction and expansion of the Thule Air Base.
99. The Special Rapporteur recommends that Greenland ensure that information on pollution and adequate forms of waste management, including potential options for reducing exposure to toxic substances, is made available and accessible to Inuit communities.
100. The Special Rapporteur recommends that Denmark and Greenland consult in good faith and obtain the free, prior and informed consent of the Inuit people before adopting decisions on the presence of foreign military forces, military activities and storage or disposal of hazardous materials in Greenland.

Climate change and conservation measures

101. The Special Rapporteur recommends that Greenland:
- (a) Ensure Inuit people meaningfully and effectively participate in decision-making related to the environment, disaster risk reduction and climate change; and promote equal opportunities for Indigenous women and girls in the participation process and decision-making;
 - (b) Carry out consultations and seek the free, prior and informed consent, as a prerequisite, of Inuit people affected by the establishment or extension of protected areas and ensure the full participation of Inuit in the management, administration and control of protected areas;
 - (c) Provide adequate funding and support to revitalize and protect Inuit practices, including the use of sled dogs.

Access to justice in Greenland

102. The Special Rapporteur recommends that, within their fields of competence, Denmark and Greenland:
- (a) Provide adequate human and financial resources for
 - (i) reaching remote settlements;
 - (ii) training judicial personnel on international standards on Indigenous Peoples;
 - (iii) training qualified interpreters and translators, including in North and East Greenlandic;
 - (iv) providing digitalization, communications technology and personal data security;
 - (v) reducing case processing times by the police and the courts, especially in cases involving children; and
 - (vi) providing adequate mental health support in the prison system;
 - (b) Strengthen educational opportunities, including the law programme at the University of Greenland, to overcome the structural imbalance of the justice system in Greenland and increase the presence of Inuit at all levels thereof; ensure that the Inuit legal tradition is included in the curriculum of the law programme; and give preference to Greenlandic as the primary language of instruction;
 - (c) Adopt adequate social policies to target poverty and social marginalization as root causes of the high rates of incarceration and recidivism in Greenland;

strengthen resocialization measures in all prisons; and offer out-of-prison activities;

- (d) Clarify the status and mandates of administrative structures within central government, provide effective and accessible remedies, strengthen the healthcare system in Greenland to reduce the wait for mental health examinations and offer appropriate health-care facilities for inmates;
- (e) Extend the mandate and guarantee the independence of the Human Rights Council of Greenland so as to receive complaints of human rights violations and independently investigate them.

Gender equality and violence against women and children

103. The Special Rapporteur recommends that Greenland:

- (a) Promote the meaningful and informed participation of Indigenous women and girls in political and public life at all levels, including in decision-making positions, which may include temporary positive measures;
- (b) Increase efforts to combat child sexual abuse and violence, as well as impunity, including by developing and conducting long-term educational and awareness-raising programmes and campaigns on preventive measures;
- (c) Secure the availability of child- and gender-sensitive, confidential and safe counselling, reporting and complaint mechanisms in order to address incidents of sexual abuse and violence.

Children

104. The Special Rapporteur recommends that Greenland:

- (a) Ensure that adequate resources are assigned for the implementation of the national action plan on compliance with the Convention of the Rights of the Child and that it is put in place through collaboration with municipal authorities, civil society, the National Advocacy Centre for Children's Rights, the United Nations Children's Fund and the children's advisory board in Greenland (Nakuusa); reach remote Inuit settlements and, in coordination with them, design culturally appropriate intervention measures in the framework of the national action plan, in order to ensure local ownership; and provide culturally appropriate mental health treatments and develop measurable indicators;
- (b) Dedicate more resources to mental health care, including preventive measures, and strengthen the inclusion of child and youth perspectives and coordination with municipal authorities. The national strategy on the prevention of suicide needs to address root causes and ensure the development of measurable indicators;
- (c) Provide adequate resources to strengthen the role of the National Advocacy Centre for Children's Rights; (d) Strengthen the quality of education and education in Inuit languages to support the intergenerational transmission of Inuit knowledge, culture, hunting and food practices;
- (e) Dedicate more resources to children's rights as children and young persons are its most valuable asset.

Housing

105. The Special Rapporteur recommends that Greenland:

- (a) Adopt a holistic approach to the implementation of the government strategy on homeless persons, taking into account interlinkages with social services, health, education and employment, assign adequate resources and define indicators in order to evaluate its effectiveness;
- (b) children. Pay particular attention to the consequences that housing policies have on Persons with disabilities 106. The Special Rapporteur recommends that Greenland: (a) Implement effective monitoring mechanisms to ensure the safety and rights of persons in residential care institutions; (b) Adopt and implement, in consultation with all relevant stakeholders, a disability action plan with adequately assigned resources and clear indicators; (c) Support appropriate and innovative solutions by Greenland, such as the use of sled dogs for rehabilitation, as this would serve multiple purposes, including sustaining livelihoods and Inuit practices.

4. Visit to Canada, A/HRC/54/31/Add.2, 24 July 2023

I. Introduction

1. The present report contains a review of the situation of Indigenous Peoples in Canada, based on information received by the Special Rapporteur on the rights of Indigenous Peoples in preparation for and during his country visit, which was conducted from 1 to 10 March 2023, including 290 written submissions. The Special Rapporteur has also taken into account the observations made by his predecessors in 2004 and 2014, communications issued by mandate holders and the recommendations of other international and regional human rights mechanisms and bodies. The Special Rapporteur aims to provide relevant information and updates on the human rights situation of Indigenous Peoples in Canada, and concrete recommendations to address existing gaps.

V. Conclusions and recommendations

86. The Government of Canada has made significant progress over the 10 years since the previous visit of the Special Rapporteur, through the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act and other important measures. The Special Rapporteur commends the Government for its proactiveness on Indigenous issues in international forums, its constructive collaboration during the visit and its open acknowledgment of remaining challenges. Canada can serve as an example for other countries with regard to acknowledging the historical and ongoing harms against Indigenous Peoples and to advance reconciliation. It is laudable that Canada has taken many important steps to advance Indigenous Peoples' rights. Regrettably, the most significant achievements are often acquired through court decisions or case settlement rather than implementation of governmental policies, and these advances are ultimately the result of Indigenous Peoples' strong determination and unabated courage to defend their rights.
87. The Government must address, as a priority, the deep-set, systemic and structural racism affecting Indigenous Peoples and, without further delay, put into practice the calls issued by the Truth and Reconciliation Commission, the National Inquiry into Missing and Murdered Indigenous Women and Girls and other thematic commissions. Implementation of these recommendations is vital to gain the trust of Indigenous Peoples in Canada and to maintain constructive and collaborative dialogues. If political commitments are not followed by concrete actions with lasting impacts on Indigenous Peoples' lives, the country's perceived progressiveness at

the international level will be questioned. Indigenous Peoples are asking Canada to respect their Nation-to-Nation relationships, treaties and self-government agreements and to ensure their full and equal participation in decisions that affect their rights, title and interests. Canada has embarked on an important journey towards reconciliation that must dismantle the foundation of structural racial discrimination against Indigenous Peoples.

88. The Special Rapporteur recommends that Canada take the following actions in respect of collaboration, cooperation and consultation with Indigenous Peoples, including representatives of non-status and off-reserve people. Legal and institutional framework 89. Canada should:

- (a) Encourage all provinces and territories to incorporate the provisions of the United Nations Declaration on the Rights of Indigenous Peoples into binding legislation and establish a commemoration day of truth and reconciliation;
- (b) Set up an independent Indigenous-led human rights mechanism in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to monitor and enforce the implementation by Canada of the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples Act,
- (c) Review and amend all relevant laws to ensure they align with the State's domestic and international obligations towards Indigenous Peoples and remove any existing legal barriers to the effective exercise of Indigenous self-government;
- (d) Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and the American Convention on Human Rights.

Residential schools

90. Canada should:

- (a) Take measures to ensure full access to information and support Indigenous data sovereignty for survivors and families of missing children who attended residential schools; the Catholic Church, health-care facilities and any other institutions holding relevant records are encouraged to disclose death certificates and other forms of documentation;
- (b) Pass legislation and take other measures necessary to preserve residential school records set for destruction in 2027 by Supreme Court order;
- (c) Fully support Indigenous Peoples' calls for survivor-centred, Indigenous-led investigations into residential school burial sites, including those located on private lands, to mitigate against further harm in accordance with Truth and Reconciliation Commission Call to Action 76, and respect Indigenous Peoples' laws and protocols related to grieving, death and burial practices in any investigation of residential school burial sites;
- (d) Counter denialism and misinformation about residential schools with ongoing public education and awareness-raising campaigns;
- (e) Fully resolve all residential school claims, including for all church-run institutions and residential schools established by provinces, as well as the claims of Métis survivors and their families, reopen the claims process for those excluded from the initial settlements, and fund culturally relevant supports

to address intergenerational trauma that include support to Indigenous-led health initiatives and from health-care professionals specialized and trained in the needs of Indigenous Peoples, giving priority to qualified Indigenous professionals;

- (f) Pass legislation to protect Indigenous Peoples' human remains, funerary objects, sacred objects and objects of cultural patrimony found on federal, provincial, territorial, municipal, church or private lands.

Child welfare system

91. Canada should:

- (a) Adopt holistic legal and administrative reforms to address the root causes of Indigenous children's overrepresentation in the child welfare system, including racial discrimination, poverty, inadequate housing and the lack of culturally appropriate interpretations of the best interests of the Indigenous child;
- (b) Implement the recommendations of the Committee on the Rights of the Child to ensure that Indigenous children in care are able to preserve their identity, by adopting legislative and administrative measures to protect their rights to identity, name, culture and language, and culturally appropriate education.

Missing and murdered Indigenous women and girls

92. Canada should:

- (a) Develop a joint action plan to advance implementation of the National Inquiry's 231 calls to justice, along with a comprehensive and coordinated national violence prevention strategy for Indigenous women and girls, and hold an inquiry into missing and murdered Indigenous boys and men;
- (b) Implement the recommendation of Committee on the Elimination of Racial Discrimination to establish an independent review mechanism for unsolved cases of missing and murdered Indigenous women and girls where there is evidence of bias or error in the investigation, including through the creation and funding of a national investigative taskforce to review or reopen unresolved investigations;
- (c) Provide core sustainable funding for Indigenous women's centres, shelters, transitional housing, treatment facilities and other safe spaces, including culturally relevant, comprehensive health-care support;
- (d) Increase funding and resources to develop culturally appropriate programmes and services for men and boys to address the intergenerational trauma and abuse suffered by Indigenous men that contributes to the many types of violence experienced by Indigenous women and girls.

Gender-based discrimination in the Indian Act

93. Canada should:

- (a) Implement the recommendations of the Standing Senate Committee on Indigenous Peoples to repeal section 6(2) of the Indian Act (the "second generation cutoff"), which reduces the number of individuals with status; to repeal non-liability clauses in the amendments to the Act, in order to allow First Nations women and their descendants who were denied status to be compensated; and to develop plain language materials in Indigenous languages and the country's official languages to explain the eligibility and the registration process;

- (b) Support registration by women and their descendants newly eligible for status through a streamlined, easily accessible process; and create an affordable, reliable, timely and accessible remedy to compensate those who have suffered the effects of discrimination.

Overincarceration and access to justice

94. Canada should:

- (a) Address the concerns of human rights treaty monitoring bodies and special procedures with regard to providing human rights training to all legal, correctional and law enforcement professionals;
- (b) Provide Indigenous prisoners with access to culturally appropriate programming and services, including by strengthening the role of Elders in correctional plans, addressing the specific needs of gender-diverse prisoners, ensuring that independent grievance mechanisms are in place and not subjecting prisoners to reprisals for filing reports of abuse by staff at correction facilities;
- (c) Ensure that any imposition of administrative segregation complies with the Nelson Mandela Rules;
- (d) Resort, wherever possible, to alternatives to detention enabling Indigenous persons to serve sentences in their communities; encourage, appropriately fund, and raise awareness about the use of alternatives to incarceration as provided by the United Nations Declaration on the Rights of Indigenous Peoples Act and sections 81 and 84 of the Corrections and Conditional Release Act; and guarantee that Indigenous-operated healing lodges established under section 81 are independent in providing correctional services;
- (e) Continue to expand the Aboriginal Justice Strategy and strengthen Indigenous legal systems, restorative justice programmes and healing lodges and culturally appropriate victim and offender treatment programmes.

Treaties and self-government agreements

95. Canada should:

- (a) Support an Indigenous-led process to develop new federal policies and legislation addressing the recognition and implementation of treaty rights to land title, and legal jurisdiction;
- (b) Honour the treaties entered into with Indigenous Peoples and establish effective, transparent bilateral processes with the full participation of Indigenous Peoples to resolve conflicts, ensure implementation, and settle disputes concerning land, water, food, health, consent and other rights affirmed in those treaties;
- (c) Guarantee in law and in practice the right to free, prior and informed consent, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international standards, including the treaties concluded with Indigenous Peoples.

Impact of business activities and climate change on Indigenous Peoples

96. Canada should:

- (a) Develop a national action plan on business and human rights;
- (b) Recognize the extraterritorial human rights obligations of Canadian companies operating abroad and ensure that they are held accountable for human rights violations committed in other countries, including against Indigenous Peoples;

- (c) Adopt human rights and environmental due diligence legislation to require companies to proactively prevent violations of human rights, including rights contained in the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) Establish mechanisms to ensure that government support to companies, including political and commercial support by embassies and financing through Export Development Canada, is conditional on respect for international human rights and environmental standards, including the Declaration;
- (e) Reform the office of the Canadian Ombudsperson for Responsible Enterprise to ensure that it is fully independent, and strengthen its mandate by granting it full investigatory powers, establish effective safeguards to protect Indigenous petitioners from reprisals and create greater awareness of the mechanism;
- (f) Adopt a rights-based approach to the establishment or expansion of existing protected areas and conduct meaningful consultations with Indigenous Peoples to obtain their free, prior and informed consent when their rights are affected;
- (g) Provide support and adequate funding for Indigenous-led initiatives related to biodiversity conservation, climate resiliency and environmental disaster mitigation; (h) Implement existing commitments to remediate mercury contamination in the Grassy Narrows First Nation and take immediate measures to address its ongoing impacts on the community's health and well-being, including compensation for the mercury contamination and other environmental harms;
- (i) Suspend large-scale mining and other business activities in the Ring of Fire region and cease construction or operation of the Coastal GasLink, Trans Mountain and Line 5 pipelines, until the free, prior and informed consent of the Indigenous Peoples affected is secured;
- (j) Implement the Impact Assessment Act in consultation and coordination with affected Indigenous Peoples and respect impact assessments conducted by Indigenous Peoples according to their own laws and protocols with regard to business activities and projects affecting them;
- (k) Halt the criminalization of Indigenous human rights defenders peacefully defending their lands and resources from extractive industries and other business actors.

Economic, social and cultural rights

97. Canada should:

- (a) Provide support and adequate funding for targeted Indigenous health, education, housing and social services programmes so that Indigenous Peoples can implement their own culturally relevant programmes;
- (b) Adopt, promulgate and monitor national accessibility standards for Indigenous persons with disabilities, and ensure the accessibility of housing and social services within Indigenous Peoples' communities;
- (c) Take the steps necessary to promote language recovery, conservation and revitalization;
- (d) Investigate the practice of forced sterilization and other forms of obstetric violence towards Indigenous women to establish policies and accountability mechanisms and provide victims with full remedy, including compensation;

- (e) Adopt “Joyce’s Principle” to guarantee all Indigenous Peoples the right of equitable access, without discrimination, to all social and health services, as well as the right to enjoy the highest attainable standard of physical, mental, emotional and spiritual health in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.

5. Green financing, A/HRC/54/31, 21 July 2023

III. Green financing and the rights of Indigenous Peoples

A. Background

4. The Special Rapporteur presents his report on green financing to update and build on the findings of previous work conducted by the mandate on the topic of climate finance,¹ international investment agreements and protected areas, with a focus on the accountability of financial actors. The Special Rapporteur compiled the report with information collected during his academic and official visits, as well as the submissions provided in response to a questionnaire addressed to States, international finance institutions, Indigenous Peoples’ organizations and non-governmental organizations (NGOs), meetings with individual experts and a consultation held with Indigenous Peoples’ representatives on 26 May 2023.
5. Green financing involves loans and investments for projects, programmes and initiatives that promote environmental sustainability and climate action. Green financing, as defined by the United Nations Environment Programme (UNEP), “is to increase the level of financial flows (from banking, micro-credit, insurance and investment) from the public, private and not-for-profit sectors to sustainable development priorities”. Green financing is critical to achieving the Sustainable Development Goals and the targets set by agreements under the United Nations Framework Convention on Climate Change and the Kunming-Montreal Global Biodiversity Framework adopted at the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity.
6. The Special Rapporteur emphasizes that green financing has an important human rights dimension. The processes and associated finance to achieve the climate and biodiversity targets could have significant negative impacts on Indigenous Peoples unless the protection of their internationally recognized human rights is defined as central to successfully achieving those goals. In addition, as economic transition requires large amounts of financial flows, nature credit markets have been considered important tools to mobilize the financial resources needed to meet international environmental targets, such as the reduction in greenhouse gases and other conservation and green economy initiatives. Securing a “just transition” inclusive of respect for human rights should address the social and environmental interventions and safeguards needed to protect the rights and livelihoods of Indigenous Peoples when economies shift to sustainable development practices to combat climate change and biodiversity loss. This will ensure that those who are most affected by environmental harm do not bear the costs of the transition and that they participate in the formation of policy solutions.
7. The purpose of the present report is not to condemn or deter the financing of green projects and green market strategies but to ensure that Governments and other financial actors take all precautions to ensure their support for the much-needed transition to a green economy and that climate change action does not perpetuate the violations and abuses currently plaguing extractive and other fossil fuel-related

projects. The Special Rapporteur aims to remind Governments and other financial actors enabling the transition that many green projects and nature-based solutions are likely to occur on Indigenous lands, whether or not the land rights of Indigenous Peoples are recognized by the State, and human rights due diligence should therefore be undertaken from the outset, using a human rights-based approach that acknowledges their collective rights to land and right to self-determination.

D. International legal framework and standards

30. The United Nations Declaration on the Rights of Indigenous Peoples contains the minimum human rights standards with regard to the protection of the rights of Indigenous Peoples against any negative impact or potential impact they may experience as a consequence of a project funded by national and foreign multilateral investors, including international development finance institutions.³⁸ The right to free, prior and informed consent is emphasized throughout the Declaration, including in relation to the use of Indigenous lands (art. 32). States must provide redress where free, prior and informed consent is not implemented (art. 28). Article 29 provides for assistance programmes for Indigenous Peoples to conserve and protect the environment and productive capacity of their lands, territories and resources. Article 39 sets out the right of Indigenous Peoples to access financial and technical assistance from States and through international cooperation.

VI. Conclusions

74. The shift to green finance is necessary and urgent, and if done using a human rights-based approach it can be a source of opportunity for Indigenous Peoples to obtain funding to preserve their lands, knowledge and distinct ways of life, and to create economic opportunities that may help them to maintain and strengthen their indigenous identity. An indigenous rights-compliant form of green financing can infuse renewed hope for Indigenous Peoples' physical and cultural survival, as well as the protection of their life-sustaining resources and the natural environment upon which they depend spiritually.
75. A just green transition will require that States and other financial actors break down the power asymmetries that continue to characterize aid and development financing and involve Indigenous Peoples, Indigenous women in particular, as equal stakeholders in the finance process and foster true cooperation and solidarity. As already observed by the previous Special Rapporteur in her report on international investment agreements, in spite of increasing human rights safeguards in host countries donors and investors continue to wield the most power and exclude from decision-making those most affected by their financial decisions.
76. States, international financial institutions and the private sector play a critical role in shaping policy beyond their financial investments and must take steps to ensure that Indigenous Peoples are consulted on, consent to and meaningfully participate in the development and implementation of projects and programmes that may affect their rights and interests. By doing so, they will contribute to the promotion of a sustainable and inclusive economy that benefits all stakeholders and rights holders, including Indigenous Peoples. When investing in green projects, some funding should be targeted directly to Indigenous Peoples. This may require allocating resources to secure their land tenure and/or empowering them to directly access funding through training and other empowerment measures. At the same time, investors should make every effort, through continuing consultations, to adapt

their financing approach to be culturally appropriate for Indigenous Peoples. A successful transition to direct funding is not guaranteed through training alone but instead needs meaningful intercultural engagement with Indigenous organizations to help them build technical capacity. As many organizations are more political than technical in nature, that implies long-term funding to support technical bodies to enable the continuation of political activities.

VII. Recommendations

77. The Special Rapporteur recommends that States:

- (a) Protect Indigenous Peoples from human rights abuses by business enterprises and financial actors within their territory or jurisdiction;
- (b) Acknowledge and respect the rights of Indigenous Peoples, as enshrined in international human rights instruments, including the United Nations Declaration on the Rights of Indigenous Peoples. That includes the right to self-determination, lands, territories and resources, as well as the right to free, prior and informed consent in green finance decision-making processes that affect their lands and communities;
- (c) Guarantee the right of Indigenous Peoples to provide or withhold their free, prior and informed consent regarding green finance initiatives affecting their lands, territories and resources after a meaningful and gender-inclusive consultation process. States should ensure that Indigenous Peoples have access to relevant information, can freely express their views and make decisions without coercion or manipulation. States should recognize that free, prior and informed consent is an ongoing process, requiring ongoing consultation throughout the life cycle of a project;
- (d) Ensure that Indigenous Peoples directly and equitably benefit from green financing projects. Indigenous Peoples should be provided with access to employment opportunities, training, capacity-building programmes and business development initiatives associated with green projects. States should ensure that funding proposals include provisions for benefit-sharing mutually agreed upon with Indigenous Peoples;
- (e) Secure the land rights of Indigenous Peoples and demarcate their ancestral lands and territories to protect them from encroachment, land-grabbing and other forms of unauthorized exploitation;
- (f) Establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to seek justice and remedy in cases of human rights violations or environmental harm resulting from green financing projects;
- (g) Establish monitoring and reporting mechanisms to track the impacts of green financing projects on the rights of Indigenous Peoples, including regular consultations with the Indigenous communities affected. States should also hold project proponents accountable, in compliance with human rights standards, and require them to report periodically on the human rights and environmental impacts of green initiatives;
- (h) Adopt, in consultation with Indigenous Peoples, domestic frameworks regulating the green economy including requirements for REDD-plus initiatives, carbon markets and nature-based markets to clearly recognize and protect the rights to land, territories and resources of Indigenous Peoples and their right to free, prior and informed consent;

- (i) Allocate resources aimed at enhancing Indigenous Peoples' knowledge and understanding of green financing mechanisms, so that they can effectively participate in decision-making processes, including by giving or withholding their free, prior and informed consent in relation to green finance projects;
 - (j) Provide funding for Indigenous Peoples to hire external legal, financial and technical advisers. Provide financial and human resources to overcome infrastructure barriers that hinder access to financial mechanisms and processes for Indigenous Peoples living in remote areas;
 - (k) Provide access to information to Indigenous Peoples and ensure transparency at all levels of green finance projects.
78. The Special Rapporteur recommends that donors, investors and funders (including international development finance institutions and intergovernmental organizations):
- (a) Adopt explicit policies and guidelines for the rights of Indigenous Peoples that are aligned with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Guiding Principles on Business and Human Rights. Such policies should recognize the contribution of Indigenous Peoples to protecting the planet and provide for the protection of their rights, particularly in green operations;
 - (b) Adopt a regulatory framework on human rights due diligence, requiring recipient Governments and/or implementing partners to identify, prevent, mitigate and account for any human rights risks. That includes assessing the potential social, environmental and cultural impacts of projects, as well as the human rights track record of project proponents and partners;
 - (c) Condition funding on the adoption and application of a solid Indigenous human rights-based approach by recipient Governments and/or implementing partners on the ground;
 - (d) Ensure that Indigenous Peoples that are or could be affected by a project they are funding are correctly identified and recognized, based on the principle of self-identification, and assess their security of tenure over their collective lands, which may be affected by the project. If land rights are not properly secured and Indigenous Peoples have provided their informed consent to the project, then donors should reserve a part of their budget to support the efforts of Indigenous Peoples to secure their land rights;
 - (e) Secure Indigenous Peoples' free, prior and informed consent before funding any projects that may affect their lands, territories, resources and livelihoods. Ensure free, prior and informed consent processes are ongoing and led by experts on the rights of Indigenous Peoples and on such processes;
 - (f) Require comprehensive and independent human rights and environmental impact assessments for projects involving Indigenous lands and resources. Such assessments should be conducted in consultation with Indigenous Peoples and take their knowledge, cultural heritage and ecosystem services into account. They should include expertise on Indigenous governance structures and decision-making, as well as an analysis of potential impacts on collective land rights, irrespective of the position of host States on the issue;
 - (g) Ensure the establishment of robust mechanisms to monitor and report on the rights of Indigenous Peoples throughout the chain of intermediaries and

- implementing partners. When abuses occur, ensure Indigenous Peoples can access independent grievance mechanisms that are in line with principle 31 of the Guiding Principles on Business and Human Rights;
- (h) Ensure a direct financial flow to Indigenous Peoples by creating or redesigning flexible financing mechanisms that simplify application procedures and reporting requirements for Indigenous-led green finance initiatives and projects. Such financing mechanisms should:
 - (i) Respond to the needs and priorities for funding of Indigenous Peoples, including with regard to their self-determination, land tenure and their sense of responsibility for future generations;
 - (ii) Respect Indigenous Peoples' own decision-making processes and cooperate with their governance institutions;
 - (iii) Avoid unnecessary intermediaries, other than those requested by Indigenous Peoples themselves;
 - (i) Track all funds allocated directly to and for Indigenous Peoples in order to generate data on how much they benefit from green finance;
 - (j) Involve Indigenous Peoples in the design and implementation of funding opportunities from the outset to ensure that funding processes are responsive to their needs, priorities and aspirations, and align with their vision of sustainable development;
 - (k) Improve gender-inclusiveness by scaling up funding for Indigenous women leaders and their organizations. Foster the participation of Indigenous women and their organizations before funding decisions are made, continue their engagement throughout the project life cycle and ensure that it is led by experts on free, prior and informed consent processes;
 - (l) Increase the institutional, technical and financial capacity of Indigenous Peoples and their organizations to access and influence the financial market as it relates to conservation, clean energy transition and nature markets. Support the organizational development and project management of Indigenous Peoples and the promotion of sustainable livelihoods;
 - (m) Increase the representation of Indigenous Peoples within financial institutions, for example by adopting staff diversity and inclusion policies, establishing focal points for them, maintaining rosters of Indigenous experts, creating Indigenous advisory bodies and/or appointing social safeguard specialists. Include representatives of Indigenous Peoples in the governance of GEF and the Global Biodiversity Framework Fund to better design and administer grants;
 - (n) Provide targeted training to organizational staff and incentives for organizational learning to better integrate the rights of Indigenous Peoples;
 - (o) Improve the transparency of private foundations by publicly sharing their funding data to better align with the practice of bilateral and multilateral institutions;
 - (p) Adapt existing and future carbon crediting and certification schemes to explicitly require compliance with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples. Guarantee the full participation of Indigenous Peoples in multi-stakeholder governance organizations, including in the voluntary carbon market;
 - (q) Ensure there is Indigenous rights expertise in the validation and verification bodies and properly assess national laws, policies and practices in relation to the

rights of Indigenous Peoples to be in line with international human rights law standards. Ensure that projects proceed in a manner that respects the rights of Indigenous Peoples and are agreed to by them;

- (r) Recognize and respect the value of Indigenous Peoples' scientific and technical knowledge, practices and innovations in green finance projects. That includes incorporating Indigenous knowledge of biodiversity, the environment and sustainable resource management practices into project design and implementation.

6. Tourism and the rights of Indigenous Peoples, A/78/162, 12 July 2023

III. Indigenous Peoples and the tourism industry

3. In recent decades, community-based approaches to tourism, such as ecotourism and ethnocultural tourism, have become increasingly popular as a sustainable development approach. In the present report, the Special Rapporteur reviews the ways in which tourism both negatively affects and positively benefits Indigenous Peoples by examining the roles of States, international organizations and the private sector. He highlights examples of Indigenous-led tourism initiatives and identifies good practices to protect Indigenous Peoples' rights in that context.
4. The Special Rapporteur identified this theme after receiving reports of human rights violations in relation to tourism activities in the context of the United Nations Educational, Scientific and Cultural Organization (UNESCO) world heritage sites, game parks, luxury resorts, sporting events and other tourism projects. The report is informed by information collected during the Special Rapporteur's academic and official visits as well as inputs provided in response to a questionnaire addressed to States, United Nations agencies, Indigenous Peoples' organizations and non-governmental organizations and by consultations with Indigenous Peoples' representatives on 25 and 26 May 2023.
5. The secretariat of the Convention on Biological Diversity⁶ and the International Union for Conservation of Nature have both published guidelines on sustainable tourism, while the non-profit sector has provided guidance, standards and certification on sustainable tourism and ecotourism. In 2017, the International Labour Organization (ILO) adopted the Guidelines on Decent Work and Socially Responsible Tourism, which highlight the potential of the tourism sector for community inclusion and the need to promote equality and non-discrimination, including for Indigenous Peoples. In May 2022, the General Assembly held a high-level thematic debate on tourism, which underscored the importance of advancing a multidisciplinary, multisectoral approach to sustainable tourism by engaging all actors in designing and implementing sustainable tourism strategies and models.
6. The World Tourism Organization (UNWTO) has collaborated with Indigenous Peoples and organizations to develop guidelines and best practices for sustainable tourism that respect Indigenous Peoples' rights, including the Inclusive Recovery Guide: Sociocultural Impacts of COVID-19: Indigenous Communities and specific recommendations on sustainable development of Indigenous tourism (2019) to encourage tourism enterprises to operate in a responsible and sustainable manner while enabling Indigenous Peoples wishing to participate in tourism to benefit from its opportunities and effectively engage in the consultation process. In March, UNWTO launched the Compendium of Good Practices in Indigenous Tourism: Regional Focus on the Americas. The Compendium, developed in the context of

the World Trade Organization programme on tourism and Indigenous Peoples launched in 2017, puts forward a series of recommendations aimed at facilitating tourism development led by Indigenous Peoples and at tourists engaging in Indigenous tourism.

IX. Conclusions and recommendations

82. The tourism industry can represent an opportunity for Indigenous Peoples to strengthen their rights to autonomy, lands, territories and resources, self-development, social and economic empowerment, and protection of natural and cultural heritage, knowledge and skills. These benefits can be achieved only through the participation of Indigenous Peoples themselves in any project that affects them and by embracing a human rights-based approach to tourism. While the Special Rapporteur notes good practices promoted by States and the private sector to ensure that Indigenous Peoples can benefit from tourism projects, the existence of gross violations of human rights related to tourism shows that much work remains to be done to align due diligence and ethical standards of the tourism sector to existing human rights standards on Indigenous Peoples to ensure that the tourism sector respects human rights.
83. Negative impacts of tourism activities on Indigenous Peoples include the expropriation of their land and resources, militarization of their territory, violence against human rights defenders, commodification, loss and misuse of Indigenous culture, unfair distribution of benefits, violence against women and children and inequitable working conditions for Indigenous workers.
84. States should adopt adequate legal frameworks that recognize and protect the rights of Indigenous Peoples in the context of the tourism industry and consult with Indigenous Peoples when adopting tourism legislation and policy. When Indigenous Peoples decide to engage in the tourism sector, they should be financially and institutionally supported. The private sector working in this industry must comply with international obligations to respect the human rights of Indigenous Peoples as outlined in the Guiding Principles on Business and Human Rights. Tourism projects in Indigenous Peoples' territories must recognize the special rights of Indigenous Peoples within their own territories and their cultural practices, legal systems and sacred areas. Before decisions concerning tourism activities are taken, the affected Indigenous Peoples must be consulted to obtain their free, prior and informed consent. In addition, business operators must perform their due diligence, respect and equitably share benefits, and establish accessible remedies.
85. Indigenous-led tourism empowers Indigenous Peoples to engage in self-determined development, strengthen and revitalize Indigenous institutions and culture, generate revenues to support their social and economic growth, counter the migration of young people by offering employment opportunities and support Indigenous women's participation and entrepreneurship. In addition, interaction with tourists can generate support for community-identified needs and initiatives, exchanges that promote solidarity for Indigenous Peoples' rights, and shared values that combat racial discrimination, biodiversity loss and climate change.
86. The Special Rapporteur encourages tourists to choose Indigenous-led tourism initiatives or those with direct business relations with Indigenous Peoples and to respect Indigenous protocols and other guidelines while visiting Indigenous communities, including the taking of photographs or videos of Indigenous peoples, sacred areas, rituals and ceremonies; access to sacred locations; and participation in ceremonies and rituals.

87. The Special Rapporteur reiterates the recommendations contained in previous reports on protected areas and conservation measures (A/71/229 and A/77/238) and further recommends that States should:

- (a) Provide Indigenous Peoples with legal recognition of their lands, territories and resources; such recognition should be given with due respect for the legal systems and land tenure systems of the Indigenous Peoples concerned;
- (b) Refrain from deploying military forces in relation to tourism projects in Indigenous Peoples' traditional territory without consultation and their free, prior and informed consent;
- (c) Adopt laws and regulations in consultation with Indigenous Peoples to protect access to their knowledge, cultural expressions and cultural heritage, including regulation of collective intellectual property rights and fair and equitable sharing of benefits;
- (d) Refrain from granting tourism licences or authorizing tourism projects and infrastructure that may have an impact on Indigenous Peoples without consulting them and obtaining their free, prior and informed consent;
- (e) Ratify and implement international instruments, standards or guidelines relevant to the tourism industry and Indigenous Peoples' rights;
- (f) Develop and enforce specific legislation and other culturally adequate and gender-oriented measures to prevent illegal, abusive or exploitative tourist activities, including sex trafficking and labour exploitation;
- (g) Promote appropriate measures to inform tourists about the cultural and ecological impacts of tourism activities, including signs and interpretive displays to indicate and explain Indigenous cultural places, use of Indigenous place names, destination-specific in-flight educational videos and other materials on sustainable tourism;
- (h) Provide adequate support to Indigenous-led tourism initiatives by:
 - (i) Removing fiscal and other regulatory hurdles;
 - (ii) Reducing administrative burdens to facilitate Indigenous Peoples' access to capital and services;
 - (iii) Collecting data on Indigenous tourism to help inform the development of programmes and policies;
 - (iv) Supporting Indigenous marketing initiatives and online and social media presence to strengthen Indigenous Peoples' capacity to raise awareness about their tourism initiatives and promote their products in the tourist markets in competitive ways;
 - (v) Developing, in consultation with Indigenous Peoples, adequate infrastructures and services, such as Internet and transportation, especially in rural areas;
- (i) Undertake, in coordination and cooperation with Indigenous Peoples, initiatives to facilitate Indigenous Peoples' active participation at all levels of the tourism development process, including transparent decision-making, sharing of benefits, and awareness of the social, economic and environmental costs and benefits;
- (j) Provide adequate financial and human resources to support Indigenous women's entrepreneurship and leadership in the tourism sector, including

their participation in national and international meetings, and recognize and encourage Indigenous women's community-based tourism projects, with their full and effective participation;

- (k) Consult in good faith and obtain the free, prior and informed consent of affected Indigenous Peoples before passing laws to restrict the trade and importation of legally obtained wildlife products;
- (l) Establish criteria for inclusive conservation of biodiversity and natural resources and incorporate the limits of tourism carrying capacity, as well as programmes for waste management, water conservation and pollution control, with full respect for Indigenous spiritual activities.

88. Businesses and non-State actors should:

- (a) Respect the rights of Indigenous Peoples, in line with business responsibilities to respect human rights under the Guiding Principles on Business and Human Rights, beyond obligations under national legal frameworks and as guaranteed under ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples;
- (b) Ensure that tourism operations do not practise any form of labour exploitation, in particular of children, young people and women;
- (c) Ensure that Indigenous Peoples' labour rights are fully respected, in particular concerning Indigenous children;
- (d) Carry out good faith consultations and obtain Indigenous Peoples' free, prior and informed consent before adopting any projects that may affect them, including the planning, design and management of tourism projects, products and services, policy formulation and sharing of benefits;
- (e) Establish, in consultation with Indigenous Peoples, adequate and accessible accountability mechanisms and remedies to redress the negative effects of tourism initiatives, including the establishment of game reserves, the selling of products that reproduce Indigenous culture, and tourism infrastructures. Redress should include, where possible, the restoration of Indigenous Peoples' access to resources and the return of their land;
- (f) Support, when Indigenous Peoples so require, Indigenous Peoples-led initiatives by:
 - (i) Undertaking measures to provide flexible and favourable grants and funds to support initiatives taken by Indigenous Peoples;
 - (ii) Supporting Indigenous Peoples to engage in community-based tourism ventures and provide training to develop their own management capacities;
 - (iii) Offering mentoring and training to Indigenous communities if they wish to start new businesses and improving their supply chain, access to markets, management and hospitality skills;
 - (iv) Establishing hiring preference for Indigenous guides and training young people to become tour guides, and facilitating the mentoring of future entrepreneurs;
- (g) Develop codes of conduct to avoid the commodification of Indigenous culture and respect Indigenous Peoples' protocols on consultation, access to Indigenous knowledge and cultural heritage;

- (h) Ensure that Indigenous tourism experiences are led or controlled by Indigenous Peoples and establish, in consultation with Indigenous Peoples, a transparent and accountable mechanism of distribution of benefits and revenues generated through Indigenous tourism products, services and experiences;
- (i) Guarantee equal and fair participation of Indigenous Peoples in local, regional and national tourism planning processes that can have an impact on them;
- (j) Inform tourists of local traditions, beliefs and protocols before arriving in Indigenous communities;
- (k) Ensure that sites with restricted access for cultural practices and ceremonies are clearly understood and respected by both the guides and the tourists, whether for spiritual reasons, privacy or safety issues;
- (l) Provide Indigenous cultural awareness training for non-Indigenous tour guides; assist with the preparation of clear guidelines or codes of conduct for visitors to respect community protocols and rules; and provide tourism partners with information on the cultural specificities of Indigenous Peoples when they engage and work with the Indigenous culture, communities and businesses.

B. SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

1. Towards guiding principles on resettlement: a review and assessment of current laws, policies and practices, A/79/317, 22 August 2024

I. Introduction

1. In his thematic report on resettlement after evictions and displacement: addressing a human rights crisis (A/HRC/55/53), 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, Balakrishnan Rajagopal, issued a clarion call to address the poor outcomes and negative impacts of resettlement. He defined resettlement in the report as the relocation of a group of people, large or small, to a new location where they re-establish their habitual place of residence and rebuild their lives and livelihoods. The drivers of large-scale resettlement are diverse, such as development (e.g. unchecked use of eminent domain, urbanization including new city building, infrastructure projects, mega-events, land and housing speculation, over-commodification of land and housing, interest rates, industrial agriculture, water management, and conservation), violent conflicts, disasters and climate change. The Special Rapporteur emphasizes that all people have the right to remain in their current location, and that if they are forced to leave, they have the right to return or, if return is not feasible or desired, to resettlement that adheres to international human rights standards.
2. Although resettlement should be avoided wherever possible, it may become unavoidable in certain circumstances, especially due to conflict or climate change. However, resettlement universally has adverse effects on communities, often resulting in a range of human rights abuses and severe negative outcomes. Typical issues associated with resettlement include: (a) loss of land and access to natural resources, including common property and services; (b) increased homelessness or inadequate housing; (c) loss of access to public infrastructure, water and sanitation, education or health care; (d) cultural loss leading to alienation, status deprivation

and social disintegration; (e) loss of employment and sources of livelihood; (f) food insecurity; (g) marginalization and disruption of social networks; (h) increased morbidity, mortality and psychological impacts, including trauma; (i) heightened risk of conflict and violence with host communities; and (j) disproportionately severe impacts on vulnerable groups, including women, racial, ethnic and religious minorities, children, older persons, migrants and Indigenous Peoples. Resettlement has also been closely associated with threats to and violence against human rights defenders, as well as excessive use of force by security personnel, arbitrary detention, torture, degrading treatment and even killings of those opposing resettlement.

II. Legal and policy approaches to resettlement

A. States

...

10. State legal and policy approaches vary depending on the cause of displacement. Development-induced resettlement is often handled differently from displacement caused by conflict or disasters. Many States separate the regulation of human rights from climate change issues, complicating coordination and implementation. This fragmentation has a particular impact on marginalized groups, such as women and Indigenous Peoples, who are often adversely affected by projects such as mining. When resettlement is triggered by natural disasters or climate change, preparation and planning may focus on evacuation or retreat, but displaced individuals should have a meaningful say in their relocation and living conditions.

Examples of State legal and policy frameworks

...

21. Resettlement in conservation contexts. Conservation initiatives often overlook the realities of communities living in protected areas that are in fact protecting biodiversity, while leading to forced displacements.
22. In Thailand, the climate change master plan acknowledges community rights to forest resources, but the forestry master plan's narrow focus on carbon sinks has led to eviction orders for Indigenous Peoples. Similar issues have arisen in Cambodia and the United Republic of Tanzania concerning cultural heritage conservation (see para. 38).

C. International organizations

...

38. For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO) is obligated to uphold human rights and fundamental freedoms as outlined in article 1 of its constitution and in the Charter of the United Nations. However, UNESCO and its World Heritage Committee have faced criticism for allegedly failing to protect human rights by supporting the resettlement of Indigenous Peoples from their traditional lands under the guise of conservation. For instance, the plan by the United Republic of Tanzania to resettle 82,000 pastoralists was influenced by a World Heritage Committee report recommending measures to control population growth in the Ngorongoro Conservation Area. UNESCO denied encouraging displacement but did not condemn the resettlement plans. Similarly, mass evictions around the Angkor Wat temple have raised concerns about intimidation and violence by Cambodian authorities. UNESCO has stated that it lacks authority to enforce rights-based standards, focusing instead on policy

advice and capacity-building, but even so, it is not evident that enough effort has been taken to encourage compliance with human rights such as by establishing grievance mechanisms or accountability measures for serious human rights violations.

D. Private sector

...

41. Some companies in the extractive industry such as Vale have committed to exploring alternatives to involuntary resettlement and adhering to IFC performance standards when unavoidable. However, Vale has been criticized for not disclosing how it manages human rights policies or involves affected stakeholders. Rio Tinto aims to secure free, prior and informed consent from Indigenous Peoples before resettlement, but this requirement is contingent on local jurisdictional applicability.

III. Planning and design prior to resettlement

...

55. **Compensation and livelihood restoration.** Land expropriation and resettlement planning is ultimately the responsibility of the State. Large-scale evictions, in particular of rural, Indigenous and informal settlement communities, often occur through the exercise of eminent domain (see A/HRC/47/43). Governments frequently resort to expropriation rather than negotiating with affected people. Displaced individuals are generally entitled to “fair” or “just” compensation, but the compensation provided often falls short of covering losses.
61. Non-economic losses, such as cultural heritage and Indigenous knowledge, are challenging to calculate and compensate for. Communities are often treated as a single entity, overlooking diverse needs, while livelihood assistance programmes suffer from inadequate oversight, hindering their effectiveness. These programmes typically rely on short-term financial aid and basic training, assuming that it is sufficient for long-term livelihood restoration.
62. **Benefit-sharing.** Current resettlement practices often view livelihood restoration as a means to compensate for asset loss rather than support actual livelihood restoration. Despite efforts, such as those seen in the Nam Theun 2 project in the Lao People’s Democratic Republic, research reveals persistent impoverishment and human rights issues. Resource development on Indigenous land often fails to deliver sufficient local benefits, and agreed compensation is frequently inadequate (see A/HRC/24/41). Numerous examples illustrate that, all too often, projects purporting to be of “vital national interest” are not necessarily in the interest of all, and usually not in the interest of those directly affected (see A/HRC/55/53/Add.1, para. 50).
63. However, some natural resources and mining companies are developing new approaches to agreement-making and benefit-sharing with affected communities. In Canada, for example, First Nations, Métis and Inuit entities were partners or beneficiaries in nearly 20 per cent of the country’s electricity-generating infrastructure in 2022, most of which produces renewable energy. In Nepal, benefit-sharing policies in the hydropower sector formalize royalty distribution to communities, though issues with clarity and uneven distribution remain.⁶¹ In Australia, land rights regimes and Indigenous land use agreements include benefit-sharing mechanisms, with some agreements offering significant benefits packages and annual payments.

VI. Conclusions and recommendations

85. The concept of human-centred resettlement is not new; however, persistent challenges in planning and implementation and the neglect of outcome-oriented processes have led to a human rights crisis. There is an urgent need to address the widespread lack of understanding and empathy regarding displacement and resettlement impacts throughout project life cycles, regardless of the reasons for resettlement. Human rights-based resettlement planning should involve full participation and consultation of affected communities from project inception, allowing them to propose and discuss alternatives to resettlement while considering gender, cultural and socioeconomic factors and power dynamics.
86. The Special Rapporteur previously provided detailed recommendations on resettlement (see A/HRC/55/53), and the following recommendations should be read in conjunction with that report.
89. The Special Rapporteur recommends that development finance institutions: ... (d) Include land tenure assessments that encompass traditional, customary, informal and Indigenous rights as well as formal ownership rights. Resettlement projects should be considered high-risk by default, with safeguards and agreements requiring contingency funds or insurance for remedying adverse human rights impacts...

2. Resettlement after evictions and displacement: addressing a human rights crisis, A/HRC/55/53, 25 January 2024

II. Resettlement under international law

...

13. Several international conventions and declarations recognize the rights of Indigenous Peoples and peasants to their lands. The United Nations Declaration on the Rights of Indigenous Peoples requires States to consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (art. 19). States must have consent as the objective of consultation before undertaking projects that affect Indigenous Peoples' rights to land, territory and resources (art. 32). The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) also provides for the rights of ownership and possession by Indigenous People over the lands which they traditionally occupy (art. 14) and includes consent requirements (art. 6). ...

III. Impact of resettlement on human rights

...

33. A major human rights issue is whether the people being resettled consent to their move. While arbitrary displacement is illegal, voluntary resettlement is seen to be acceptable. However, the communities being asked to move may face equally unpalatable choices: their right to remain in place may place them in danger, while their resettlement may be presented as a *fait accompli* with no choice. Under these conditions, even voluntary resettlement may well constitute forced displacement, giving rise to the risk of illusory consent. In addition, the true costs, losses and damages incurred by displaced persons and households are often not fully accounted for in resettlement, where quantification and related consultation

methods are rarely adequate to assess the immediate and longer-term economic and non-economic loss and damage and enable full remedy and reparation.

34. The social costs of involuntary resettlement that fails to respect the dignity, capabilities and worth of displaced people can be enormous and are well documented. Many cases have shown that too often resettlement planning and implementation have been deficient to the point of impoverishing affected communities. This burden falls disproportionately on those who are at the bottom of the social ladder in many countries, people who belong to ... Indigenous Peoples ... Indeed, such disproportionate impacts may well be seen as a form of indirect targeting of minorities which has been termed “development cleansing” – a kind of ethnic cleansing by means of displacement and marginalization. Despite the development of policies and legal frameworks to guide and regulate different aspects of resettlement of displaced populations, actual recorded incidences of successful community resettlement remain rare. Conversely, when affected communities are properly consulted and project planning and implementation includes appropriate stakeholder engagement and support, resettlement can and does avoid excessive social harms.
35. Many human rights have been violated in the context of projects involving resettlement, including the right to development, self-determination, cultural identity, life, food, livelihood, adequate housing and land, the rights to assemble, associate, protest and speak and the rights to participation, remedy, restitution, compensation and reparation. Given that human rights are interdependent, violations of the right to adequate housing alone can significantly undermine access to education, work, health care or other services. People who are resettled often have difficulty accessing basic services owing to language barriers, financial constraints, discrimination or a simple lack of availability. Resettlement also disrupts people’s livelihoods when they lose their jobs, land or businesses, which in turn has a devastating impact on their ability to support themselves and their families. This can have a heavy impact on people’s cultural identity, when they are forced to leave behind their traditional ways of life and adapt to a new culture, and disrupt social and family networks, with the consequent loss of a socioeconomic safety net.
36. Non-economic losses, including cultural losses, such as the loss of heritage, graves and religious places, must be fully accounted for and remedied, including through appropriate recognition and compensation. A recent study reviewing 203 resettlement case studies documented loss of livelihood and limited economic opportunities as a frequent consequence of resettlement. Although physical outcomes, such as the provision of services and infrastructure, improved in some cases, outcomes with respect to natural, financial, social and cultural assets were typically significantly worse. Empirical research also demonstrates that people subjected to resettlement are at risk of and often experience disenfranchisement and exploitation.
40. Vulnerability to human rights violations during resettlement may result from multiple and intersecting forms of inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights. Often resettlement has disproportionate impacts on vulnerable groups such as women, racial, ethnic and religious minorities, children, older persons, migrants or Indigenous Peoples, resulting in their further marginalization and discrimination. It is therefore important to consider gender and other demographic, cultural and socioeconomic differences at all stages of resettlement planning and implementation.

IV. Main drivers of resettlement: tackling the causes

...

41. Displacement is caused or justified by many stated reasons: climate change, conservation, violent conflict, urbanization, disaster or health protection, population management, industrialization, infrastructure development and poverty reduction strategies. In addition, there are other structural root causes that the Special Rapporteur cannot fully explore in the present report, such as land speculation and the financialization of land, housing and climate policies, economic development models that are centred around large infrastructure and land deals, including through “green grabs”, unchecked growth of the use of eminent domain, poor land governance and models of property rights that shrink common property resources through the imposition of markets, among other things. The most prominent proximate drivers of resettlement can be organized into the following categories:
 - (a) **Disasters and climate change.** Drivers include natural disasters such as flooding, heatwaves and wildfires, landslides, tsunamis, typhoons, earthquakes and volcanic eruptions, which are unpredictable and typically occur without notice. They also include “slow-onset” events such as rising sea levels, salinization, land and forest degradation, loss of biodiversity, desertification, drought and famine. Climate change and associated extreme weather events and disasters occur globally but tend to affect low-income communities more frequently. Social, economic and political conditions mediate exposure and susceptibility to the physical impacts of disasters, and marginalized groups tend to live in higher-risk areas, have limited resources and are often excluded from or underrepresented in decision-making bodies. Too often, post-disaster reconstruction favours the interests of elites and promotes privatization or land grabs. It should also be noted that conservation-related displacement and resettlement, especially from forest areas, is increasing owing to the creation and expansion of protected areas, parks, reserves and sanctuaries and the financialization of climate risks, including through the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD) and climate mitigation initiatives. As all stages of housing construction, management and demolition have strong environmental impacts, it is of key importance to avoid unnecessary housing demolition and resettlement and to ensure that resettlement is not only human rights-compliant, but also socially and environmentally sustainable;
 - (b) **Planned development projects and eminent domain.** These include infrastructure, green energy production, other energy projects and public works. Development projects such as hydroelectric and irrigation dams, airports, roads and transmission lines are usually justified as serving the public good, even though the benefits may be captured by private interests or accrue to a dominant segment of the public. Land is typically acquired or expropriated in advance through the use of eminent domain or compulsory purchase orders, which provide the State with the power to acquire or expropriate private properties for a public purpose. Frameworks for compensation to landholders often stipulate payment of “fair market value”, although provisions also exist for in-kind or land-for-land compensation in many countries. Infrastructure projects typically involve significant financing from the State as well as international development institutions, which often play a central role in their implementation, and therefore have a critical role in the resettlement of affected people. Policies and

legislation enabling special economic zones usually allow for their development without the formal approval or prior assessment of environmental and social impacts, and have frequently resulted in forced evictions and resettlement that is not human rights-compliant;

...

- (d) **Extractive industries.** The extraction of natural resources such as oil, gas, minerals, mining and wood products regularly results in land being acquired by the State or by private actors, leading to displacement and resettlement. While natural resource extraction remains vital to the economies of many countries, negative social impacts are particularly pervasive in sectors such as mining. Extractive industries often require the expropriation of land, leading to the displacement of communities, which are frequently undercompensated. The commercial exploitation of forests is also a major driver of displacement, particularly of Indigenous Peoples. Land for natural resource extraction is typically acquired in areas where it can be obtained at a low cost and where people are already impoverished. Involuntary resettlement driven by the extractive industries in the name of development is often a reflection of unbalanced distribution of development benefits and risks, inequality and marginalization of poor communities;
- (e) **Agribusiness.** The rapid expansion of agribusiness in the form of land concessions and plantations for the production of export crops such as palm oil, sugar cane, cotton, soybeans and fruit, as well as beef cattle ranches, is a common driver of displacement and resettlement and can also remove land and resources for local food supply. Forced evictions and involuntary resettlement facilitated by multinational corporations, foreign investors, local governments and businesses have led to mass displacements of rural populations globally. In some instances, enterprises purchase the land directly; however, in most cases, land is expropriated by States exercising eminent domain....

V. Why resettlement often undermines human rights

...

- 48. National laws, regulations and contracts, even where they are enforced, are not always aligned with international human rights law and often reflect power imbalances, historical injustices and discriminatory practices. For instance, projects that result in involuntary displacement frequently do not comply with international human rights standards. Domestic regulations provide for varying approaches to determining compensation, resulting in inconsistent and often negative outcomes. Most large-scale evictions of communities, especially of rural and Indigenous communities and persons living in informal settlements, occur as the result of the exercise of eminent domain in one form or another, and Governments frequently resort to enforcing expropriation processes rather than fostering genuine support for public or private projects through negotiation with the affected people.
- 61. The Mandalika project, situated in the West Nusa Tenggara Province of Lombok, includes parks, resorts, hotels and an international racetrack circuit. Well-founded allegations indicate that implementation of the Mandalika project has resulted in serious human rights violations and abuses committed by the Government of Indonesia and the Indonesia Tourism and Development Corporation. These include forced evictions and involuntary resettlement of Indigenous Peoples, intimidation and threats against those opposing land acquisitions, loss of cultural and religious

sites, and a lack of access to decent livelihoods and effective remedies. This has been attributed to insufficient due process protections, a deeply flawed project resettlement action plan, a lack of informed consent from affected persons and poor implementation and enforcement by the Asian Infrastructure Investment Bank of its own Environmental and Social Framework.

63. In a study on resettlement in Cambodia, sites were found to lack basic services, in particular potable water, roads, food security, power sources, and sanitation, health and education services. Numerous Indigenous households felt that the compensation for their cultural sites was insufficient and therefore unjust. Roughly a quarter of households did not have access to sufficient food, and one fifth of households (including almost half of the Indigenous households) had children out of school and working to earn income. Resettlement contributed to debt, as households took on loans to improve their housing and livelihood conditions, and many households have been living on site for over 10 years without land titles.

VI. Towards improved resettlement

...

69. If, after obtaining meaningful consent from affected persons – and in the case of Indigenous Peoples, free, prior and informed consent – relocation is agreed upon, adequate alternative housing and land, as appropriate, of similar or greater size, quality and cost, must be provided. Such housing and land should be as close as possible to the original place of residence and, to the extent possible, the community's sources of livelihood and the cohesiveness of the community should be retained. While livelihood restoration is often stated as a goal of resettlement, contemporary thinking has become more focused on improving livelihoods and enabling affected people to transition to new and improved circumstances, by enhancing livelihood opportunities and access to basic public services for instance, as well as compensating for the emotional and personal toll that resettlement imposes. The selection of the resettlement site should be made through meaningful consultations with the affected community, and no relocation should take place until conditions are in place for dignified living in accordance with the right to adequate housing and the terms of the resettlement plan have been agreed upon.

VII. Conclusions and recommendations

...

74. The Special Rapporteur recommends that States, regional, local and other public authorities, international organizations, United Nations bodies and agencies, international financial institutions and business enterprises, as appropriate: ...
- (c) Avoid evictions and involuntary resettlement of communities in the context of conservation, ecotourism, eco-city development or other eco-justified projects, including for climate change mitigation, and ensure that strategies incorporating resettlement, whether as part of housing, development or poverty alleviation policies, take climate risks into account and are coordinated with climate policies;
 - (d) Reform laws on the use of eminent domain and adopt measures to ensure respect for the free, prior and informed consent of Indigenous Peoples before any resettlement is undertaken and that meaningful, realistic and inclusive participatory processes are carried out with all affected persons and communities in all stages of resettlement....

C. SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS

1. Right to participate in science, A/HRC/55/44, 21 February 2024

International law context and recent developments

A. International human rights law context

11. Of particular relevance is the additional protection granted in international law to marginalized and vulnerable groups that face structural discrimination, including women and girls, persons with disabilities or living in poverty, members of minority communities and Indigenous Peoples. On the basis of their right to self-determination, Indigenous Peoples have the right to participate fully, if they so choose, in the cultural and public life of the wider society and to maintain, protect and develop all manifestations of their cultures, including their sciences, technologies and traditional knowledge. They must be guaranteed free, prior and informed consent in any projects and decision-making that affect them [citing United Nations Declaration on the Rights of Indigenous Peoples, arts. 5, 11, 19 and 31].

B. Urgent need for a coherent approach

...

14. Specifically on climate change, the General Assembly and the Human Rights Council have stressed that climate change action needs to happen in accordance with States' human rights obligations and commitments. The principles of participation and information, transparency, accountability, (intergenerational) equity and non-discrimination need to guide global efforts to mitigate and adapt to climate change¹⁶ and, more broadly, the triple planetary crisis and development challenges. Sectors of the population that are more affected by climate change, especially Indigenous Peoples, must see their scientific knowledge reflected in the solutions.

C. Avoiding exclusionary processes through the definition of science

...

2. Avoiding exclusionary processes

25. The definition of science, while including its distinction from both faith or belief and disinformation and misinformation, must not exclude from scientific discussions reliable knowledge production anchored within predominant narratives. The criteria of "validation" (Recommendation on Science and Scientific Researchers) and "falsifiability" and "verification" (Committee on Economic, Social and Cultural Rights, general comment No. 25 (2020), para. 5) must be interpreted in an open and inclusive manner so that their application does not lead to the prevalence of one specific methodology or limit science to a particular historical context. Science may also include traditional knowledge, Indigenous science and other community, public or alternative science, as long as they satisfy broadly the above criteria. Ongoing reflection on such criteria is important to capture the nuances of an evolving concept. As one contribution underlined, science should not be used as an instrument of cultural imposition.
27. Efforts are still needed, however, to make such inclusive understanding of science a reality, as many groups are still excluded. In particular, many Indigenous Peoples call for the recognition of Indigenous sciences as science per se, contesting false hierarchies, prejudices and discrimination against their specific knowledge and

highlighting their specific methodologies and tools. Other Indigenous Peoples favour the use of so-called knowledge systems when their systems cut across science, belief and cultural practices and are therefore not universalizable or replicable outside the community. The decision of which concept of the two is used relies on the Indigenous Peoples in question as part of their recognized right to self-determination.

28. Of utmost importance is the eradication of perceptions of Indigenous knowledge “as primitive, inferior, unscientific, superstitious or even dangerous” and the acknowledgment that it can be “a sophisticated set of understandings of no less value than the other kinds of knowledge that often form the foundation of ‘western’ science”. While some level of recognition of Indigenous traditional knowledge and science has been achieved, in particular by means of article 31 of the United Nations Declaration on the Rights of Indigenous Peoples and new initiatives or agreements, as well as the practice of human rights mechanisms and States, many areas of disrespect remain unchallenged. Efforts must be made to devise direct mechanisms so that Indigenous sciences are included in the formulation of public policy, always acknowledging their contribution and allowing for benefit-sharing.

IV. Defining participation in science

A. Access and participation: two interdependent concepts

33. Access and participation in science are interdependent dimensions. There can be no meaningful participation in science if individuals do not have access to knowledge, data, technology and applications. In addition, individuals must be able to rely on strong public institutions that guarantee access to unbiased scientific information and genuine democratic debate, which can serve as guidance for them in their own choices. Inequalities in access to science and applications translate into growing inequalities in participation in all dimensions of social life.
34. Participation also enables access. It makes science familiar rather than hostile and foreign and brings people closer to it. It is a prerequisite for access to the benefits of scientific progress, ensuring that it is applicable and relevant to specific groups of people. The lack of recognition, for example, of Indigenous ancestral knowledge makes Indigenous women sceptical of non-Indigenous health systems and contributes to their poor access to culturally appropriate sexual and reproductive health services. ...

B. Who participates?

35. Participation should be understood to include the activities of professional scientists and the meaningful involvement of non-scientists or non-professionals. The Committee on Economic, Social and Cultural Rights has criticized the rigid distinction between the scientist who produces science and the general population, entitled only to enjoy the benefits derived from research conducted by scientists. The right to participate in science as a human right means that all individuals, without discrimination, are rights holders, however with varying modalities of participation. Science is certainly a field in which expertise should prevail and experts must be guaranteed participation and space to make their opinions heard. The circle of experts who have enhanced participation, however, is not as exclusive as it used to be and experts are not the only ones with the right to participate in science.
37. Other actors and stakeholders also have different roles to play in science: researchers, scientists and scholars, leaders at research institutions, educators, academia, members

of professional societies, students and young researcher organizations, information specialists, librarians, museum professionals, users and the public at large, including communities, Indigenous knowledge holders and civil society organizations, computer scientists, software developers, coders, creatives, innovators, engineers, citizen scientists, legal scholars, legislators, magistrates and civil servants, publishers, editors, technical staff, research funders and philanthropists, policymakers, learned societies, practitioners from professional fields and representatives of the science, technology and innovation-related private sector.

38. Their participation must be guaranteed regardless of nationality, ethnicity, gender, language, age, discipline, socioeconomic background, funding basis and career stage or any other grounds and particular attention should be paid to those suffering from structural discrimination, including Indigenous Peoples...
41. The collective element of the right to participate in science must be recognized. Each individual participates and collectively shapes scientific process and shares in its benefits and applications. Scientific endeavour as a collective endeavour includes setting priorities, conditions and possible limits for the use of science as a common good.
42. That collective dimension must be distinguished from the collective right to participate in science that Indigenous Peoples must enjoy as part of their right to self-determination, with full respect for their right to free, prior and informed consent.

C. Various layers of participation

...

3. Participation in benefits and in preventing harms

57. In paragraph 56 of its general comment No. 25 (2020), the Committee stressed that participation included the right to information and participation in controlling the risks involved in scientific processes and their applications. In view of the unequal distribution of benefits and risks within and among societies, the Special Rapporteur underscores that participation must entail a conversation on both benefits and risks and whom they affect. In particular, focusing on the participation modalities of vulnerable and marginalized groups, including Indigenous Peoples, peasants and those located in remote areas, is essential.
58. The recognition of communities or knowledge previously excluded, such as Indigenous science and traditional knowledge, and benefit-sharing are key elements of participation. Participation can facilitate a collaborative and inclusive approach that enables the responsible exploration of the opportunities to benefit scientific progress and its applications, checked against specific risks for specific communities. Benefit-sharing includes sharing in the material benefits or products of scientific advancements and access to scientific knowledge and education and developing one's critical mind and faculties associated with doing science. All of those achievements must be shared with everyone in all parts of the world without discrimination and without restrictions based on commercial interests. The only caveat that the Special Rapporteur would raise relates to the right of Indigenous Peoples, deriving from their right to self-determination and the recognition of historical injustices committed against them, to decide on the level to which they open up their traditional knowledge to the world.

59. The right to participation in science also includes the right to participate in anticipating the harms resulting from science, in accordance with States' obligation to prevent harm and the precautionary and the due diligence principles (see sect. V). In that respect, it is important to be wary of the self-validation of science by means of impact assessments, as their technical nature does not fully address questions of wider human rights and dignity. Participation in decision models, rather than mere impact assessments, can offer better ways of predicting and preventing harms.

4. Right not to participate in science

...

61. More widely, the right not to participate derives from considering the right to access to and participation in science as a cultural right. As has always been stressed under the mandate, people always enjoy their right to participate or not to participate in one or several communities, to freely develop their multiple identities, to access their cultural heritage as well as that of others and to contribute to the creation of culture, including through the contestation of dominant norms and values within the communities they choose to belong to as well as those of other communities.

62. Those rights were confirmed by the Committee on Economic, Social and Cultural Rights, which stressed that the decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, was a cultural choice and, as such, should be recognized, respected and protected on the basis of equality. The Committee noted the crucial importance of that aspect for Indigenous Peoples, who could refuse to participate in collective testing or any other scientific endeavour.

V. Limits of the right to access to and participation in science

...

68. The same human rights approach is required by States when acting as members of international organizations. They cannot ignore their human rights obligations but must actively ensure that the effective participation of civil society is guaranteed in discussions with international organizations that relate to the benefits and harms of scientific products. That is currently not the case. More space must be ensured for civil society and for more consideration of alternative scientific understandings beyond the prevailing ones in decision-making by such organizations. For example, the Special Rapporteur was disappointed to hear that Indigenous scientific evidence is ignored in UNESCO discussions on designating world heritage status for territories in which Indigenous Peoples live. She also notes the presentation of the International Indigenous Forum on Biodiversity at a recent meeting on the Convention on Biological Diversity regarding the lack of robust indicators of traditional knowledge in the monitoring mechanism for the Kunming-Montreal Global Biodiversity Framework. It is reported that the continuing failure to agree on a robust monitoring mechanism is due to the resistance of several member States.

VII. Conclusions and recommendations

92. States must: ... (d) Ensure the free, prior and informed consent of Indigenous Peoples in all matters relating to science that concern them. Their sciences and traditional knowledge must be recognized and used, including in matters that affect them, to the degree that they so decide. Their participation in the benefits of scientific endeavours must also be guaranteed...

2. Development and cultural rights: the international governance, A/78/213, 21 July 2023

II. Cultural rights and international governance: positive seeds

...

C. World Intellectual Property Organization

...

21. The work of WIPO is consistent with cultural rights as it recognizes that the protection of traditional cultural expressions does not fit a one-size-fits-all approach and that States should provide different options, including the adaptation of existing international property systems to include Indigenous cultures, the establishment of sui generis intellectual property systems and solutions beyond intellectual property law such as cultural heritage preservation laws, customary and Indigenous laws, trade policies and the use of contracts.

D. World Bank

23. Although serious concerns have been raised concerning projects funded by the World Bank and their effect on cultural rights, the World Bank has made considerable progress over the past decade in addressing these concerns in its standards and better reflecting cultural rights. In August 2016, the Bank adopted a new set of environmental and social policies called the Environmental and Social Framework, which came into force in 2018. According to the vision statement of the Framework, the activities of the Bank will support the realization of human rights expressed in the Universal Declaration of Human Rights. This represents a major opportunity, even if human rights are not explicitly referred to in the operational work of the Bank. With respect to cultural rights, the reference to the Universal Declaration of Human Rights is important as it commits the Bank to support the realization of cultural rights, as stated in article 27.
24. The 10 Environmental and Social Standards of the Environmental and Social Framework relate to cultural rights in several ways and sometimes go quite far in protecting them. For example, Standard 7, entitled “Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities” explicitly recognizes a cultural dimension of development: “the development process fosters full respect for the human rights, dignity, aspirations, identity, culture, and natural resource-based livelihoods” of these peoples/communities. The Bank also requires the free, prior and informed consent of Indigenous Peoples when the project has a significant impact on their cultural and spiritual heritage, and a grievance mechanism which is culturally appropriate and accessible to affected Indigenous Peoples.

E. World Trade Organization

...

32. The WTO perceives culture as “goods” or “services”; the preservation of cultural identity, participation in cultural life and access to heritage can only be protected by individual States, to the extent that they produce economic value. Limits to the scope of trade liberalization in cultural industries do not take into account the protection of the cultural rights of individuals, local communities or Indigenous Peoples. This represents a departure from the way cultural rights and cultural diversity are conceptualized under international human rights law, and as such, from the emerging attention of international organizations on sustainable development.

III. Persistent challenges

A. The cultural dimension of sustainable development is still not recognized in discussions

37. A persistent fundamental challenge is the vision that development can happen mainly through the liberalization of trade. The economic dimension of development still overwhelmingly takes up all the space in international governance. The cultural dimension is still invisible, even in the myriad of current discussions and debates, reports, counter-reports, initiatives, programming and actions.
38. This is particularly regrettable in the discussion of the Sustainable Development Goals. There have been many voices highlighting the omission of culture in implementing the Goals, but so far, the difference they have made is limited. In 2021, several members of the #Culture2030 Network noted that culture is an underused accelerator for the implementation of the Goals, both for short-term recovery and long-term sustainable development.
39. The forthcoming 2023 Global Sustainable Development Report does not demonstrate any understanding of the cultural dimension of development. The quadrennial report, drafted by an independent group of scientists appointed by the Secretary-General and supported by a task team of six entities (Department of Economic and Social Affairs, United Nations Conference on Trade and Development, United Nations Development Programme, United Nations Environment Programme, UNESCO and the World Bank), fails to address the importance of cultural frameworks in realizing sustainable development. Interestingly, in the report it is noted that: “a better future does not rest on one source of security, but on all necessary securities, including geopolitical, energy, climate, water, food and social security”.
40. A better future is of course also dependent on cultural security. Strategies to embrace transformations should integrate the principles of cultural understanding as well as respect for cultural diversity. The Global Sustainable Development Report does not bring culture into the discussion of women’s empowerment, or technology and knowledge. The literature from the Department of Economic and Social Affairs on the Goals favours “activities [that] seek to promote cross-cutting approaches and value of stakeholder engagement in planning and decision-making”, but cultural rights are not addressed in any depth.

B. Cultural rights are still not explicitly addressed in and linked to development

44. On the rare occasions when international organizations include the cultural dimension of development, they do not discuss nor acknowledge cultural rights, even if, indirectly, their work relates to them. The references to cultural rights in the Mondiacult Declaration have renewed the commitment of States to include cultural rights in their cultural policies; now is the time for States to also put cultural rights at the core of and throughout their development plans. In the national voluntary reports⁴³ discussed during the high-level political forum on sustainable development convened under the auspices of the Economic and Social Council held in July 2023, there is no link made between “cultural diversity” (Chile), “social cohesion” (Burkina Faso), “well-being” (Cambodia), “official language of minority communities” (Canada), “universality of human rights” (European Union), “changes in behaviours and lifestyles” (France), “cultural exchange” (Kuwait), “inclusive society” (Singapore), and cultural rights.

48. The policies of WIPO are aligned with cultural rights, but do not explicitly integrate them. The 2007 recommendations under the WIPO Development Agenda, important as they may be in internalizing cultural rights, do not mention them when referring to inclusive and participatory processes, the protection of traditional knowledge and folklore and further access to knowledge. The independent review of the implementation of the Development Agenda recommendations, in 2016, was a missed opportunity to discuss the effects of the work of WIPO on cultural development and cultural conditions. The 2023 report on the contribution of WIPO to the implementation of the Goals and their associated targets still does not refer to the cultural dimension of development, nor does it discuss the impact of WIPO development work on cultural resources. In addition, WIPO initiatives only address specific issues, mainly the traditional knowledge and heritage of Indigenous Peoples and local populations. In limiting the scope of culture, they also limit the scope of cultural rights.
49. Culture, as recognized in General Assembly resolution 76/214, represents a source of identity, innovation and creativity for individuals and their communities. Cultural development, from a human rights perspective, encompasses the development of each person's identity, individual and collective, and of their ability to contribute to innovation and express their creativity; the development of practices, ideas and philosophies that can be shared and used in developing other aspects of the individual and groups; and the development of material resources, spaces and conditions that allow the exercise of everyone's right to take part in cultural life and in the decision-making processes that have an impact on it. Focusing only on the cultural development of the most marginalized or with only a heritage perspective limits the potential transformation that can be achieved through a comprehensive understanding of cultural development and rights.

C. The cultural sector is not just an economic asset

56. Culture and trade are often described as being in inherent conflict with one another. This recognizes a tension that exists between preserving cultural diversity and liberalizing trade in certain areas. Some of the challenges associated with commercialization and the right to take part in cultural life have been addressed in previous reports, including the misappropriation or distortion of cultural expressions for commercial purposes and the constraining of cultural diversity and cultural traditions brought about by the dominance of commercial advertising and marketing. Similar risks manifest themselves in the realm of international trade, which prioritizes economic development over cultural and diversity considerations.
57. Neither under the General Agreement on Tariffs and Trade, nor under the General Agreement on Trade in Services is there a "cultural exception" clause that would allow States parties, representing the whole of the population, to derogate from their obligations to liberalize trade in services to protect cultural rights. States are permitted to exclude some sectors from their specific commitments to national treatment and market access under the General Agreement on Trade in Services and have relied on this flexibility to carve out some policy space for the protection of cultural industries, for example, through the provision of subsidies, quotas or restricting market access to foreign service providers. In some trade agreements, issues of culture are only indirectly addressed through the clauses that carve out space for States to pursue their cultural policies, through the protection of commercial activity in cultural industries. Moreover, States have opted to include limited provisions relating to cultural heritage and traditional knowledge in trade

agreements. As those provisions depend on individual State policies and negotiation outcomes in the context of trade agreements, which are often very harsh, their scope and content lack the coherence and consistency necessary to protect universal human rights. Some recent good practices that include broad exceptions for the protection of cultural industries and Indigenous traditional knowledge in trade agreements include the United States-Mexico-Canada Agreement, the Comprehensive Economic and Trade Agreement between Canada and the European Union and its member States, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Regional Comprehensive Economic Partnership.

D. International organizations fail to respect cultural rights

...

62. The World Bank has acknowledged negative impacts on cultural rights in several projects. For example, a hydroelectrical project financed by the World Bank that severely affected the cultural identity and heritage of the community members living in Chamoli District, Uttarakhand, in India, has shown the importance of implementing the Environmental and Social Standards. The Bank recognized that the transmission line had indeed affected the cultural identity and heritage of the local population, who were not informed nor consulted. The project adversely affected homes, schools, cultural and religious sites, agricultural lands, the environment, and economic activities, and threatened their health and safety as well as the ability of the local populations to maintain and improve their livelihoods. In Kenya, the World Bank accepted the State definitions of “Indigenous Peoples” that excluded the Cherangany people, resulting in the denial of their rights. The Bank must ensure that its standards always apply and are informed by international human rights principles and definitions.
63. The Bank’s opaque system as well as the challenging procedures to file complaints sometimes act as an additional burden in identifying cultural rights violations. Many affected populations have to rely on more knowledgeable intermediaries to take their concerns further. Most of these civil society intermediaries do not specialize in cultural rights, so these issues are underrepresented compared with environmental issues or Indigenous issues. In addition, relying on intermediaries results in a double unequal power situation: with respect to the World Bank, and to the civil society intermediary, often also operating at the international level. The agency of communities to claim their cultural rights is correspondingly weakened.

E. Ensuring participation and consultation

64. A prerequisite of a human rights approach is to ensure wide participation and the meaningful involvement of all concerned parties in relevant decisions. For the international governance of development, this continues to be a challenge, as it operates at a level that tends to be further from the local dynamics. The standards for participation applied across development agencies are not consistent and often fall short of international standards: some only demand simple consultation or consent; others require the free, prior and informed consent, while others still are content with free, prior and informed consultation. International human rights law is very clear on the requirement of free, prior and informed consent in relation to projects that directly affect Indigenous and local communities. Trade organizations must ensure that the standards apply, that their staff know and require their application, and that clear and structured processes exist to ensure their effective implementation. Failing to meet such standards must mean the interruption of the project.

65. ... There are still instances, however, in which the work of UNESCO does not meet the standard of free, prior and informed consent of Indigenous Peoples but remains at the level of consultation. In the Mondiacult Declaration, States affirmed their commitment to implement frameworks that uphold collective cultural identity, heritage rights and Indigenous rights, but the Declaration does not emphasize the necessary participation of Indigenous Peoples in this endeavour, which would be consistent with the UNESCO policy on engaging with Indigenous Peoples (2017) and the United Nations Declaration on the Rights of Indigenous Peoples.
66. The World Bank has also included the free, prior and informed consent standards in its policies, a major development, but several cases have been reported in which these standards were not implemented. For example, the case in 2018 involving Santhal people in Jharkhand, India, where the World Bank acknowledged its failure to apply the Bank's policy on physical cultural resources and free, prior and informed consent, but could not stop the construction and repair the damage. More attention will hopefully be given to the World Bank's community-driven development projects, which implement a bottom-up approach and can therefore better ensure the cultural adequacy of the objectives, methodologies and results. For such projects, systematically integrating human rights principles, including cultural rights, would help orient the projects, avoid any cultural relativism and ensure coherence between development and human rights objectives.
67. WIPO has institutionalized specific avenues for stakeholder participation in its work on traditional knowledge, traditional cultural expressions and genetic resources. Accredited civil society organizations representing Indigenous Peoples and local communities have been granted observer status and can participate in the sessions of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Ad hoc expert groups are also appointed by States and the Indigenous Caucus to address, in their personal capacities, legal, policy and technical issues in relation to the work of the Intergovernmental Committee. The draft texts of the Committee are reviewed by Indigenous experts. Fellowship opportunities for Indigenous persons are offered and a voluntary fund has been established to support the participation of Indigenous Peoples and local communities in the intergovernmental discussions. These are remarkable steps that must be extended to other marginalized groups and civil society in general.

V. Conclusions and recommendations

82. International development and trade organizations are currently failing to respect cultural rights: IMF rejects its responsibility to respect cultural rights; WIPO has not fully grasped the wide concept of culture and connections between all its work and cultural rights; the World Bank does not press States to respect cultural rights when they clash with economic development or other interests; WTO prioritizes other rights and interests; UNESCO has not yet fully operationalized cultural rights in its work on the cultural dimension of development; and the Office of the United Nations High Commissioner for Refugees and other organizations have not fully engaged with their possible linkages with cultural rights. Finally, most, if not all, organizations have not yet developed clear processes that mitigate and prevent violations of cultural rights and advance their realization in development. States have an important role to play in ensuring that the organizations of which they are members do so urgently, so that truly no one is left behind.

84. International organizations should make it a priority to: ... (j) Ensure effective participation of all interested parties and meaningful consultation, including the free, prior and informed consent of Indigenous Peoples ... according to the current human rights standards....

D. SPECIAL RAPPORTEUR ON THE RIGHT TO FOOD

1. Fisheries and the right to food in the context of climate change A/HRC/55/49, 9 January 2024

I. Introduction

A. Overfishing, climate change, and the coronavirus disease (COVID-19) pandemic

1. Just as there is no life without water, there is no life for millions of people in coastal and riparian communities without small-scale fishers and fish workers. The full enjoyment of human rights by small-scale fishers and fish workers is therefore a necessary precondition for the realization of the right to food by everyone. In the present report, the Special Rapporteur focuses on small-scale fishers, fish workers and Indigenous Peoples reliant on fishing, because they are on the front lines of climate change. He thanks States, members of civil society and experts for their inputs and consultations. The report is built upon and advances the work done by previous mandate holders and in the context of the International Year of Artisanal Fisheries and Aquaculture.
2. Small-scale fishers have been warning governments about the dangers of overfishing since at least the 1860s. For over a century and half since then, small-scale fishers' ecological concerns have been ignored, as large-scale fishing has increased in mechanization and capacity, harvesting at rates faster than the stock could rebuild. Governments were blinded by large profits and assumed that fish stocks would always be at abundant levels.
3. In the past 50 years, overfishing tripled; today, one third of the world's assessed fisheries are currently pushed beyond their biological limits. Meanwhile, 60 per cent of the world's fisheries are being fished at capacity. The global biomass of large predatory fish targeted by fisheries has fallen by two thirds over the past century. One third of freshwater fish are threatened with extinction owing to overexploitation, pollution and habitat destruction. Overfishing not only threatens the environment but also undermines the food security and livelihood of billions of people.
4. Moreover, among food systems, small-scale fisheries are some of the most vulnerable to climate change. Members of coastal communities and Indigenous Peoples on coasts, especially in the Arctic and on small islands, have been among the first people to experience the disruption and violence wrought by climate change.
7. The pandemic, climate change, pollution and overfishing are brutally harming small-scale fishers, fish workers and their communities. Nevertheless, small-scale fishers, fish workers and Indigenous Peoples remain stewards of the world's waters; they have demonstrated a capacity to adapt to climate change and play an important role in restoring, conserving, protecting and jointly managing local aquatic and coastal ecosystems. They are integral to most countries' recovery from the pandemic and food system transformation, considering that small-scale fisheries employ more people than all other ocean economic sectors combined. Including subsistence and secondary sector workers and their dependents, it is

estimated that about 600 million livelihoods depend at least partially on fisheries and aquaculture, 95 per cent of those workers are in the global South. Based on recent annual averages, small-scale fishing accounts for 90 per cent of the world's capture-fishing employment. Of the 92 million tons of fish captured annually, 40 per cent are captured by small-scale fishers.

9. In the present report, the Special Rapporteur uses the term “fisheries” to encompass the capturing (or hunting), farming, harvesting and processing of fish and shellfish. He does not address the hunting of marine mammals, since this a different economic sector and is governed by its own set of legal regimes and institutions, although the ways of life of some coastal communities and Indigenous Peoples are organized around the hunting of fish and marine mammals.

B. Small-scale fishers and fish workers

...

11. A human rights-based approach therefore does not only draw from an intersectional analysis of discrimination and oppression and ensure policy coherence. It also encourages solidarity among small-scale fishers and workers, emphasizing gender justice and recognizing the unique position of Indigenous Peoples.
18. The Voluntary Guidelines are key to fulfilling the right to food in the broadest sense, in the context of climate change and biodiversity loss. They provide an authoritative interpretation of peoples' legal entitlements in regard to small-scale fishing and concomitant State human rights obligations, enabling policy coherence across institutions. As such, they must be interpreted in the light of international law and relevant human rights instruments such as the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. Any contradictions and tensions within international law and among the instruments must be interpreted in a way that advances the full realization of human rights.

D. Indigenous Peoples

21. Indigenous Peoples' connection with seas and rivers reflects the deep intertwining of their livelihoods, food security and culture. Of the over 476 million Indigenous people in the world, around 27 million rely on fishing for their livelihoods and food security. On average, coastal Indigenous Peoples' per capita consumption of seafood is 15 times higher than that of non-Indigenous populations. Similarly, traditional fish harvests from rivers are pivotal for inland Indigenous Peoples.
22. At stake for Indigenous Peoples facing the commodification and overexploitation of aquatic resources is their inherent right to self-determination. As such, Indigenous Peoples are entitled to control and govern their coastal and riparian ecosystems through their own tenure systems. In turn, States must protect and respect Indigenous tenure.
23. Additionally, States' are obliged to fully realize Indigenous Peoples' right to free, prior and informed consent, which is the right of Indigenous Peoples to give or withhold their consent for any action that would affect their lands, territories or rights. This includes a duty to provide Indigenous Peoples with a special and differentiated consultation process. Indigenous women and girls face relatively high risks of violence, especially in the course of advancing their land and territorial rights, and

the risks are even higher when they oppose the implementation of development projects undertaken without their free, prior and informed consent. States should promote and support the meaningful, real and informed participation of Indigenous women and girls in political and public life and at all levels, including in decision-making positions.

II. Climate change, fish stock depletion and biodiversity degradation: issues of governance and inequality

48. Ultimately, a community's ability to adapt to climate change is determined by the ability of shared norms, values and understandings to enable cooperation; the degree of community participation in decision-making; and the ability to simultaneously work with traditional, Indigenous and scientific knowledge systems. In fact, fishers with a high degree of localized knowledge are on the front line, since they can quickly identify signals of change within their environment, recognize the need to adapt and identify ways to overcome new challenges.
49. Climate change creates profound inequality because it harms those who have contributed the least to greenhouse gas emissions. In turn, inequality – especially in terms of income and gender – undermines the ability to effectively enact sustainability policies, and also undermines inclusive decision-making processes, the fair and equitable sharing of benefits, and the benefits derived from tradition and Indigenous knowledge.

III. International law

B. Convention on Biological Diversity

55. There is an even more acute tension between conceptualizing nature as a natural resource versus the source of life in the Convention on Biological Diversity. The parties to the Convention adopted the Kunming-Montreal Global Biodiversity Framework in 2022. They agreed, among other targets, to conserve 30 per cent of the world's lands, inland waters, coastal areas and oceans by 2030 – the “30x30 target” (target 3). Target 19 provides that at least \$200 billion should be devoted to this conservation agenda by 2030, 90 per cent of which is to come from private finance, with an emphasis on blended finance. The framework encourages States to in effect subsidize private investment.
56. During negotiations, Indigenous Peoples and members of civil society were concerned that target 19 would change people's relationship to the land and waterways, turning the ecosystem into a financial market. As such, target 19 also includes a commitment to “enhancing the role of collective actions, including by indigenous peoples and local communities, Mother Earth centric actions and non-market-based approaches including community based natural resource management and civil society cooperation and solidarity aimed at the conservation of biodiversity”. Mother Earth-centric actions are defined as an “ecocentric and [human] rights-based approach enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring the non-commodification of environmental functions of Mother Earth”. The Framework is to be implemented through a human rights-based approach (paras. 6 and 7 (a), (g) and (h)).
57. Reconciling the concepts of nature as a financial market and as Mother Earth is unlikely. It is also well recognized that conservation efforts that create protected

areas excluding people, as envisioned under the 30x30 target, often violate human rights, especially for Indigenous Peoples. As discussed below, conservation finance, including “blue finance” for oceans, as currently structured, carries serious risks of human rights violations.

D. World Trade Organization

...

1. Illegal, unreported and unregulated fishing

65. The WTO Agreement (art. 3 (1)) prohibits States from granting or maintaining any subsidy to a vessel or operator engaged in illegal, unreported and unregulated fishing or fishing-related activities in support of such fishing.
68. Moreover, States should recognize local norms and practices – including customary tenure systems and other systems that grant preferential access to fishery resources and land to small-scale fishers, Indigenous Peoples and ethnic minorities – as regulated fishing.

2. Overfished stocks

...

70. This power imbalance can be addressed by States or regional fisheries management organizations or associations through the Voluntary Guidelines, which provide that States should recognize the role of small-scale fishing communities and Indigenous Peoples to restore, conserve, protect and co-manage local aquatic and coastal ecosystems (para. 5.5). Moreover, “best scientific evidence” must include scientific knowledge augmented by traditional and Indigenous knowledge of coastal and riparian communities, which is well recognized as crucial to adapting to climate change. In so doing, a member State or regional fisheries management organization or association can more easily determine small-scale fishing sustainability.

IV. Commodification and financialization of the oceans and aquatic life

...

C. Blue finance and conservation

87. A more recent phenomenon is the rise of “blue finance”, in which the ocean is increasingly conceptualized and organized through financial elites, institutions and markets. This financialization of the ocean is creating greater degrees of inequality and opaque governance, and raises significant risks of human rights violations, especially for coastal communities, Indigenous Peoples and small-scale fishers.
92. This issue has become more acute following the adoption of the 30x30 target of the Kunming-Montreal Global Biodiversity Framework. As mentioned above, financing this target is a contentious issue. On the basis of colonial and racist experiences in the past and present, Indigenous Peoples raised the alarm that the 30x30 conservation target risked dispossessing their communities from their territories and creating “colonial conservation” schemes, also known as fortress conservation. Fisher organizations and other civil society organizations have called for a rejection of debt-for-nature swaps in the context of oceans. Ultimately, it is impossible to separate aquatic conservation from human rights.

V. Conclusions and recommendations

93. The ocean is our Mother and the rivers are her kin. States and businesses must stop exploiting oceans and rivers and treating them like a commodity, and instead recognize that oceans and rivers are a source of life.
94. Policies need to be refocused on addressing the needs and challenges of small-scale fisheries, which are integral to most countries' recovery from the pandemic and to food system transformation, to counteract the fact that large industrial fleets dominate fisheries management efforts and political interests. States should therefore:
 - (a) Recognize the vital contribution to aquatic life and health made by small-scale fishers, Indigenous Peoples and fish workers;
 - (b) Ensure that small-scale fishers, Indigenous Peoples and fish workers – especially women – are consulted in good faith and are empowered to actively, freely and meaningfully participate in all decision-making processes that may affect their lives, land and livelihoods; this must include an emphasis on gender justice and recognize the unique rights of Indigenous Peoples, including their right to free, prior and informed consent;
 - (c) Develop a national, comprehensive context-specific definition of small-scale fishers that captures all aspects of the value chain, including processing, marketing and sales, while also identifying vulnerable and marginalized groups through a process that is meaningful, participatory, consultative and gender-sensitive.
95. Relatedly, regional fisheries management organizations and associations should incorporate human rights-based approaches into their operations, which includes ensuring that small-scale fishers, fish workers and Indigenous Peoples can meaningfully participate.
96. States should respect, protect and fulfil:
 - (a) Small-scale fishers' and Indigenous Peoples' customary tenure rights. This includes fully implementing the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication;
 - (b) Indigenous rights, including the right to self-determination and free, prior and informed consent. This includes fully implementing the United Nations Declaration on the Rights of Indigenous Peoples....
97. States shall protect water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes, from overuse and contamination by harmful substances, and should restore them, recognizing the inherent co-existence of fisherfolk and nature. To do so, States should:
 - (a) Integrate and privilege local, traditional and Indigenous knowledge of fish and aquatic habitats held by fishers;
 - (b) Ensure that at the local, national and international levels, small-scale fishers, fish workers and Indigenous Peoples – especially women – are supported and able to participate meaningfully in every decision-making aspect of policies and programmes affecting their human rights and livelihood;
 - (c) Grant small-scale fishers and fish workers priority in the allocation of public lands and fisheries;
 - (d) Restore and redistribute traditional, customary and Indigenous tenure rights of fishing communities where small-scale fisher communities and Indigenous Peoples have been dispossessed from land and water territories without appropriate consultation and consent;

- (e) Create exclusive fishing zones for small-scale fishers and clamp down on incursions by industrial fleets;
 - (f) Implement co-management systems for 100 per cent of all coastal areas, by putting in place specific legal frameworks that clearly define the roles and responsibilities of the authorities and fishers and by providing the appropriate support for fishers to engage, taking into consideration their legitimate tenure rights and systems;
 - (g) Reject the advancement of and suspend any offshore oil and gas projects that deprive affected small-scale fishers and fish workers of their enjoyment of fundamental human rights;
 - (h) Carefully assess and disclose – through impact statements, good faith public consultations and Indigenous free, prior and informed consent – the impacts of proposed offshore oil and gas activity on local fisheries and fisherfolk rights. This includes addressing the proposed project’s climate and biodiversity impacts and requires the mitigation of such effects before approving or financing any such projects;
 - (i) Conduct periodic independent audits of oil loading operations locally and compensate coastal communities for any environmental damage.
100. Relatedly, FAO should prioritize, and devote more resources towards, protecting and supporting small-scale fishers, fish workers and Indigenous Peoples, including through support for full implementation of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication at all levels of government.
101. States must revisit the blue economy agenda and should:
- (a) Protect small-scale fishers, fish workers and Indigenous Peoples from competing “blue economy” sectors;
 - (b) Govern fisheries through human rights-based approaches and not through private property rights regimes;
 - (c) Avoid using “blue” financial instruments to achieve conservation goals;
 - (d) Exercise great caution around aquaculture; recognize that the toxic and biological threat aquaculture poses to human and environmental health may outweigh the benefits; and not support the expansion of the aquaculture sector until the risks are better understood and robustly regulated, making a distinction between small-scale and large-scale operations;
 - (e) Strictly restrict the imports of fish-based feed from regions where people are food insecure and where fish stocks are proven to be overexploited;
 - (f) Ensure that corporations operate transparently and are held accountable for human rights violations through laws and regulations.

E. SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

1. Visit to Costa Rica, A/HRC/56/52/Add.2, 29 April 2024

I. Introduction

1. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, visited Costa Rica from 18 to 31 July 2023, at the invitation of the Government.
3. She also met with representatives of the national human rights institution, international organizations, a wide range of civil society actors, in San José and surrounding areas (La Carpio) and Limón, and members of Bribri Indigenous communities.

III. Availability, accessibility, acceptability and quality of the health-care system

...

B. Health system: universal health coverage

...

1. Social Security Fund

19. Enrolment in the Social Security Fund provides access to various medical services, including preventive care, emergency services, specialized care and hospitalization. Affiliation is mandatory for Costa Rican and permanent residents and can be done through employment, as an independent worker or as a volunteer. The social assistance programmes require contributions through the payroll, which is a facility offered by the formal economy.
21. In accordance with domestic and regional legislation, the Social Security Fund also ensures treatment for minors, pregnant persons and those requiring urgent lifesaving medical care. The Special Rapporteur was pleased to learn about the efforts the Government had made since 2016 to move towards universal health-care coverage and the inclusion of an important number of persons belonging to marginalized groups in the health-care coverage provided by the Social Security Fund, including domestic workers whose employers were willing to contribute, coffee bean collectors and members of their families (during the coffee collection season) – who are mostly temporary migrant Indigenous Peoples – and a specific number of refugees and asylum-seekers.

E. Maternal health

...

63. The Special Rapporteur was also informed about reports of obstetric violence against women in connection with childbirth services, in particular affecting Indigenous women who were obliged to follow protocols that were incompatible with their cultural backgrounds. There were reports of cases of verbal and physical abuse. The Special Rapporteur welcomes the adoption, in October 2021, of a law on qualified, dignified and respectful care during pregnancy and childbirth, and postpartum and newborn care, but learned that it lacks proper implementation by hospital staff.

IV. Underlying determinants of health

68. The Special Rapporteur reiterates that the right to health encompasses the underlying determinants of health, which are also interconnected with other rights, including the right to work, education, housing, information, freedom, security of person, a healthy environment, equality and non-discrimination and bodily autonomy, among others.
70. The goal of realizing the highest attainable standard of physical and mental health is becoming even harder to reach. That is true for those in vulnerable situations, including: Indigenous Peoples ... and those at the intersection of the factors at play, such as poverty, disability, racism, xenophobia, health status, such as those requiring an abortion or those facing discrimination....

A. Racism, xenophobia and other forms of discrimination

...

73. Racial or other types of discrimination in employment are prohibited and there is a mandate to maintain and cultivate Indigenous languages (Constitution, arts. 68 and 76).
74. The National Policy for a Society Free of Racism, Racial Discrimination and Xenophobia 2014–2025, for which the Ministry of Foreign Affairs and Worship is responsible for implementation, considers priority target groups in situations of risk and vulnerability, including ... Indigenous or native Peoples The national policy was developed through the consultation of Indigenous Peoples.... Indigenous Peoples expressed the fact that they did not have easy access to health-care services, which were geographically distant from population centres and that health services did not adequately take into account the realities, cosmovision and customs of Indigenous Peoples. ...
76. Despite those advancements, the Special Rapporteur received deeply personal accounts of racism and xenophobia, as well as of the lack of empathy within the system, from Indigenous Peoples.... Racialized discrimination not only limits the realization of the right to health, but it affects social cohesion and enables systemic violence originating within and outside the State.

B. Gender-based violence

...

80. It was brought to the attention of the Special Rapporteur that, in Talamanca, women and girls were experiencing different types of violence, including femicide and sexual violence. To address that situation of violence, Indigenous women and women of African descent from Talamanca presented, in April 2023, a common agenda of women from Talamanca, focused on preventing and addressing sexual violence from a comprehensive perspective, in which more than 40 women leaders of 18 organizations from Talamanca participated, with the support of the United Nations Population Fund and the United Nations Development Programme, among others.

V. Specific population groups

88. Articles 2 (2) and 3 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 14 (2000) adopted by the Committee on Economic, Social and Cultural Rights proscribe any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for

their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, health status, sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. On 24 April 2019, Costa Rica signed the Inter-American Convention against All Forms of Discrimination and Intolerance. The Special Rapporteur notes that, at the time of the visit, its ratification was still pending.

89. Article 33 of the Constitution states that every person is equal before the law, stipulating that discrimination is “contrary to human dignity”. Furthermore, article 9 of the General Health Act provides that all persons have the right to the promotion of physical and mental health.
90. The Special Rapporteur welcomes the amendment made to article 112 (11) of the Criminal Code in 2022, which increased the punishment for hate-related murders to between 20 and 35 years of imprisonment. Such crimes are defined as the killing of a person for reasons of hatred due to their membership of an age, racial, ethnic or religious group or their nationality, political opinion, immigration status, sexual orientation, gender identity or expression, disability or genetic characteristics.
91. The Special Rapporteur welcomes the appointment of the Presidential Commissioner for Social Inclusion for issues related to disability and the rights of people of African descent, Indigenous Peoples and lesbian, gay, bisexual, transgender, intersex, queer, asexual and other sexually or gender-diverse (LGBTIQ+) persons in June 2022.

D. Migrants, asylum-seekers and refugees

112. Costa Rica has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. According to the Office of the United Nations High Commissioner for Refugees, at the time of the visit, there were approximately 250,000 asylum-seekers in Costa Rica, mostly from Nicaragua, which also includes Indigenous Peoples from the Miskito community.
113. The long delays in the recognition of refugee status and the issuing of identification documents, coupled with the administrative barriers, have resulted in the exclusion of and disproportionate impact on, for example, ... Indigenous migrant populations, as their obtention is key to accessing health care.

E. Indigenous Peoples

117. Costa Rica ratified the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), on 2 April 1993. The Special Rapporteur was informed that mobile teams from the basic comprehensive health-care teams carry out between one and four visits a month to the 24 Indigenous territories within the country. She also heard accounts of structural violence against Indigenous Peoples. Basic comprehensive health-care teams are located far from their communities, limiting their right to a comprehensive health-care system – some individuals indicated that they must leave their house at 4 a.m. to access a basic comprehensive health-care team, sometimes without the guarantee of being received the same day, due to the lack of capacity.
118. The Special Rapporteur was informed about structural violence affecting the Indigenous communities. They indicated that Western medicine was expensive for them and that hospitals lacked a specific area where traditional healers could interact with sick persons from their communities.

119. The Special Rapporteur is concerned about the dispossession of Indigenous Peoples' land and their invisibility vis-à-vis the authorities, as well as the increase, since 2018, in depression and anxiety among Indigenous youth who are studying outside their communities, as well as the increase in attempted suicide and death by suicide in Talamanca, which were brought to her attention.
120. While meeting with members of the Bribri community, the Special Rapporteur was informed about the lack of employment perspectives, resulting in most of them working in the informal sector, which prevents them from enrolling in the Social Security Fund, and in ongoing related administrative obstacles.
121. The Special Rapporteur is concerned about the alleged lack of empathy of some members of the authorities and those working in public services, where they experienced ill-treatment, including, on some occasions, no respect for their ethnic identity and cultural needs.
122. Access and affordability of transportation are barriers to access basic comprehensive health-care teams. The Special Rapporteur also heard about the waiting times for consultations and the lack of specialists, including doctors working in paediatric and geriatric care.
123. It was brought to the attention of the Special Rapporteur that Indigenous Peoples from the Miskito Indigenous community from Nicaragua suffer the trauma of being in exile, in addition to the lack of access to ancestral flora used for traditional medicine. She was informed of the differential access to underlying determinants of health, including the lack of housing and water.
124. During her visit to Talamanca, the Special Rapporteur witnessed a positive meeting and an agreement between the Social Security Fund and members of the Bribri community, in which they committed to give a clear role to Indigenous leaders to document barriers to access health care, including problems of infrastructure and medical errors, and to administratively sanction those responsible. The mandate holder was also pleased to learn that there was an agreement to construct a new basic comprehensive health-care team with complementary services in Talamanca, which would also include specialized care.

F. Persons deprived of liberty

125. Issues related to the economic barriers to women's access to justice and the lack of human resources and health personnel in prisons were brought to the attention of the Special Rapporteur. She was concerned to learn about stereotypes affecting women and the limited knowledge of women's rights among enforcement officers, including the police.
126. The Special Rapporteur is concerned about the barriers encountered by Indigenous Peoples ... in accessing justice. Those groups intersect with other categories of the population, including women and LGBTIQ+ persons. She regrets the absence of information on the remedies available to them to complain about intersecting forms of discrimination.

VIII. Recommendations

140. The Special Rapporteur recommends that the Government and other relevant stakeholders: ... (u) Enable the Social Security Fund to hire cultural advisers across the health system and ensure their integration therein. The cosmovision, physical and mental health, spirituality and autonomy of Indigenous Peoples ... and their

inseparable connection to their territories and lands are a matter of human rights and should be approached as such.

F. INDEPENDENT EXPERT ON THE ENJOYMENT OF ALL HUMAN RIGHTS BY OLDER PERSONS

1. Human rights of older persons in the context of climate change-induced disasters, A/78/226, 25 July 2023

I. Introduction

1. The present report is submitted to the General Assembly by the Independent Expert on the enjoyment of all human rights by older persons, Claudia Mahler. It contains a brief overview of the activities of the mandate holder during the reporting period and a thematic analysis of the impacts of climate change-induced disasters on the human rights of older persons. The analysis relies on previous work and extensive desk research, as well as 32 written submissions received from States, national human rights institutions, civil society organizations, academics and other stakeholders in response to the call for contributions issued in March 2023. Furthermore, five regional expert meetings were organized, in partnership with three United Nations regional commissions, to collect inputs and good practices from all regions in the world. The Independent Expert is grateful to all those who contributed to the preparation of her thematic report.
3. In a recent speech, the United Nations High Commissioner for Human Rights affirmed that the triple planetary crisis – of climate change, biodiversity loss and pollution – was a human rights crisis, noting that those worst hit would be people who are already trapped in vulnerable situations. Climate change results in extreme weather events and disasters that are greater in frequency and intensity, disproportionately affecting the most vulnerable people and systems. In 2019, 97.6 million people were affected by climate- and weather-related disasters, with vulnerability to climate change impacts compounded by factors such as ... Indigenous identity...

IV. Intersectionality

22. Disproportionate impacts of climate-induced disasters are felt by older persons who experience multiple and intersecting forms of discrimination, including older women, older Indigenous persons, older persons with disabilities, older persons belonging to racial or ethnic minorities and older persons living in poverty.

Indigenous Peoples

28. Older persons in indigenous communities are more likely to have close ties to the environment, including from traditional practices and livelihoods. For this reason, the impacts of climate change may be associated with a unique sense of loss related to the disappearance of cultural practices and traditional ways of life. Indigenous Peoples are also important bearers of knowledge and skills for climate adaptation. The Special Rapporteur on the rights of Indigenous Peoples points out, for example, that Indigenous women are custodians of a collective accumulation of scientific knowledge and technical skills related to, inter alia, natural resource management and weather patterns. This knowledge is critical to managing the risks and impacts of climate change, as well as building resilience in the face of extreme events. Older Indigenous persons are often community leaders that hold this valuable indigenous

knowledge. Their participation in decision-making processes concerning climate adaptation and disaster risk reduction should be facilitated and promoted..

VI. Conclusions and recommendations

70. In paragraph 7 of its resolution 48/3, the Human Rights Council recognized the need to identify and integrate the needs and meaningful participation of older persons and their organizations in the preparedness, response and recovery stages of emergencies, including pandemics, climate change and disaster risk reduction and resilience measures, and to ensure that emergency plans and responses do not include ageist stereotypes and biases. In the present report, the Independent Expert considered the rights of older persons in the context of climate-induced disasters and how to build forward more equally to uphold the rights of older persons in disaster preparedness, response and recovery, as well as climate mitigation and adaptation.
71. However, the current international human rights framework fails to provide sufficient protection for the rights of older persons in the context of climate-induced disasters. The lack of a comprehensive international legally binding instrument on the rights of older persons leaves significant gaps, including in the context of the disproportionate risks older persons face owing to climate change and climate-induced disasters. Furthermore, the absence of sufficient clear and binding obligations for the human rights of older persons, including non-discrimination based on age, results in limited access to justice.

A. Recommendations to States

...

Participation

79. Older persons must be given meaningful opportunities to participate in all facets of disaster preparedness, response and recovery. They should be consulted and involved in the gathering of data and the development of relevant law and policy frameworks, as well as related decision-making processes. The Independent Expert notes that, based on their knowledge and experience, older persons – particularly older Indigenous persons – should have an important role to play in building capacity for climate adaptation and mitigation and disaster risk reduction.

Communication

80. All older persons should be provided with information that is accessible and easy to understand and read, including in Indigenous and minority languages, on climate change and related disasters. Any awareness-raising campaigns on these issues should be age inclusive. Where older persons may be directly affected by a disaster, they must receive accessible information regarding the disaster, associated risks and recommended action to reduce harm, as well as where and how to access any help they may need.

G. SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS

1. Visit to Mexico, A/HRC/53/35/Add.2, 27 June 2023

II. Context

...

7. Indigenous Peoples have historically suffered structural inequalities, exclusion and systematic violence. There continue to be obstacles that prevent them from fully enjoying their human rights, such as extreme poverty, violence by armed actors, including organized crime groups, lack of recognition of their own regulatory systems and institutions, progressive land grabbing and appropriation of their lands, and the design and implementation of investment projects by the State and private companies.

III. Causes of internal displacement

8. The causes of internal displacement in Mexico are diverse and multifactorial. They include various types of violence, often resulting from organized crime, development projects, including mining and illegal logging, community land conflicts, climate change, and disasters. Likewise, it has been shown that, in specific cases, the creation of protected natural areas has caused arbitrary displacement.
9. The Special Rapporteur noted that many cases of internal displacement were the result of high levels of violence, mainly by organized crime groups, paramilitary groups and even State agents. In addition, internally displaced persons, representatives of Indigenous Peoples and civil society organizations described cases of internal displacement linked to disappearances, sexual violence, gender-based violence, femicides, homicides, massacres, recruitment, and forced labour and extortion, among other things.
12. The Special Rapporteur observed internal displacement caused by development plans and projects related to mining, logging, hydrocarbon extraction, dam construction and tourism, including the Mayan train project. In this regard, she noted with concern the irregularities and harassment faced by Indigenous communities in expressing their free, prior and informed consent. She received information concerning the case of the Penmont La Herradura gold mine on the El Bajío communal land in the State of Sonora, which illustrates the power of mining companies in the country, since, despite 67 court rulings having been handed down ordering the mining company to vacate the land, repair the environmental damage and compensate the communal landholders, these orders have still not been executed.
13. She also noted that Indigenous Peoples suffer the impact of long community conflicts over land, during which acts of intra- and inter-community violence often occur. During her visit, she learned, for example, about the situation of internal displacement and dispossession of 200 Mixe Indigenous people from the community of Tierra Negra, in the municipality of San Juan Mazatlán, in the State of Oaxaca. These conflicts appear to be caused by differences over agrarian, religious, budgetary and political affiliation issues.
14. Despite the fact that some of these conflicts have been latent for decades, for example in the Chiapas highlands, there does not appear to be a government strategy for preventing, managing and resolving them. Furthermore, many acts of

violence go completely unpunished, which puts Indigenous Peoples at risk of being victims of a range of human rights violations.

17. The creation of protected natural areas was identified as another cause of internal displacement. In her 2016 report, the Special Rapporteur on the rights of Indigenous Peoples included Mexico among the countries in respect of which concerns have been raised over the impact that protected areas have had on Indigenous Peoples.⁶ During her visit, the Special Rapporteur received information on protected natural areas that have reportedly caused the displacement of Indigenous Peoples in the Montes Azules and Calakmul Biosphere Reserves, in Chiapas and Campeche, respectively. It is worrying that, according to the information received, the Government has relocated the communities without having obtained the necessary consent. While the creation and maintenance of protected areas for the conservation of the environment and cultural heritage is paramount, the Indigenous Peoples concerned must be consulted, and must express their free, prior and informed consent.

IV. Characteristics of displacement

18. Mexico does not have official national figures or information disaggregated by age, gender, ethnic origin, sexual orientation, disability and diversity that illustrates the scale of internal displacement and the various profiles of internally displaced persons. In this regard, the Special Rapporteur notes with interest the efforts made by government agencies, academic institutions and civil society organizations, both at the federal and state levels, to monitor, collect information and generate statistics on displacement. According to statistics from civil society, as of December 2021, a total of 379,322 people had been displaced in Mexico in episodes of mass internal displacement caused by violence.
21. The Special Rapporteur noted with great concern that internal displacement affects mostly Indigenous Peoples, who, despite making up 10 per cent of the total population of Mexico, were affected by 40 per cent of the episodes of displacement recorded by civil society in 2020.
22. Internal displacement has a differentiated impact on women and girls, as they face gender-based violence, including sexual violence. She noted the risks arising from the discrimination and vulnerability faced by Indigenous and Afrodescendent women, as well as men's fear of exercising economic activities in an area controlled by organized crime, which forces women to become the sole providers.
23. She notes with concern that children and adolescents were part of almost all episodes of displacement in 2020 and highlights the differentiated impact on them due to their particular dependency and vulnerability, including forced recruitment, the breakdown of the family unit, the loss of protective environments, school dropout, the loss of identity documents and hindered access to health services. Mention should be made of the situation of Indigenous women who are older or have disabilities, as they face economic and social obstacles due to their condition and require special attention.
24. Furthermore, family members of disappeared persons constantly face threats and security and displacement risks when they report their loved ones missing. Families who were interviewed reported experiencing attacks during the search and suffering harm to their personal integrity or freedom of movement.
25. The risks faced by human rights defenders and journalists, and their displacement as a result of threats, assaults, criminalization and other attacks, have been the

subject of concern among various United Nations experts. This violence reportedly has a chilling effect on others carrying out the same work. There continue to be inadequate protection measures in respect of human rights defenders and journalists, and the Special Rapporteur even learned of cases of journalists who were murdered in their new location. She notes the lack of differentiated measures for the protection of women journalists and human rights defenders, as well as the absence of comprehensive plans for the relocation of the direct family of persons subject to protection measures.

V. Impact of internal displacement

28. The Special Rapporteur received information on the devastating impact of internal displacement. The vast majority of victims stated that displacement inevitably entailed the loss of livelihoods. In her meeting with the Ministry of Labour and Social Security, she noted the absence of plans for the reintegration of internally displaced persons into the labour force. This type of omission heightens the vulnerability of the victims.
29. An Indigenous group relocated from the State of Chiapas to the State of Campeche reported that the land provided by the State was unsuitable for planting and that they had no drinking water or schools nearby. Some internally displaced persons regretted that the type of land and climate to which they had been relocated by the Government was different from that of their community, and that this has had a substantial negative impact on food production.
30. Displacement has meant the loss of social and cultural identity, particularly for Indigenous Peoples, who have a special attachment to their ancestral lands. Displaced Indigenous families expressed regret that the new generations have lost the link with their land, and that their customs and traditions have been weakened. Displaced Indigenous women expressed concern that their children are losing their mother tongue, and older Indigenous persons expressed their fear of dying far from their home communities. The Indigenous people interviewed stated that their arrival in urban areas has marginalized them, stripped them of their social and cultural identity, and caused the weakening of their traditional institutions.
31. This situation has led many displaced Indigenous Peoples to organize to seek their return and the protection of their human rights. In such situations, they face discrimination and racism from justice operators and systematic delays in access to justice. They also suffer reprisals and attacks, and Indigenous leaders have even been assassinated. Some Indigenous persons are unable to return to their communities due to arrest warrants issued in the context of intra-community conflicts.
32. Regarding the impact on the family sphere, the Special Rapporteur found that internally displaced persons have been deeply affected by the disintegration of their nuclear family and the loss of protective environments. She heard testimonies from journalists, human rights defenders and family members of disappeared persons who chose to live far from their immediate family for fear of reprisals.

VII. Ensuring a comprehensive response to displacement

62. The Special Rapporteur highlights the importance of the implementation by the State of a comprehensive response strategy at all stages of displacement: before, during and after. This response requires a coordinated, simultaneous and permanent institutional effort. On the one hand, the legislature (at the federal and state levels) needs to establish a rights-based regulatory system that includes the

necessary legal elements to provide comprehensive support to internally displaced persons, as well as the criminalization of arbitrary displacement. On the other, the executive branch must redouble its efforts to create public policies and legislative proposals in order to strengthen the State's comprehensive response. Finally, the judicial branch plays an essential role in the protection of displaced persons by handing down court decisions that allow for the material protection of victims.

63. In order to ensure the proper approach and functioning of a comprehensive response to internal displacement, it is essential that the strategy is designed in such a way as to include the participation of internally displaced persons, who have direct knowledge of the evils of forced displacement and are well positioned to contribute to the identification of tools and procedures to promote the protection of their rights.

A. Before the emergency: prevention and protection measures

65. In development projects, the full implementation of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), ratified by Mexico, is one measure to address the impacts of climate change. It is thus essential that when creating protected natural areas, the State guarantees the provision of full information and the participation of the affected populations in order to avoid internal displacement.

66. With regard to the internal displacement of Indigenous Peoples, she recalls that the full implementation of the international regulatory framework on the rights of Indigenous Peoples is essential to guarantee their enhanced protection and prevent internal displacement, especially taking into account the obligation of State authorities to seek their consent prior to any act that could displace them from their lands.

VIII. Conclusions and recommendations

81. The causes of internal displacement in Mexico are diverse and multifactorial. Formally recognizing the social problem of internal displacement is an essential step that must be followed by putting in place legal frameworks and public policies for the comprehensive protection of internally displaced persons. All laws and policies must have a differentiated approach that takes into account age, gender and diversity, be adequately funded, and be comprehensive and consistent with international human rights standards.

94. In terms of assistance and support, it is recommended to:

- (a) Establish clear support pathways for internally displaced persons;
- (b) Identify safe places to house internally displaced persons and meet their temporary needs with safe and secure facilities, keeping the development perspective in mind to avoid prolonged displacement;
- (c) Create a protection and support plan for internally displaced persons that includes specific measures for families, Indigenous Peoples, women and girls, and children and adolescents, in a way that protects the family unit and takes into account the best interests of the child, as well as the opinions and preferences of displaced persons....

98. In relation to Indigenous Peoples, it is recommended to adopt a national policy for the prevention of the causes of internal displacement that includes the perspective of displaced Indigenous Peoples. It is also recommended to ensure the application

of an intercultural approach for the protection of the rights of Indigenous Peoples at all stages of displacement, particularly with regard to the reinforced protection of their rights in relation to the link to their ancestral lands. When displacement is caused by development projects and the creation of protected areas, it is essential to consult the Indigenous Peoples concerned.

101. With respect to durable solutions, she recommends: (a) Ensuring access to housing, land and property rights, including restitution in a culturally appropriate manner, and enabling internally displaced persons, particularly Indigenous persons and families, to exercise their livelihood needs. If restitution is not possible, fair and proportional compensation should be provided, in accordance with the guarantees of due process....

H. SPECIAL RAPPOORTEUR ON FREEDOM OF RELIGION OR BELIEF

1. Visit to Sweden, A/HRC/55/47/Add.2, 2 April 2024

III. Government cooperation with the United Nations system

...

14. Sweden has a long-standing and strong engagement with relevant human rights mechanisms, and reports regularly on its human rights record. In concluding observations adopted by treaty bodies between 2016 and 2023 and the outcome document adopted in 2020 in the context of the universal periodic review, concerns were raised about continued reports of racist hate speech, in particular during election campaigns, in the media and online; about racist and xenophobic violence against ... the Sami; and incidents of religious intolerance, including physical attacks against persons belonging to religious minorities and attacks on their places of worship.

IV. National laws, policies, institutions and practices

17. The Constitution of Sweden includes four fundamental laws with which no other laws or ordinances may conflict: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Constitution provides for freedom to practice religion alone or in the company of others, mandates that there be no limitation of rights or freedoms on the grounds of religious opinion and instructs public institutions to combat discrimination based on religious affiliation. It promotes opportunities for the Sami people and ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own. No one is obliged to belong to a religious community or divulge religious beliefs in relations with public institutions.

C. Situation of the Sami people

85. The Sami are an Indigenous People and also one of the five recognized national minorities in Sweden. The region comprising their traditional lands is called Sápmi in the northern Sami language. Some estimates suggest that between 20,000 and 40,000 Sami live in Sweden.
86. In the seventeenth century, efforts were made to Christianize Sami in Sweden. They were forced to attend church services, under threat of fines, imprisonment and even the death penalty for those who did not give up their traditional beliefs. The effort

of Christianization included the burning of sacred drums and the desecration of sacred sites, and led to an almost complete destruction of traditional Sami religious expression. The persecution went hand-in-hand with State encouragement for farmers to settle on Sami territory in the very far north of Sweden.

87. The Sami people was first recognized as an Indigenous People by the Riksdag in 1977. Following an amendment, as of 1 January 2011, the Constitution explicitly recognizes the Sami as a people, in addition to being an Indigenous People and a national minority in Sweden. Swedish has the status of official language within the country. Five other languages, including Sami, have the status of official minority languages. Citizens are permitted to use those minority languages in certain official or judicial contexts, and Sami may be used in the contexts of childcare and elder care; children who speak Sami have the right to attend bilingual Sami schools instead of regular Swedish schools.
88. Recognition of Sami rights has gradually increased since the 1950s. The Sami Parliament was established by the Sami Parliament Act of 1992 and is both a publicly elected parliament and a government agency. The Act on consultation on issues concerning the Sami people (2022:66) entered into force on 1 March 2022, making consultation with the Sami Parliament and Sami organizations obligatory before a decision is made in matters of particular concern to the Sami.
89. One aspect of Sami culture is reindeer herding, although it is not practised by all Sami. Too much focus on this one aspect has led to other aspects of Sami land rights being overlooked, along with free, prior and informed consent. A continuing and complex issue is the repatriation of Sami remains and sacred objects to Sápmi, and the Special Rapporteur recognizes the significance relating to the freedom of religion or belief of such repatriation.
90. In October 2022, Archbishop Antje Jackelen issued a second public apology to the country's Indigenous Sami community for centuries of mistreatment that had contributed to what the Sami described as legitimized repression conducted by the Church of Sweden. The Sami representatives were successful in their attempts to include a traditional Sami singing style previously considered sinful, joik, in Church services. The Church of Sweden and its Sami Council presented an action plan to increase Sami participation and influence, strengthen Sami religious life, and include Sami children and young people, as well as increase knowledge of Indigenous rights.
91. In March 2022, the Government granted concessions for an iron ore mine in Kallak (known as Gállok to the Sami) in Norrbotten on Sami reindeer-herding land, despite massive opposition from affected Sami villages, the Sami Parliament, the Swedish environmental agency and two United Nations special rapporteurs.
92. The Special Rapporteur welcomes the establishment, in November 2021, of a truth commission to investigate the abuses of the Sami people by the State of Sweden, which is due to report its findings in December 2025. The Truth Commission for the Sami People has been mandated to: (a) survey and examine the policies pursued towards the Sami and the actions of relevant actors in the implementation of those policies; (2) highlight the experiences of the Sami; and (3) analyse and shed light on the consequences of the policies pursued towards the Sami with regard to the living conditions, health and social life of the Sami people as a whole and as individuals, and the ability of the Sami people to preserve and develop their own culture and community life.

93. In July 2023, the Government requested that the Swedish National Council for Crime Prevention conduct a study on hate and threats against Sami persons.

VIII. Recommendations

98. The Special Rapporteur notes that a human rights-based approach to addressing the challenges facing Sweden is necessary to avoid the setbacks that security-based or populist responses to tensions between communities beget. Against this background, the Special Rapporteur recommends that the Government:
- ... (p) Continue to work towards ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, while considering further measures to strengthen the access of the Sami people to influence, participation and livelihoods in full respect of their freedom of religion or belief; and take all necessary measures to ensure that Sami remains and sacred objects are repatriated to Sápmi...

2. Freedom of religion or belief, from the grass-roots level, A/78/207, 19 July 2023

III. The role of domestic State authorities in guaranteeing freedom of religion or belief

...

C. Authorities responsible for land, zoning and tenure

27. Land, zoning and tenure represent key issues in relation to freedom of religion or belief. Authorities are responsible for the distribution and allocation of land for places of worship and for burial, the security of tenure for religious or belief minorities and the demarcation of protected indigenous land and territory that may have spiritual significance. Denial of access to, or forced eviction from, land of spiritual significance are among the most common violations experienced by indigenous peoples. The relevant municipal and regional authorities bear the primary responsibility to act legally and in a consultative manner on such matters.

D. Authorities responsible for economic, social and cultural rights

...

36. Health care is also profoundly interconnected with a range of human rights, including the right to freedom of religion or belief. Religious or belief minorities and indigenous peoples may experience obstacles in gaining access to health care arising from discriminatory budgeting, a resulting lack of infrastructure and care facilities and/or prejudice among health-care providers and affecting the quality of care that they receive. Pastoral services may also be denied or unavailable to certain religion or belief groups. Particular care is needed in mental health settings to ensure that there is no prejudicial application of existing criteria for intervening in the forum *internum* in psychiatric care through technologies and treatments.

E. Law enforcement and public prosecutors

...

47. Law enforcement officials and public prosecutors must protect individuals and groups from violence and discrimination based on religion or belief and refrain from engaging in such acts. They must facilitate the enjoyment of freedom of religion or belief through, inter alia, ensuring that such violence and discrimination

is prevented and, where it could not be, through ensuring prompt, thorough and effective investigation and prosecution, while respecting the rights of survivors and victims. Religious or belief discrimination should be considered a potential motive for hate crimes and investigated effectively. That requires States to ensure literacy in relation to freedom of religion or belief, including as it relates to indigenous communities, among law enforcement officials and public prosecutors. It may also necessitate the creation of specialized units.

48. Places of worship and other sacred sites, including indigenous territory, must be protected from infringements and attacks in a manner that does not impede their accessibility to relevant communities. Furthermore, States must address underlying prejudicial attitudes among law enforcement officials and public prosecutors with respect to religious or belief communities, through training and education on freedom of religion or belief that are designed and implemented in collaboration with religious or belief communities.

G. National human rights institutions

...

60. State actors charged with protecting the rights of indigenous peoples, combating racism, gender inequality or other forms of discrimination or overseeing mechanisms for the prevention of torture also have key roles, especially in conflict prevention and resolution. Such institutions must be trained in international standards on freedom of religion or belief and be able to make the specific forms of multiple disadvantage that may arise visible.

V. Conclusion

90. The enjoyment of human rights, including the freedom of religion or belief, must be practical and effective, not theoretical and illusory.⁹⁸ In the present report, the Special Rapporteur has detailed the wide array of actors at the domestic level who have the power to contribute towards the realization or violation of the enjoyment of the right to freedom of religion or belief. The scale of the task to make that freedom practical and effective is significant and ongoing.
94. Further steps are required to facilitate the enjoyment of freedom of religion or belief. Even when effectively established in law, standards may be superseded in practice by public policies, strategies and narratives that undermine them, such as those aimed at countering extremism and terrorism, national security or economic development. Such practice may contribute to the stigmatization of religious or belief minorities and indigenous peoples and/or otherwise violate their freedoms.

3. Landscape of freedom of religion or belief, A/HRC/52/38, 30 January 2023

II. Landscape of freedom of religion or belief

9. The core of respect for the freedom of religion or belief can, for impetus and inspiration, be traced back to many civilisations, religions and belief systems, and cultures. The early antecedents of the core value of respecting the realm of conscience is reflected in ancient Indigenous cultures and in the Persian empire, and many other sources, religious or otherwise, throughout millenniums and into more recent times.

15. In addition to the standards noted, a number of subsequent instruments illustrated specific dimensions of this freedom. They include the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992 and the United Nations Declaration on the Rights of Indigenous Peoples of 2007.

A. International and regional standards

...

29. Article 12 of the United Nations Declaration on the Rights of Indigenous Peoples sets out that: (a) Indigenous Peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies, the right to maintain, protect and have access in privacy to their religious and cultural sites, the right to the use and control of their ceremonial objects and the right to the repatriation of their human remains; and (b) States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned. Article 12 should be read in conjunction with article 5, regarding the right of Indigenous Peoples to maintain their institutions, namely, that Indigenous Peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. This is reinforced by article 25, which sets out that Indigenous Peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard. Other articles of the Declaration address restitution regarding Indigenous religious and spiritual property (article 11 (2)), the spiritual development of Indigenous children (article 17 (2)), maintaining Indigenous institutional structures and distinctive customs, spirituality, traditions, procedures, practices and juridical systems, in accordance with international human rights standards (article 34). The affirmation in the preambular paragraph that all doctrines, policies and practices based on or advocating the superiority of peoples and individuals on the basis of religious differences are morally condemnable is also worth noting.

C. Fields of operation

...

50. The influence and engagement of religious and belief communities in conflict resolution, peacekeeping and peacebuilding has long been established. This has given rise to inspiring visions, new initiatives and global movements with established regional and national plans to advance peace. A previous mandate holder urged caution against homogenizing the experiences of religious or belief minorities in conflict situations, lest it lead to “religionizing” conflicts, which may make conflict resolution more elusive and intractable. Other frameworks have put forward holistic understandings of human rights and peace, promoting commitments to stand up for the rights of Indigenous Peoples and all persons belonging to minorities, their freedoms and right to participate in cultural, religious, social, economic and public life, which may also contribute to political and social stability.

I. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF SLAVERY, INCLUDING ITS CAUSES AND CONSEQUENCES

1. Visit to Canada, A/HRC/57/46/Add.1, 22 July 2024

III. Main findings and challenges

...

C. Indigenous Peoples

40. The Special Rapporteur is encouraged by efforts of the Government of Canada to re-examine and redress its colonial legacy and advance the rights of Indigenous Peoples, including the domestication of the United Nations Declaration on the Rights of Indigenous Peoples and the adoption of a federal action plan for its implementation, and the National Inquiry into Missing and Murdered Indigenous Women and Girls. However, the legacies of colonization and entrenched racial discrimination continue to adversely impact the rights of Indigenous Peoples, including First Nations, Métis and Inuit, and heighten their vulnerability to contemporary forms of slavery.
41. Under the colonial framework, Indigenous Peoples lost sovereignty over their lands, resources, families and bodies, all against a backdrop of unrelenting direct, cultural and structural discrimination. This has created intergenerational trauma and normalized violence and external control over the bodies of Indigenous persons, who experience greater rates of homelessness, low educational achievement, unemployment, poverty and poor health than non-Indigenous Canadians. These enduring inequalities rooted in colonization and dispossession have left many Indigenous persons without the social and economic resources that would enable them to enjoy an adequate standard of living, leaving them vulnerable to exploitation.
42. An underlying driver of vulnerability to contemporary forms of slavery is the denial of the rights of Indigenous Peoples to fiscal autonomy, under article 4 of the United Nations Declaration on the Rights of Indigenous Peoples, and to sovereignty over public services under article 23 of the Declaration. Most Indigenous Peoples continue to depend on funding provided by the Federal Government rather than on autonomous sources of revenue. Existing self-government agreements are frequently not implemented, while the initiation of new agreements require extensive negotiations.
43. As Indigenous Peoples do not have sufficient revenue to manage public services, such services continue to be provided by the Federal Government. This has led to significant disparities in their quality. The Canadian Human Rights Commission found that the public services provided on First Nations reserves were chronically underfunded and that the Government had refused to pay for essential health services. First Nations and Inuit Peoples face significant inequalities in access to water. The lower quality of public services reduces the standard of living enjoyed by Indigenous Peoples and creates migratory pressures as many are obliged to leave areas where they are in the majority in order to access essential services. Lower standards of living may push Indigenous persons to accept exploitative work, absent alternative forms of labour, or to face targeting by traffickers while travelling to seek services in unfamiliar areas.
44. Historically, the State has exercised significant control over the bodies of Indigenous persons, most infamously through the residential school system, under which over 150,000 First Nations, Métis and Inuit children were taken from their families and

sent to Government-funded schools where they experienced horrific abuses. While the system has been recognized as a genocide by the Government, it persists in the disproportionate rates of institutionalization that affect Indigenous children and adults. Indigenous children and youth, who account for roughly 8 per cent of the population in Canada, account for 53.8 per cent of children in foster care and 50 per cent of children in youth custody and detention facilities.

45. The over-institutionalization of Indigenous children makes them vulnerable to contemporary forms of slavery. Many interlocutors emphasized that the child welfare system reproduces the negative impacts of residential schools, as the majority of Indigenous children in care are placed with non-Indigenous families. Others are placed in group homes, which may be publicly or privately run and not well-regulated. Some Indigenous children are reportedly subjected to contemporary forms of slavery by their caregivers in the foster care system. For others, entry into the out-of-home care system results in the loss of cultural, social and family ties, an important bulwark against exploitation. However, the Special Rapporteur was made aware of good practices to remedy such problems at the provincial level, including the efforts of the government of British Columbia to restore jurisdiction of child and family services to Indigenous communities and measures in the province of Ontario to license and regulate out-of-home care.
46. Children raised in the foster care system are more likely to have experienced violence, neglect and loneliness and may have fewer close relationships. When children age out of foster care, they may be abruptly forced to live on their own means, with few social or economic resources, leading them to accept exploitative work or relationships. Human traffickers, who are reportedly aware of these dynamics, target homes where children are reaching the age of majority. Some provinces, including Ontario, have introduced programmes to expand access to financial support, education and public services for youth exiting out-of-home care to mitigate such risks.
47. Major extractive projects continue to be implemented on Indigenous lands without the free, prior and informed consent of all affected Indigenous Peoples by the State and private actors, who frequently fail to provide appropriate restitution and compensation. Notwithstanding the broader human rights implications of such projects, they create direct vulnerabilities, exposing Indigenous persons to contemporary forms of slavery. Further, resource extraction projects implemented without compensatory measures deprive Indigenous communities of critical sources of revenue, perpetuating the underdevelopment of services in the communities and may further impoverish them as the presence of resource extraction “boom towns” often leads to a rise in the local cost of living. This heightens the risk of labour exploitation. Interlocutors also highlighted instances of sexual exploitation experienced by Indigenous women and girls near mobile resource extraction camps populated by non-Indigenous men with money to spare.
48. The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls makes clear that the crisis is at least in part attributable to contemporary forms of slavery. The majority of trafficked women and children in Canada are Indigenous. Indigenous women, girls and persons of diverse sexual orientation and gender identity are potentially subjected to particularly violent manifestations of contemporary forms of slavery, given the disproportionate level of violence they face: one in four female homicide victims is Indigenous, and 63 per cent of Indigenous women and girls have experienced physical or sexual assault in their lifetimes.

49. Entrenched racist stereotypes depict Indigenous women as hypersexualized. While the stereotype motivates traffickers to target them for sexual exploitation it also leads security and justice actors to downplay their complaints of abuse. Law enforcement personnel reportedly does not investigate such crimes seriously, but seek instead to criminalize Indigenous individuals seeking their assistance. The deeply intertwined nature of colonialism and the police system in Canada means that Indigenous persons, while being over-policed in their daily lives through constant surveillance, harassment and criminalization, are underpoliced when reporting violence, abuse or exploitation. The incarceration rate for Indigenous adults in provincial adult institutions is roughly nine times that of non-Indigenous Canadians, which heightens their susceptibility to labour exploitation as they may be targeted by traffickers when re-entering society or struggling to find decent work with a criminal record.

E. Persons deprived of liberty

...

58. Employment programmes reportedly do not adequately prepare prisoners for the labour market. The selection of trades offered is not based on conditions in the external labour market. Vocational training often focuses on general soft skills. Inmates may be ill-prepared to support themselves upon release because they experience particular discrimination in terms of access to public services, financial services and employment. Few prisoners have access to transitional housing, given the overall housing crisis confronting Canada. Socioeconomic marginalization may push them to accept exploitative forms of work and many former prisoners consequently end up in precarious types of work, characterized by situations of exploitation or abuse. Given the above challenges, some former prisoners experience homelessness and recidivism. This is particularly true for Indigenous persons ... who are disproportionately represented within the correctional system and face additional barriers both while incarcerated and after their release.

G. Persons with disabilities

64. Although the Convention holds that persons with disabilities should be able to live independently within communities, some persons with disabilities remain institutionalized in Canada. When exiting institutionalized settings, they are vulnerable to exploitation if not provided sufficient transitional supports. Disability rates exceed 30 per cent in some Indigenous nations which may be linked to the ongoing experience of colonization and intergenerational trauma and reportedly, Indigenous women and girls with intellectual disabilities are targeted by traffickers as they are intellectually vulnerable and their disappearances less likely to attract scrutiny from law enforcement.

H. Homelessness

...

66. In Canada, homelessness disproportionately affects groups that already face greater vulnerability to contemporary forms of slavery, including Indigenous Peoples.... Despite the fact that victims of human trafficking are a priority group for access to social housing, they face long wait times in practice. Insufficient transitional and long-term affordable housing also heightens vulnerability for persons exiting institutionalized settings, who may be inclined to accept exploitative forms of work to afford housing.

IV. Conclusions and recommendations

77. The Special Rapporteur acknowledges the ongoing efforts of Canada to prevent and address contemporary forms of slavery within its territory and abroad and its willingness to critically re-examine the underlying drivers, including its colonial legacy, the adverse effects of the activities of the Canadian private sector on human rights and its treatment of marginalized groups. Nonetheless, Canada risks failing to live up to its reputation as a global champion of human rights if it does not act more decisively to reform laws and policies that enable the exploitation of vulnerable workers and fail to provide adequate remedy and rehabilitation to victims of exploitation and abuse.
78. Canada must move from acknowledging the human rights challenges its past and current policies have created and towards meaningful remedial actions, including: promoting human rights due diligence by Canadian companies; reforming migration programmes that are conducive to exploitation; and addressing its colonial legacy and its enduring impacts on Indigenous Peoples, including structural barriers that continue to marginalize persons with disabilities and racialized groups. Approaches to prevent and address contemporary forms of slavery must follow a survivor-centred, human rights-based approach that does not infringe upon the rights of other groups, including sex workers. Support services must be provided on an equitable and predictable basis, with institutionalized funding and without discrimination. Canada must also tackle the root causes of contemporary forms of slavery, including poverty, inequality and discrimination, amplified by the legacy of colonialism and racism, and the housing crisis, in particular the critical shortage of social and transitional housing.
79. With due respect for the Canadian constitutional framework, the Special Rapporteur believes that the current arrangements for responsibility-sharing between the Federal Government and the provincial and territorial governments systematically create situations of interjurisdictional neglect that increase vulnerability to contemporary forms of slavery for certain groups and stymie efforts to protect and assist victims, with particular impacts on Indigenous Peoples, migrants, persons experiencing homelessness and persons with disabilities. The current approach to federalism appears to prevent Canada from effectively fulfilling its human rights treaty obligations. As made clear in the Vienna Convention on the Law of Treaties, a State cannot invoke the provisions of internal laws as justification for its failure to perform a treaty.
80. Canada is deservedly known for its commitment to a diverse and multicultural society, in which Indigenous Peoples, persons with disabilities and people of every gender, race, national origin, profession can coexist without discrimination. To turn this vision into reality, however, every resident of Canada must enjoy the same rights. During his visit, the Special Rapporteur observed that often the people who face intersecting forms of discrimination are most vulnerable to contemporary forms of slavery, including Indigenous Peoples ... and that Canada must do more to address the systematic, intersecting forms of discrimination those groups continue to face.
81. The Special Rapporteur wishes to reiterate that Canada has a deeply rooted culture of respect for human rights. As a result, many robust mechanisms have been put in place, including the National Inquiry into Missing and Murdered Indigenous Women and Girls.... Those bodies have assessed the human rights challenges highlighted in the present report and have drawn similar conclusions. However, the Government

must implement their recommendations, as well as those submitted in the present report, rather than deferring action by prolonging debate or taking concrete recommendations under indefinite periods of consideration.

Indigenous Peoples

88. The Special Rapporteur recommends that the Government of Canada guarantee the economic, social, cultural, civil and political self-determination of Indigenous Peoples through the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples in law and in practice, including by:
- (a) Ensuring that all provincial and territorial laws and practices conform to its treaty obligations and with the federal commitment to the domestication of the Declaration;
 - (b) Granting fiscal sovereignty and self-governance in law and practice for Indigenous Peoples, including First Nations, Métis and Inuit Peoples;
 - (c) Expediting the transfer of full control over essential public services, including child and family services, to Indigenous Peoples and, in the interim, strengthening oversight of service delivery;
 - (d) Respecting the principle of free, prior and informed consent in law and in practice, including the ability of Indigenous Peoples to benefit from compensation, restitution and revenue-sharing arrangements from extraction and development projects on their lands;
 - (e) Involve Indigenous Peoples in all decision-making processes affecting) their lives.
89. The Special Rapporteur recommends that the Government of Canada act upon the findings of the National Inquiry into Missing and Murdered Indigenous Women and Girls in a timely manner by effectively implementing the “Calls for Justice” emanating from the inquiry, with particular emphasis on the following in the context of contemporary forms of slavery:
- (a) Allocation of sufficient financial and other resources to Indigenous communities for permanent, accessible and wraparound public services;
 - (b) Self-determination over and equity in policing services for Indigenous Peoples;
 - (c) Holistic support for the legal process and rehabilitation under a trauma-informed approach;
 - (d) Sovereignty over child welfare systems in order to secure appropriate long-term transitional support for youth ageing out of the foster care system, identify and respond effectively to potential trafficking of children more effectively and provide appropriate long-term care for children who have been exploited.

Cross-cutting actions to address contemporary forms of slavery

95. The Special Rapporteur recommends that the Government of Canada ensure that the approaches of law enforcement authorities to address contemporary forms of slavery are victim-centred and human rights-based, including by: ... (e) Creating police oversight boards that reflect the diversity of Canada, including racialized, Indigenous, migrant and sex worker representation....

2. Visit to Costa Rica, A/HRC/54/30/Add.1, 14 July 2023

I. Introduction

1. The Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata, visited Costa Rica from 16 to 25 November 2022. The main objective was to assess the progress made by the Government in eliminating contemporary forms of slavery as part of its commitment as a Pathfinder Country under Alliance 8.7. In this regard, the Special Rapporteur had the opportunity to analyse the nature and extent of labour exploitation in various sectors such as agriculture, including plantations, and tourism and domestic work, as well as in commercial sexual exploitation.

III. Positive aspects

Elimination of child labour

...

23. Aside from law enforcement actions, Costa Rica has been implementing a variety of additional measures to keep children in schools and prevent child labour. One example is the Houses of Joy (Casas de la Alegría). This is a public-private alliance that provides day care and meals to Ngäbe Buglé – Indigenous children whose parents, mainly migrant workers from Panama, work on coffee farms in the Zona de los Santos and other locations. ...

Prevention of forced labour and protection of migrant workers

26. Aside from child labour, Costa Rica has taken some steps to address forced labour. ... The Special Rapporteur was also informed that 11 labour inspectors were learning the Indigenous language of the Ngäbe Buglé community in order to more effectively communicate with Indigenous workers of that ethnic group. It is also encouraging that the Labour Inspectorate has created three specialized groups of labour inspectors in the areas of gender, occupational health and virtual inspection. These teams strengthen and increase the Labour Inspectorate's response and generate greater coverage and specialization of the inspection work.

Situation of populations in a particularly vulnerable situation

32. The Special Rapporteur considers that more needs to be done to protect particularly vulnerable populations in Costa Rica in order to prevent their exploitation in contemporary forms of slavery. Children and young people constitute one example. While the steady progress being made by Costa Rica towards the elimination of child labour has led to important results, some challenges persist. Instances of child labour have been reported in the informal economy, such as in street vending, construction, domestic work and agriculture, where laws and regulations are not always enforced effectively. In plantations where fruit such as pineapples, oranges and other products are paid per unit, some children reportedly help their parents to pick and earn more.
33. One of the reasons for the persistence of child labour is poverty exacerbated by inequality and intersecting forms of discrimination, which particularly affect ... Indigenous Peoples Some parents may encourage their children to work, particularly in rural areas, and the Special Rapporteur was informed that many children also feel a sense of duty to assist their parents. Early warning/follow-up systems for identifying and protecting children at risk of exploitation exist at the elementary school level, but their impact is limited at the secondary level. The Special

Rapporteur was informed by several interlocutors that prevention programmes promoted by the Government are insufficient, and that there is a lack of robust monitoring mechanisms to evaluate their effectiveness.

34. There is a direct link between access to quality education and the prevention of child labour. All children are entitled to education without discrimination under the Constitution of Costa Rica. In practice, however, there is unequal access affecting certain children. ... In addition, education for Indigenous children reportedly does not always respect their cultural heritage and sensitivity, and some children have been excluded or even punished when they have spoken their own language rather than Spanish. In this regard, some concerns around cultural sensitivity in the Houses of Joy were also raised with the Special Rapporteur, as well as additional hurdles such as remote locations of schools and bureaucratic requirements.
35. These factors naturally discourage children from attending school and increase the risk of child labour and sexual exploitation. Reportedly, the dropout rate is higher among ... Indigenous children, who may end up working in sectors such as agriculture, services or domestic work. ... Even if these children stay in school, their access to higher education is often limited, and therefore they are more likely to work in the informal economy where the risk of exploitation is elevated. The situation became worse during the COVID-19 pandemic, as many children were not able to access education.
41. Despite the existing domestic legal framework on Indigenous rights and ongoing efforts to improving their working conditions, the Special Rapporteur is concerned about the situation of Indigenous Peoples in Costa Rica. In Los Santos, for example, their living conditions reportedly remain precarious and Indigenous Peoples have insufficient access to social security and health care. The Joint Institute for Social Assistance provides funds for Indigenous families working in the coffee plantations, but the money is paid to the estate managers, not to the families themselves. Many workers and their families are unable to access the funds in practice and there does not seem to be a robust oversight mechanism to rectify this. Furthermore, Indigenous workers who do not speak Spanish face significant difficulties in understanding and claiming their rights, which puts them at a particular risk of labour and/or sexual exploitation. In this regard, some workers in the coffee sector reportedly do not receive a contract and are paid less than what they are entitled to.
42. Indigenous women face an increased risk of being subjected to labour or sexual exploitation and abuse, for example in the domestic sector or in agriculture, particularly in remote areas. Some have been forced to perform sexual favours to receive food at the supermarket. They also face disproportionate obstacles in accessing justice and remedies, due to inaccessible, unsafe and inadequate reporting channels and intersecting forms of discrimination. The Special Rapporteur heard from Indigenous women that their complaints were not always taken seriously by the relevant authorities.
43. Inability to access their ancestral lands is another issue experienced by Indigenous Peoples. Their lands and natural resources have been taken, controlled and commercialized by non-Indigenous people and businesses, without meaningful consultation and free and informed consent. Despite the existence of legal frameworks and policies, including the most recent National Action Plan for the Recovery of Indigenous Territories 2016–2022, the Special Rapporteur learned that Indigenous Peoples' ancestral lands have not been returned effectively, and that their access to justice and remedies remains insufficient. Consequently, many

Indigenous Peoples have no choice but to work for these non-Indigenous businesses, or else in the informal economy, putting them at risk of labour exploitation.

V. Conclusions

61. Costa Rica has shown its commitment to ending contemporary forms of slavery. Important progress has been achieved, for example in preventing and addressing child labour and trafficking in persons. However, more needs to be done by the Government and by the private sector to achieve sustainable change by effectively ending contemporary forms of slavery and implementing target 8.7 of the Sustainable Development Goals. The promotion of an inclusive society through recognition of the significant economic contribution made by women and marginalized groups such as ... Indigenous Peoples ... and equal protection of their rights, are needed in order to ensure that no one is left behind in accordance with the 2030 Agenda for Sustainable Development.

VI. Recommendations

To the Government

...

72. Decentralize services, assistance and reporting channels, and ensure their accessibility also for children, Indigenous Peoples and migrants, including in border and coastal areas.
77. Adopt and implement temporary special measures to promote economic inclusion without discrimination, particularly for ... Indigenous Peoples.
86. Ensure access to free, quality education for all, including ... Indigenous children ... without discrimination. Adopt and implement temporary special measures where appropriate.
89. Ensure the accessibility of health care and social care for populations in a vulnerable situation, including ... Indigenous Peoples.... Adopt and implement temporary special measures where appropriate.
95. In order to address structural causes of labour exploitation and sexual exploitation, return ancestral lands to Indigenous Peoples and fully involve them in decision-making processes affecting them. Provide appropriate financial compensation and other remedies to rectify injustice suffered by Indigenous Peoples and strengthen measures to prevent invasion of Indigenous territories.
96. Systematically promote the active participation of Indigenous Peoples in the management of the Houses of Joy, in order to ensure that the food, the education and the languages spoken are in line with Indigenous rights and practices.

J. WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

1. Visit to Japan, A/HRC/56/55/Add.1, 1 May 2024

III. At-risk groups

28. While this section is focused on... Indigenous Peoples ... it is important to stress that this is not an exhaustive list of at-risk stakeholder groups in Japan. ...
29. The crux of the challenges faced by at-risk stakeholder groups is the lack of diversity and inclusion in the labour market, on the one hand, and the prevalence of discrimination, harassment and violence in the workplace and society at large on the other. Indeed, ongoing disparities in these groups' ability to gain access to employment opportunities, fair wages and a living income are closely linked to structural inequality, workplace discrimination and related problems, including poverty and social exclusion. While personal attributes, such as ethnicity, race, age, gender and sexual orientation, should not prejudice an individual's job opportunities or perception of their work competencies, this is often the case in reality. Indigenous Peoples ... many of whom work in lower-paid and informal economy jobs, generally receive lower wages than the rest of the population. Beyond the moral imperative to ensure inclusion, inequality can be economically and politically damaging. To achieve sustainable growth and leave no one behind, as promised in the 2030 Agenda, it is important for government policies and business activities to champion inclusion and social justice by first reaching at-risk peoples, who are often those left the furthest behind.

D. Minority groups and Indigenous Peoples

40. The recognition of the Ainu people as Indigenous Peoples and the passing of the Ainu Measures Promotion Act of 2019 mark a positive move towards acknowledging their rights. However, the absence of a comprehensive census of the Ainu population, one that is predicated on an Ainu definition of their own Indigenous identity, renders discrimination against them invisible and uncounted, with Ainu people still facing discrimination in various domains, including education and the workplace.
41. The Working Group was informed of a lawsuit against the central and prefectural governments seeking to reclaim the Ainu people's fishing rights. Article 28 of the Act on the Protection of Marine Resources prohibits, with limited exceptions, the harvesting of freshwater salmon by all Japanese citizens, including the Ainu people. However, this measure does not adequately consider the Ainu people's traditional salmon fishing rights as an Indigenous People whose way of living has historically involved the hunting and harvesting of salmon from rivers. The measure only permits harvesting for cultural and ritual purposes, failing to support the Ainu's traditional livelihood from salmon fishing. The Working Group is concerned that this situation limits Ainu rights and instead benefits businesses permitted to take salmon from the sea, warranting re-examination by the Government.
42. The absence of free, prior and informed consent from the Ainu people for various development projects, including those in the renewable energy sector, is likewise troubling. The Working Group notes with apprehension the adverse impact of these projects on the Ainu people and their rights. Stakeholders have brought to the Working Group's attention issues of grave concern, including the leasing of

State-owned forests to businesses to construct large-scale windmill complexes and resort developments without the Ainu people's consent. Although prior notification of project details to local residents is required for certification under the feed-in tariff and feed-in premium programmes, this is different from obtaining free, prior and informed consent from the Ainu people as Indigenous Peoples. Furthermore, the Ainu Measures Promotion Act allows Ainu people to collect forest products only for the purpose of promoting the Ainu people's culture. While the Working Group acknowledges the law's recognition of the Ainu people as the nation's Indigenous People, it is unfortunate that the Government does not recognize the Ainu people's collective rights to forest management and hunting.

43. The Working Group has also received reports of a surge in hostile and distorted views on the Ainu people, which may be categorized as hate speech, in printed materials and on the Internet. Noting the Government's efforts to promote cultural education about the Ainu people through tourism, for example, the Working Group is concerned about reports received of racial harassment and psychological stress faced by Ainu workers at the National Ainu Museum and Park.
48. The Working Group underlines that, without adequate regulation or laws that prohibit discrimination, it is extremely difficult for victims of discrimination to file complaints or gain access to remedy. Discrimination against Indigenous Peoples ... falls under the scope of the International Convention on the Elimination of All Forms of Racial Discrimination, to which Japan has acceded. Furthermore, the Working Group specifically reiterates the role that social media and technology businesses should play in promoting respect for human rights across their platforms and preventing harm.

V. Conclusions and recommendations

...

85. In addition to previous recommendations and guidance issued by OHCHR and other United Nations human rights mechanisms, the Working Group recommends that the Government: ... (p) Ensure that government entities and the private sector uphold the rights of Indigenous Peoples to free, prior, and informed consent, in accordance with international standards, such as the United Nations Declaration on the Rights of Indigenous Peoples...

2. Extractive sector, just transition and human rights, A/78/155, 11 July 2023

I. Introduction

A. Context

1. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises explores the implications of ongoing energy transition programmes in extractive sectors across the world for human rights. The Working Group considers how States, businesses and other stakeholders in the extractive sector can best design and implement just, inclusive and human rights-based energy transition programmes in line with the Guiding Principles on Business and Human Rights.
2. For several centuries, the extraction, development and use of natural resources have remained at the heart of the global economy. For many years, the economies of several States have been critically dependent on the development and use of

extractive resources. These resources have acted as a catalyst in providing access to energy needed to sustain socioeconomic growth. However, over the past decades, scientific studies, including reports of the Intergovernmental Panel on Climate Change, have emphasized the urgent need to transition away from carbon-intensive energy sources.

3. In response to the climate emergency, a growing number of stakeholders in the extractive sector have announced, or are currently developing, plans to reach net-zero carbon emissions by 2050 or earlier. The ensuing energy transition has already resulted in a degree of divestment from fossil fuels, which is known as “transition out”, and investment in decarbonization projects, in particular those relating to solar and wind energy, hydropower, battery storage systems, low-carbon hydrogen and power infrastructure, which is known as “transition in”. The global energy system is therefore in the middle of a major and rapidly evolving transition to low-carbon energy sources. The energy transition is urgently needed to avert and minimize catastrophic human rights harms related to climate change. The global climate emergency poses a profound threat to human rights, affecting every aspect of peoples’ lives.
4. Despite the need for these efforts, energy transition programmes have been linked or have contributed to serious human rights abuses, such as land-grabbing, forced displacement, modern slavery, discrimination and environmental pollution, among others. For example, recent reports show that more than 1 million children worldwide are being forced to work in dangerous cobalt and coltan mines, which are essential minerals needed to manufacture batteries for electric vehicles and solar, wind and other renewable energy infrastructure.
9. The question of how to achieve a just transition in the extractive sector therefore arises. In the present report, the term “just transition” refers to the transition to a green and zero-carbon economy that is fair and inclusive, creates decent work opportunities and upholds the human rights of affected communities, in particular Indigenous Peoples and populations affected by energy poverty, through social dialogue and meaningful participation, particularly in decision-making on the use of land and natural resources. Critical to achieving this goal is the recognition of the differentiated human rights impacts experienced by communities and individuals in vulnerable situations, to prevent and address those adverse human rights impacts and leave no one behind. A just transition will also have to acknowledge and address the fact that the people potentially adversely affected by the transition out may not be the same as those who benefit from the transition in.

II. Concerns related to energy transition programmes in the extractive sector

...

15. Flowing from this imbalance is the growing level of fragmentation in the design and implementation of energy transition programmes. While several stakeholders are announcing energy transition programmes, the specific recognition or mention of human rights dimensions remains significantly lacking. Human rights and climate change are each governed in many States by separate sets of laws, rules and institutions. Similarly, at the international level, the lack of coordination, cooperation and systemic integration by different stakeholders in the design and implementation of energy transition programmes produces adverse human rights impacts in the extractive sector, especially for vulnerable groups, such as women and Indigenous Peoples. For example, while energy transition programmes may

aim to provide new economic opportunities in renewable energy sectors, they may not necessarily consider pre-existing patterns of social and economic exclusion that are often linked to human rights abuses in the extractive sector. These factors could make it very difficult for marginalized individuals and groups to gain access to such economic opportunities, secure renewable energy technologies or obtain financing to establish renewable energy ventures.

26. In many cases, failure to report energy transition performance in accessible formats and languages limits the reports' widespread utility, especially for communities. There is also a need to disaggregate data on energy transition programmes on the basis of human rights and intersectional indicators, such as gender and the socioeconomic impacts of the energy transition on Indigenous Peoples ... and other groups in at-risk situations, in order to understand and address the human rights impacts of such programmes.

C. Insufficient access to effective remedy

27. In many cases, current legal and policy frameworks that apply to both the extractive sector and the energy transition do not provide effective access to justice and remedy and do not adequately address the situation of marginalized groups, for example by failing to apply a gender lens to remedy frameworks.
28. Procedural barriers in judicial systems make it difficult for victims of human rights abuse to seek and obtain justice. For example, locus standi requirements can make it very difficult for civil society organizations to bring a legal claim on behalf of project-affected communities and to establish companies' liability, including for parent companies. Furthermore, legal systems may place a disproportionate burden of proof on the claimants, making it more difficult to seek and obtain remedy in courts. The high cost of litigation and of obtaining legal representation, inadequate legal aid programmes, and general delays in the dispensation of justice all make it difficult for communities to obtain remedy for human rights abuses in a fair and timely manner.
29. Similarly, despite increased awareness of the potential of alternative dispute resolution mechanisms, such as investment arbitration and mediation, in facilitating access to remedy, a wide range of legal and institutional barriers still limit their widespread application in extractive sectors, especially by affected communities. For example, where domestic legislation limits the scope of arbitrable matters to commercial disputes, it may not be possible to submit non-commercial disputes, such as those relating to access to land or the resettlement of communities, in particular Indigenous Peoples, to arbitration. Such a model is plainly unjust and indefensible. The use of alternative dispute resolution to settle extractive disputes should not be restrictive. On the contrary, it should allow States and affected communities to resolve their grievances, including those relating to the design and implementation of energy transition programmes, in a transparent, fair, timely and accessible manner. Integrating clear and specific rules to guide the arbitration of disputes related to the human rights impacts of business activities can help in this regard.

III. Reform trajectory and implications of the Guiding Principles on Business and Human Rights for a just transition

32. The following section outlines key trends and highlighted practices that are aimed at addressing human rights concerns in energy transition programmes. By aligning with the Guiding Principles, the extractive sector can navigate the complexities of transitioning to a sustainable energy future while safeguarding human rights.

C. Stakeholder engagement

39. Effective rights-based climate action requires participatory and transparent processes. In order to amplify the voices and priorities of rights holders and ensure a just transition, meaningful consultation is indispensable. This includes, but is not limited to, engagement with ... Indigenous Peoples, with their free, prior and informed consent....
40. Communities should participate in, and not just be consulted about, the development and implementation of policies and activities related to energy transition programmes. Community-based or participatory human rights, social and environmental impact assessments, for example, can provide an alternative to applicant-driven impact assessments and may guarantee better outcomes for rights holders. Community or impact benefit agreements, which are contracts between businesses and communities that outline the benefits and responsibilities associated with energy transition programmes and projects, may also be useful tools. These agreements can include provisions for revenue-sharing, employment opportunities and community development projects, among others.
41. Indigenous Peoples are one of the most affected groups in the energy transition, as studies indicate that more than half of the world's resources that are key to the energy transition are located on or near the lands of Indigenous Peoples. In this context, States must ensure that the rights of Indigenous Peoples are protected in legislation to guarantee a just transition, including through the codification of free, prior and informed consent and the United Nations Declaration on the Rights of Indigenous Peoples in legislation.
42. Women's rights and gender equality also require specific attention to ensure a just transition. The human rights and environmental impacts of mining activities often result in greater and differential burdens on women, which in turn require redress measures that address intersecting inequalities. For example, studies show that women, in particular Indigenous women, are more susceptible to a wide range of human rights abuses across the mining sector value chain and are less likely to obtain the benefits of the energy transition.³⁴ Women and girls are often not considered in compensation and relocation schemes derived from mining activities that have an impact on their rights, including their rights to housing, food, work and an adequate standard of living. Women's experiences in the extractive sector must therefore be made visible, so that policies.

E. Investors

47. The Working Group has repeatedly highlighted the applicability of the Guiding Principles to financial actors. It has reaffirmed the responsibility of institutional investors and banks to prevent and address the adverse human rights impacts associated with their activities, value chains and business relationships, in line with principles 13 and 17 of the Guiding Principles. To ensure a just transition, investors must be held accountable under legislation, policies and industry guidelines. To this end, investors must be required to, for instance, conduct gender-responsive human rights due diligence, in meaningful consultation with affected communities, civil society organizations, Indigenous Peoples and human rights defenders, and their remediation responsibility must be established.

IV. Conclusions and recommendations

A. Conclusions

62. States must seize the ongoing energy transition as an opportunity to promote just transition laws and policies and hold businesses, including investors, accountable for human rights abuses across the entire value chain. By taking action based on the recommendations provided below, States and businesses can ensure that the pursuit of the Sustainable Development Goals and the implementation of the Paris Agreement include guarantees of human rights protection.
63. In order to advance a just transition, States should ensure policy coherence in the extractive sector, including the implementation of legislation on the right to a clean, healthy and sustainable environment. In order to advance policy coherence, energy, environmental and investment policies must be developed collaboratively, while ensuring that human rights are always protected. The process of ensuring a just transition will also require strong coordination between international and regional institutions and organizations, national Governments, as well as with subnational governments. States must respect their extraterritorial obligations, as efforts to meet international climate commitments domestically cannot justify overlooking human rights abuses in the States where the extractive activities are taking place. The terms of extractive sector agreements affect the ability of States to regulate business conduct in the context of a human rights-based and just transition. States should therefore maintain their domestic policy space when negotiating new extractive contracts, concessions or bilateral agreements or reforming existing agreements, in order to meet their human rights obligations under international law and in conformity with principle 9 of the Guiding Principles.
64. Businesses, especially those in the extractive sector, must play an indispensable role in promoting a human rights culture in the design and implementation of energy transition programmes. Businesses should work to integrate human rights into ongoing energy transition plans and programmes to address adverse human rights impacts, including through social dialogue. Better information disclosure and transparency will lead to more informed decision-making and can also facilitate access to remedy. Furthermore, the growing number of regulatory developments unfolding at the national, regional and international levels is further increasing expectations of extractive sector businesses, including investors, to prevent, mitigate and address the adverse impacts of their energy transition efforts on human rights. In order to advance a just transition, energy transition programmes should be designed with international human rights standards and the Guiding Principles in mind, including standards on decent work, capacity-building, social inclusion, public participation and environmental protection.
65. As energy transition programmes in the extractive sector unfold, the availability of effective remedies will be crucial for individuals and communities that may experience human rights abuses during the transition. Any legislative, institutional and procedural barriers that limit or delay the abilities of individuals and communities adversely affected by energy transition programmes should be fully dismantled.

B. Recommendations

...

68. The Working Group makes the following recommendations to States:
 - (a) Adopt a clear and comprehensive regulatory framework to achieve energy transition targets in a just and human rights-based manner. Contracts,

nationally determined contributions and procurement and other extractive sector-related legal frameworks should: ... (iii) Require businesses to identify and manage risks that Indigenous Peoples and other vulnerable groups face, including by obtaining mandatory free, prior and informed consent prior to any decision-making that may affect Indigenous Peoples' rights; ...

(s) When developing energy transition strategies, undertake meaningful consultation with all stakeholders and ensure that the free, prior and informed consent of Indigenous Peoples has been obtained.

69. The Working Group makes the following recommendations to businesses, including investors: ... (d) Ensure effective and meaningful consultation with all relevant rights holders on the actual and potential impacts of energy transition programmes on human rights and the right to a clean, healthy and sustainable environment and ensure the free, prior and informed consent of Indigenous Peoples;

3. Visit to Argentina, A/HRC/53/24/Add.3, 23 June 2023

I. Overall context

5. Argentina is a middle-income country whose population in 2022 stood at 46,044,703, 92 per cent of whom live in urban areas.¹ The Working Group's visit took place during an election year marked by an economic crisis and an inflation rate that reached 94.8 per cent in 2022, according to data from the National Statistics and Census Institute.

7. Despite the efforts made to promote economic recovery following the coronavirus disease (COVID-19) pandemic, the National Statistics and Census Institute reports that, in 2022, the poverty rate in Argentina reached 37.9 per cent, with an indigence rate of 8.5 per cent. Poverty is concentrated in certain regions, particularly in provinces in the north of the country and in parts of greater Buenos Aires, with Indigenous Peoples being particularly affected by social inequality, economic marginalization and structural racism. All this occurs within a context of periodically excessive levels of external debt and the successive financial crises that result from them.

11. In addition, the sometimes conflicting interests of companies, the State and social actors frequently result in socioenvironmental conflicts in which there is a significant imbalance of power between the parties. During the visit, this challenge was clearly seen in the experiences of Indigenous Peoples.... The Working Group received reports that families living in irregular settlements in cities such as Buenos Aires have been evicted as a result of real estate developments. It also learned that transport, drinking water and electricity companies in several provinces, including Catamarca, Chaco, Jujuy, Neuquén and the Autonomous City of Buenos Aires, fail to provide basic services and engage in explicit discrimination.

IV. State obligations in relation to business and human rights

...

18. However, stakeholders from different sectors informed the Working Group that they were not aware of the national action plan process or had not been included in the relevant forums. The failure to provide information to Indigenous Peoples, civil society and the private sector is particularly troubling. Those who were aware of the process said they had little confidence in it, given the lack of transparency and participation and the lack of any hierarchy among the persons managing the process. The Working Group also identified a general lack of awareness of the

Guiding Principles on Business and Human Rights among both State and non-State actors at the national, provincial and local levels.

22. The Working Group welcomes the efforts made by some ministries and government agencies to engage in collaborative work. However, a lack of coordination, overlaps and insufficient clarity in the assignment of powers were observed in some key areas of the business and human rights agenda, such as water management, environmental law enforcement and land management. It is also necessary to strengthen, especially at the provincial level, certain key institutions such as the National Institute of Indigenous Affairs, the offices of the prosecutor for environmental and trafficking offences and the human rights secretariats.
23. The Working Group has identified a need to disseminate clear, accurate and culturally appropriate information on the distribution of powers and on mechanisms for processing claims or complaints for rights holders, especially Indigenous Peoples and local communities.
24. The Working Group has identified significant implementation and oversight gaps in the existing legal and regulatory frameworks for all areas. The information received from the private sector, civil society, local communities and Indigenous Peoples shows that there are institutional gaps, routine breaches of the aforementioned legal frameworks, insufficient allocation of budgetary resources, a shortage of effective mechanisms for their implementation, and widespread gaps in the regulatory functions of the State and provincial authorities. The whole apparatus of the State must urgently address this systemic problem.

VI. Access to justice and remedy

33. The Working Group was concerned to note that it is very difficult to gain access to justice and effective remedy for business-related human rights violations. The lack of accountability and the climate of impunity have undermined the affected communities' trust in the national and provincial justice systems. The Working Group was also informed about complaints of judicial harassment directed at human rights defenders, Indigenous leaders ... that must be urgently and expeditiously addressed.

A. State-based judicial mechanisms

...

37. The Working Group was repeatedly informed of the difficulties that vulnerable groups, particularly Indigenous Peoples, face in gaining access to justice. Obstacles include the complexity of the system, which makes it difficult for victims to know which office to contact and at which administrative level, and the travel costs for victims living in remote areas. It was also repeatedly noted that the justice system lacks cultural adequacy.

VII. Thematic areas highlighted

...

46. These recurring concerns relate to violations of Indigenous Peoples' rights, lack of consistency in consultations and free, prior and informed consent processes, economic displacement and loss of livelihoods, violations of labour rights, issues relating to gender, diversity and the rights of persons with disabilities, and impacts on health, the environment and natural resources. The Working Group was also alerted to emerging issues concerning foreign investment and financing for development projects with serious human rights impacts.

A. Rights of Indigenous Peoples

47. The Working Group wishes to highlight the State's recognition of the pre-existence of the Indigenous Peoples and the safeguarding of their ancestral territories, as established in the Constitution (art. 75 (17)), the Civil and Commercial Code (art. 18), national regulations such as Act No. 23.302, and provincial regulations. However, there are concerns about persistent challenges to the implementation and enforcement of these laws. Among other things, the Working Group wishes to draw attention to the inconsistency inherent in the fact that the State itself chooses representatives of the Indigenous Peoples, denying them the right to self-rule, and that, in order to have access to the cadastral survey of their lands, Indigenous Peoples are required to register with an administrative registry.
48. The State has recognized 1,822 communities throughout Argentina, less than half of which have completed the survey of their territories in accordance with Act No. 26.160 on the declaration of a state of emergency in respect of Indigenous land, which was enacted in 2006 and extended by Decree No. 805/2021. While the Working Group welcomes the enactment of this Act, which prevents communities from being evicted, it is concerned about the lack of legal certainty provided by the extension by decree. The Working Group learned that, in spite of the law, communities are continuing to be evicted, often violently, particularly for projects occupying large areas of land, including those related to the extractive industries and real estate developments.
49. During its visit, the Working Group received numerous complaints about the shortcomings of the cadastral registration and survey mechanism relating to the slowness and inefficiency of the processes and the lack of political will. It was concerned to note that the regulations do not have the express purpose of ensuring the effective titling of Indigenous lands. Structural racism, stigmatization and harassment
50. The Working Group is alarmed by the structural discrimination affecting the Indigenous Peoples, who endure higher rates of poverty and more significant barriers to access to health, education and essential infrastructure such as electricity and drinking water. Their ability to earn a decent living for their development is affected by the very high rate of informal employment and by the difficulties that they face in carrying out their traditional economic activities owing to the expansion of the area taken up by agricultural land and the extractive industries.
51. The communities stated that their poverty levels and lack of access to basic services put pressure on their members to accept goods, money or employment opportunities from the companies in exchange for their consent, which undermined the social cohesion of the communities.
52. The fact that Indigenous Peoples and communities are stigmatized and rendered invisible in society in general, including in the media, which exacerbate highly racist discourses, is unacceptable and reflects the enormous historical debt owed by the State and Argentine society to the native peoples.
53. The information received about violent evictions and interventions, repression, raids, criminalization and prosecution, as well as acts of violence carried out by private armed groups hired by individuals or organizations with economic interests, is very troubling. These situations recur in different provinces, including Santiago del Estero, Río Negro, Chaco and Corrientes. Participation and consultation
54. The Working Group noted repeated violations of the right of Indigenous Peoples to consultation and to free, prior and informed consent.

55. Some progress in this area may be identified, such as the production of the Technical Handbook for the Consultation of the Indigenous Peoples in the Management of Forests and Climate Change, developed by the Ministry of the Environment and Sustainable Development, and the very recent Decree No. 0108/2023 on the procedure for free, prior and informed consultation in the province of Neuquén, which, being the first such decree in the country, sets a good precedent. However, the Working Group is concerned to note that the Decree is applicable only to communities whose legal status has been granted by state authorities, in contravention of the right to autonomy and self-government established in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).
56. While the Working Group heard about examples of public consultations and participatory meetings, these do not meet the criteria established for free, prior and informed consent; they are often unclear and difficult to access, and they are mostly lacking in cultural appropriateness. The Working Group was also struck by the deliberate strategies employed by companies that provide little or no information on business activities and their impact or, on the contrary, an excessive amount of highly technical information with scattered data that cannot be analysed in short periods of time.

D. Natural resources and the right to a healthy environment

...

75. The Working Group is particularly concerned about access to clean drinking water, given its importance for the health of communities and its impact on livelihoods, food and ecosystems, especially in provinces with large-scale extractive and agribusiness activities. These problems further highlight the lack of adequate infrastructure for ensuring access to water for remote communities. In fact, many Indigenous Peoples in different provinces are concerned that biodiversity in their territories is in danger of being destroyed by threats from different industries. The Working Group is concerned about the lack of regulations and oversight of companies' compliance with standards on the use of agrochemicals and water resource management. It is essential to have more accurate and complete sector-based information on expanding water-intensive industries, such as lithium extraction and unconventional hydrocarbon extraction.
79. In the case of the mining and hydrocarbons industry, the Working Group has received complaints from Indigenous communities about toxic gas inhalation, water pollution, impacts on the crops and soil on which their livelihoods depend, and the deaths of animals.
80. A study carried out by Greenpeace, using samples from the processing plants in Vaca Muerta, identified significant levels of metals and metalloids such as barium, strontium, cadmium, lead, mercury and arsenic, elements that pose a significant risk to health. On the basis of this study, a criminal complaint was filed against the company responsible for the dumpsite, Treater S.A., and other extractive companies.
81. These trends are alarming, given that environmental problems such as water, air and soil pollution, as well as degradation caused by land clearances and agricultural and forest monocultures, exacerbate the effects of climate change.
82. During its visit, the Working Group was able to observe the effects of deforestation and biodiversity loss in some regions, and the disproportionate affects that they have on communities in situations of vulnerability. The Working Group is very

concerned about the progressive deforestation of the American Gran Chaco, the second largest forest in the region after the Amazon, to the detriment of biodiversity, rural communities and Indigenous Peoples in Argentina.

84. According to the Public Defence Service, similar challenges exist with real estate developments and industrial hubs in urban areas, such as shortcomings in environmental impact studies, lack of trust in the information provided by government agencies and/or companies regarding pollution levels and the use of resources such as water, allegations of corruption and the eviction of Indigenous communities.

E. Health

...

88. In addition, the Working Group is concerned about violations of the right to mental and emotional health of people living alongside certain industries that generate a continuous state of uncertainty regarding their physical health and their territorial, financial, water and food security. The Working Group finds it regrettable that there is a lack of official data that would provide an accurate picture of the violations and allow appropriate measures to be taken to provide care. It has received reports of clinics or health-care units without sufficient supplies, specialized medical staff or ambulances and with poor connectivity, leaving the Indigenous Peoples and historically marginalized communities at risk.

VIII. Conclusions and recommendations

90. The Working Group commends the State on the efforts it has made to advance the business and human rights agenda in the country, and for having committed to the development of its first national action plan. It is also encouraging that the impact of different economic sectors and business projects is being discussed in Argentina ... and Indigenous Peoples are participating in the discussions. In addition, the business sector showed itself to be open to hearing and receiving information on the Working Group's concerns and recommendations.
91. The Working Group noted that there is a robust and serviceable regulatory framework to promote respect for human rights by the business sector, although it identified gaps that should be rectified and, above all, a need to strengthen monitoring, oversight and sanctioning mechanisms to ensure that the regulations are properly implemented.
92. The Working Group also noted the challenges facing the Government, such as the debt, economic and financial crises with which the country has struggled for the past 40 years, the dependence on the extractive and agricultural sectors to service the debt, the high proportion of persons working in the informal sector and the social and economic exclusion of the most vulnerable individuals and groups, including the Indigenous Peoples, which is exacerbated in different provinces of the country. These challenges are some of the main factors behind a fragility that is not only economic but also social and environmental and that requires all relevant stakeholders to take a coordinated approach.
95. The Working Group stresses that consultations with potentially affected people and groups should take place at all stages of projects, from the earliest stage onward. It is essential to ensure the protection of human rights defenders and Indigenous Peoples so that they can carry out their important work.

96. As a starting point for addressing these challenges, the Working Group makes the following recommendations:

A. For the State

...

- (c) Ensure active transparency in the development of the national action plan, in accordance with article 31 and ff. of Act No. 27.275 on the Right of Access to Public Information, and promote broad participatory forums with all relevant stakeholders that are not merely information-sharing exercises and include representatives of Indigenous Peoples.... The Working Group emphasizes that good faith participation refers to collaborative and ongoing interaction and dialogue that ensures not only that the parties are listened to and understood but also that their concerns are addressed, with particular emphasis being placed on rights holders;
- (j) Continue making efforts to implement the judgment of the Inter-American Court of Human Rights in the case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina of 2020;
- (o) Adopt immediate measures to protect the life, health and integrity of human rights defenders and Indigenous Peoples and communities who are at risk because they are defending the rights of communities, the environment, water and/or land and territory in the context of business activity. These measures should include the creation of a comprehensive policy on the protection of human rights defenders that ensures the prompt and impartial investigation of threats, acts of harassment, intimidation and violence and sets out the corresponding sanctions; (p) Urgently tackle acts of violence by private armed groups hired by individuals or organizations with economic interests;
- (q) Strengthen the National Institute of Indigenous Affairs, ensuring that it has its own budget and sufficient resources;
- (r) Stop the evictions of Indigenous Peoples and make progress in managing and titling land in accordance with article 75 (17) of the Constitution and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). Take steps towards establishing a national law on communal ownership;
- (s) Guarantee consultation and free, prior and informed consent in compliance with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). Ensure the establishment of other participatory mechanisms for rights holders and civil society;
- (t) With regard to environmental impact assessments: (v) Ensure that these provide for: ... d. The broad participation of Indigenous Peoples and communities....

B. For private and State-owned companies and business associations

...

- (c) Establish safe, good faith forums for dialogue for affected communities and Indigenous Peoples, providing transparent, reliable, clear and timely information on impacts, and listening to critical voices; ... (g) Refrain from doing anything that could be seen as harassing or pressuring Indigenous Peoples, or taking advantage of their vulnerability, especially in the case of children and adolescents....

4. Visit to Liberia, A/HRC/53/24/Add.1, 21 April 2023

I. Introduction

1. Pursuant to Human Rights Council resolutions 17/4, 26/22, 35/7 and 44/15, the Working Group on the issue of human rights and transnational corporations and other business enterprises, represented by its Chair, Fernanda Hopenhaym, and one of its members, Damilola Olawuyi, visited the Liberia, at the invitation of the Government, from 31 October to 11 November 2022. During the visit, the Working Group assessed the efforts made by the Government and business enterprises, in line with the Guiding Principles on Business and Human Rights, to identify, prevent, mitigate and account for the adverse impacts of business-related activities on human rights.

V. Salient business and human rights issues in specific sectors

...

A. Human rights abuses in the agribusiness and extractive industries

35. The failure of mining and agricultural concessionaires to comply with human rights standards was a major concern for the Working Group. The Working Group learned that land grabbing, forced displacement without adequate compensation, and disputes over land property were prevalent, despite positive reforms in the land-rights regime providing, inter alia, for the participation of communities regarding land-related issues.... Communities reported the destruction of villages, damage to crops and the desecration of shrines and graves, without any regard for the Indigenous practices vital to those communities. Oversight by the Government was seen to be weak or non-existent.
36. Concession agreements typically span several years, in some cases up to 99 years, such as in the case of Firestone Liberia LLC, concern hundreds of square kilometres of land and affect tens of communities (for example, in the case of Bea Mountain Mining Corporation's 478 km² concession area). Given the loss of livelihood and land caused by the granting of concessions, relevant regulations often require licence holders to provide a number of services to local communities, including schools, health facilities, roads, employment and training opportunities for communities within the concession areas as well as a safe working environment. According to existing laws, such agreements are to be reviewed every five years to ensure regulatory compliance by licence holders.
37. However, the Working Group heard that farmers in certain concession areas were displaced and deprived of their sole means of livelihood, without being offered a suitable and sustainable alternative. The dire living conditions of the communities in the concession areas that the Working Group visited were aggravated by the lack of basic infrastructure and services, such as water and sanitation, roads and electricity. These conditions exacerbated the communities' physical isolation, precarious living conditions, exclusion, sense of despair and lack of opportunities for alternative livelihoods. Community members told the Working Group, "We are dying". They asked, in relation to the lack of basic services, "Are we not also Liberian?" and decried the lack of a meaningful future for their children.
38. In 2010, the National Bureau of Concessions was created to strengthen the management of concession agreements and, in 2020, an act of Parliament provided for greater accountability and transparency for the County Social Development Fund,

which comprises financial contributions from the national Government and fees paid by concession companies extracting natural resources from local communities. Determining the allocation of the funds is meant to be a participatory process, with local authorities and communities working together to identify development priorities. However, the participatory process has not been implemented in practice due to weak oversight, a lack of transparency, perceived or actual corruption, a lack of trust among stakeholders and the absence of appropriate mechanisms to enable the effective participation of communities in the administration and monitoring of the funds. As a result, many communities living in concession areas have yet to benefit from the funds.

B. Recommendations

80. The Working Group recommends that the Government: ...

- (f) Take immediate measures to create a safe and enabling environment for human rights defenders and to protect the life and integrity of people at risk because of their work defending the rights of communities, land or the environment in the context of business operations, with reference to the Working Group's 2021 guidance, including the following urgent measures:
 - (i) Adopt a human rights defenders protection law, including legislation to counter strategic lawsuits against public participation (SLAPP), in line with best international practices;
 - (ii) Ensure that the criminal justice system is not used to attack, intimidate, criminalize or deter those who speak out against business-related human rights abuses, including by reviewing laws against terrorism, corruption and money-laundering and any other laws with a legitimate end so that they comply with the proportionality and necessity criteria;
 - (iii) Ensure prompt and impartial investigation into and accountability for cases involving threats and violence against individuals and trade unions defending human rights and the environment, including by businesses, State security forces and private security companies and provide effective remedies to victims;
- (k) Ensure the effective enforcement and oversight of the regulations providing for the equal and meaningful participation of rights holders and for the right to free, prior and informed consent for Indigenous Peoples in environmental and development-related decision-making, including the management of natural resources, from an early stage and throughout project implementation and monitoring, including by ensuring access to information and transparency during the scoping and licensing phases;
- (p) In relation to land rights:
 - (i) Build capacity and allocate adequate resources to the relevant authorities to strengthen the implementation of the Land Rights Act of 2018, with the meaningful participation of rights holders;
 - (ii) Ensure the protection of the right of people living in rural areas, including Indigenous Peoples, to possess, use, develop and control their lands and resources, with the full security of their land rights. Such protection includes a transparent and inclusive land demarcation process, the legal recognition of title deeds of Indigenous communities for communally held land and the establishment of an appropriate and effective mechanism to enable rights holders to submit claims and obtain compensation for abuses of rights over their lands and natural resources....

K. SPECIAL RAPPOREUR ON EXTREME POVERTY AND HUMAN RIGHTS

1. Breaking the cycle: ending the criminalization of homelessness and poverty, A/HRC/56/61/Add.3, 26 June 2024

II. Why the criminalization of homelessness and poverty is not a solution

A. Criminalization violates human rights

8. There is a growing international consensus that criminalizing life-sustaining activities in public spaces is not acceptable. This consensus is reflected in the New Urban Agenda, the Guiding Principles on Extreme Poverty and Human Rights, the Guidelines on the Implementation of the Right to Adequate Housing, resolutions of the Human Rights Council, reports by the United Nations Secretary-General, recommendations of United Nations human rights mechanisms, the United Nations System Common Position on Incarceration, and principles issued by the International Commission of Jurists.

D. Criminalization entrenches discrimination and stigmatization

23. States are required to guarantee human rights to all individuals within their territory without any distinction, including in relation to their social origin, property, birth or other status, which includes their social and economic situation, their housing, health or residency status. Yet, laws that criminalize persons or the behaviours of persons in public spaces are often discriminatory as they either target, or have a disproportionate impact on, groups protected against discrimination in human rights law.

3. Impact of intersecting forms of discrimination

26. Discrimination, stigma and social exclusion are all drivers of poverty and homelessness, as well as consequences of poverty and homelessness. Those who face discrimination on the grounds of race, ethnicity, place of origin, age, family status, gender, mental or physical disability, health conditions, sexual orientation and gender identity are at a higher risk of becoming homeless or of falling into poverty. Once homeless or destitute, they face additional layers of structural discrimination, including within justice systems. As marginalized groups are more likely to live in poverty than the general population, they are disproportionately affected by laws criminalizing conduct associated with poverty and homelessness. For example: ...
(f) Other groups subjected to discrimination, stigmatisation or criminalization are also impacted by laws that criminalize homelessness or poverty. Among them are ... persons who identify as ... Indigenous Peoples, as many laws relating to public spaces undermine their capacity to live, move, stay or work according to their customs or traditions. ...

III. Alternatives to criminalization: an agenda for change

32. The search for alternatives to criminalization should start with a review of the laws in force, changing the way they are enforced, reviewing proportionality and impact of penalties, and ensuring that sufficient resources are available to the State to ensure the use of alternatives. Inclusive and meaningful consultations should identify effective alternatives to criminalization that will realize the right to adequate housing and to enjoy an adequate standard of living while meeting the objectives

of public order and public health, consistent with human rights. This process should be participatory, involving people with lived experience of homelessness and precarity; law enforcement officials; housing, healthcare or social service providers; business actors, shopkeepers and street traders; and local residents. ...

A. Repeal laws that criminalize life-sustaining activities

34. National and subnational governments should undertake comprehensive and participatory reviews of all laws regulating the use of public spaces to determine the extent to which they criminalize life-sustaining activities. Laws that punish life-sustaining activities where there are no meaningful alternatives available should be repealed.
35. States should move beyond de facto decriminalization, where laws prohibiting life-sustaining activities in public spaces remain in place but are not enforced. Mere non-enforcement of laws that are not compliant with human rights remains insufficient, as such laws remain a constant threat to persons experiencing homelessness or poverty as long as they remain in force. They reinforce the message in law enforcement and society that persons who experience challenging living conditions are inherently law breakers.
36. States should sensitise urban planners, lawmakers, law enforcement officials, judges, and criminal and administrative justice officials at national, regional and local levels on the human rights impacts of criminalization of homelessness and poverty, in particular on people who are unable to comply with the laws regulating the use of public spaces for reasons of necessity or survival.

2. Visit to Ecuador, A/HRC/56/61/Add.2, 2 May 2024

I. Introduction

1. The Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, conducted an official country visit to Ecuador from 28 August to 8 September 2023. He is grateful to the Government for its cooperation prior to, during and following up on the visit.

II. Context

...

9. The Special Rapporteur's visit provided an opportunity to identify areas where more progress could be made, including regaining young people's trust. Part of the challenge will be to identify sources of funding. The two referendums also held on 20 August 2023, on oil exploitation in the 43-ITT oil block, located inside Yasuní National Park, and on whether metallic mining should be prohibited in the Chocó Andino in Pichincha province, respectively, gave the Government a clear mandate to move beyond extractivism. Of the more than 10 million voters, 58.95 per cent voted in favour of banning oil exploitation in Yasuní National Park and 68 per cent of the voters residing in the municipalities involved voted to ban metallic mining in the Chocó Andino.
10. One immediate consequence of these referendums was that credit rating agencies such as Fitch, Moody's and S&P downgraded the long-term foreign currency issuer default rating from B- to CCC+. The broader lesson, however, is that a new development model, less reliant on natural resource exploitation, should be designed. Indeed, the Special Rapporteur met a large number of individuals and groups who expressed

their concerns about the impacts of the extractive industry throughout the country. In Chimborazo and Pastaza provinces, Indigenous communities explained that mining projects were polluting the soils and water sources on which they depend for agricultural production. Other groups presented him with examples of mining projects, both legal and illegal, that affected their access to resources. Two of the most publicized examples are the large-scale Fruta del Norte gold mine and the open-pit Mirador mine for copper and gold extraction, located in the southeast and the south of Zamora-Chinchipe province, respectively, threatening the livelihoods of members of the Shuar nationality. Several other mining projects raise similar concerns, such as concessions in the cantons of Pangua and Sigchos in Cotopaxi province, in La Merced de Buenos Aires parish in Imbabura province, in the canton of Las Naves in Bolívar province and in Las Pampas and Palo Quemado parishes in the canton of Sigchos. While the Special Rapporteur cannot comprehensively cover the details of each of these cases in the present report, he was alarmed by allegations that the consultation requirements established in article 398 of the Constitution and the 2009 mining law were routinely circumvented, and that projects were allowed to go ahead despite the strong opposition of the local communities.

III. Assessment of poverty and inequality

A. Population and regional disparities prevail

11. The incidence of poverty is higher among women, the Indigenous population and people who live in rural areas. ...
16. There is an urgent need to collect disaggregated data and to use human rights indicators in order to better address the impacts poverty has on groups in marginalized situations. The capacity of the National Statistics and Census Institute to fulfil both those functions should be strengthened. Age, gender, household type, background (to identify the circumstances of Indigenous groups, Afro-Ecuadorians and Montubio people), occupation, access to land, and location (to track variations between urban and rural areas) should all be precisely identified.

B. Specific challenges facing the groups at risk of poverty

...

2. Peoples and nationalities

21. Indigenous, Afro-Ecuadorian and Montubio people are disproportionately affected by poverty. In 2022, income poverty affected 54.26 per cent of the country's Indigenous population and 33.77 per cent of Afro-Ecuadorians. This is the result of institutional discrimination and racism and the lack of economic opportunities. Article 74 of the Organic Act on Higher Education provides that the representation of all population groups in higher education should be proportional to their representation in the population. This pledge remains largely unfulfilled. While self-reported Afro-Ecuadorian and Indigenous groups are estimated to account each for at least 7 per cent of the country's population, they account for only 2.5 and 3 per cent of undergraduates, respectively. Overall, 24 per cent of white people have a university degree, compared to 13 per cent of mestizos, 7 per cent of persons of African descent, 2 per cent of Indigenous People and 1.4 per cent of Montubio people.⁴² 22. The National Council for the Equality of Peoples and Nationalities is responsible for ensuring that gender, ethnic, generational, intercultural, disability and human mobility issues are mainstreamed into public policies, and for assessing public policies in these areas. Currently, the Council is the result of a merger of three

previously independent bodies: the Council for Afro-Ecuadorian Development, the Council for the Development of the Indigenous Nationalities and Peoples of Ecuador and the National Council for the Montubio People of Ecuador. ...

(ii) Indigenous Peoples and nationalities

24. Despite the fact that Ecuador has ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) and its acceptance of the 2007 United Nations Declaration on the Rights of Indigenous Peoples, Indigenous groups remain subject to social and material exclusion and discrimination. The 2008 Constitution provides that Ecuador is an intercultural and plurinational State and acknowledges the collective rights of Indigenous Peoples and nationalities to land and territory, ancestral possession, ancestral medicine, collective intellectual property, ancestral knowledge and cultural heritage. Article 57 (17) of the Constitution also recognizes their right to free, prior and informed consultation concerning decisions that affect their territories. Yet, practical implementation has been wanting, despite the commitment included in the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) in 2020.
25. Indigenous Peoples and nationalities have a right to the protection of their lands and territories. The Special Rapporteur notes in this regard, with regret, that the judgment the Inter-American Commission on Human Rights delivered more than 10 years ago in the case of the Kichwa Indigenous People of Sarayaku v. Ecuador has still not been fully implemented. In that case, the Kichwa Indigenous People of Sarayaku challenged the granting in 1996 of a permit to a private oil company to carry out oil exploration and exploitation on their territory. The Court held that the State had violated those people's rights to consultation, to Indigenous communal property and to cultural identity. The Court also found that, by allowing the laying of explosives on Sarayaku territory, the State had jeopardized their rights to life and to personal integrity, protected under articles 4 (1) (prohibition of arbitrary deprivation of life) and 5 (1) (right to physical, mental and moral integrity) of the American Convention on Human Rights.
26. The Court insisted that Ecuador should ensure the participation of the Kichwa Indigenous People of Sarayaku at all stages of the oil exploitation process, and that their right to free, prior and informed consent should be protected. The mere reference in article 57 (7) of the Constitution to the right of Indigenous communities to free, prior and informed consultation, within a reasonable period of time, on the plans and programmes for prospecting, producing and marketing non-renewable resources located on their lands and which could have an environmental or cultural impact on them is not sufficient in that regard. The Court found that specific legislation was needed to clarify the content of that right, consistent with the requirements of articles 10, 11, 19, 28, 29 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, which refer to the requirement to seek Indigenous peoples' free, prior and informed consent on measures affecting them. There is a similar requirement in the Indigenous and Tribal Peoples Convention, 1989 (No. 169).
27. The Expert Mechanism on the Rights of Indigenous Peoples clarified the implications of this requirement, and the Committee on Economic, Social and Cultural Rights, in its general comment No. 26 (2022), reaffirmed that this is also a requirement under the International Covenant on Economic, Social and Cultural Rights (para. 16). Furthermore, the ILO Committee of Experts charged with examining the application of ILO conventions, protocols and recommendations has underlined the

interconnectedness between consultation and participation. In order to obtain the free, prior and informed consent of Indigenous Peoples, meaningful consultation should be organized with them prior to and during projects. The Human Rights Committee has also noted that Indigenous Peoples have the right to participate in ways that go beyond consultation and that participation in the decision-making process must be effective. Ecuador should make this issue a priority, following the finding by the Constitutional Court, in its judgment of 17 November 2023, that Executive Decree No. 754 amending the regulations on the Organic Code on the Environment is unconstitutional.

28. Indigenous Peoples and nationalities also have a right to basic health and education services and to improved employment opportunities. Companies doing business on their lands and territories have the responsibility to undertake human rights due diligence to avoid further violations of collective rights and rights of nature, to ensure access to justice and reparation and to prevent anything that could increase the vulnerability of those peoples and nationalities. It remains critical to protect human rights and environmental defenders. The lack of respect for their rights is particularly evident in the Amazonian provinces of Morona Santiago and Pastaza, despite the Organic Act on Comprehensive Planning for the Amazon Special Territorial District, which has been in force since 2018. Indigenous communities listed access to education, particularly higher-level education, at the top of their priorities.
29. The National Council for Equality of Peoples and Nationalities is considered by the Government as the representative of Indigenous Peoples in decision-making processes, alongside Afro-Ecuadorian and Montubio communities. The above-mentioned restructuring of the Council invalidated the institutional autonomy of Indigenous Peoples, leading the Special Rapporteur on the rights of Indigenous Peoples to express his concern, in 2019, that the country does not have a mechanism for the direct representation of Indigenous Peoples. He highlighted the fact that “the government agencies whose activities have a significant impact on the fundamental rights of Indigenous Peoples do not have procedures for joint decision-making that are needed under the plurinational and intercultural approach”

VII. Priority recommendations

65. In addition to the recommendations made above, the Special Rapporteur highlights three priority areas.
66. In order to improve the protection of groups in situations of vulnerability, the Special Rapporteur recommends that: ... (b) The anti-discrimination framework should be strengthened by guaranteeing legal security of tenure concerning Afro-descendants' and Indigenous Peoples' traditional land, territories and natural resources and by ensuring free, prior and informed consultation and consent for establishing and managing protected areas; (c) Access to education for members of the Afro-Ecuadorian, Montubio and Indigenous communities should be prioritized.

3. Visit to Bangladesh, A/HRC/56/61/Add.1, 30 April 2024

I. Introduction

1. The Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, conducted a visit to Bangladesh from 17 to 29 May 2023. The Special Rapporteur is grateful to the Government for inviting him and facilitating his visit and for engaging in a constructive dialogue. He submits the present report in accordance with Human Rights Council resolution 53/10.

II. General state of poverty and inequality

...

9. The Special Rapporteur thus encourages the General Economics Division to persist in its efforts to design a national multidimensional poverty measure. He also encourages the Bangladesh Bureau of Statistics, the agency responsible for conducting the Household Income and Expenditure Survey, to improve area-based poverty mapping and subgroup analysis. The current approach towards the Household Income and Expenditure Survey limits its ability to track poverty in specific areas such as the Chittagong Hill Tracts, or among specific groups such as Indigenous communities. Therefore, while welcoming the commitment of the Government to carry out the Household Income and Expenditure Survey on a more frequent basis, the Special Rapporteur encourages greater disaggregation of poverty and inequality indicators in order to understand the situation of different groups as well as the dynamic nature of poverty. Disaggregation should include age, gender, and household type; background (to identify the situation of Indigenous groups and ethnic, religious or linguistic minorities); health and disability status; occupation; access to land; migration status; and location (to track differences between urban and rural areas). This would allow the Government to track whether certain groups of the population are left behind and deserve special attention in public policies.

III. Preconditions to the fight against poverty

...

B. Preventing and combating discrimination

...

15. Bangladesh is home to many linguistic, ethnic, gender-diverse and religious minorities, such as Dalits, Adivasis, Urdu-speaking Biharis, Bede (nomadic), Hijras and others. It rightly prides itself on its diversity. Article 28 (1) of the Constitution of Bangladesh prohibits discrimination by the State on the grounds of religion, race, caste, sex or place of birth.
17. In Rangpur, the Special Rapporteur met with representatives from plainland Adivasi communities. The total population of the Adivasi community in Bangladesh was reported to be 1.65 million according to the most recent population census, of 202213 – a figure that Indigenous groups consider to be an underestimate. Many Adivasi face linguistic barriers as well as obstacles in access to education and livelihood prospects. Child marriage among Adivasis remains a common practice. While government policy provides for a 5 per cent quota for some jobs in the civil service for Adivasis, this applies only to lower-tier government jobs.
18. Like the Dalit community, many Adivasi people are also unable to access allowances for older persons or persons with disabilities, as access to such schemes in practice

requires “good social relations” with the local union council chairperson or the ward councillor. The Special Rapporteur was informed that in some cases, people were expected to pay a bribe of Tk 4,000 to 8,000 in order to access welfare schemes.

22. While the Dalit, Adivasi and Bihari are not the only groups that face discrimination in the country, they illustrate the importance of strengthening the legal and institutional framework to address discriminatory practices. An anti-discrimination bill was introduced into Parliament in April 2022 for approval. The bill does not specifically define who the “backward communities” or individuals are that it aims to protect. It also does not identify the practice of untouchability as a form of discrimination. While section 3 of the bill recognizes discrimination against the “third gender”, it does not mention hijra (transgender or intersex) communities – who are at the margins and are subjected to extreme levels of discrimination and dehumanization. It also does not recognize discrimination as a criminal offence, nor does it criminalize hate speech directed at Dalit, Adivasis, Bede, Hijra and other minority communities. The Special Rapporteur noted that the bill could be improved to ensure its full alignment with the relevant universal instruments, including the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Declaration on the Rights of Indigenous Peoples, and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)

L. SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND THE ENVIRONMENT

I. Overview of the implementation of the human right to a clean, healthy and sustainable environment, A/79/270, 2 August 2024

II. Recognition in universal and regional processes

A. Historic development of the right to healthy environment at the United Nations

...

16. In parallel, United Nations declarations advanced the recognition of the right to a healthy environment for some groups. The United Nations Declaration on the Rights of Indigenous Peoples includes the right to conservation and protection of the environment and Indigenous Peoples’ lands, territories and resources. ...
17. United Nations treaty bodies have also contributed significantly to clarifying States’ obligations regarding the human right to a healthy environment and the interlinkages with other rights. In its general comment No. 26 (2023) on children’s rights and the environment with a special focus on climate change, the Committee on the Rights of the Child confirmed that children have a right to a healthy environment. In its general recommendation No. 39 (2022) on the rights of Indigenous women and girls, the Committee on the Elimination of Discrimination against Women also recognizes this right.

III. Substantive and procedural elements of the right to a clean, healthy and sustainable environment

38. As the human right to a clean, healthy and sustainable environment is a compound right, substantive and procedural elements have been identified by previous mandate holders. These elements are interconnected; therefore, the

implementation of programmes, policies and projects must be done with a holistic approach. A summary of this right is presented below, acknowledging that some of these elements are fully understood in international and human rights law, while others require further clarification and development. This is an effort with which the Special Rapporteur will be assisting States.

A. Procedural elements

...

3. Access to justice

47. Access to justice and effective remedy are independently recognized human rights, and crucial elements to guarantee the right to a healthy environment. As an Indigenous People's organization mentioned in its contribution, access to courts has been a last resort in order to advance the protection of their rights on environmental issues, when efforts at the legislative or executive powers have not been useful. Even when compliance with court decisions is challenging, it has helped in advancing policy and legislation, thereby benefiting the public interest.

B. Substantive elements

...

4. Healthy and sustainable food

62. Healthy and sustainable food implies the production of food avoiding environmental and human health harms, and the protection of food systems. In 2022, 30 per cent of the global population suffered from moderate or severe food insecurity. The largest drivers of this, as also highlighted by the Special Rapporteur on the right to food, include climate change, the coronavirus disease (COVID-19) pandemic and conflict. Women and girls are particularly at risk, and make up 60 per cent of the people globally who suffer from extreme hunger. Lack of formal land and tenure rights jeopardize the right to food for millions of Indigenous Peoples, who are also affected by high contamination from mining on their lands.

63. States are increasingly aware that food security is an integral part of environmental and climate actions. Recognizing that pesticides used in food production can be harmful to the environment and health, the regulation, control and minimizing of their use can lead to more sustainable food production.⁸⁸ Implementing agroecology systems in a participatory and inclusive way, including organic farming, climate-smart agriculture, decreasing the use of pesticides and restoring soil health, will increase sustainable food and biodiversity while reducing pollution and greenhouse gas emissions. Addressing climate change-related impacts on food security requires all types of knowledge, including from Indigenous Peoples, women and young people, in formal and informal ways.

6. Healthy ecosystems and biodiversity

67. Healthy ecosystems and biodiversity are vital for all beings and essential to human food, medicine, cultural practices and shelter, among others. However, one million of the world's species of plants and animals are threatened with extinction, and close to 90 per cent of global marine fish stocks are exploited or depleted. The decline in biodiversity is caused primarily by habitat loss, the unsustainable use of natural resources, climate change, desertification and pollution.

68. Biodiversity loss is having a significant impact on human rights, especially of those more directly dependent on it, including Indigenous Peoples, Afrodescendent communities, peasants and other rural communities. Therefore, it is vital to recognize and ensure Indigenous Peoples' land rights and the rights of others, as mandated under international law, recalling also that forests legally owned by Indigenous Peoples have lower rates of deforestation and improved biodiversity.

IV. Main challenges of the implementation of the right to a clean, healthy and sustainable environment

...

C. Weak rule of law

76. Environmental rule of law implies a governance system in which all persons, including public and private individuals and institutions, are accountable to laws that are public, equally enforced, independently adjudicated and consistent with human rights. The creation of more legal frameworks is in contrast to substantive effectiveness, which remains to be seen. Current environmental frameworks aim mostly at managing natural resources, without considering planetary boundaries and existing recognized human rights. Effective and comprehensive control and monitoring of the drivers of the crises, including corporate accountability mechanisms, tend to be absent. The increasing demand for critical minerals, including for clean energy technologies, is set to increase rapidly; without strong rule of law, this could cause further impacts on biodiversity, nature, food and water systems and culture.

77. Critical government tools for the adequate implementation of environmental rule of law, such as strategic environmental assessments and environmental impact assessments, are not adequately regulated and enforced. In some jurisdictions, such assessments are not binding, while in others there is no independent evaluation and such measures do not comprehensively include environmental and climate impacts. The lack of effective information and participation in these processes reduces the possibility of rights-holders to defend their rights and, as such, for States to prevent further impacts.

78. The right to a healthy environment has yet to be mainstreamed in all planning processes. This also applies to international institutions whose decisions can have negative environmental and climate consequences. For example, the International Seabed Authority, in charge of regulating deep seabed mining in areas with resources that are the common heritage of humankind, must effectively regulate these activities, guaranteeing effective access to information and participation, especially considering the human rights impacts on Indigenous Peoples, children and future generations. Information received in preparation of the present report raises concerns about the effectiveness of regulations protecting the seabed.

G. Increased risks for environmental human rights defenders and closing of civil spaces

86. Environmental human rights defenders face different risks linked to their work in protecting the environment and climate, including stigmatization, criminalization, threats and assassinations. Other increasing risks mentioned in the contributions received include the excessive use of force and closing of civic spaces. ... Indigenous Peoples ..., land rights defenders and journalists are at a greater risk. These risks are exacerbated by intersectional factors. Situations of conflict, war and illegal activities

increase risks further for environmental human rights defenders when defending their territories.

V. Challenges faced by people and groups in situations of vulnerability

88. Climate and environmental impacts affect everyone, although more greatly those in more situations of vulnerability. Systemic inequalities, discrimination and historic exclusion from decision-making processes have resulted in differentiated impacts from environmental degradation, climate change and biodiversity loss on marginalized people and groups. For those groups, many other rights are also affected, such as protection against the loss of livelihood, and the rights to life, health and culture.
94. Decisions from international and regional human rights treaty bodies developing recommendations for States on how to advance an intersectional approach and implement measures to address systemic discrimination should be considered. Examples include decisions relating to the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples. The Office of the United Nations High Commissioner for Human Rights and special procedure mandate holders have also developed extensive information regarding adequate measures to increase environmental protection and guarantee the human rights of people and groups in vulnerable situations, including an intersectional approach in the context of climate change and climate actions.

C. Indigenous Peoples

100. Indigenous Peoples have contributed greatly to environmental and biodiversity conservation. Indigenous and ancestral knowledge is vital for transformational systems towards climate and environmental justice, including knowledge from elders and women. Despite this, Indigenous Peoples' rights still face serious challenges, including stigmatization and discrimination.
101. The information received included descriptions of situations such as Indigenous Peoples being "racialized as primitive and unintelligent", and the rights of self-recognized Indigenous Peoples, such as pastoralists and forest dependent communities, still yet to be fully recognized in too many countries. Protection has yet to be secured for Indigenous lands, and there is a risk of legal modifications that could increase dispossession and degradation of these lands.
102. Despite the obligation of free, prior and informed consent, this is not fully respected, owing to weak rule of law, non-binding processes and inadequate controls over business activities. Examples received by the Special Rapporteur include cases related to mining activities in several regions, including lithium mines in South America.
103. Moreover, climate change is having a severe impact on Indigenous Peoples' lands, rights and culture, including as a result of fossil fuel extraction; the energy, agribusiness, tourism and renewable energy sectors; melting permafrost; the mining of transitional minerals; and carbon markets projects.
104. Conservation efforts, like establishing natural protected areas, sometimes with militarization and forcible relocation, are affecting Indigenous Peoples' rights, evidenced in contributions received. Lack of inclusion of traditional Indigenous knowledge in these efforts, and implementing REDD-plus and carbon market projects without adequate free, prior and informed consent and benefits-sharing, might be a source of conflicts and in some cases subject to litigation.

105. Access to information, participation and access to justice for Indigenous Peoples is also challenging in these situations regarding projects and activities that affect their territories, as well as environment and climate. Language is still one of the main barriers; when information is made public, it tends to be in official languages, with little or no interpretation in Indigenous languages. Digital and geographic isolation exacerbates the situation.

2. Visit to Chile, A/HRC/55/43/Add.1, 3 January 2024

I. Introduction

1. The Special Rapporteur on the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, visited Chile from 3 to 12 May 2023 at the invitation of the Government. The purpose of the visit was to examine the country's progress in implementing the right to a clean, healthy and sustainable environment, to identify good practices and to consider the environmental challenges that the country faces.
7. The Special Rapporteur smelled the toxic fumes of industry in Ventanas and felt them in his throat. He listened to the testimony of mothers, tears rolling down their cheeks, who were afraid to send their children to school because of recurring toxic disasters. ... He also heard the impassioned pleas of Indigenous Peoples seeking respect for their rights and their territories.

III. Fulfilling the right to a clean, healthy and sustainable environment

21. The role of the Special Rapporteur is to promote the implementation of obligations relating to the right to a clean, healthy and sustainable environment so that everyone, everywhere can fully enjoy this right. This fundamental human right, supported by Chile in recent United Nations resolutions, includes clean air, safe and sufficient water, healthy and sustainably produced food, non-toxic environments, healthy biodiversity and ecosystems and a safe climate. It also includes rights of access to environmental information, public participation in environmental decision-making and access to justice with adequate remedies.

A. A safe climate

...

27. However, there is an essential prerequisite for the development of the country's renewable energy potential, which is fulfilling its human rights obligations. That means providing the public with clear, accessible information, as well as opportunities to participate in decision-making processes. Additional efforts must be made to include communities that may be in situations of vulnerability or marginalization. If renewable energy projects are going to be built in the traditional territory of Indigenous Peoples, their right to free, prior and informed consent must be respected from the very outset of planning processes. Communities in which renewable energy projects are located should receive a fair share of the benefits produced. Following that human rights-based approach is a legal obligation for the State. It decreases the potential for socio-environmental conflict, accelerates the just energy transition and increases the likelihood of positive outcomes.
30. Populations in situations of vulnerability experience a disproportionate share of climate impacts, but also offer tremendous potential for contributing to just and sustainable solutions. For example, marginalization and discrimination have

exacerbated the impacts of climate change on the culture and livelihoods of the Mapuche Indigenous People. However, according to the Intergovernmental Panel on Climate Change: “The traditional agriculture of Mapuche Indigenous Peoples includes a series of practices that result in a system that is more resilient to climate and non-climate stressors. Practices include water management, native seed conservation and exchange with other producers (trafkintu), crop rotation, polyculture and tree-crop association.”

C. Safe and sufficient water

...

40. The problem is that water rights in Chile were privatized decades ago. The Water Code allowed the State to grant water rights in perpetuity, free of charge, and the 1980 Constitution protects these rights as a form of property. That system has led to increasing control of water supplies by industrial agriculture, forestry and mining companies at the expense of people in rural communities, Indigenous People and small-scale farmers. A multi-year megadrought and the escalating impacts of the global climate crisis have exacerbated water scarcity. By the end of 2021, more than half of the population of Chile lived in areas confronted by severe water scarcity.
41. For example, the flow of the Loa River in northern Chile has dropped 75 per cent in recent decades due to water-intensive mining activities and growing urban demand. That dramatic decline affects Indigenous communities in the region, including their rights to water, food and livelihoods, as well as cultural rights. The decreased flow has also had significant negative effects on wetlands, flora and fauna in the region. ...

E. Healthy and sustainably produced food

...

61. According to information received during the visit, acute poisoning and diseases associated with the use of pesticides were suffered by children, agricultural workers, Indigenous communities and other rural inhabitants. That indicates that there are still high risks associated with the use of pesticides in Chile. Pesticide exposure can damage human health, with children and pregnant women being particularly vulnerable. Moreover, many countries, including Chile, lack fully effective monitoring systems to regulate the pesticide industry and control pesticide use by agribusinesses. This lack of monitoring and barriers to seeking and obtaining redress could amount to human rights violations if not addressed properly.

F. Healthy biodiversity and ecosystems

63. Several major industries in Chile, including industrial fishing, salmon aquaculture, forestry and mining, threaten biodiversity. Chile endorsed the Kunming-Montreal Global Biodiversity Framework in December 2022, committing to take a human rights-based approach to conserving and restoring biodiversity, as well as to protect at least 30 per cent of all terrestrial, freshwater and marine ecosystems by 2030. Indigenous Peoples have a key role to play in conserving biodiversity in Chile. Wetlands in all regions urgently require greater protection from industry and urban development.
64. At present 21 per cent of the country’s land is in national parks or other protected areas, while an impressive 42 per cent of its marine territory is protected. However, the majority of protected areas lack management plans, and resources for conservation

action are limited. In a positive step, the newly created Biodiversity and Protected Areas Service established a national protected areas system, integrating all the existing protected areas in Chile, marine and terrestrial, that are currently managed by several different ministries.

1. Salmon farming

65. The salmon industry has increased its production and marine footprint dramatically during recent decades in Chile. According to data from the Undersecretary of Fisheries and Aquaculture and the National Fisheries and Aquaculture Service, Chile has become the world's second largest producer of salmon, with more than 1,200 aquaculture concessions granted in the Los Lagos, Aysén and Magallanes Regions. Over the last 30 years, the Chilean salmon industry has grown by an average rate of 117 per cent a year, inflicting ecological damage on ecosystems often located in Indigenous territories.
66. Salmon farming is one of the main environmental threats facing Patagonia, especially the Kawésqar National Park, which is important for the conservation of diverse species and ecosystems, including 32 species of cetaceans. The salmon industry has contributed to an increase in industrial waste on beaches, in the water and on the seabed. The Special Rapporteur visited Reloncaví Sound and observed sites for salmon farming. He was also informed of the recent installation of a new salmon farming site in Hualaihué, jeopardizing a nearby wetland.

Forest industry

67. The Chilean forestry industry produces 2.24 per cent of the world's timber exports.⁷¹ In southern Chile, in the traditional territories of the Indigenous Mapuche, biodiversity and native forests have been replaced by monoculture plantations. The approach and practice of forest "extractivism" are having profoundly negative consequences, such as soil degradation, dryness and an increase in forest fires, threatening the rights, lifestyles and livelihoods of the Indigenous Mapuche.

IV. Indigenous Peoples

68. According to the 2017 census, almost 2,200,000 persons or approximately 11 per cent of the total population of Chile declared that they had Indigenous origins. Many Chileans are of partially Indigenous descent; however, Indigenous identity and its legal ramifications are typically reserved for those who self-identify with and are accepted within one or more Indigenous groups. The largest populations are Mapuche, who account for 80 per cent of the Indigenous population as a whole and with whom the Special Rapporteur met in Puerto Montt. There are also other groups like the Atacameños, with whom the Special Rapporteur met during his visit to Calama.
69. In 2015, the Special Rapporteur on extreme poverty and human rights stated that: "The rights of indigenous peoples are the Achilles' heel of the human rights record of Chile in the twenty-first century." That was repeated 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, in 2018 and, unfortunately, that still seems to be the case.
70. The Committee on Economic, Social and Cultural Rights has recommended that Chile implement the necessary measures to ensure free, prior and informed consent of Indigenous Peoples in relation to their rights under the Covenant and

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 of their landownership. The Special Rapporteur was disturbed to learn that the Government of Chile had approved the Rucalhue hydroelectric project on the upper Biobío River, violating an agreement with Mapuche Indigenous Peoples concluded in 2004 promising no further megaprojects, especially hydro projects, in that region.

71. During a visit to the Atacama Region in northern Chile, where there are large copper, lithium and renewable energy projects, the Special Rapporteur observed serious shortcomings in compliance with the State's obligations to fully inform Indigenous People about proposed developments, to ensure their participation in decision-making and to secure their free, prior and informed consent on an ongoing basis. The lack of a comprehensive system of dialogue from the earliest stages of planning to ensure ample and equitable participation is not consistent with the human rights obligations of Chile.
72. One example of the lack of consultation, which was provided to the Special Rapporteur, involved the installation of a municipal waste landfill site in the municipality of Ancud on the island of Chiloé. In 2019, the municipality failed to adequately consult both Indigenous People and other affected communities. The same mistake was apparently repeated in 2020 with regard to a second site close to a natural sanctuary on the River Chepu, where a landfill site was created. Indigenous persons who protested against the project were violently removed by members of the National Police.

V. Environmental human rights defenders

73. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms defines a defender as any person who acts to promote and protect human rights in a peaceful manner. The work of environmental human rights defenders is key in realizing the full enjoyment of the right to a clean, healthy and sustainable environment for all persons.
74. Unfortunately, defending human rights in Chile is a risky activity, especially for those who defend land, water, territory and the environment. Indigenous defenders of nature and environmental human rights defenders have been targeted using harassment, threats, cybersurveillance, criminalization, lawsuits and violence (including sexual violence against women). The Government must forcefully state that those actions are unacceptable. A civil society organization has urged Chile to make visible the struggle and attacks that women defenders have suffered.

VI. Conclusions and recommendations

78. "We don't want more speeches; we need concrete improvements", as stated by an individual from a civil society organization. Seven years ago, OECD wrote that "Chile has one of the most resource-intensive economies of OECD countries and is overreliant on natural resources like copper, agriculture, forestry and fisheries for delivering economic growth. It suffers from persistently high air pollution in urban and industrial areas, water shortages and pollution, habitat loss and vulnerability to climate change. More than 95 per cent of its waste continues to be landfilled ... the country's natural resource-based economic model is starting to show its limits."
81. The Special Rapporteur encourages the Government of Chile: ...

- (b) To urgently detoxify sacrifice zones and eliminate environmental injustices by:
 - ... (v) Ensuring that all development initiatives, such as the recently announced National Lithium Strategy and other large-scale industrial projects, take place in a way that respects human rights by recognizing the rights of Indigenous Peoples to free, prior and informed consent regarding projects in their territories, respecting the rights of local communities to participate in decision-making and share in the benefits, imposing the highest possible environmental standards and maximizing public benefits...;
- (i) To protect and restore healthy ecosystems and biodiversity, including by:
 - (i) Expediting actions to formally designate additional terrestrial protected areas, in line with commitments made under the Kunming-Montreal Global Biodiversity Framework and in consultation with Indigenous Peoples and local communities, to ensure that their rights are respected...

3. Business, planetary boundaries, and the right to a clean, healthy and sustainable environment, A/HRC/55/43, 2 January 2024²⁹

II. Business responsibilities to respect the right to a healthy environment

14. To address the substantial impacts of businesses on human rights, a number of normative frameworks have emerged, including the Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the Principles for Responsible Investment, the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the Children's Rights and Business Principles. Despite these frameworks, few businesses are implementing the actions required to respect human rights, especially the right to a clean, healthy and sustainable environment, largely because none of these frameworks are legally binding.
19. Businesses have a responsibility to consult and engage with rights holders and other stakeholders, especially vulnerably situated rights holders, who often bear a disproportionate burden of the adverse impacts of environmental degradation. These rights holders include: Indigenous Peoples... Children's right to a healthy environment should be prioritized in due diligence processes, because of their heightened vulnerability to climate-related and environmental harm. Businesses should undertake gender-transformative measures to respect the right to a healthy environment.
20. Businesses must respect the rights of Indigenous Peoples, persons of African descent, and nature-based local communities to consultation and to free, prior and informed consent. Many Indigenous environmental human rights defenders are harassed, attacked and criminalized when defending their territories from business activities. Even where free, prior and informed consent rights are not legally mandatory, this represents a best practice used by a growing number of businesses. Given the disturbing level of violence facing environmental human rights defenders, businesses must ensure that their activities and value chains take a zero-tolerance approach to intimidation, violence, legal harassment or any other form of silencing, stigmatization or criminalization of human rights defenders.

²⁹ See also *Expert seminar on the responsibility of business enterprises to respect the human right to a clean, healthy and sustainable environment*, A/HRC/55/41, 02 January 2024.

III. Business impacts on the right to a clean, healthy and sustainable environment

24. The right to a clean, healthy and sustainable environment includes clean air, a safe climate, safe and sufficient water, adequate sanitation, healthy and sustainably produced food, non-toxic environments, and healthy biodiversity and ecosystems. It also includes access to information, public participation and access to justice. Over a decade after the introduction of the Guiding Principles on Business and Human Rights, environmentally irresponsible business practices, products and services continue to have egregious negative impacts on all of these substantive and procedural elements, indicating that many businesses largely ignore or pay lip service to voluntary normative frameworks. The Working Group on business and human rights acknowledged that implementation of the Guiding Principles “has not reached sufficient breadth or depth” to curb human rights abuses.
26. A separate policy brief provides additional information on the devastating impacts of businesses on the right to a clean, healthy and sustainable environment.⁵³ The following are among the most egregious examples: ... (e) Oil palm plantations have inflicted brutal impacts (biodiversity loss, water pollution, declining air quality, and loss of sources of food and medicine) on communities in Africa, Asia and Latin America; (f) Angola, Kenya, Liberia, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe recently sold the rights to the carbon in tens of millions of hectares of forests to a foreign business that intends to sell carbon offsets, posing grave risks to the rights of Indigenous Peoples, local communities, pastoralists and farmers who live on these lands and use them for their livelihoods but were not consulted and are unlikely to receive a fair share of the financial benefits.

IV. State obligations to protect the right to a healthy environment from harm caused by businesses

31. States have a duty to protect human rights from actual and potential harm that may be caused by all businesses within their territory, jurisdiction or control. This requires States to act with due diligence, meaning they must take all reasonable and appropriate measures to protect, preserve and achieve human rights, including the right to a healthy environment. As the planetary crisis worsens, it is clear that the dream of voluntary corporate social and environmental responsibility is dead. Unfortunately, States are complicit in the planetary crisis, because they encourage, enable and subsidize destructive business activities. States must free themselves from corporate capture and mandate businesses to respect their climate, environmental and human rights responsibilities. Yet climate, environmental and human rights legislation is often weak, riddled with gaps and loopholes, not implemented, or not enforced in a meaningful way. No State has climate and environmental laws or policies that incorporate the science of planetary boundaries. Few States have adequate regulatory frameworks to control excessive corporate influence on public policy.
46. States have obligations to ensure safe and enabling spaces for environmental human rights defenders to do their vital work. In regulating and monitoring businesses, States must protect defenders from threats, intimidation, reprisals and unlawful violations of privacy; promptly and thoroughly investigate any threats or violence; establish severe penalties for failing to take sufficient actions given existing and reasonably attainable leverage to prevent threats, intimidation and reprisals; and strengthen institutions tasked with implementing these actions. States should also

publicly recognize the important work being done by environmental human rights defenders, have a zero tolerance policy for threats, intimidation and reprisals, and educate businesses about the importance of respecting human rights defenders.

47. Fulfilling Indigenous Peoples' rights includes preventing forced evictions and protecting their lands, territories and resources from illegal or unjust exploitation by businesses. The Inter-American Court of Human Rights has ruled that Indigenous Peoples who have lost possession of their lands without their free, prior and informed consent after a lawful transfer to third parties "are entitled to restitution thereof or to obtain other lands of equal extension and quality". Restitution of land is often the most important remedy for Indigenous Peoples. States must enact and implement laws protecting Indigenous Peoples' rights, including land and resource rights, from business encroachment.

V. Systemic and transformative changes

...

B. Rights-based climate and environmental laws that respect planetary limits

...

62. Incorporating Indigenous laws and worldviews into climate and environmental laws and policies would further the full enjoyment of the right to a healthy environment for all people and contribute to transforming business behaviour. While Indigenous laws are unique to each culture, in general, Indigenous legal traditions reflect holistic, long-term perspectives and "reflect a set of reciprocal relationships and a coexistence with the natural world. Balanced relationships are sought between humans and other entities in the natural world (animals, plants, birds, forests, waters etc.) as well as with the ancestors and future generations.

VII. Conclusions and recommendations

69. Humanity faces a three-pronged fork in the road. The path of business as usual will accelerate environmental catastrophe, worsen inequality, and inflict inhumane suffering on billions of people. The path of incremental change leads to slightly less catastrophic environmental consequences and slightly less extreme inequality, but still results in widespread suffering. The third path, hard to see through the fog of obfuscation spread by businesses, is a future of transformative changes so that everyone lives a fulfilling life in harmony with nature and within planetary limits. Only the third path leads to justice, sustainability and the full enjoyment of human rights for all. Only the third path can pull civilization back from the edge of the cliff. It will not be easy but it is necessary, and it is required by States' human rights obligations. Society has the right to insist that Governments put human rights ahead of shareholder profits, communities ahead of companies, and children ahead of chief executive officers.
70. Rather than driving the systemic destruction of nature and exploitation of people, businesses must contribute to transformative changes including: reforming supply chains to reduce climate, environmental and human rights impacts; reducing humanity's overall environmental footprint via decreased material consumption by wealthy nations and individuals; a rapid clean energy transition; scaling up ecosystem conservation and restoration; and shifting to a rights-based circular economy founded on principles of sufficiency, equality and regeneration. The purpose of business should be to solve the problems of people and the planet profitably, not to profit by causing problems for people and the planet. States are obliged to transform legal regimes governing businesses – for example corporate law, tax

law, property law, trade and investment agreements, and climate, environmental and human rights laws – to ensure that businesses respect human rights, benefit society and contribute to a sustainable future. Robust regulatory frameworks require comprehensive monitoring and stringent enforcement, implemented by independent and empowered agencies overseen by national human rights institutions and judiciaries.

71. To ensure that businesses respect the right to a clean, healthy and sustainable environment, States should: ...
 - (o) Accelerate processes of legally recognizing the land and resource rights of Indigenous Peoples ... that are vulnerable to land- and resource-grabbing, emphasizing the rights of women within these communities; ...
 - (q) Replace industrial agriculture with a rights-based approach that champions agroecology and the traditional knowledge of Indigenous Peoples, local communities, Afrodescendent communities, and peasants (including smallholder farmers)....
72. To ensure that businesses respect the procedural elements of the right to a clean, healthy and sustainable environment, States should improve public access to information, public participation and access to justice by: ... (c) Legislating Indigenous Peoples' right to free, prior and informed consent....

4. Visit to Botswana, A/HRC/55/43/Add.2, 29 December 2023

I. Introduction

1. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, visited Botswana from 3 to 11 October 2023 at the invitation of the Government. The purpose of the visit was to examine the implementation of the right to a clean, healthy and sustainable environment in Botswana, to identify good practices and to investigate the environmental challenges that the country faces.
4. Specific groups, in particular impoverished rural populations, Indigenous Peoples and women and children bear the brunt of economic and environmental inequalities. Those groups are far more likely than affluent urban populations to lack access to safe and sufficient drinking water and adequate sanitation, to suffer from malnutrition and to endure the adverse health effects caused by dependence on cooking and heating fuels that produce household air pollution. Women and girls face the daily challenge of securing water for their families and are the most exposed to the toxic smoke produced by cooking with wood, charcoal or dung.

II. Legal and policy framework

...

C. Political structure and economy

...

19. A key demographic feature of Botswana is that 40 per cent of the population is under the age of 19. Children and youth belonging to Indigenous minorities, many of whom live in remote communities in the Kalahari Desert, are especially vulnerable because of poverty, marginalization and lack of access to the essential services needed to enjoy their economic, social, cultural and environmental rights.

20. In addition, it should be noted that the coronavirus disease (COVID-19) pandemic exacerbated inequality, negatively affecting ... Indigenous Peoples ... and, in particular, persons belonging to two or more of those categories (intersectionality).

III. Fulfilling the right to a clean, healthy and sustainable environment

...

B. A safe climate

...

38. The delay in constructing additional large-scale solar plants in Botswana has a silver lining, in that costs have declined by almost 90 per cent in the past decade, while the technology has continued to improve. However, there is an essential prerequisite to the development of the country's renewable energy potential, which is the fulfilment of its human rights obligations. To achieve that goal, the Government must provide the public with clear, accessible information, in a variety of languages, as well as opportunities to participate in decision-making processes. Additional efforts must be made to include communities that may be in positions of vulnerability, particularly in remote locations. If renewable energy projects are going to be built in the territory of Indigenous Peoples and local communities, their right to free, prior and informed consent must be respected from the outset of planning processes. Further, large solar or other renewable energy projects should not be exempted from environmental assessment processes and communities where renewable energy projects are located should receive a fair share of the benefits produced. Following a human rights-based approach is a legal obligation for the State and also increases the likelihood of positive outcomes.
41. During the course of his visit, the Special Rapporteur noted significant challenges in access to electricity, with roughly 30 per cent of households without access to electricity, especially in rural areas. Because remote rural and Indigenous communities are often not connected to the grid as a result of their geographical location, distributed, small-scale renewable energy offers the best path forward. Solar can be used to provide access to electricity for remote communities at a much lower cost than connecting them to the national electricity grid. However, the Special Rapporteur was surprised to learn that Kuke and other Indigenous communities in northwestern Botswana are not connected to the national electricity grid, despite being situated very close to powerlines.

C. Biodiversity and healthy ecosystems

45. As noted earlier, Botswana is a recognized leader in biodiversity conservation, including in transfrontier protected areas, which are important because ecosystems transcend political boundaries. A leading example is the Kavango-Zambezi wetland system, which is jointly managed by Angola, Botswana, Namibia, Zambia and Zimbabwe. The region is home to a variety of species, including populations of elephants, cheetah, white rhinoceros, black rhinoceros, African wild dogs and lions. The Miombo woodland and the Okavango Delta are also important for global conservation.
46. In the past there have been serious human rights concerns about the eviction of Indigenous Peoples under the guise of conservation, most famously the Basarwa communities which were removed from the Central Kalahari Game Reserve. While protecting biodiversity is essential for the realization of the right to a healthy environment, strict conservation measures, including through past practices of "fortress conservation", may produce meagre conservation gains at the

cost of evicting rural communities from their homes and ancestral lands, criminalizing their traditional livelihoods and violating their human rights to life, health, water, food, an adequate standard of living, non-discrimination and their cultural rights. The Special Rapporteur stressed in his recent policy brief that “Ending the current biodiversity crisis will require a transformative approach to what ‘conservation’ entails” and that “human rights-based conservation is the most effective, efficient, and equitable path forward to safeguarding the planet”. It is essential that Botswana employ a rights-based approach to all aspects of conservation, as emphasized in the Kunming-Montreal Global Biodiversity Framework adopted in 2022.

47. The Special Rapporteur would like to echo the concerns and recommendations of the Human Rights Committee regarding former residents of the Central Kalahari Game Reserve, in particular the Basarwa and Bakgalagadi, who were not applicants in the case *Roy Sesana and Others v. the Attorney General*, and who are required to obtain entry permits to enter the reserve. Also deeply concerning is the recent decision by the Court of Appeal of Botswana ruling against a family’s request to bury one of their family members on their ancestral land in the Central Kalahari Game Reserve. The Special Rapporteur emphasizes that respecting and protecting human rights of all, especially the rights of Indigenous Peoples and other rural rightsholders, is an obligation under international law that applies in the context of all conservation actions.
51. A Canadian corporation has been granted a lease for oil and gas exploration in northwestern Botswana and Namibia, raising concerns about risks to the Okavango Delta world heritage site. The Special Rapporteur expressed concern about the human rights impacts of the project in a joint allegation letter to the Government of Botswana in 2021; no response has been received from Botswana. In the letter, the Special Rapporteur highlighted concerns related to the potential damages that the project may cause to the fragile ecosystem and protected areas on which Indigenous Peoples depend for their physical and cultural survival. A recently published scientific article concluded that “groundwater in ReconAfrica’s lease area flows towards the Okavango Delta, so there is a risk of oil contamination of the world heritage site from the proposed oil development”. The Special Rapporteur agrees with UNESCO that Botswana should implement rigorous environmental impact assessment procedures for activities outside the Okavango Delta world heritage site that have the potential to negatively impact its outstanding universal value. The Government indicated that it will require an environmental impact assessment prior to permitting oil and gas exploration.

IV. Information, public participation and access to justice in environmental matters

...

75. Although traditional community meetings (kgotlas) are a useful way to engage with local communities, many people felt that there was only “an appearance of consultation”, owing to the limited information shared with the chief and the community prior to consultations. The Special Rapporteur heard that information shared with communities by private companies is sometimes incomplete and inaccurate and that it is not always updated as projects are developed. Concerns about unfulfilled commitments to provide local benefits and the inadequate implementation of the obligation to seek free, prior and informed consent of Indigenous Peoples were also reported.

VI. Conclusions and recommendations

...

85. As Botswana continues to develop its enormous natural wealth, including diamonds, copper and abundant sunshine, it must do so in a way that respects human rights by recognizing the rights of Indigenous Peoples to free, prior and informed consent regarding projects in their territories, respecting the rights of local communities to participate in decision-making and to enjoy a fair share of benefits, imposing the highest possible environmental standards and maximizing public benefits.
86. The Government should continue ongoing efforts to respect, protect and fulfil the human right to a clean, healthy and sustainable environment and related human rights, including by: (a) Continuing to strengthen its human rights legal and policy framework, including by; ... (iv) Recognizing the Indigenous Peoples of Botswana and respecting their rights, including to free, prior and informed consent....

5. Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights, A/78/168, 13 July 2023

I. Introduction

1. At a time when it is imperative that States accelerate the pace and ambition of climate and environmental action to prevent planetary catastrophe and fulfil their human rights obligations, a daunting obstacle has emerged. Foreign investors have weaponized a secretive international arbitration process, known as investor-State dispute settlement (ISDS), that is embedded in thousands of international investment agreements (IIAs), mostly bilateral investment treaties. Claims under the ISDS process are used to challenge climate and environmental actions taken by States and to demand billions of dollars in compensation. These cases are decided not by independent judges but by arbitration lawyers, many of whom work for law firms that represent investors. This unjust, undemocratic and dysfunctional process has sparked a legitimacy crisis in the international investment regime.
2. State measures vulnerable to the threat of ISDS claims include actions to enact, strengthen and implement climate and environmental laws, regulations, standards and policies. For example, refusing to grant oil and gas exploration permits, the phasing out of coal-fired power plants, denying permits for large mines, introducing fracking bans and strengthening laws to protect water supplies have all resulted in arbitration claims. The number of known ISDS cases targeting actions taken by States to protect the environment has skyrocketed, from 12 initiated prior to 2000 to 37 in the period 2000–2010 and 126 in the period 2011–2021.
3. ISDS cases are conducted not in domestic courts but through international arbitration between the foreign investor and the State where investments were made. If a State is found to be in breach of investment treaty obligations, arbitral tribunals have the power to grant massive monetary awards. The explosion of ISDS claims in recent years, and the threat of such claims, is led by fossil fuel, mining and other extractive industry corporations, resulting in exorbitant damages awards against States, permits granted for environmentally destructive activities and the rollback of vital rules addressing climate change, biodiversity loss and pollution.
4. The United Nations Conference on Trade and Development (UNCTAD) reports more than 127 ISDS claims have been filed that seek \$1 billion or more in damages.

Billion-dollar ISDS claims are becoming routine in climate and environmental cases, representing a gold mine for foreign investors and an economic nightmare for low- and middle-income States. Examples of ISDS claims and awards include: ... (d) A \$15 billion claim by TransCanada Energy against the United States for refusing to approve an oil pipeline; ... (g) A claim of undisclosed magnitude by Glencore against Colombia, related to a conflict between expanding one of the world's largest coal mines and protecting a vital river for Indigenous Peoples.

II. The fundamental flaws of the investor-State dispute settlement system

10. ISDS was established in the 1960s to protect investors, based in colonial powers, from the expropriation of their assets, without compensation, by newly independent States. Oil company executives and their lawyers exerted substantial influence on the development of the ISDS system. Allowing foreign investors to sue States directly through international arbitration was an extraordinary and unwarranted concession of sovereignty to transnational corporations. The purported justification was that the rule of law was weak or unreliable in these States, whose domestic legal systems lacked competence or independence. However, the majority of ISDS cases today challenge legitimate public policies enacted by democratic governments in States with independent judiciaries. Few ISDS claims involve complaints about direct expropriation. Instead, the vast majority of claims involve regulatory or permitting actions taken by States, strategically framed by foreign investors as “indirect expropriation” or unfair treatment. Other potential claims include undermining the investor’s “legitimate expectations” of regulatory stability or introducing a measure that is “disproportionate” to a legitimate policy objective. Legitimate expectations have been misconstrued by investors and tribunals as precluding States from taking actions to address climate change, despite these actions being necessary and foreseeable for decades.

D. Obstacles to public participation

24. Public participation and access to justice with effective remedies are fundamental rights in and of themselves, but they are also integral to the full enjoyment of other human rights. Inclusive public participation improves the quality of decision-making, enhances rights holder support for projects and fulfils human rights obligations. Yet the ISDS system poses major barriers to participation by affected communities, human rights defenders, Indigenous Peoples and civil society, who have no right to participate as parties and only the possibility of making non-party submissions, called *amicus curiae* briefs. Foreign investors are granted the privilege of being able to bypass domestic court systems and move directly to binding international arbitration. In contrast, victims of human rights violations must generally exhaust their domestic remedies before pursuing justice through international courts and tribunals.

25. Arbitration tribunals have absolute discretion regarding whether to accept amicus briefs. Criteria include whether an applicant has a significant interest in the proceedings and particular knowledge or insight that would assist the panel. Tribunals also ensure that amicus submissions would not disrupt the proceeding or unduly burden or unfairly prejudice either party. *Amicus* briefs are often rejected by ISDS tribunals, meaning that affected communities, human rights defenders, Indigenous Peoples and civil society are unable to participate and thus unable to highlight the devastating impacts of environmental degradation on the right to a healthy environment and other human rights. The exclusive focus of ISDS claims on investors and States routinely results in public participation, community concerns

and human rights being ignored at all stages of the process. Even if admitted, *amicus* briefs represent a limited, one-off form of participation. Applicants often lack access to other case documents, have their submissions limited in scope and length and are not permitted to participate in oral hearings.

26. *Eco Oro v. Colombia* and *von Pezold v. Zimbabwe* are examples where directly affected communities were excluded from ISDS processes. In *Eco Oro*, a foreign investor filed a claim based on Colombia's refusal to grant permits for a mine expected to cause significant environmental damage and jeopardize water supplies. Communities and civil society organizations opposing the project applied to submit an *amicus* brief, arguing that the actions taken by Colombia were justified by the State's human rights obligations, including protection of the right to a healthy environment. The tribunal refused to admit the proposed submissions. In *von Pezold*, a case about land reform, the tribunal rejected an application from Indigenous Peoples, concluding that Indigenous rights were outside the scope of the dispute.

III. Environmental and human rights consequences

40. Hundreds of ISDS claims involve projects, either active or proposed, that are antithetical to sustainable development because of their adverse consequences for the environment and human rights. Public opposition to unsustainable development, including protests led by Indigenous Peoples, local communities, environmental human rights defenders and civil society, generates pressure on Governments to regulate, reject or close down these projects. Examples include mines in Australia, Colombia, Costa Rica, El Salvador, Guatemala, Mexico, North Macedonia, Pakistan, Peru, Serbia and Türkiye; coal-fired power plants in Germany and the Kingdom of the Netherlands, fracking in Slovenia, offshore oil exploration in Italy and fossil fuel projects in Canada, Slovakia, Tunisia and the United States.
41. In recent years, ISDS has been transformed from a shield against unlawful State action into a weapon wielded to bully Governments by investors seeking windfall profits. The polluter pays principle, widely accepted in international environmental law, has been turned upside down, as polluters get paid. Of the 12 largest ISDS awards to date, 11 involve cases brought by fossil fuel and mining investors (see annex I67). These 12 awards alone total more than \$95 billion, although investors in these cases sought more than \$200 billion in compensation. To put this massive figure in context, the \$95 billion awarded in a dozen ISDS cases likely exceeds the total amount of damages awarded by all courts to victims of human rights violations in all States worldwide, ever.

Human rights consequences

53. Human rights are almost completely ignored by IIAs (see A/76/238). Rights to life, health, food, water and a healthy environment, among many others, are all affected by ISDS. Dozens of ISDS claims have challenged government policies or decisions intended to respect and protect Indigenous rights, the right to health, the right to water and the right to a healthy environment. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework emphasize that States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts (A/HRC/17/31, principle 9). The framework principles on human rights and the environment state that States should ensure

that agreements facilitating international trade and investment support, rather than hinder, the ability of States to respect, protect and fulfil human rights and to ensure a safe, clean, healthy and sustainable environment (A/HRC/37/59, principle 13, para. 39).

54. Many of the projects subject to ISDS claims are interfering, or would interfere, with people's ability to enjoy the right to a clean, healthy and sustainable environment, which includes clean air, safe and sufficient water, healthy and sustainably produced food, non-toxic environments, healthy biodiversity and ecosystems and a safe climate. ...
58. Many foreign investors whose projects have major climate and environmental consequences ignore the rights of Indigenous communities to free, prior and informed consent, fail to consult with other affected communities, refuse to comply with environmental impact assessment laws and cause the shrinking of civic space. Environmental human rights defenders often mobilize against foreign investment projects because of the negative impacts they have on the environment, livelihoods and culture, as well as the failure of approval processes to address these impacts. Defenders often do this at considerable personal cost, facing intimidation, violence and criminalization.

6. Women, girls and the right to a clean, healthy and sustainable environment, A/HRC/52/33, 5 January 2023

III. Disproportionate impacts of the global environmental crisis on women and girls

12. All people depend on nature for their life, health and well-being, from the oxygen in air produced by plants on land and at sea, to crops pollinated by birds, bats and bees and other insects. Everyone has the right to a clean, healthy and sustainable environment. This includes clean air; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; healthy biodiversity and ecosystems; and a safe climate. It is also linked to the rights to information, participation in decision-making and access to justice with effective remedies.
13. Unfortunately, gender-based stereotypes, biases, inequalities and discrimination profoundly restrict women and girls' enjoyment of the right to a clean, healthy and sustainable environment.¹⁶ This also affects the rights to life, health, adequate housing, food, water, sanitation, education and an adequate standard of living, cultural rights and child rights. Gender-based discrimination is exacerbated for women and girls who are potentially vulnerable or marginalized because they are Indigenous...

C. Healthy and sustainably produced food

20. Women and girls make up almost half of the world's agricultural workforce. In some low-income countries, they produce up to 80 per cent of the food, yet are often unpaid or paid less than men doing the same work. They account for 70 per cent of the world's hungry and are disproportionately affected by malnutrition, poverty and food insecurity. These inequalities are rooted in discriminatory norms dictating that when insufficient food is available, women and girls should restrict their own food consumption and implement preferential feeding practices that favour men and boys. In 2019, nearly one in three women of reproductive age (15–49) were anaemic.

21. A critical problem is discrimination regarding women's land ownership and the recognition and security of their resource tenure rights. Because of legal, cultural and economic barriers, only 20 per cent of the world's land is owned by women, and the land and resource rights of Indigenous women ... who rely on community-based tenure systems are underrecognized and insecure. The number of malnourished children is 60 per cent higher in countries where women do not have the right to own land and 85 per cent higher in countries where women lack access to credit.

D. Healthy ecosystems and biodiversity

23. Climate change, pervasive pollution and irresponsible resource use – all caused by the corporate capitalist economy that prioritizes extractive industries, energy megaprojects and large-scale industrial agriculture – have catastrophic impacts on the health of biodiversity and ecosystems and the people who depend most directly on nature.
24. Declining biodiversity and degraded ecosystems affect human health, food security and livelihoods, particularly for Indigenous ... women and girls. These women and girls steward their territories and use them for food, water, medicinal plants, non-timber forest products, cultural and spiritual purposes and small-scale livelihoods (agriculture, agroforestry, fisheries, livestock management and aquaculture). They also play vital roles in seed selection, protection and distribution. However, they and their communities often lack legal land title or legally recognized tenure rights, creating precarity. The Committee on the Elimination of Discrimination against Women has highlighted adverse impacts of deforestation on the rights of women and girls, especially in Indigenous communities.

H. Access to information, participation, and access to justice and effective remedies

...

46. Indigenous ... women are consistently excluded from business and government decisions related to land acquisition, land use, resource rights and processes in which their community's free, prior and informed consent is required. This exclusion harms women's ability to feed their families, earn livelihoods, participate in development, maintain their nature-dependent cultural or spiritual practices and receive compensation, leading to environmental conflicts and heightened risks of violence. The systematic underrepresentation of women and girls worsens environmental outcomes. For example, their exclusion from community forest management leads to ineffective forest protection.

3. Access to justice and effective remedies

...

48. In the aftermath of harms caused by climate change, biodiversity loss and pollution, access to justice is often inaccessible, particularly for Indigenous women, women in situations of intersecting vulnerability, including poverty, and where transnational claims are needed. For example, following climate-related disasters, women may encounter significant difficulties in claiming compensation and other forms of reparation to mitigate their losses and to adapt to climate change.

I. Gender-based violence

49. During their lifetime, one in three women and girls will experience gender-based violence. The climate, pollution and biodiversity crises worsen poverty, increase

stress and fuel violence against women and girls, including physical, psychological, domestic and sexual violence, child marriage and sex trafficking. Increased domestic and sexual violence have been reported after hurricanes, cyclones, heatwaves and bush fires.

50. Gender-based violence disproportionately affects women and girls in vulnerable situations. Indigenous women and girls experience a range of gender-based violence, including environmental violence that can take the form of environmental harm, degradation, pollution or State failures to prevent foreseeable harm connected to climate change. Gender-based violence threatens the individual autonomy, personal liberty and security, privacy and integrity of all Indigenous women and girls and may also harm the collective and its well-being, by jeopardizing the spiritual life, connection with Mother Earth, cultural integrity and survival, and social fabric of Indigenous Peoples and communities.
51. In some States, the climate crisis contributes to economic violence through wife inheritance (after a husband dies, his brother or other male family member “inherits” the widow and her family’s property), inheritance renouncement and other means of disinheriting women and girls. Climate-related disasters such as droughts and floods also are contributing to a rise in “witch” killings, which target women and girls and may serve as cover for land and property grabbing.
52. Militarized efforts to protect or facilitate environmentally destructive activities (especially large-scale agribusiness, extractive, hydropower and mining projects) heighten risks of gender-based violence, especially on Indigenous... lands. Examples from Guatemala, Papua New Guinea, the Philippines and the United Republic of Tanzania reveal the involvement of the police, the military and armed guards in rape, torture, assault, sexual harassment and other forms of violence against women. Trafficking for the exploitation and the prostitution of others or other forms of sexual exploitation may replace safer livelihoods for women and girls. The risks of gender-based violence are also exacerbated by exclusionary, militarized approaches to conservation and by the illegal wildlife and timber trades.
53. The planetary environmental crisis also contributes to forced displacement, where risks of violence against women and girls escalate. In 2021, over 20 million people were displaced by climate-related disasters. Millions more were displaced in 2022.... Most displaced persons are women and girls.

J. Environmental human rights defenders

54. Women and girls around the world, especially from Indigenous... communities, have an inspiring history at the forefront of environmental defence. Women environmental human rights defenders are disproportionately affected by environment-related human rights violations. In response, they challenge patriarchy, corporate power and State complicity.
55. Women and girls are at a disadvantage in defending the environment and human rights due to their lack of land and tenure rights, relative poverty and exclusion from decision making processes. Because of gender discrimination and the power of their activism, women and girl defenders are stigmatized, marginalized, shamed and exposed to greater risks of violence and reprisals. They are accused of pursuing environmental justice to the detriment of their domestic duties and may be subject to coercion through threats against their families and loved ones. Hundreds of women have been murdered for their work as environment, land, water and human rights defenders in recent years. Countless more experience violence, intimidation and criminalization.

C. Heightened duties towards women and girls in vulnerable situations

82. Gender-transformative climate and environmental actions should prioritize those groups of women and girls with heightened risk of vulnerability, including those from Indigenous, racial, ethnic and sexual minority groups, women and girls with disabilities, adolescents, older women, unmarried women, women heads of household, widows, women and girls living in poverty in both rural and urban settings, women sex workers and internally displaced, stateless, refugee, asylum-seeking and migrant women.
83. Indigenous women and girls have a special connection to their environment, described as “territories of life”, Pachamama or Mother Earth. They are disproportionately affected by pollution, deforestation, the climate crisis and biodiversity loss. ... States must:
- (a) Recognize and prioritize the collective and individual needs and rights of women and girls in these communities in all climate actions and efforts to conserve, protect, restore, sustainably use and equitably share the benefits of nature;
 - (b) Take measures to protect Indigenous ... women’s traditional knowledge, customary practices and cultural rights;
 - (c) Support capacity-building for women and girls who depend directly on nature for their cultural identities and livelihoods to sustainably conserve and use nature based on traditional knowledge, customs and stewardship responsibilities;
 - (d) Respect the right of Indigenous women and girls to free, prior and informed consent in all decisions that affect their territories, cultural heritage and rights before authorizing economic, development, extractive or climate projects or designating their lands as protected areas.
84. As the customary laws and practices of Indigenous ... communities may be a source of discrimination against women and girls, States must not exempt customary laws and practices from laws guaranteeing gender equality or prohibiting discrimination against women.
85. Land is the most important asset for the majority of people in developing countries, in part because it is pivotal to rural women’s capacity to escape poverty and act as transformational environmental agents, including with respect to their right to a clean, healthy and sustainable environment. States must legally recognize the land and natural resource ownership, tenures and participatory rights of Indigenous ... women, including the collective ownership and tenure rights held by Indigenous ... communities.
86. To fulfil their obligation to protect the right to a clean, healthy and sustainable environment, States must strictly regulate business activities to prevent actions that threaten the lands, waters and ecosystems of Indigenous ... women and girls. States should recognize, support and honour the many contributions to climate action, environmental stewardship, conservation and restoration made by these pivotal rights holders.

M. SPECIAL RAPPORTEUR ON THE RIGHT TO EDUCATION

1. Visit to Finland, A/HRC/56/58/Add.1, 30 April 2024

II. General context

...

B. National education system

1. Structure

11. Compulsory education begins when a child turns 6 years old and ends when the child reaches the age of 18 years. Every child permanently residing in Finland must attend compulsory education, which is free of charge. The education system caters for children with special needs and those whose mother tongue is not Finnish or Swedish, such as children speaking Sami, Romani or other minority languages or using sign language.

III. Specific achievements and challenges relating to the right to education in Finland

...

A. Challenges facing the teaching profession

...

Teacher shortages in early childhood education and care

...

45. There are also shortages of teachers with special competences, such as special needs education and Sami ... or other minority languages.

C. Challenges in ensuring social cohesion, inclusion and diversity at all levels of education

...

3. Meeting educational needs of national minorities

81. Section 17 of the Constitution expressly protects the right of the Sami, as an Indigenous People, and the Roma and other groups to maintain and develop their own language and culture.
82. In Sami-speaking areas of Lapland, the northernmost region of Finland and the Sami homeland, Sami-speaking children are entitled to early childhood education and care in their own language. Local authorities must also provide pre-primary, primary and lower secondary education in the Sami languages.
83. There are approximately 10,000 Sami living in Finland, more than 60 per cent of whom live outside the Sami homeland and speak three Sami languages: North Sami, Inari Sami and Skolt Sami. All three are equally protected, but not equally used, which creates difficulties with arranging education in the less used languages.
84. In the Sami homeland, Sami-language teaching is uneven and varies in quality. There are very few Sami-language teachers and support staff available. The lack of resources available for the development of educational materials directly affects the quality of education and the equality of Sami-speaking children and young people.

85. Outside the Sami homeland, small-scale education in the Sami languages is slowly being introduced in early childhood education and care through a project to provide “language nests”. Municipalities may receive discretionary Government grants to organize instruction in Sami languages if there are more than two Sami-speaking pupils in a group. Reportedly, there are now 378 students outside the Sami homeland learning the language. It is difficult to assess the need, provision and functionality of Sami-language teaching, but it is important to see it as a long-term development investment. Efforts are also made to develop distance-learning methods.

IV. Conclusions and recommendations

...

B. Students’ well-being

119. The Special Rapporteur commends the Government for its significant efforts to support ... students speaking Sami.... Nevertheless, studies indicate significant gaps in educational attainment, school enjoyment and well-being.

120. The Special Rapporteur recommends that the Government:

- (a) Find capacity for more intensive language and learning support, including smooth, flexible and individual learning paths, especially in transition phases, and the fostering of well-being, participation, active agency and togetherness; ...
- (c) Continue to collect data, disaggregated by socioeconomic status, gender, language, migrant background, place of origin and other factors, to assess whether and to what extent the educational system allows for social mobility and helps to overcome existing inequalities;
- (d) Step up its official statistical data collection and ensure that results are available to the general public with minimal delay and are used to review existing policies and practices;
- (e) Direct more resources to producing Sami-language teaching materials more rapidly and keeping them current, and to improving the availability of Sami ... language teachers and early childhood educators, in cooperation with teacher-training institutions and municipalities.

2. Role and rights of teachers, A/78/364, 14 September 2023

II. Key role of teachers in ensuring the right to education and rights in education

10. In the ILO-UNESCO Recommendation, the “essential role of teachers in educational advancement” is recognized, and it is reconfirmed that advances in education depend “largely on the qualifications and ability of the teaching staff in general and on the human, pedagogical and technical qualities of the individual teachers.”

11. The nature and content of the human right to education is well established in international human rights law, encompassing not only issues of access to education but also the standard and quality of education and the conditions under which it is provided. One of the most comprehensive taxonomies of protected elements of the right to education is provided by UNESCO in its Right to Education Handbook, in which the essential role of teachers in delivering the right to education is demonstrated.

D. Education in home languages

32. Closely connected to the element of inclusiveness is instruction in one's home language (also called the first language or the mother tongue(s)). In article 30 of the Convention on the Rights of the Child, the right of every child belonging to an ethnic, religious or linguistic minority or of Indigenous origin to use their own language is recognized. In article 5 (c) of the Convention against Discrimination in Education and article 5 of the 2001 UNESCO Universal Declaration on Cultural Diversity, the educational rights of persons belonging to minority groups, the importance of mother tongues and the promotion of cultural diversity are stressed.
34. To ensure education in home languages, initial teacher training and professional development should provide skills for working efficiently in bilingual and multilingual language settings, at least at the level of primary education and especially in territories where Indigenous languages or dialects prevail. Importantly, language policies in education should be aimed at counteracting the effects of colonial heritage.

III. States' obligations to respect, protect and fulfil the rights of teachers with the aim of ensuring inclusive, equitable and quality education

41. The training of teachers, their status and their working conditions are all integral parts of the internationally recognized and protected content of the right to education. The Committee on Economic, Social and Cultural Rights has established that "trained teachers receiving domestically competitive salaries" is essential for the availability of education. The Committee has stressed that the deterioration of teachers' working conditions is inconsistent with article 13 (2) (e) of the International Covenant on Economic, Social and Cultural Rights and a major obstacle to the full realization of the right to education. The increasing shortages of teachers and their inadequate working conditions are regularly documented in concluding observations of treaty bodies. States have an international obligation to create and maintain a functional education system with a sufficient number of teachers at all levels.
42. Teachers, including those working in informal and non-formal education or in other knowledge systems, such as Indigenous systems, must be recognized and valued as professionals. Their professional autonomy needs to be guaranteed through adequate support for their well-being. To guide and empower learners, educators themselves need to be empowered and equipped as facilitators of learning, for example through the use of innovative, learner-centred pedagogies.

V. Conclusions and recommendations

...

104. Teacher training is a key tool to progressively realize all aspects of the right to education, especially to make it more adaptable, inclusive and responsive to current challenges. Teacher training needs to be comprehensive and dynamic and to include the following aspects: ... (e) Skills for working efficiently in bilingual and multilingual language settings, at least at the level of primary education and especially in territories where Indigenous languages or dialects prevail...

3. Securing the right to education: advances and critical challenges, A/HRC/53/27, 17 May 2023

II. Legal and monitoring frameworks A. Universal acceptance of the right to education, a norm of international customary law

A. Universal acceptance of the right to education, a norm of international customary law

8. Considerable evidence supports the right to education as a norm of international customary law based on the universality of treaty provisions, practice at the national level and States' engagement with monitoring mechanisms. Indeed, "there may be no better case for recognition of a fundamental human right as a matter of customary international law than the right to education".

C. Need to reinforce implementation, accountability and monitoring processes

17. Realization of the right to education requires more than an acceptance of established norms. International instruments must be robustly worded and sufficiently detailed. Guidance tools for States and other stakeholders must be made available, including through technical assistance and strong monitoring mechanisms.
20. From December 2010 until April 2023, the right to education mandate has been involved in approximately 139 communications, well distributed across regions, with a generally good response rate. The highly diverse issues addressed in the communications included: ... respect for cultural rights and diversity, including minority language instruction; ... banning NGOs and attacks against human rights defenders promoting the right to education; ... forced evictions affecting access to education, including indigenous and peasant communities; the impact of privatization on education; budget cuts targeting basic services, including education; and lack of access to education in informal settlements.

E. Right to participate in educational life

51. Decolonial and intersectional perspectives provide a vocabulary with which to examine the quality of inclusion. These perspectives entail, inter alia: changing curricula to include historically excluded stories; human rights education and rebuilding trust in institutions; changing "chalk-and-talk" teaching rather than punishing those who do not respond well to such methods; bringing students' identity vectors into the classroom; and recognizing diverse knowledge systems, such as those of indigenous and traditionally marginalized populations. Without such actions, pupils may be formally included in educational systems that exclude their needs, contributions and contexts.

G. Right to educational freedoms

54. Educational freedoms are essential. Under article 13 of the International Covenant on Economic, Social and Cultural Rights, parents have the liberty to choose schools for their children and to ensure that their education is in conformity with their own convictions; and individuals and bodies have the liberty to establish and direct educational institutions. These liberties include the right to opt out of religious education, including one's own religion,⁶⁶ thus allowing for diversity in education, without absolving public education systems from their obligations to protect cultural diversity.

55. Measures that impinge on cultural pluralism or the rights of indigenous or minority groups in education in favour of assimilation, whether in the name of nationalism, secularism or social cohesion, are contrary to the obligations of States. The rights of minorities and indigenous people to establish and operate their own educational services, in their own languages and according to their cultural methods of teaching and learning, are recognized in article 27 of the International Covenant on Civil and Political Rights, article 30 of the Convention on the Rights of the Child, articles 3 and 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁶⁸ and article 14 of the United Nations Declaration on the Rights of Indigenous Peoples.

N. SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF CLIMATE CHANGE

1. Visit to the Philippines, A/HRC/56/46/ADD.2, 9 August 2024

I. Introduction

1. Pursuant to Human Rights Council resolution 48/14, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, undertook an official visit to the Philippines from 6 to 15 November 2023, at the invitation of the Government. In that resolution, the Special Rapporteur was mandated to raise awareness on the human rights affected by climate change, especially of persons living in developing countries particularly vulnerable to climate change, and encourage increased global cooperation in that regard.

IV. Community visits to observe climate change impacts

10. The Special Rapporteur visited a number of communities that had suffered climate change and related impacts.

E. Iloilo, Calinog and the Jalaur mega dam project, Panay

22. The Special Rapporteur visited Iloilo, Calinog and the Jalaur mega dam project, on the island of Panay. The Jalaur dam has been proposed to provide irrigation water for various rural communities, fresh water for the city of Iloilo and hydroelectric power. The dam is still under construction. The dam is funded primarily by a loan from the Export-Import Bank of Korea, with a repayment period of 30 years and the possibility of extension for another 30 years.
23. The Jalaur dam is a highly controversial project, as it is being constructed on ancestral land. It has displaced a number of Indigenous Peoples and rural communities. A number of members of Indigenous Peoples have been killed, allegedly by the military, because they did not approve of the dam project on their ancestral land... While the dam is supposed to provide opportunities for increased food production as a result of irrigation, there are questions over the viability of the project. Sacred Indigenous sites will be submerged by the dam water.
24. The region is known for its geological instability and high rainfall events, leading to landslides. This could shorten the lifespan of the dam and could, in the worst-case scenario, result in a catastrophic failure of the dam. To date, no work has begun on the hydroelectric component of the dam. Questions have been raised about the overall greenhouse gas benefits of such a dam, as the dam water will inundate

large areas of vegetation, leading to methane emissions. Organic matter entering the upstream catchment will contribute to further methane emissions. No provision has been made for fish ladders, so the dam will create a blockage for the migration of fish, which will have food security implications for upstream communities, even if the dam is stocked with newly introduced fish.

25. The Special Rapporteur met with the Mayor of Calinog and representatives of the Calinog local government unit. They have developed offsite housing for communities displaced by the dam. These offsite housing sites do not appear to fit with the traditional lifestyles of the Indigenous Peoples from the area affected by the dam. This type of social manipulation is not consistent with respecting the rights of Indigenous Peoples. The Special Rapporteur met with representatives of Indigenous Peoples while in the Calinog local government unit building. Most said that they were happy with the dam project, although the long history of intimidation by the military and presence of the military and police outside the meeting room made it difficult to elicit an honest response. The Special Rapporteur later heard from representatives of the Tumandok Indigenous people, whose lives have been turned completely upside down by the dam project. They were intimidated by the military into signing approval documentation and, if they declined, they were subjected to extreme human rights violations. Nine members of the Tumandok people who had opposed the dam project were executed by the military on 30 December 2020. Their traditional way of life has been destroyed by the dam project. Some of the representatives have been jailed and remain in prison on the basis of what appear to be trumped-up charges of illegal possession of firearms and explosives.
26. The Special Rapporteur also met with the Mayor of the city of Iloilo. Iloilo is highly vulnerable to typhoon impacts, in particular storm surges and high rainfall events that lead to flooding. The city has developed a number of adaptation projects to protect it from the impacts of typhoon damage. This includes major canal development and drainage work to increase water flows during heavy rainfall. Informal settlements and fishponds along the river have been removed, as it is claimed that they contributed to water contamination and slowed the flow of water. Rainfall harvesting projects have been developed to meet the need for potable water during dry periods. Solar projects have been developed for schools and other buildings. The local government is considering the development of a “waste for energy” project. This needs to be carefully considered, as such projects lead to increased air pollution by a variety of toxic chemicals from the burning of soft plastics and other materials that cannot be recycled.

V. Thematic issues

...

C. Climate change mitigation

33. As part of its efforts to meet its obligations under the Paris Agreement with regard to reducing greenhouse gas emissions, the Government of the Philippines, in collaboration with local governments, has developed and proposed a number of measures to reduce reliance on the use of fossil fuels. The Government’s efforts to reduce the country’s contribution to global greenhouse gas emissions are to be commended. However, the choice of mitigation projects is leading to a number of human rights violations. Strategic-minerals mining and hydroelectric dams are two key mitigation actions that have very clear human rights implications. Furthermore, proper planning is needed for the country to transition away from transport powered by internal combustion engines. These issues are discussed below.

1. Mining for strategic minerals

34. The global economic push to mine so-called strategic minerals (nickel, lithium, cobalt, copper, gold and other rare earth metals) for renewable energy (batteries and electric motors) is having a profound effect on the Philippines. There appears to be a mining boom in the country, with apparently minimal concern for the environmental, social and human rights consequences. Many communities with which the Special Rapporteur met, from both small and larger islands, are suffering human rights violations related to the mining industry.
35. The expansion of open-cut mining is a particular concern. Some people with whom the Special Rapporteur spoke recounted how they had been forcibly removed from their land. This is particularly the case for members of Indigenous Peoples. The practice appears to be widespread throughout the country. Unsound mining practices mean that freshwater supplies are being contaminated by toxic mine waste. Some mines use mercury in their operations, which leads to serious downstream health impacts for local communities. Some communities have witnessed a significant reduction in their water supplies because the water upstream is used for mining or escapes down mines and does not follow its previous catchment flows. It has been alleged that some downstream rural communities are facing a violation of their right to food and water because of the impact of the mines on the aquifer. Mining is also driving deforestation, which contributes to greenhouse gas emissions and creates geological instability, resulting in landslides during high rainfall events. There are significant impacts on the biodiversity of these areas.
36. The communities with which the Special Rapporteur met expressed concern that mining operations had been “red-tagged” by the military (see the section below on environmental human rights defenders). Proper procedures for environmental impact assessments and free, prior and informed consent principles are being overridden by mining interests. There appears to be a high level of corruption associated with the granting of mining leases. While some local government officials have allegedly profited by taking bribes from mining companies, the Special Rapporteur was made aware that local government officials who had expressed concern about mining operations had been harassed by the military, and some had also been “red-tagged”.
37. On the positive side, the Mayors of both Baybay and Abuyog, Leyte, indicated that they had passed ordinances that placed 15-year moratoriums on mining. This is due to the high rainfall experienced in the region. This appears to be a highly responsible approach and reflects the fact that some regions are very conscious of the impacts of typhoons and the need to protect freshwater catchments.
38. Some of the communities with which the Special Rapporteur met said that they were not opposed to mining outright. Nevertheless, they wanted the correct environmental and social impact procedures to be undertaken, with appropriate free, prior and informed consent measures for Indigenous Peoples. Communities need to be properly informed of proposals and have the right of refusal if they think that the mining operation is against their interests. Mines should be developed in such a way that avoids deforestation, loss of biodiversity, contamination of waterways and destruction of sacred lands. This is possible if the proper mining practices are employed. Open-cut mining, with waste deposited in the water catchment, is unacceptable to communities in which livelihoods are contingent on the human right to clean water.

2. Hydroelectric dams

39. A number of hydroelectric dams have been built, are under construction or are in the planning stage across the country. These are designed to provide electricity and, in some cases, water for irrigation or drinking supplies. Many community members with whom the Special Rapporteur spoke, including members of Indigenous Peoples, were opposed to the development of hydroelectric dams. The dams have been developed without proper free, prior and informed consent and cause significant human rights violations.
40. Dams inundate land traditionally owned by farmers and members of Indigenous Peoples. They also affect the flow of rivers, depriving people of the enjoyment of their right to water. In a country such as the Philippines, which is geologically unstable and experiences a high frequency of typhoons, hydroelectric dams present a significant risk of disaster in the event of a breakage caused by an earthquake or unsound construction.
41. There appears to be a systematic programme of harassment to force communities to approve dam projects. Individuals who have expressed concern about the construction of dams have been harassed, “red-tagged”, assaulted by the military or even killed. A number of members of Indigenous Peoples have been killed, allegedly by the military, after objecting to mining developments on their ancestral lands.
42. While it is important to develop alternative sources of energy, they should not be developed at the expense of the community. There are other, less harmful ways of generating hydroelectricity without the need to construct large-scale hydroelectric dams. Alternatives include run-of-river power generation and off-river pumped hydro. Other, more sound sources of renewable energy and energy efficiency are also possible.

E. Treatment of environmental human rights defenders

46. According to Global Witness,⁶ the Philippines is now the deadliest country in Asia for land and environmental defenders. The Special Rapporteur was informed by one civil society organization that, in the previous three years, there had been 75 extrajudicial executions of environmental human rights defenders. Each civil society group with which the Special Rapporteur met explained how it was trying to ensure that the communities that it represented were able to enjoy their right to a clean, healthy and sustainable environment. That right has been recognized by the Human Rights Council and the General Assembly⁸ and is included in the Constitution of the Philippines. Environmental human rights defenders are opposing unsustainable land reclamation, hydroelectric dams, deforestation and mining. Each of these unsustainable activities has implications for climate change and human rights.
47. A number of individuals and organizations have faced human rights violations for their environmental activism. Some of them have been the subjects of allegation letters sent by special procedure mandate holders. All the organizations with which the Special Rapporteur met have had members harassed, vilified, abducted or jailed, and some of their members have lost their lives. The Government, through the Philippines Defence Force and the National Task Force to End Local Communist Armed Conflict, has systematically “red-tagged” environmental human rights defenders and members of Indigenous Peoples. This is a clear violation of the right to freedom of expression and, for some, the right to life. The Special Rapporteur heard that various members of the clergy and humanitarian workers had been falsely

accused under the Anti-Terrorism Act. They reported that their bank accounts had been frozen under terrorism financing provisions.

48. It appears that the National Task Force to End Local Communist Armed Conflict is using its powers to protect powerful economic interests in the country. This has nothing to do with anti-terrorism or anti-communism. The gross overreaction to people trying to defend their right to a clean, healthy and sustainable environment is totally unacceptable.

F. Indigenous Peoples

49. The Special Rapporteur met with representatives of Indigenous communities from across the country. All gave accounts of how Indigenous Peoples were being driven from their ancestral lands, in particular due to the development of large dams and mines. He heard that aerial bombings had been undertaken by the military, some apparently using phosphorous, in areas inhabited by Indigenous Peoples and Moro communities in Kalinga, Cagayan Valley, Lanao del Sur and Negros Occidental, causing irreversible damage to the environment and their livelihoods and homes.
50. The Special Rapporteur met with representatives of the Tumandok Indigenous people in Panay. On 30 December 2020, nine men belonging to the Tumandok community were executed by the military. In addition, 16 people were taken into custody, and some remained in jail during the visit. The only reason was that they had protested against the construction of the Jalaur mega dam project. The Tumandok are the stewards of their ancestral lands and the primary custodians of the environment. They have no interest in terrorism or communism and live in constant fear of further attacks by the military. At the time of writing, no one has appeared in court for the killing of the nine men. This is not an isolated incident. The Special Rapporteur heard accounts of other Indigenous communities being attacked by the military.
51. It is critical that the execution of the nine members of the Tumandok Indigenous people by the military, on the island of Panay, is properly investigated by an independent body and that those responsible for these extrajudicial killings are brought to justice. It is also critical that the relatives of those executed are properly compensated for their loss, even if the loss of a loved one cannot be properly compensated for.
52. The Special Rapporteur also heard concerns expressed by organizations of Indigenous Peoples about the National Commission on Indigenous Peoples. Allegations were made that the Commission passed information to the National Task Force to End Local Communist Armed Conflict about “communists” and “terrorists”. Those individuals were “red-tagged”. Others expressed concern that the Commission forced members of Indigenous Peoples to sign free, prior and informed consent agreements to allow dams and mines to go ahead through intimidation and without proper consultation. It was noted that the close connection between the Commission and the National Task Force, due to the dual role of the former Chair of the Commission, did not instil confidence that the Commission was an independent organization representing the interests of Indigenous Peoples. It was alleged that the former Chair had misused his position to falsely accuse certain members of Indigenous Peoples of being “communists” in various United Nations forums. The Special Rapporteur expresses the hope that the new Chair of the Commission will show a greater interest in Indigenous Peoples. Some organizations of Indigenous Peoples suggested to the Special Rapporteur that the Commission

should be abolished. Others suggested that major reforms were required to make it into an independent body, as originally intended, and to ensure that it properly represented the interests of Indigenous Peoples. One major reform suggested was to establish a grievance mechanism to enable members of Indigenous Peoples to make complaints about various development activities, such as mining, illegal logging and the construction of dams without proper free, prior and informed consent procedures.

G. Gender equality

...

56. Special attention must be paid to Indigenous women. The Special Rapporteur met with Indigenous women whose lives had been dramatically affected by various mitigation projects and military harassment and killings. The Government should implement general recommendation No. 39 (2022) of the Committee on the Elimination of Discrimination against Women on the rights of Indigenous women and girls and should include Indigenous women and girls in policymaking.

VI. Conclusions and recommendations

58. Climate change is having negative impacts on human rights in the Philippines, including the rights to water and sanitation, food, culture, education, a healthy environment, health, work and adequate housing. It is very evident that the Government has made efforts to address the impacts of climate change by developing a number of policies and pieces of legislation. The Government has launched a new National Adaptation Plan. These steps are to be commended.
61. The Special Rapporteur was deeply troubled by the treatment of environmental human rights defenders, in particular members of Indigenous Peoples. The military's use of intimidation, harassment, abduction, prosecution, jail sentencing and extrajudicial killing based on trumped-up charges against human rights defenders is contrary to many of the country's international human rights obligations. It is a blight on the country and needs to be urgently addressed. It is evident that mining and dam construction companies and other project developers are having an undue and corrupt influence on the Government and the military. People live in fear of the military and its connection with corrupt officials and companies. Communities are being denied their right to defend their rights to a clean, healthy and sustainable environment. Furthermore, many of these projects are on Indigenous land. In all the cases relayed to the Special Rapporteur, mines and dams had been developed without the appropriately and correctly obtained free, prior and informed consent of the affected Indigenous Peoples. Any objection to these so-called development projects is met with harassment, bombing or killings by the military. Communities are being forced to sign approval documents through a process of intimidation. It is clear that the lack of control over the military and overreach by the military in the context of the Government's anti-communist agenda are having tragic consequences for people trying to peacefully defend their right to a clean, healthy and sustainable environment.
64. The Special Rapporteur believes that the Government should implement the following recommendations to address some of his concerns:
 - (a) The Government should rapidly develop a strategic plan of implementation for all the climate change policies that it has developed. It needs to identify gaps in implementation and ways of addressing these and to develop gender-, age-, disability- and Indigenous-sensitive actions; ...

- (i) The Government should enact the human rights defenders bill; Reparations should be paid to communities, Indigenous Peoples and individuals who have been victims of human rights violations; (j) The Government should disband the National Task Force to End Local Communist Armed Conflict, as it is abusing its powers and targeting environmental human rights defenders and members of Indigenous Peoples;
- (k) A full independent investigation should be undertaken to investigate the past operations of the National Task Force to End Local Communist Armed Conflict;
- (l) The proposed Commission on Human Rights inquiry on “red-tagging” should be strongly supported; (m) A major judicial inquiry should be carried out to review all cases in which environmental human rights defenders have been prosecuted on trumped-up charges;
- (n) Major reforms to the National Commission on Indigenous Peoples need to be implemented to ensure that it protects the rights and serves the interests of Indigenous Peoples. This would include the establishment of a grievance mechanism whereby members of Indigenous Peoples can make complaints against processes by which various developments, such as mining, illegal logging and dam construction developments, were approved;
- (o) The Government should implement general recommendation No. 39 (2022) of the Committee on the Elimination of Discrimination against Women on the rights of Indigenous women and girls...

2. Visit to Honduras, A/HRC/56/46/Add.1, 30 July 2024

I. Introduction

1. Pursuant to Human Rights Council resolution 48/14, the Special Rapporteur on the promotion and protection of human rights in the context of climate change undertook an official visit to Honduras from 18 to 27 September 2023, at the invitation of the Government. In its resolution 48/14, the Council mandated the Special Rapporteur to raise awareness on the human rights affected by climate change, especially of persons living in developing countries particularly vulnerable to climate change and to encourage increased global cooperation in that regard.

IV. Community visits to observe climate change impacts

16. During his visit in Honduras, the Special Rapporteur was able to travel to a number of communities in various parts of the country that have suffered the impacts of climate change.

C. Reitoca

22. The Special Rapporteur visited the town of Reitoca in the dry corridor where community members, particularly the Lenca Indigenous People, were trying to protect their local river from being developed for hydroelectric dams. They were also concerned about mineral exploitation affecting their rivers. They want their rights under the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) to be respected. Members of the community have already witnessed the impacts of a long drought and loss of water and are gravely concerned that they will lose all access to their water if the hydroelectric dam project is completed. Furthermore, the Lenca Indigenous People have strong beliefs that damming rivers contravenes their cosmovision of the world, in which the natural system is paramount.

23. Within the community, the environmental human rights defenders have suffered continuous persecution and criminalization from what they believe to be representatives of dam company, the police and the military. A number of community members face sentences for alleged crimes which they deny they have committed. The communities stated that there were no free, prior and informed consent provisions being applied to the developments associated with the dam. Furthermore, members of the Lenca Indigenous People are not recognized as being Indigenous. Other tactics are being used to divide the community; some community members are given fertilizer while the human rights defenders are not. These divide and conquer methods are typical tactics employed by companies to promote their projects. Women human rights defenders reported that they live in fear for their lives as they are continuously threatened and have been removed from the protection of the National Protection Mechanism for human rights defenders, journalists, social communicators and justice operators.

V. Impact of climate change on human rights in Honduras

...

B. Climate change displacement

46. Migration and displacement result from climate change events such as tropical storms and droughts. However, there are various reasons why people are displaced. Displaced people are also impacted by poverty, crime, gangs and food insecurity. ...
47. ... There is also a risk of displacement related to territorial conflicts for the Garifuna community and the Lenca Indigenous People and for farmer communities who are opposing hydroelectric dams or mining concessions.

D. Environmental human rights defenders

52. Honduras is one of the countries in the world most affected by attacks against environmental human rights defenders. At the time of his visit, the Special Rapporteur learned that there had been over 200 attacks so far in 2023, more than the total number of attacks in 2022. Approximately 40 per cent of the environmental human rights defenders who have been victims of violence are Indigenous or Afrodescendent People. Many live in the coastal areas in the north where there are numerous land conflicts. The perpetrators are often unknown and are frequently linked to organized crime.
53. The Special Rapporteur was deeply concerned that environmental human rights defenders have suffered from serious intimidation and abuse, including homicides and physical and psychological attacks on their well-being. Many communities live in a culture of fear and psychological trauma due to constant intimidation. Some have been persecuted by the Government and corrupt officials, have been subjected to criminal proceedings for defending their rights to sustainable livelihoods and are often accused of opposing development. The Special Rapporteur heard that laws are being misused to imprison environmental human rights defenders, such through the misuse of the provision of “forced displacement” or “misappropriation” (usurpación). He learned that the crime of forced displacement was initially applied to the activities of gangs that force people to move or threaten them. However, as the definition is not clear, in recent years it has been used to prosecute environmental human rights defenders who are charged with “forcing” companies to be displaced. This practice continues today. People still live in fear from corrupt officials and companies that allegedly use criminal gangs to intimidate and attack people who

are trying to defend their human rights, including the right to a clean, healthy and sustainable environment. Much more needs to be done to protect these people.

VI. Conclusions and recommendations

55. Climate change is having a negative impact on human rights in Honduras, including the rights to water and sanitation, food, culture, education, healthy environment, health, work and adequate housing. The costs of climate-related events and the lack of capacity to address climate change seem to be the main problems. Many communities face the combined impacts of climate change, mining, hydroelectric dams, deforestation and large-scale agro-industries, such as African palm oil plantations.
56. Indigenous Peoples and Afro-descendants, who mainly live on the Atlantic Coast, are highly vulnerable to the impacts of climate change as their way of life is closely linked to the ecosystem. Other groups are also disproportionately affected by the impacts of climate change, including persons with disabilities, children and women, in particular rural women. Concerning indigenous women in particular, the Special Rapporteur shares the concern expressed by the Committee on the Elimination of Discrimination against Women about the lack of consultation with Indigenous women on large-scale projects, including agro-industrial and hydroelectric projects undertaken by foreign investors and private enterprises on Indigenous lands and using their natural resources, as well as the adverse impact of climate change on rural and Indigenous women.
58. Intimidation and attacks against environmental human rights defenders is an issue of great concern to the Special Rapporteur. During his short visit, three environmental human rights defenders were attacked, and one killed. Honduras is one of the most dangerous countries in the world for environmental human rights defenders.
62. Domestically, the observations of the Special Rapporteur suggest that there are key steps that the Government should take to address the human rights implications of climate change more effectively, including: ...
 - (f) Ensure that the consideration of development projects, such as mines or hydroelectric dams, are done in full consultation with affected communities (including Indigenous Peoples and Afrodescendent Honduran communities) and with the free, prior and informed consent of Indigenous Peoples, including indigenous women;
 - (g) Remove all legislative and administrative obstacles to the exercise of the right of access to information at all stages of the issuance of environmental licences and concessions, adopt a regulatory and institutional framework to ensure the equal and meaningful participation in decisions regarding business projects from an early stage and ensure protection of the right of people living in rural areas, including indigenous peoples, to possess, use, develop and control their lands and resources, with full security of their land rights, as recommended by the Working Group on the issue of human rights and transnational corporations and other business enterprises; ...
 - (i) Ensure that all the territories of Indigenous Peoples and Afrodescendent Honduran communities are properly enshrined in law, enforce the law and protect the access and uninterrupted use of their lands and territories by those groups; ...

- (r) Implement the United Nations Declaration on the Rights of Indigenous Peoples and support the efforts of Indigenous Peoples to protect their land from invasive cattle grazing, mining, coca growers, crime gangs, hired militia and corrupt police....

3. Promotion and protection of human rights in the context of climate change, A/79/176, 18 July 2024

I. Introduction

1. The present report explores the specificities, challenges and good practices related to access to information on climate change and human rights. It clarifies States' international obligations, individually and as part of international cooperation, as well as the responsibility of businesses. Access to information is a prerequisite for enhancing the transparency, inclusiveness and effectiveness of decision-making processes, including by preventing intersectional discrimination, and better protecting the human rights that are being, and can be, negatively affected by climate change and climate change response measures (see A/HRC/56/46). The Special Rapporteur is grateful for the more than 90 responses to a questionnaire inviting contributions to the report.
2. The clarifications in the report should inform the interpretation and application of the Paris Agreement, which requires States to cooperate to enhance public awareness, public participation and public access to information (art. 12) and provides for a transparency framework regarding States' compliance with their climate change obligations (art. 13), and the Glasgow Work Programme on Action for Climate Empowerment and its action plan. The clarifications should also inform broader action for the realization of Sustainable Development Goals 13 and 14 (see Human Rights Council resolution 48/14).

II. The importance of access to information

...

7. States must take enhanced measures to ensure access to information for those most affected by climate change and related decisions, in particular Indigenous Peoples, with a view to fulfilling obligations related to their free, prior and informed consent, ... with a view to ensuring recognition and respect of their knowledge systems and territorial connections, and those who face intersectional discrimination (see A/HRC/37/59, annex, principle 15, and A/HRC/56/46), including in the context of displacement and planned relocations (see A/HRC/56/47).

III. The information needed to prevent negative impacts on human rights arising from climate change and climate change response measures

9. Access to the following information is needed: (a) the causes, extent and effects of climate change, to ensure the public understands whether climate-related conditions are improving or worsening; (b) potential and actual negative impacts of climate change on human rights, to support the public's resilience and adaptive capacities to respond to these impacts; and (c) proposed and ongoing climate response measures and their impact on human rights, to empower the public to assess the adequacy of State action to combat climate change and promote, protect and fulfil human rights.
18. Access to information is acutely needed on carbon credits (see A/HRC/54/31), including: calculations of carbon capture; expected local impacts on land and

waters, tenure rights and other human rights; confirmation of consent of all affected communities, including free, prior and informed consent of Indigenous Peoples; revenue throughout the project life cycle, including the sale price of carbon credits; distribution of revenue and other benefits to the project developer, national and local governments and affected communities; and the identity and purpose of those buying credits associated with the project, including whether credits are being used to offset preventable emissions. States should collect and share this information systematically to allow credit buyers to easily understand the potential risks of the credit they are purchasing. Equally States should monitor the use of technologies (remote sensing, artificial intelligence and digital platforms) to measure carbon storage, and to issue and trade carbon credits, because they collect and use data from communities beyond their control.

B. Challenges related to intersectionality

29. States should gather disaggregated data on climate change impacts, as well as the impacts of response measures and just transition programmes, to understand and address differentiated human rights impacts in planning and capacity-building (see A/78/155 and A/HRC/56/46). However, social, economic, cultural and health data, community feedback, Indigenous knowledge and local knowledge in remote or marginalized areas with limited resources and infrastructure⁵² remain underrepresented in information-gathering efforts. In addition, victims of human rights violations often do not report incidents due to fear of retribution or a lack of trust in authorities.
34. Finally, States should provide information to workers and trade unions on the types of climate-driven occupational safety and health hazards occurring by sector, as well as on the existence of and compliance with protective legislation on climate change-induced extreme heat. States should consider that informal workers and migrant workers are underrepresented in national databases, and their health and safety needs are not adequately monitored in the context of climate change. International cooperation is needed to share information for migrant workers between countries of origin and receiving countries, including as part of pre-departure training in migration agreements. ... Indigenous Peoples also experience insufficient access to information on climate change impacts on farming and climate-smart agriculture (see A/70/287) and on small-scale fisheries. Undocumented or inaccessible communities are also often left out of information-gathering processes.

C. Impacts of inadequate access to information

35. Without adequate access to information on States' plans to prevent and minimize the human rights impacts of climate change and response measures, there can be no meaningful public participation to ensure the respectful integration of Indigenous knowledge, based on free, prior and informed consent, as well as of local knowledge into assessment, planning and monitoring processes. These inputs are essential to ensure holistic and effective responses that prioritize the protection of those in situations of vulnerability.

VIII. Conclusions and recommendations

72. Timely access to high-quality, trustworthy, evidence-based and accessible information on climate change and human rights is essential to ensure that public authorities understand the foreseeability and preventability of negative human rights impacts of climate change and response measures and make holistic,

effective and inclusive decisions to mitigate and adapt to climate change. The public must be informed about the magnitude of actual and potential negative human rights risks and impacts of climate change and response measures, and about the adequacy of States' and businesses' responses to effectively protect and respect human rights in the context of climate change. This is necessary to support the resilience and adaptive capacities of people in vulnerable situations to respond to the adverse impacts of climate change.

73. It is thus essential to fill gaps and connect sources of information across different sectors and levels of government, as well as across civil society, the research community and international organizations. Information is needed on climate change sources and effects, including on biodiversity and ecosystem services, weather and natural disaster patterns, as well as on impacts on human health, mobility, labour, social, economic and cultural rights, and the right to a clean, healthy and sustainable environment, in terrestrial, freshwater and marine contexts. It is imperative to identify and respond – locally, nationally, regionally and internationally – to the greatest need for progress in knowledge production and information- and data-sharing, in order to protect the human rights of those in vulnerable and marginalized situations in the context of climate change.
75. States should also: ... (c) Take enhanced measures to ensure access to information for those most affected by climate change and related decision-making, in particular Indigenous Peoples, with a view to fulfilling obligations related to their free, prior and informed consent, as well as peasants and local knowledge holders, with a view to ensuring recognition of and respect for their knowledge systems and territorial connections, and those who face intersectional discrimination....

4. Scene-setting report, A/HRC/56/46, 24 July 2024

I. Introduction

1. Since the creation of the mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change in 2021, thematic reports have been completed in three out of the six priority areas highlighted by the previous mandate holder: (a) promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation; (b) ways to address human rights implications of climate change displacement, including legal protection of people displaced across international borders; and (c) exploration of approaches to developing and enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergenerational justice. The following priority areas remain unaddressed: (d) corporate accountability in the context of human rights and climate change; (e) protection of human rights through just transition for workers in industries that contribute to climate change; and (f) exploration of the impacts of new technologies associated with climate change mitigation on human rights.

II. Mitigation

...

2. Intersectionality

...

20. The Special Rapporteur on human rights and the environment recommended that States take action, including temporary special measures, to empower women and

girls as climate leaders by addressing barriers to the participation of marginalized women and girls; recognize and prioritize the collective and individual needs and rights of Indigenous women and girls in all climate actions, equitably sharing benefits with them; and protect the traditional knowledge, customary practices and cultural rights of Indigenous and other nature-dependent rural women. The Special Rapporteur on the rights of Indigenous Peoples recommended incorporating the knowledge of Indigenous women into decision-making on climate change, including in technical panels and environmental and sociocultural impact assessments, and promoting women's full and equal participation and leadership in all climate governance. The Committee on the Elimination of Discrimination against Women clarified that climate mitigation can only be implemented in Indigenous territories with the effective participation of Indigenous women, including full respect for their free, prior and informed consent and adequate consultation processes. The Special Rapporteur on violence against women and girls, its causes and consequences recommended: ensuring the full and effective participation of women and girls in the design, implementation, monitoring and evaluation of mitigation measures at all levels; and considering their specific needs for protection from gender-based violence in risk analysis, monitoring and evaluation of mitigation policies, including data collection, financing and allocation of other resources.

21. ... The Special Rapporteur in the field of cultural rights underscored that States should fully explore the potential of culture and cultural heritage, Indigenous knowledge and local knowledge to enhance mitigation efforts. The Special Rapporteur on the right to food called for rejecting approval of, or suspending, offshore oil and gas projects that negatively affect the human rights of small-scale fishers and fish workers.
24. The High Commissioner clarified that States should take measures to protect the biodiversity of food sources and systems and recognize the rights of Indigenous Peoples, peasants and rural communities. The Special Rapporteur in the field of cultural rights underscored that mitigation measures with negative impacts on culture and cultural rights could only be permitted as a last resort, subject to fully participatory and consultative approaches and the free, prior and informed consent of Indigenous Peoples. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance cautioned against "green sacrifice zones" where racially and ethnically marginalized groups are disproportionately exposed to human rights violations associated with the extraction or processing of fossil fuel alternatives. The Rapporteur called for meaningful mitigation that addresses systemic racism, in particular the historic and contemporary racial legacies of colonialism and slavery, on the basis of inputs, consideration and leadership of racially marginalized peoples, rather than overreliance on technocratic knowledge.

B. Technologies

...

28. In its report on the impact of new technologies, the Human Rights Council Advisory Committee clarified that international human rights law applies to any new technological development related to mitigation, particularly when it has the potential to produce large and long-lasting impacts on human rights and the environment. The Committee noted that carbon dioxide removal measures and solar radiation modification actually increase levels of carbon dioxide once the overall emissions produced by constructing and operating the relevant facilities are

taken into account. The Committee also noted that such technologies: (a) act as a deterrent to cutting emissions, because they give “the false promise of a hypothetical future solution to a problem that requires immediate action”; and (b) are likely to have irreversible impacts on complex global planetary systems and negatively affect everyone indiscriminately owing to the magnitude of the potential negative socioeconomic and human rights impacts. The Committee clarified that States have a duty to: protect all persons against potential human rights violations involving companies developing such technologies; develop governance frameworks that facilitate inclusive dialogue, transparent processes, accountability and the active participation of all persons in decision-making processes, including voices from the global South, Indigenous Peoples, peasants, women, people of colour and frontline communities; carry out ex ante human rights and environmental impact assessments before deploying climate altering technologies, including continuous monitoring and evaluation conducted by independent and impartial bodies, with safeguards against conflicts of interests and public participation and oversight; and prioritize research on greenhouse gas emissions reductions. The Committee recommended adopting restrictive regulations on solar radiation modification experiments, including a ban on outdoor experiments, allowing only conditional and controlled research, and disincentivizing the development and deployment of carbon dioxide removal techniques by withholding public support (including funding) for them, requiring research to be non-profit and disclosing any financing provided by the fossil fuel industry. The Committee noted that its findings also apply to bioenergy with carbon capture and storage, which also concerned the Special Rapporteur on the human rights to safe drinking water and sanitation because of the magnitude of water consumption required, which equals that of current agricultural water withdrawals.

29. The Advisory Committee considered the decision adopted by the Conference of the Parties to the Convention on Biological Diversity in 2010, which supports the consideration of applicable international human rights, as an authoritative moratorium on geoengineering. The Conference of the Parties decided, by consensus, that, in the absence of science-based, transparent, effective control and regulatory mechanisms over geoengineering activities, no such activities should take place “until there is an adequate scientific basis on which to justify such activities and appropriate consideration of the associated risks for the environment and biodiversity and associated social, economic and cultural impacts”. In addition, the Conference of Parties to the Convention subjected “small-scale scientific research studies” to restrictions as they should be only “conducted in a controlled setting” and “only if they are justified by the need to gather specific scientific data and are subject to a thorough prior assessment of the potential impacts on the environment”. The Special Rapporteur underscores that whether an experiment is small-scale depends on the extent of the potential risk of harm to the environment and to human rights, notably those of Indigenous Peoples, frontline communities, children and future generations.

C. Carbon credits

32. Carbon credits refer to the creation of mechanisms to facilitate compliance by States to meet their climate targets by acquiring carbon credits earned from the reduction of greenhouse gas emissions elsewhere and the unlocking of additional financial support for developing countries. The High Commissioner has underscored that many voluntary carbon credits have been found to inaccurately reflect emission

reductions actually achieved or likely to be achieved and that nature-based carbon credits have been associated with widespread displacement and increased human rights harms and risks for people whose livelihoods depend on nature, including Indigenous Peoples. The Special Rapporteur on human rights and the environment noted the grave risks arising from carbon offsets for the rights of Indigenous Peoples, pastoralists and local communities, who were not consulted and are unlikely to receive a fair share of the financial benefits from credits accrued in the territories where they live or that they traditionally use for their livelihoods and culture. He also raised questions about the unproven contributions of carbon markets to generate negative emissions on a sufficiently large scale.

33. A group of Special Rapporteurs called for ensuring that market-based mechanisms have effective means for protecting human rights and effective compliance and redress mechanisms, including mandatory environmental and human rights due diligence laws and policies.
34. The Special Rapporteur on the human rights of Indigenous Peoples called for a moratorium on carbon credits until existing and future crediting and certification schemes are explicitly required to comply with international human rights standards, including by: guaranteeing the full participation of Indigenous Peoples in multistakeholder governance organizations; ensuring expertise on Indigenous rights in validation and verification bodies; properly assessing whether national laws, policies and practices are in line with international human rights law standards; and conducting projects in a manner that respects the rights of Indigenous Peoples, as agreed upon by them.

III. Adaptation

35. Climate change adaptation entails adjustments in ecological, social and economic systems to respond to current and future climate change impacts. The Human Rights Committee clarified that any lack, delay or inadequacy in this regard is a violation of human rights when the ability of human rights-holders to cope is compromised and negative impacts on their human rights (including livelihoods and culture, including the ability to transmit knowledge and traditions to children and future generations) are foreseeable, serious and attributable to State authorities. ...
36. The Special Rapporteur on human rights and the environment indicated that States should: develop adaptation actions through inclusive, participatory processes, informed by the knowledge, aspirations and specific contexts of affected countries, communities and individuals; implement national adaptation plans that address both extreme weather disasters and slow-onset events by building or upgrading climate-resilient infrastructure; develop disaster risk reduction and management strategies, early warning systems and emergency response plans; provide social protection mechanisms to reduce vulnerability to climate-related disasters and stresses, enabling people to become more resilient; and ensure that adaptation actions do not reduce the vulnerability of one group at the expense of others, future generations or the environment. The Special Rapporteur on the right to development recommended that technological and other adaptation measures should build on Indigenous knowledge and local and traditional knowledge and practices.
38. The Special Rapporteur in the field of cultural rights underscored that States should: protect cultural rights from the climate emergency in a globally coordinated and resourced way, guided by local priorities and concerns, with adequate funding, monitoring and follow-up; prioritize the need for an especially urgent, effective

and concerted global effort to prevent the cultural extinction of populations facing particular threats from the climate emergency, such as those in polar and coastal regions, including Indigenous Peoples and those living in small island States; fully explore the potential of culture and cultural heritage, Indigenous knowledge and local knowledge to enhance adaptation efforts; and include harm to culture, cultural heritage and cultural rights in an inventory of harms resulting from or likely to result from climate change adaptation actions, as well as in all environmental impact and climate vulnerability assessments and policy responses at all levels.

IV. Just transition

54. The Working Group on the issue of human rights and transnational corporations and other business enterprises referred to just transition as “the transition to a green and zero-carbon economy that is fair and inclusive, creates decent work opportunities and upholds the human rights of affected communities, in particular Indigenous Peoples and populations affected by energy poverty, through social dialogue and meaningful participation, particularly in decision-making on the use of land and natural resources”. The Working Group noted that “little progress has been made in providing the corresponding regulatory and governance frameworks needed to advance a just transition process”, pointing to: regulatory gaps; lack of meaningful participation of affected communities; lack of access to information, including data transparency; lack of community-based or participatory human rights, social and environmental impact assessments; lack of benefit-sharing agreements between businesses and communities; and lack of access to effective remedies for victims.
55. The Working Group also noted the need to ensure policy coherence in the extractive sector and to review and renegotiate existing extractive contracts, concessions, procurement practices and bilateral and multilateral investment agreements to remove any regulatory constraints to just transition. The Independent Expert on human rights and international solidarity recommended reforming transnational corporate governance to ensure that corporate decision-making prioritizes the protection of international human rights threatened by climate change over profits and other financial interests. The Special Rapporteur on the right to development called upon businesses to embrace decarbonization, phase out fossil fuel, integrate circularity throughout their products and services and share green technologies. The Special Rapporteur on human rights and the environment recommended that States safeguard their ability to take ambitious and effective climate action, discourage foreign investments that undermine climate action and human rights and encourage investment in the just transition. He noted that States would be required to eliminate their exposure to international State-investor dispute settlement claims and to conduct ex ante and ex post impact assessments of international investment agreements. The Rapporteur also recommended requiring the transparent and accurate disclosure of climate, environmental and human rights performance by businesses
59. The Special Rapporteur on the human rights of Indigenous Peoples called for national regulation of just transition projects to ensure that renewable energy projects located on or near Indigenous territories are allowed only after: adequate and participatory environmental and social impact assessments; free, prior and informed consent; appropriate remuneration and benefit-sharing (including access to national energy distribution grids) with Indigenous Peoples; and the prevention of negative health and environmental impacts, notably forced displacement or the degradation of the environment and means of sustenance of Indigenous Peoples.

He recommended: Indigenous Peoples' participation or co-ownership of renewable projects; transparent mechanisms to foster their leadership in the design and management of projects; redressing the gap in funding for Indigenous Peoples' own renewable energy, climate action and conservation projects; and priority for investment and financing initiatives aimed at improving Indigenous Peoples' access to energy services and their development.

60. The Committee on the Rights of the Child, in its general comment No. 26 (2023), cautioned against children's forced evictions arising from the transition without prior provision of adequate alternative accommodation and recommended child-rights impact assessments as a prerequisite, with particular attention to the traditional territories of Indigenous children and the rights of children belonging to non-Indigenous groups whose rights, way of life and cultural identity are intimately related to nature. The Committee also called upon donor States to develop rights-based programmes and on States receiving international finance and assistance to consider allocating a substantive part of that aid to child-focused programmes.

V. Climate finance

...

65. With regard to priorities and accessibility of climate finance, the Special Rapporteur on the human rights to safe drinking water and sanitation underscored that climate finance is often targeted to specific projects, requiring a level of research and planning whose cost is often unaffordable for vulnerable groups, which are most in need, and tends to focus on building new infrastructure or upgrading existing infrastructure, to the exclusion of funding for nature-based solutions that address the root causes of key problem. The Special Rapporteur on the rights of Indigenous Peoples called for allocating a part of the funding to support efforts of Indigenous Peoples to secure their land rights. The Special Rapporteur in the field of cultural rights recommended integrating artists and cultural rights defenders into funded climate efforts. The Special Rapporteur on the right to development recommended that the Green Climate Fund improve access to financing for those particularly vulnerable to climate change impacts and consider ways to increase small grant financing.
66. On safeguards, the Special Rapporteur on human rights and the environment indicated that climate funds should strengthen and harmonize social, environmental and human rights safeguards when financing projects and adopt simplified procedures for least developed countries and small island developing States. The Special Rapporteur on the human rights of Indigenous Peoples underscored the need to: correctly identify, based on the principle of self-identification, Indigenous Peoples that are or could be affected by a project and assess whether security of tenure over their collective lands may be affected by the project; require comprehensive and independent human rights and environmental impact assessments, free, prior and informed consent and benefit-sharing mutually agreed upon with Indigenous Peoples; establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to seek justice and remedy in cases of human rights violations or environmental harm resulting from such projects; establish monitoring and reporting mechanisms to track impacts of funded projects on Indigenous Peoples' rights; and require project proponents to report periodically on their human rights and environmental impacts. The Special Rapporteur on the right to development recommended that the Green Climate Fund channel funding through entities that have enacted environmental and social safeguards through a transparent, inclusive and participatory process.

A. Intersectionality

...

70. The Special Rapporteur on the human rights of Indigenous Peoples called for: ensuring direct financial flows to Indigenous Peoples by creating/redesigning flexible financing mechanisms that simplify application procedures and reporting requirements for Indigenous-led initiatives and projects; involve Indigenous Peoples in the design and implementation of funding opportunities from the outset to ensure funding processes are responsive to their needs, priorities and aspirations and align with their vision of sustainable development; and scale up funding for Indigenous women leaders and their organizations. He also recommended allocating resources to: enhancing Indigenous Peoples' knowledge and understanding of green financing mechanisms; hiring legal, financial and technical advisers to Indigenous Peoples; overcoming infrastructure barriers that hinder access to financial mechanisms and processes for those in remote areas; and increasing the institutional, technical and financial capacity of Indigenous Peoples.

5. Report of the Special Rapporteur, A/78/255, 28 July 2023

III. Human rights in climate change legislation

8. Making the link between climate change and human rights considerations in domestic legislation is a relatively new phenomenon. A number of countries refer to human rights or the special considerations of rights holders in their legislation, although the coverage is not widespread or systematic. Many countries have indicated that their climate change legislation is for the purposes of meeting their obligations under the Paris Agreement. This connection is made in the National Climate Change Act, 2021 of Uganda, for example. By referring to the Paris Agreement, the linkage between climate change and human rights is strengthened, thereby allowing for better implementation of human rights obligations in the context of climate change.
17. Few national climate change laws make reference to the rights of Indigenous Peoples or adherence to obligations under the United Nations Declaration on the Rights of Indigenous Peoples. One exception is the new Climate Change Act, introduced by Finland, establishing the Sámi Climate Council, which supports the preparation of climate change policy plans and identifies key issues with regard to the rights of the Sámi people. In the United States of America, the President has issued an executive order aimed at advancing environmental justice by, inter alia, addressing climate change and its effects, including in areas within the boundaries of "Tribal Nations". The inclusion of Indigenous Peoples is noteworthy given that the United States had originally opposed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and has now lent its tacit support to the Declaration, with a number of interpretative caveats.

IV. Climate change litigation

...

Human rights invoked in climate change litigation

...

28. In 2019, a group of eight Australian nationals, all of them Torres Strait Islanders, and six of their children submitted a complaint against the Government of Australia to the Human Rights Committee. In *Billy et al. v. Australia*, the Torres Strait Islanders

alleged that changes in weather patterns have direct harmful consequences on their livelihoods, their culture and their traditional ways of life. In 2020, the Government of Australia asked the Committee to dismiss the petition on the ground of inadmissibility. This request was rejected, and the Human Rights Committee found that the failure of the Government of Australia to adequately protect the Indigenous Torres Strait Islanders against the adverse impacts of climate change violated their rights to enjoy their culture and be free of arbitrary interferences with their private lives, their family and home. The Committee requested the Government of Australia to provide adequate compensation to the members of the Indigenous community for the harm suffered, engage in meaningful consultations with their communities to assess their needs and take measures to continue to secure the communities' safe existence on their respective islands.

V. Barriers to climate change litigation

...

E. Language barriers

39. In testimonies received by the Special Rapporteur a number of Indigenous Peoples' groups expressed concern that they were not able to gain access to courts in a language that they understood. In general, courts use complex legal language and proceedings are often conducted in colonial languages. This makes it difficult for Indigenous Peoples to engage in the court system. The same is true for linguistic minorities or people who have not been educated in colonial languages. In many cases, the courts are unable to take testimonies in languages that are not common to the court system. There are related aspects of intersectionality that limit access to courts. In Brazil, for example, certain regions are more vulnerable to the impacts of climate change and yet those regions are poorly represented in climate change litigation cases.

F. Fear of counter claims

40. Another limitation with regard to access to justice is the fear of counter claims. Such counter claims often materialize as strategic lawsuits against public participation, which generally refers to litigation brought by a corporation against private individuals or NGOs on a substantive issue of some political interest or social significance. The aim of this type of litigation is to shut down critical speech by intimidating critics into silence and draining their resources. Strategic lawsuits against public participation can also have personal and collective consequences, since they can deter organizations from carrying out their human rights-related work. Such lawsuits are often filed after defenders have expressed criticism of business actors by publishing a report, participating in an event or interview, launching a campaign, organizing a demonstration or posting on social media. Strategic lawsuits against public participation can have a "chilling effect" on the exercise of freedom of expression if others are afraid to speak out for fear of being sued. Such lawsuits also put significant pressure on public resources and cause judicial systems to waste time on superfluous legal processes. Companies use these strategic lawsuits to target a wide range of dissenting voices in order to suppress criticism. In many instances, the defendants are Indigenous leaders or community members protecting their lands and territories from large-scale projects, such as mining or oil pipelines, or even journalists covering the harmful activities of companies. Strategic lawsuits against public participation generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners.

VI. Recent litigation trends and future directions

...

B. Greenwashing and climate-washing

...

50. ... While the present report is focused primarily on false accounting, it is worth noting that numerous Indigenous Peoples' groups have expressed their concerns to the Special Rapporteur about the use of carbon offsetting in carbon markets and the impact that such schemes have on their human rights to life, food, water and housing.

VIII. Conclusions and recommendations

62. In recognition of their responsibilities under the United Nations Framework Convention on Climate Change and the Paris Agreement, countries around the world have enacted laws and adopted policies in which they describe national and international responses to climate change. Despite such efforts, there are significant material and procedural barriers to undertaking decisive legal action on climate change. These barriers relate to inadequate climate change legislation, significant limitations with regard to pursuing climate change litigation and limited efforts to enshrine the concept of intergenerational equity at the international level. The Special Rapporteur proposes the set of recommendations outlined below for focused attention by the General Assembly and Member States.

General principles

68. New climate change legislation should incorporate general principles with a view to: ... (k) Respecting the rights of Indigenous Peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, including by ensuring the incorporation of provisions on free, prior and informed consent. Mitigation

Mitigation

69. With respect to mitigation, it should be ensured that new climate legislation: ... (b) Establishes provisions on prior and informed consent with regard to Indigenous Peoples; ... (d) Ensures that science and Indigenous knowledge are given primacy in decision-making processes associated with climate change mitigation actions...

Adaptation

70. With respect to adaptation, new climate change legislation should: (a) Provide for meaningful consultation and engagement in adaptation planning processes for those who are most vulnerable to the impacts of climate change, in particular ... Indigenous Peoples...

Right to information

71. With respect to the right to information, new climate change legislation should: ... (b) Establish advisory committees constituted by vulnerable communities, Indigenous Peoples and other disadvantaged communities.

O. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

1. Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, A/79/316, 22 August 2024

I. Introduction

2. Special measures are an integral part of remedying the legacies of historical patterns of enslavement, colonialism and apartheid. As such, this topic is aligned with the Special Rapporteur's commitment to integrating the examination of the impact of the historical legacies of colonialism and enslavement on contemporary forms of racism, racial discrimination, xenophobia and related intolerance into all aspects of her work.¹ She also responds to the lack of awareness and understanding, as well as to the inadequate adoption, of special measures worldwide. She asserts that better understanding and acceptance of the existence of racial inequalities and their root causes will lead to increased adoption of special measures.
3. The Special Rapporteur reminds States that special measures are an important part of the suite of measures needed to address racial discrimination experienced globally, and that States are obliged under international human rights law to implement special measures. The Special Rapporteur calls upon States to improve the effectiveness of special measures by ensuring that they are designed in consultation with intended beneficiaries and based on disaggregated data and a robust understanding of systemic racism. She also calls upon States to ensure that special measures address intersectional discrimination and are combined with broader antiracism and equality measures, and that special measures are regularly reviewed, amended as needed and not withdrawn prematurely.

III. Special measures

A. The concept of special measures

7. Special measures, which are often referred to as “affirmative action”, “affirmative measures” or “positive measures”, are the provision of targeted benefits to underrepresented or marginalized racial and ethnic groups, aimed at ensuring equitable representation and the equal enjoyment of human rights by all.
8. Well-known examples of special measures include reservations or quotas within political representation, targeted recruitment in employment and university admission policies that allow race, ethnicity or caste to be considered in assessing prospective students. Special measures may also exist in the form of scholarships, financial aid for university tuition or university accommodation, mentorships, or other kinds of educational support for marginalized racial or ethnic groups. Two additional domains in which targeted interventions have frequently been employed are public housing and health care.
9. Special measures are underpinned by the well-established human rights principle that treating all people identically cannot address inequities caused by differences and existing disadvantages; substantive equality can only be achieved by taking cognizance of the historical oppression of marginalized communities. In certain circumstances, identical treatment also amounts to indirect discrimination. The Special Rapporteur echoes the calls of other United Nations experts to refrain from using the terms “reverse discrimination” and “positive discrimination”.⁵ Special

measures are not an exception to the prohibition against discrimination. They are an integral part of the suite of strategies that States are obligated to implement, aimed at achieving the equality and representation of racial and ethnic groups.

B. International human rights law framework

...

13. In general recommendation No. 32, it is clarified that special measures should be: ... (i) Different than specific rights pertaining to certain categories of person or community, such as Indigenous land rights, for which permanent measures may be needed.
15. In the Durban Declaration and Programme of Action (2001), the necessity for special measures aimed at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society and to bring all onto an equal footing is recognized. ... In the Declaration, States are expressly requested to promote understanding among society at large of the importance of special measures to overcome disadvantages faced by Indigenous Peoples.
17. The United Nations Declaration on the Rights of Indigenous Peoples (2007) provides a more express reference to the obligation of States to take special measures and the need to consider intersectionality in doing so, including that States should take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention should be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities.

IV. Examples of special measures

25. In this section, the Special Rapporteur provides examples of special measures in three areas in which they have most commonly been implemented: political representation, higher education and employment. The examples provided are non-exhaustive.

A. Political representation

27. India was the first country to implement special measures in political representation, referred to as “reservations”. Shortly after independence, India introduced a comprehensive and systematic set of special measures. The Indian Constitution of 1950 enshrined provisions for the reservation of seats in legislatures, educational institutions and government jobs for “scheduled castes” and “scheduled tribes” (Indigenous Peoples outside the caste system) to address historical injustices and social discrimination. These measures were aimed at promoting social justice and ensuring equal opportunities for marginalized communities. The implementation of these policies began with the reservation of seats in Parliament and state legislatures, followed by reservations in public sector employment and educational institutions on the basis of proportional representation. Over time, the scope of affirmative action was expanded to include “other backward classes”....
28. In the past two decades, multiple States in all regions of the world have provided reservations or quotas in political representation to marginalized racial or ethnic groups. In New Zealand, the Electoral Act provides a proportional representation system, which resulted in an increase in reserved seats for the Māori to five seats in 1996, six seats in 1999 and seven seats in 2002. There are reserved seats for

Indigenous Peoples in national parliaments or key public offices in many other countries, such as the Plurinational State of Bolivia, Chile, Fiji, Indonesia, Jordan, Peru and the Bolivarian Republic of Venezuela, and Taiwan Province of China....

V. Challenges to the effective implementation of special measures

43. The Special Rapporteur notes that many special measures have been instrumental in improving the access of marginalized racial or ethnic groups to education, employment and political representation. However, despite these advancements, significant challenges remain in ensuring that special measures are implemented effectively in accordance with international human rights law standards. She outlines some of the major challenges to the effective implementation of special measures, including the lack of understanding and adoption of special measures, the lack of broad societal support, the use of special measures in isolation, failure to address intersectionality, insufficient disaggregated data and monitoring mechanisms, the lack of full and effective consultation and active participation of intended beneficiaries, and the premature and abrupt withdrawal of special measures.

A. Misinterpretation and lack of understanding

...

46. Special measures should also not be confused with the specific rights of certain groups, such as Indigenous land, fishing or herding rights. They are rights recognized in international human rights law, for which permanent measures may be needed. For example, the Nordic Saami Convention establishes reindeer husbandry as a sole right of the Saami in Saami reindeer grazing areas. These are rights belonging to the Saami, and they differ from temporary special measures.

P. SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

1. Justice is not for sale: the improper influence of economic actors on the judiciary, A/79/362, 20 September 2024

IV. Misuse and abuse of justice systems: advancing private interests at the expense of human rights through strategic lawsuits against public participation

A. Introduction

44. As explored above, powerful economic actors may seek to exploit loopholes in ethics and integrity rules in organized efforts to reshape justice systems to serve their long-term aims. Submissions for the present report emphasized that such actors also make strategic use of existing justice systems to achieve more immediate goals. In this section, the Special Rapporteur focuses on one form of strategic use of the justice system to further the interests of economic actors: strategic lawsuits against public participation (SLAPPs). An examination of such lawsuits brought by powerful economic actors offers a stark illustration of the weaponization of justice systems to serve private interests at the expense of legitimate human rights objectives.

45. Companies and wealthy individuals use SLAPPs in an effort to shield their business interests or protect their reputations in the face of legitimate investigation, criticism or protest. In doing so, SLAPPs convert public concerns into private legal disputes, creating a climate in which activists may be punished, intimidated

or deterred from engaging in human rights-promoting activities in the future. Most importantly for the mandate holder, SLAPPs claimants seek to enlist judges inappropriately in this effort.

B. Defining and spotting strategic lawsuits against public participation

46. Regional bodies, domestic lawmakers and experts have developed various definitions of SLAPPs. Defining SLAPPs is important, since the rapid identification of abusive actions gives judges and lawyers more options for combating them. After careful consideration, the Special Rapporteur adopts the definition used by the Office of the United Nations High Commissioner for Human Rights, as the Special Rapporteur considers that this definition includes all the key elements required to identify a SLAPP. SLAPPs are “lawsuits or threats of legal action which use abusive litigation tactics with the aim or effect of suppressing public participation and critical reporting on public interest matters”.
47. There are three key elements that characterize a SLAPP:
- (a) There is an imbalance in financial, political or societal power between the powerful claimant or initiator and the less powerful defendant or target of the SLAPP;
 - (b) The action abuses legal tactics, including bringing disproportionate or excessive claims, issuing multiple legal cases and “forum shopping”;
 - (c) The subject of the action concerns public participation, such as the exercise of the right of free speech or assembly, on matters of public interest, such as human rights violations, illegal or unethical action by corporations, or environmental damage and climate change.

1. Strategic lawsuits against public participation exploit power imbalances

48. SLAPP targets are often individual activists, local groups, Indigenous Peoples, non-governmental organizations or journalists. SLAPP claimants may be wealthy, high-profile individuals, local businesses or transnational corporations. SLAPPs may be brought by State agencies as well as private actors, although the latter are the focus of the present report.

2. Strategic lawsuits against public participation abuse legal tactics

49. SLAPPs may use either civil or criminal procedures. A submission for the present report tracked 474 SLAPPs initiated by private actors around the world since 2015. At least 68 per cent of those cases involved criminal charges, with 9 of 10 occurring in the global South.¹¹⁶ Most cases involving civil legal claims occurred in the global North.
50. Whatever proceeding, civil or criminal, is selected, SLAPPs utilize legal tactics that are unreasonable, improper or abusive. Civil claims often seek inflated and devastating financial awards. Where SLAPPs target action by an organization, powerful private actors may bring claims against individual employees or members, rather than the organization itself, to ramp up the pressure.
- ...

3. Strategic lawsuits against public participation target public participation on matters of public interest

52. Many SLAPPs brought by economic actors allege some form of damage against a company or private interest. But this represents a disingenuous concealment of the private actor’s true aims: to stifle legitimate criticism, oversight or resistance

to their activities. SLAPP claims for defamation often relate to campaigns led by human rights defenders or critical reporting by journalists. They may also be aimed at Indigenous Peoples who speak up about violations of their rights, including to self-determination, consultation and free, prior and informed consent. Criminal cases may involve allegations of damage to a company's property or accusations that a company's employees have been attacked; such accusations may arise in the context of peaceful resistance to land-grabbing or extractive activities.

53. It has been reported that activists face accusations of trespassing or physical obstruction when exercising their right to free assembly. Such claims may target environmental defenders engaging in protected acts of protest or on-site monitoring of activities of public concern, such as environmental contamination caused by extractive industries. The Special Rapporteur also heard of peasant communities that occupied territory to resist illegal land-grabbing by companies being subjected to private criminal complaints of trespassing.
54. In States where prosecutions can be initiated by private actors, SLAPPs may also involve more serious criminal accusations. Reports describe cases where private companies involved in major extractive projects filed private criminal complaints in response to protests from local communities. Charges encompassed kidnapping, home invasion, aggravated robbery, riots, obstruction of the operation of public services and aggravated damages – crimes that could carry lengthy prison sentences.
55. In global SLAPPs cases tracked since 2015, the underlying issues of public interest at stake frequently relate to mining, agriculture and livestock. More localized studies reveal a similar pattern. The United Nations Development Programme found that most SLAPPs initiated in Thailand between 1997 and 2022 were filed by mining companies, followed by the livestock industry. The vast majority of such SLAPPs targeted local villagers. However, SLAPPs may arise out of perceived threats to any economic activities, for example in response to reports of unlawful dismissals at a factory, or protests at tax evasion by a technology company.

2. Reimagining justice: confronting contemporary challenges to the independence of judges and lawyers, A/HRC/53/31, 13 April 2023

7. Reimagining access to justice requires ensuring that all persons can enjoy the whole range of human rights – civil, political, economic, social and cultural. Lawyers and community-based justice advocates play a key role in this endeavour. Lawyers must be able to freely exercise their profession with the resources necessary to defend those charged with crimes, seek remedies for grave violations and facilitate fulfilment of rights. They can also undertake efforts to dismantle the dynamics of exclusion in the legal system, including those that affect groups marginalized due to ethnic or racial discrimination, persons experiencing extreme poverty, persons with disabilities, those of diverse gender identities and sexual orientations, Indigenous Peoples and others facing histories of entrenched dispossession or discrimination. Finally, reimagining access to justice entails embracing an expanded legal ecosystem and recognizing the power and promise of community-based justice advocates, such as community paralegals, “barefoot lawyers” and legal navigators, to extend and enhance legal services and support for isolated and underserved communities.

6. Strengthening respect for the independence of Indigenous Peoples' justice systems

38. The Special Rapporteur also intends to focus on judicial independence in the context of the realization of Indigenous Peoples' rights. Consistent with her emphasis on systemic discrimination, she will look at how questions of judicial independence relate to stark discrimination and inequalities faced by Indigenous Peoples within "ordinary" justice systems.
39. She will also prioritize the independence of Indigenous justice systems. Human rights law recognizes, as set out in the United Nations Declaration on the Rights of Indigenous Peoples, Indigenous Peoples' right to autonomy or self-government in matters relating to their internal and local affairs, the right to maintain and strengthen their distinct political and legal institutions, as well as the right to promote, develop and maintain juridical systems or customs. However, despite the valuable contributions of Indigenous justice mechanisms around the world towards resolving disputes and realizing rights, in practice, recognition of the traditional justice systems and customary laws of Indigenous Peoples remains generally limited. Building on the work of other mandate holders and treaty bodies, and the writings of Indigenous judges, scholars and leaders, the Special Rapporteur will look at persistent and contemporary challenges to recognition of the judicial independence of judges in Indigenous legal systems. She will explore the impact on rights, including on women's rights, of jurisdictional, territorial or subject-matter restrictions on Indigenous justice systems. She will consider what measures member States and others can undertake to ensure the respect of the right of Indigenous Peoples to autonomous legal institutions and processes and disseminate good practices for member States in their relations with Indigenous Peoples' justice systems.
51. The Special Rapporteur is extremely concerned about widespread and increasing efforts to target lawyers for their work. Amidst deepening autocratization globally, lawyers increasingly may face threats, arrest, prosecution, imprisonment and even death. This is especially true for lawyers who are active in the defence of human rights, women's rights, minority groups, refugees and migrants, Indigenous Peoples, the LGBTQI+ community and the environment. Such targeting violates the rights of lawyers, but also affects the rights of other individuals to a fair trial and to the broad range of human rights meant to be protected by rule of law and a functioning judicial system.

Q. SPECIAL RAPPORTEUR ON TOXICS AND HUMAN RIGHTS

1. Visit to Australia, A/HRC/57/52/Add.2, 18 July 2024

I. Introduction

1. Pursuant to Human Rights Council resolution 45/17, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, visited Australia from 28 August to 8 September 2023, at the invitation of the Government.
2. The aim of the visit was to identify good practices and assess the Government's efforts to prevent and address the adverse impacts of toxics on human rights, with a view to offering recommendations. The visit focused on: (a) coal mining and

coal-fired power plants; (b) uranium mining and nuclear weapons testing; (c) waste management; (d) highly hazardous pesticides; (e) perfluoroalkyl and polyfluoroalkyl substances (PFAS); and (f) oil, gas and petrochemicals.

II. General context

6. The discourse around toxics in Australia is characterized by a deep disconnect between the narratives of authorities and those of communities. Whereas the authorities prioritize efforts towards stronger regulations to address the risks of chemicals and pollution, communities and civil society denounce State actions for the benefit of mining, oil, gas, agrochemical and other corporate interests.
7. This disconnect appears particularly acute between Indigenous Peoples and the Government. Representatives of Indigenous Peoples often referred to the ongoing colonization of their territories and expressed frustration at their exclusion from decisionmaking processes.
8. Indigenous Peoples have lived on the continent and have passed down their culture and heritage for at least 65,000 years. For decades after British colonization began in the 1780s, campaigns of land dispossession, forced displacement, massacres, violence and a wave of diseases introduced by the European settlers ravaged the Indigenous population and generated deep-rooted distrust.
9. In 1901, the colonies federated and formed the Commonwealth of Australia. Today, the Federation consists of six states and two self-governing territories. It was not until the 1960s that all Indigenous Peoples were given the right to vote in all states and territories. States and territories enjoy a large degree of autonomy, and the national Government does not have power over many of their decisions in relation to environmental and toxics issues.

III. International and domestic legal framework

...

B. Domestic legal framework

...

24. The Environment Protection and Biodiversity Conservation Act 1999 is the main national environmental law aimed at protecting and managing unique plants, animals, and habitats, including heritage sites, marine areas and some wetlands.¹³ An independent review of the Act in 2020 found that the Act did not facilitate restoration of the environment and that addressing the challenge of adapting to climate change was an implied, rather than a central, consideration. It also concluded that the 1999 Act was not fulfilling its objectives with respect to the roles of Indigenous Peoples in providing advice to decision makers.¹⁴ The federal Government announced plans to reform the Act in 2022, and following consultation processes, legislation was introduced to Parliament in May 2024.

IV. Environmental governance

...

B. Public participation

34. Parliamentary inquiries in Australia are a mechanism that provides the public with an opportunity to offer inputs on issues being considered by Parliament. These inquiries serve as an important tool for public debate and informed decision-making. They also contribute to shedding light on issues of concern to the population and create a record for future generations. Examples of toxics-related inquiries include

those on the Australian Naval Nuclear Power Safety Bill 2023,²³ waste reduction and recycling policies, Darwin's Middle Arm industrial project and the Climate Change Amendment Bill 2023. The Special Rapporteur also welcomes the November 2023 Senate inquiry into the United Nations Declaration on the Rights of Indigenous Peoples and its implementation and the ongoing parliamentary inquiry on the possibility of enacting a federal Human Rights Bill, which are key areas of focus for a human rights-guided approach to the environmentally sound management of hazardous substances and wastes.

35. The Special Rapporteur expresses deep regret that a referendum on a constitutional amendment to secure a voice for Indigenous Peoples, through the creation of an advisory body to Parliament, failed.

V. Confronting toxic challenges

A. Coal mining and coal-fired power plants

41. Australia has more than 350 operating mine sites across the country and approximately 2.5 million hectares of land under active mining leases. The pollution generated from the extraction and processing of minerals poses serious human rights threats to communities.
42. With respect to coal mining, most of the country's black coal, which has higher potential energy than other forms of coal, is mined in New South Wales and Queensland. Approximately 80 to 90 per cent of it is exported, making Australia the world's second largest exporter of black coal. Coal mining causes habitat destruction, soil erosion and water pollution. "We are connected to the River through our songlines; it's like a rainbow coming from the East", said one Indigenous representative describing the impacts of the McArthur River zinc mine. Pervasive dust and particulate matter from coal mines, such as in Acland in Queensland, also have serious adverse health effects on local communities.

B. Uranium mining

52. Australia has a significant uranium mining industry, with many mines located on or near Indigenous lands. This has raised concerns about the health and environmental impacts of uranium mining on Indigenous communities, including the risk of radiation exposure.
53. While some mines, such as Ranger, had been forced onto traditional owners against their will, the Special Rapporteur received information that not all Indigenous landowners were opposed to uranium mining, including some who currently had operational mines on their land.⁴⁵ Even at mines such as the Olympic Dam, where the local Indigenous people, the Kokatha, had not expressed open opposition to the mine, there was deep concern at the reckless degradation of sacred sites and insensitivity to their culture. Past mining in places such as Rum Jungle had left areas so degraded that traditional owners were unable to use them.
54. The Special Rapporteur notes that despite the complex applicable regulatory framework, there has been a persistent pattern of failure to rehabilitate uranium mines. Nevertheless, there appear to be promising developments at Ranger Mine in the Northern Territory. This territory has a long history of uranium mining and has some of the country's most significant and highest-grade uranium deposits.
55. The environmental impacts of tailings have been well documented for both historical and current uranium mines in Australia, including the Roxby Downs and Ranger uranium mines, Radium Hill and Rum Jungle.

60. The Special Rapporteur notes the proposal in South Australia called the Northern Water Project – a desalination plant on the Eyre Peninsula that would supply water to multiple users, predominately the mining sector in the northern regions of South Australia. This project is expected to provide enough water capacity to substitute the reliance on Great Artesian Basin water for mining operations. While the project would help alleviate the pressure on the highly vulnerable, ecologically unique and culturally significant Mounds Springs, authorities should address concerns over energy consumption, toxic byproducts and impacts on Indigenous communities.
61. Australia has extensive reserves of minerals that are needed in the renewable energy transition and in advanced manufacturing. There are environmental and economic benefits from this sector – if it is developed in a measured and sustainable way. Detoxification and decarbonization strategies should be integrated and be guided by human rights principles.

C. Nuclear testing legacies

62. After testing its first nuclear weapons off the west coast of Australia in 1952, the United Kingdom of Great Britain and Northern Ireland, in 1953, detonated two “Totem” nuclear bombs at Emu Field. Between 1952 and 1957, the United Kingdom also conducted seven major and hundreds of minor nuclear tests at the Maralinga test site in South Australia. Nuclear fallout from the explosions contaminated large parts of the region and exposed many people to high levels of radioactivity. Indigenous Peoples bore the brunt of the negative impacts from radiation exposure.
63. In Maralinga, the testing of nuclear weapons contaminated great tracts of Tjarutja people’s lands, causing detrimental medical, psychological and social effects. The region of Maralinga was inhabited by Pitjantjatjara and Yankunytjatjara, with other Indigenous Peoples often passing through the area. During the tests, many of them came into contact with fallout in the form of “black mist”. The warning signs in English were usually incomprehensible to the Indigenous Peoples. Without adequate warning, many lost their eyesight and were left with a legacy of health issues from the radiation exposure. Studies on the health effects of radiation on the Indigenous Peoples were inconclusive, due to inadequate identification and follow-up of the affected population.
64. Similarly, the detonations at Emu Field still vividly reverberate in the Indigenous community’s memory and lived experience. The loss of family members who passed away in the aftermath of the testing calls for an apology by the Government that can open a path towards healing for this community.

D. Waste management

1. Nuclear waste

67. While Australia does not currently have any operating nuclear power plants, it does generate low- and intermediate-level radioactive waste from the use of radioactive materials in scientific research and for industrial, agricultural and medical applications.
70. In 2021, the federal Government declared a location near Kimba as the site of a new low-level nuclear waste storage facility. According to a ballot conducted by the Australian Electoral Commission, about 60 per cent of residents supported the proposed storage facility. Nonetheless, Indigenous Peoples staunchly opposed the proposed storage facility, along with environmentalists and many farmers. The Barnjarla people mounted legal resistance to the proposed siting of the facility and sought a judicial review, citing insufficient consultation with traditional owners,

among other concerns. The Federal Court's judgment set aside the declaration of the site and found apprehension of bias in the site selection decision-making process by the former federal resources minister. The Special Rapporteur applauds the decision of the federal Government not to appeal the Federal Court's judgment.

71. While the National Radioactive Waste Management Act 2012 does not override federal laws to protect cultural heritage, it contains elements that override cultural heritage protections established by the states. This raises the need to align all regulations with the United Nations Declaration on the Rights of Indigenous Peoples.

5. Pesticides

...

85. The Special Rapporteur stressed that access to an effective remedy is a critical step in healing past environmental injustices. For example, the loss of life resulting from exposure to Agent Orange, a combination of two potent herbicides, 2,4,5-T (containing dioxins/TCDD) and 2,4-D, distributed by the state government of Western Australia in the late 1970s and early 1980s in the Kimberley region in the north of Western Australia, is still an open wound in Indigenous Peoples' memory.

7. Oil, gas and petrochemicals

94. Scientific reports suggest that temperatures in the Northern Territory could make the region uninhabitable for humans.⁹³ Yet, according to the information received, the petrochemical and oil and gas industries are lining up massive projects in the region, threatening to make Darwin and the region a climate change sacrifice zone.
95. One such project is the Santos Barossa offshore gas extraction project. The Special Rapporteur expresses concern that consultations were not carried out with all the relevant persons who may potentially be impacted by the company's drilling plan. He also expressed concern that applicable regulations placed consultation requirements on the titleholder instead of the National Offshore Petroleum Safety and Environmental Management Authority. The Tiwi people also challenged the construction of the pipeline in federal court on the basis that impacts on their cultural rights had not been adequately assessed. In November 2023, the federal court ordered Santos to pause pipeline works until a further trial had been held. However, in January 2024, Santos won the case and was allowed to resume operations. The Special Rapporteur considers that the court's decision does not provide for free, prior and informed consent, as contemplated in the United Nations Declaration on the Rights of Indigenous Peoples, or for the recognition of their sea country cultural rights.

VI. Conclusions and recommendations

...

100. The Special Rapporteur notes, however, that there is a disconnect in narratives between authorities' efforts and the lived experiences of local communities, Indigenous Peoples, and workers in relation to toxics issues. Indigenous Peoples have suffered grave maltreatment from radiation exposure due to nuclear testing, spraying of highly hazardous pesticides, uranium and other mining, and industrial activities with toxic impacts. The proposed siting of radioactive wastes on the lands of Indigenous Peoples illustrates the lack of respect for rights contemplated in the United Nations Declaration on the Rights of Indigenous Peoples.
107. This is where human rights can guide the transformation of law and policy concerning toxics: to avoid legalizing hazardous levels of toxic pollution, to secure

respect for the rights of Indigenous Peoples, to enable informed public-participation in environmental decision-making, to ensure the internalization of environmental costs, to transition to zero waste and a chemically safe circular economy, and to make the right to live in a toxic-free environment a reality for all.

A. Legal framework and environmental governance

109. The Special Rapporteur recommends that the Government of Australia: ... (e) Align national and subnational legislation with the United Nations Declaration on the Rights of Indigenous Peoples; (f) Ensure meaningful engagement with Indigenous Peoples in licensing processes for extractive and other industries, including guaranteeing their right to free, prior and informed consent and respect for their cultural rights....

B. Radioactive waste and the legacy of nuclear testing

110. The Special Rapporteur also recommends that the Government of Australia:

- (a) Amend the National Radioactive Waste Management Act to explicitly reflect the United Nations Declaration of the Rights of Indigenous Peoples and the right of free, prior and informed Consent of Indigenous Peoples;
- (b) Provide adequate compensation and assistance to those affected by radiation exposure from nuclear testing, particularly Indigenous Peoples;
- (c) Provide further assistance to affected communities and further environmental remediation in relation to the atomic tests conducted by the British Government on Australian territory.

2. Gender and hazardous substances, A/79/163, 16 July 2024

I. Introduction

1. A planetary chemical crisis of unprecedented proportions is inflicting harm to countless individuals and communities, causing and deepening injustices in who can live healthy lives, reproduce and have healthy newborns and who cannot. Over the past seven decades, as industry has exponentially increased its use and release of hazardous substances, the prevalence of multiple chronic health conditions and deaths from chemical pollution has escalated globally. At the same time, there is a troubling paucity of data, particularly broken down by sex and gender.
11. Chemicals can no longer be a fringe issue in women's rights or sexual and reproductive health and rights. Feminists and other activists, including those of African descent, Indigenous activists and disability rights activists, among others, have provided paths forward for societies to end industrial damage and instead recentre reproductive justice, protection and care. Many important movements and institutions are needed to apply a rights-based approach to toxics and drive the deep shift from extraction and economic growth to valuing all bodies and environments equally, including if damaged by injustices. Far greater engagement from public health workers, providers and advocates working to improve maternal and newborn health, child health and sexual and reproductive health and rights is needed to end toxics undermining health goals.

II. Socioeconomic gendered intersections and vulnerabilities

...

C. Work, gender and toxic exposure

...

1. Gendered harms from industrial agriculture

41. Pesticides and chemical-based farming dramatically undermine women's power regarding their roles as food producers, caretakers of biodiversity and seed keepers. Furthermore, in many countries the use of costly pesticides and commercial seeds has augmented women's poverty.
42. There are many examples of women's regenerative cultural work being curtailed by pollution and industrial pesticides. However, many women Indigenous activists, for example, continue to forge paths for reviving environmental care in a world deeply changed, perhaps for many generations or even permanently, by synthetic chemicals and other pollutants.

2. Gendered harms from care work

...

59. In some Alaskan Indigenous cultures, crucial care work within women's responsibilities extends to transmitting cultural practices inextricably linked to care of the natural environment. This work makes them vulnerable to absorbing environmental contaminants, which are increasingly affecting their health and livelihoods. Alaska Native women aged 40 to 49 years are nearly twice as likely as white women of the same age range to die of breast cancer.

D. Bodily autonomy and toxics

61. Hazardous substances in wastes and products, often imperceptible, are a new insidious frontier of attacks on bodily autonomy. Women's rights and gender equality movements have rejected efforts to control women's bodies and reproduction. Movements that have sought to protect bodily autonomy with anti-ableist, anti-racist, decolonial and feminist goals have relevant expertise to support efforts towards the realization of the right to a clean, healthy and sustainable environment.
62. ... Indigenous women have also denounced how environmental violence threatens culture, identity and choices about having children. Disability rights groups have valuable expertise in the impacts of toxics and how well-designed policies should simultaneously halt ongoing pollution and damage and ensure equal respect, non-discrimination, and long-term care for people and environments that have been affected.

D. Pregnancy

100. Pregnancy presents a period of unusually high vulnerability to exposure to many hazardous substances. Pregnant bodies are undergoing significant physical, metabolic and hormonal changes, and systems are under significant new pressures. In studies, lead and other chemicals have been associated with maternal hypertension.
101. The fetus undergoes dramatic and precisely timed changes. Many damaging substances cross the placenta and affect fetal growth and development. Pregnancy exposures can have a major impact on the lifelong health of the newborn, not only in the form of congenital anomalies but also in higher rates of preterm birth and neurological impacts, which may be seen only later in development. For example, mercury released into rivers by small-scale gold miners in the Amazon countries of Bolivia (Plurinational State of), Brazil, Colombia, Ecuador, Peru and Venezuela (Bolivarian Republic of) is highly persistent, contaminates the rivers that provide sources of food and spiritual sustenance of many Indigenous Peoples, and crosses the placenta of pregnant people. This causes irreversible adverse impacts on newborns and widespread environmental injustices.

3. The toxic impacts of some proposed climate change solutions, A/HRC/54/25, 13 July 2023

III. Some proposed decarbonization technologies

19. States have an obligation to mitigate climate change and prevent its negative impacts on human rights, including by taking action to reduce emissions in a “rapid, deep and in most cases immediate” manner.

C. Nuclear power generation

54. Nuclear energy is the energy in the core, or nucleus, of an atom. Modern technology primarily harnesses nuclear energy through nuclear fission, in which atomic nuclei are split and energy is released. This energy can be used to create zero-carbon electricity. However, claims by the European Union that such energy is “green” have been denounced as greenwashing.

55. The production of nuclear energy presents both environmental and health risks. Nuclear power plants are most often powered by a rare type of uranium, uranium-235. A typical nuclear reactor uses about 200 tons of uranium every year. Uranium mining can expose workers to high levels of radon gas, which has been associated with an increased risk of lung cancer, as well as producing radioactive and toxic by-products and contaminating groundwater. These risks weigh particularly heavily on Indigenous Peoples, as 70 per cent of global uranium mining occurs on Indigenous lands.

IV. Human rights affected by some proposed climate change solutions

72. Some proposed technologies to mitigate climate change aggravate the toxic burden on people and planet, and they may adversely affect the effective enjoyment of human rights. The adverse impacts weigh heavily on persons and groups in vulnerable situations.¹⁵⁰ This situation undermines progress towards the Sustainable Development Goals to end poverty and hunger, to ensure healthy lives, clean water, decent work and sustainable consumption, and to protect and conserve lands and waters.

B. Right to life, in conjunction with the rights to clean air, safe water and nutritious food

77. The right to life has been recognized in universal and regional human rights treaties. The right to life includes the right to a dignified life. The conditions that enable people to live a dignified life include clean air, safe water and nutritious food, among others. The Inter-American Court of Human Rights has reasoned that failure to uphold international standards regarding clean water, food and health amounts to a violation of the right to a dignified life. This reasoning is also applicable to the physical components of the right to a clean, healthy and sustainable environment, underlining the intimate connections between that right and the right to life.

78. For Indigenous Peoples in particular, the right to a dignified life, in conjunction with the rights to clean air, safe water and nutritious food, is undermined by the toxic impacts of some of the technologies to mitigate climate change that have been proposed in recent years. This is due to the direct relationship between the physical environment in which Indigenous Peoples live and the rights to life, security and physical integrity, which are directly affected by pollution. For example, mineral and metal extraction often generates intolerable toxic pollution and biofuels use large amounts of fertilizers, pesticides and other chemicals. The increased carbonization

and toxification seriously affects livelihoods and daily lives by threatening food safety, polluting soil, surface and ground water, and generating wastewater. Their cumulative effects also reduce the contributions of climate change adaptation measures.

V. Human rights should guide the integration of decarbonization and detoxification pathways

...

C. Protecting particularly vulnerable groups

1. Indigenous Peoples

84. International human rights instruments and jurisprudence recognize human rights that are specific to Indigenous Peoples, such as the right to free, prior and informed consent, and to culture, land and natural resources. Protecting these rights is critical to avoid perpetuating the structural injustices and unsustainable economic development patterns that have resulted in the contamination of Indigenous Peoples' lands, waters, food, wildlife and plants, and the climate crisis.
85. The toxic impacts of some climate mitigation technologies could cause irreversible harm to ancestral sites, water, medicines and culturally important wildlife, as well as deforestation, soil degradation, limited crop production for years to come, water shortages, biodiversity loss and acid-mine drainage, contaminating downstream water sources and depleting ecosystem health, while worsening global warming. The lack of respect for free, prior and informed consent and inadequate environmental impact assessments are examples of the systemic and systematic barriers¹⁷⁸ that need to be urgently addressed to ensure Indigenous Peoples' rights.
86. These structural barriers also affect ethnic minorities and persons of African descent. The Inter-American Court of Human Rights has recognized that tribal communities of African descent have the same rights as Indigenous Peoples. Such decisions are consistent with some recent national judicial decisions concerning mining, environmental, social and climate justice, and persons of African descent.

VI. Conclusions and recommendations

99. Deep reductions of greenhouse gas emissions and carbon removals from the atmosphere are urgent to tackle the global climate crisis. Decarbonization of the energy matrix and polluting sectors of the economy are indispensable to realizing the goals established in the Paris Agreement. Some climate actions, such as replacing coal-fired power plants by solar or wind energy facilities, will contribute to such decarbonization.
100. Yet, some climate technologies proposed in recent years may aggravate the toxic burden befalling people and planet, exacerbating the human rights infringements caused by exposure to hazardous substances. The extraction of so-called transition minerals and metals can aggravate the toxic impacts of mining. Solar panels and wind turbines to generate electricity can impose considerable waste management challenges. Mislabelling nuclear energy generation as "green" downplays the acute challenges of radioactive waste disposal.
105. The Special Rapporteur recommends that States: ... (h) Install science-based capacity to enable circular management of chemicals Respect the right to and obtain free, prior and informed consent from Indigenous Peoples in regard to climate change mitigation technologies that directly or indirectly affect them....

4. Shipping, toxics and human rights, A/78/169, 13 July 2023

IV. Shipping and pollution

...

A. Water pollution

19. Ships are responsible for large-scale water pollution through biofouling and anti-fouling systems; the release of ballast water, black water, grey water or bilge water; and spills of oil or hazardous substances.
22. It is estimated that the total volume of chemicals entering the ocean rose by 12 per cent between 2003 and 2012. Toxic chemicals accumulate in marine organisms throughout the entire food chain and also affect non-aquatic species. Oil spills have harmful consequences for fur-bearing mammals, birds, fish and corals, among other species, ranging from hypothermia and dysfunction of the immune and reproductive systems to poisoning. At the top of the food chain, humans are the final recipients of these toxins. Since some types of contaminants do not break down easily in the environment, they can build up in a person's body, for example through the long-term intake of contaminated fish. Even low concentrations of heavy metals and other hazardous substances can directly transfer to the human body and cause toxic effects. Moreover, the impact on coastal ecosystems on which local tourism and fisheries rely often aggravates the already existing vulnerabilities of marginalized groups of society (e.g. low-income households, women, children, ethnic minorities, Indigenous Peoples and persons with disabilities).

F. Examples of marine pollutants

...

7. Black carbon

52. Black carbon, a small soot particle that is emitted when fuel fails to burn completely, is the second-largest contributor to shipping's climate impacts, representing 7 per cent and 21 per cent of carbon dioxide-equivalent emissions on a 100-year and 20-year time frame, respectively. Ship fuel, specifically heavy fuel oil, emits high amounts of black carbon when burned. Since 2015, use of heavy fuel oil in the Arctic has grown by 75 per cent, while black carbon pollution from ships has increased by 85 per cent and will reportedly continue to grow if the use of heavy fuel oil remains unabated.
53. Black carbon is a potent driver of climate change, especially in Arctic regions. Black carbon is 3,200 times more persistent than carbon dioxide on a 20-year timescale. When it lands on snow or ice, it reduces the surface reflectivity, causing the snow or ice to absorb more of the sun's energy, accelerating melt rates and exacerbating global warming. Black carbon also has significant adverse health impacts. It can penetrate deep into the lungs and is linked to cardiovascular diseases, strokes and cancer, and to acute respiratory infections in children.
54. Indigenous Peoples in the Arctic are particularly vulnerable to black carbon pollution. Since Indigenous Peoples depend on Arctic natural resources for spiritual, physical and other sustenance, the adverse climate-related impacts, including increased temperatures, melting snow and permafrost, shrinking glaciers, longer dry seasons, an increase in forest fires and severe climate extremes, threaten their health and food security. The failure to effectively regulate black carbon emissions may infringe on their cultural rights, their right to self-determination, their right to the means of subsistence, their right to property and their right to a clean, healthy and sustainable environment, among others.

VI. Application of a human rights-based approach to shipping and toxics

70. Shipping has a direct and indirect impact on the effective enjoyment of human rights, and the human rights responsibilities of States and businesses also apply at sea. The human rights principles of non-discrimination, accountability, transparency and participation are key to upholding the rights of individuals and groups that may be affected by shipping, including seafarers, coastal communities and Indigenous Peoples. However, references to the human rights obligations and responsibilities of States and private businesses are almost non-existent in the international instruments relating to shipping.

C. Meaningful participation in decision-making processes

75. Every person and community is entitled to active and meaningful participation in decision-making processes that can directly or indirectly affect them. Establishing participatory mechanisms with States and private businesses to hear the voices of maritime workers and their rights to peaceful assembly and freedom of association, including the right to form and join trade unions, is particularly important. In the light of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication adopted by States, establishing participatory mechanisms with local communities, including Indigenous and fisherfolk communities, is an important tool to consider. Applying these human rights principles also advances the shipping industry's interest in increasing trust and public support for improvements in the sector generally.

VII. Conclusions and recommendations

103. The shipping industry is closely linked with the environment and human rights. Oil and toxic spills harm coastal communities and Indigenous Peoples, air emissions from vessels adversely affect port cities, greenhouse gas emissions contribute to climate change, seafarers are exposed to hazardous working conditions and the transport of hazardous cargo poses risks to crew and the environment.

106. Certain groups are particularly vulnerable to the adverse impacts of shipping. Coastal communities can be devastated by spills of oil or highly noxious substances. Indigenous Peoples, such as those living in the Arctic, are especially affected by marine pollution and the bioaccumulation of persistent pollutants. ...

R. SPECIAL RAPPORTEUR ON THE RIGHTS TO WATER AND SANITATION

1. Visit to Peru. A/HRC/54/32/ADD.2, 26 July 2023

I. Introduction

1. Pursuant to Human Rights Council resolution 51/19 of 2022, the Special Rapporteur on the human rights to safe drinking water and sanitation undertook an official visit to Peru from 1 to 15 December.

II. General context

A. Urgent challenges

4. During his visit to Peru, the Special Rapporteur on the human rights to safe drinking water and sanitation learned first-hand about the country's alarming hydrological vulnerability to climate change, which has been exacerbated by the prevailing

extraction-oriented development model, and the devastating consequences of toxic water contamination on the population.

6. With respect to toxic contamination, according to data from the Ministry of Health, more than 10 million Peruvians (i.e. more than 31 per cent of the population), are exposed to a daily risk of contamination by heavy metals, metalloids and other toxins; devastatingly, 84 per cent of these people are children.
7. The contamination comes from active legal and illegal mining operations and frequent oil spills, but also from 7,668 environmental liabilities linked to mining and from 3,231 hydrocarbon sector liabilities identified to date. In short, a large part of the population is being systematically poisoned, especially in rural and Indigenous communities, while climate change portends a bleak hydrological future for the country.

B. Hydrological framework of Peru from a current climate change perspective

9. The surface waters draining the Peruvian territories flow through three watersheds: the Pacific; the Amazon, which flows into the Atlantic Ocean; and the endorheic basin of Lake Titicaca. A total of 97.27 per cent flow into the large rivers of the Amazon basin, 0.55 per cent feed into the endorheic basin of Lake Titicaca and 2.18 per cent flow into the rivers of the Pacific slope; most of the country's population and economic activity is concentrated in the Pacific coastal zone.
15. Extractive projects in the Amazon put forest cover at risk. Failure to uphold the rights of Indigenous Peoples over their territories, in addition to the violation of these rights, means doing away with the role that these peoples have played for thousands of years – to the benefit of Peru and humanity – as guardians of the Amazon. In this regard, the Special Rapporteur wishes to draw attention to the numerous cases of invasion of lands recognized as Indigenous territories and to the number of Indigenous territories awaiting demarcation and titling. In Loreto, the Special Rapporteur heard grim testimonies from women of the Kukama People about oil spills and forestry concessions that are harming the health of their communities and destroying the “lungs of the world” on which rainfall in the mountains also depends.

C. Population distribution, cultural diversity and water management

16. Peru has a population that is 82 per cent urban and 18 per cent rural, with continuous migratory flows from rural to urban areas. Almost 60 per cent of the population is concentrated in the coastal zone (more than 11 million live in the Lima region), 27 per cent lives in the Andes and 13 per cent in the Amazon.
17. In 2017, the Population and Housing Census of the National Institute of Statistics and Information Science identified 55 Indigenous Peoples – 51 in the Amazon region and 4 in the Andes – in addition to the Afro-Peruvian population. Overall, 25.7 per cent of the population identifies as Indigenous: 22.3 per cent Quechua, 2.4 per cent Aymara and 1.0 per cent members of Amazonian ethnic groups; 3.6 per cent are of African descent and 5.9 per cent of white origin, and 60.2 per cent identify as mestizo. It should be noted that, as in other countries, the colonial and post-colonial marginalization of Indigenous Peoples has led to a reduction in Indigenous self-identification. The progressive recognition of the political, economic, social and cultural rights of Indigenous Peoples means that more and more rural communities are recognizing their Indigenous origins.

IV. Legal framework

26. The Special Rapporteur welcomes the fact that article 7-A of the Constitution of Peru establishes the right of everyone to progressive and universal access to drinking water as a public good, prioritizing human consumption over other uses and requiring sustainable management. The Framework Act for the Management and Delivery of Sanitation Services (Legislative Decree No. 1280, art. 1) governs the supply of drinking water and sanitation services at the national level, with the aim of achieving universal access and ensuring quality and efficient and sustainable provision.
27. The Water Resources Act (Act No. 29338), which also enshrines these principles, promotes participatory and decentralized water management, including water users, regional and local governments, rural communities and Indigenous Peoples in the National Water Resources Management System.
28. Article 64 of Act No. 29338 establishes that the ancestral uses and customs of rural and Indigenous communities are to be respected and recognizes their right to use the waters that flow through their lands and through the watersheds where such waters originate; it also affirms the rights of Indigenous Peoples recognized in the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization.
32. The Special Rapporteur believes that the concept of water as “the heritage of the Nation”, both in the Constitution and in the Water Resources Act, is being used to call into question the right of Indigenous Peoples and rural communities to control their lands and the management of their waters. For example, when the regional government of Cajamarca designated headwaters areas as protected zones, the Constitutional Court ruled that the designation was unconstitutional.
33. The Special Rapporteur was alerted to Legislative Decree No. 1285, which amends article 79 of the Water Resources Act, allowing the discharge of untreated or inadequately treated wastewater for a period of nine years, thus authorizing the contamination of water bodies for nine years. In the Puno region, the Special Rapporteur observed how wastewater from the city of Juliaca is discharged into the Coata River and noted the disastrous consequences this has on the environment of Lake Titicaca. The combination of untreated urban waste discharge and increasing contamination from mining has already led to the extinction of more than 80 per cent of native fish species and massive mortality in populations of giant Titicaca frogs, fish and birds, as well as widespread heavy metal contamination in surrounding rural communities.

V. Institutional framework

34. Peru has an extremely complex institutional framework for water and sanitation management, with responsibility spread across several ministries. The National Water Authority is the lead government agency for water resources. The fact that it comes under the Ministry of Agrarian Development and Irrigation demonstrates a production-oriented approach, historically linked to water use in agriculture and, more recently, in the mining and hydrocarbon sector.
37. The Special Rapporteur appreciates the work of project implementation units, which make it possible to finance sanitation projects in impoverished rural communities, reducing bureaucracy and encouraging community participation. However, he was alerted to problems occurring with Indigenous Peoples in Loreto as a result of lack of intercultural dialogue and lack of respect for the knowledge and practices of

Indigenous groups, including cases in which they have been criminally accused of alleged embezzlement after signing, as project implementers, documents that they did not understand.

VI. Human rights to safe drinking water and sanitation

40. In assessing the levels of water supply coverage, the Special Rapporteur understands that it is necessary to distinguish between the concepts of “potable water” and “safe water”, since the latter term is used by the Government to refer to chlorinated water, without specifying whether it is adequately chlorinated or whether it contains other contaminants. The data on water supply coverage refer to the percentage of the population that receives piped water from public supply systems, whether or not it is potable.
41. The term “sanitation” should include sewerage and wastewater treatment services. However, the data on sanitation coverage reflect the percentage of the population connected to a sewerage system, with no guarantee of adequate treatment of sewage.

A. Coverage of water supply services

...

43. The territorial distribution of water supply coverage from public systems reveals strong inequalities. In rural areas, under the responsibility of the administrative boards of sanitation services, the estimated coverage is 76 per cent. The remaining 24 per cent of the population obtains water from rivers, irrigation ditches, springs, wells or other sources. The Special Rapporteur is particularly concerned about the lack of access to drinking water in the Loreto region, where only 56.3 per cent of the population has access to water from public supply systems. After 50 years of hydrocarbon extraction operations, the Corrientes, Chambira, Marañón, Pastaza and Tigre rivers, on which more than 90 Indigenous communities depend, are heavily contaminated by oil spills.

F. Toxic contamination and public health problems

63. As noted, the Ministry of Health estimates that more than 10 million people, or 31.1 per cent of the population, are at daily risk of contamination by heavy metals, metalloids and other toxins.⁴⁶ This rate is more than 50 per cent in Amazonas, Callao, Cusco, Madre de Dios, Moquegua, Pasco, Puno and Ucayali, and up to 100 per cent in Lambayeque. These figures are all the more alarming given that 84 per cent of the exposed population is made up of children aged 11 years or younger.
64. In other words, this is a process of mass poisoning that leads to flagrant and largescale violations of the human rights of at least one third of the Peruvian population. This process has undermined the health and violated the human right to drinking water of millions of people, especially among campesino communities and Indigenous Peoples, and is based on inequality, poverty and spatial segregation. It is imperative that redress mechanisms for victims of contamination be implemented, based on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.
65. The Ministry of Health defines populations exposed to toxic contamination as those that work or live near sources of contamination. However, given that these potential sources of contamination – environmental liabilities and active mining operations,

among others – are usually located in river headwater areas, water, as a vector for the spread of contamination, can affect people and communities far from these contaminating sources, which could further increase the actual levels of toxic harm.

G. Sources of toxic contamination: large-scale open-pit mining and petroleum exploitation

70. Both the large mining and oil corporations and the national Government insisted to the Special Rapporteur on the cleanliness of the production procedures used, placing the blame on illegal mining. The Environment Act (Act No. 28611) establishes that all environmental information is public and there are provisions on citizen participation in the mining sector. However, the Special Rapporteur heard reports, including from regional government representatives, of a perceived lack of transparency in reporting on the activities of extractive industries and a lack of citizen participation, which undermines their credibility.
79. In Iquitos, the Special Rapporteur heard dozens of testimonies from mothers in the communities and Indigenous leaders about the toxic contamination caused by oil spills in riverbeds, where it accumulates and spreads in cycles of swelling and flooding, and about the alarming increase in miscarriages and malformations in newborns. Since the late 1990s, it is estimated that more than 500 oil spills have occurred in the Marañón, Pastaza, Tigre and Corrientes rivers (in addition to many others on the coast) due to pipeline breaks, often caused by lack of maintenance. In 2015, the Environmental Assessment and Oversight Agency recognized Petroperu's responsibility for lack of infrastructure maintenance, which causes damage to the health of the communities of Cuninico and to flora and fauna. The Special Rapporteur also heard accounts of sabotage, apparently committed by those who are later contracted to carry out the repairs, which highlights problems of corruption.

I. Illegal mining

82. Although it takes place in all regions of the country, illegal mining has a particularly devastating impact on the Amazonian rivers, where thousands of tons of mercury have been discharged into the waters in recent years, causing very serious environmental and health impacts, especially for the Amazonian Indigenous Peoples. Furthermore, illegal mining is linked to threats against, attacks and murders of human rights defenders and, in particular, water rights defenders. According to the Ombudsman's Office, there were 11 such murders between 2020 and 2021.
83. Since 2013, the Ombudsman's Office has repeatedly included recommendations to public institutions in its reports. These reports have resulted in progress being made, such as the ratification of the Minamata Convention on Mercury, the adoption of the Protocol for Conducting Interdiction Operations against Illegal Mining and the Comprehensive Plan to Combat Illegal Mining, which are undoubtedly positive steps, although they are insufficient, as the Ombudsman's Office stresses. In 2022, at the request of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, the Ombudsman's Office issued a report on the human rights impact of illegal mining, in which it updated its recommendations.

K. Transparency, citizen participation and accountability

...

90. Through the decentralization process for water and sanitation, municipalities and community systems, such as the administrative boards of sanitation services and Indigenous authorities, should be provided with the necessary resources. Likewise, the existence of powerful community organizations, such as the *rondas campesinas*, or *campesino* patrols, recognized in article 149 of the Constitution and committed to the defence of rivers, lakes and wetlands, offers great potential for developing participatory strategies in the territories. However, the Special Rapporteur observed that, far from being understood in this way, these organizations are criminalized on the grounds that they stand in the way of extraction projects.
91. In Loreto, the women of the Kukama People were tired and fed up with the convening of forums for dialogue that do not resolve anything, while the *apus* – Indigenous leaders – of the Federation of Native Communities of Corrientes complained that, even when they do reach agreements, these are not respected.

L. Civic space and human rights defenders

94. After speaking with representatives of more than 200 communities and social organizations, the Special Rapporteur was deeply concerned about the criminalization of those who claim their rights to drinking water and sanitation.
99. In the Amazon, representatives of communities and Indigenous Peoples complained about the growing presence of drug traffickers, armed actors and illegal, but permitted, Kukama People, who promote the recognition of the legal personality of the Marañón River to protect it from impacts such as oil spills, based on their cosmovision, which sees the river as sacred and home to the spirits of their ancestors.
100. During his many meetings with communities and Indigenous Peoples, the Special Rapporteur noted the very active participation and growing leadership of women in *campesino* patrols, defence fronts and community institutions.

VII. Conclusions and recommendations

101. The Special Rapporteur presents the following conclusions, with recommendations linked to each of them.
102. It is necessary to introduce a new water governance model that is in line with current challenges and future challenges as a result of climate change. Peru faces a future of increasing water scarcity, especially drinking water, due to climate change, population distribution and migratory flows, the marginalization of *campesino* communities and Indigenous Peoples and, above all, the unsustainability of the current extraction-oriented development model. In this context, profound legal and institutional reform is needed, as well as a new ecosystem- and human rights-based approach that strengthens participatory water governance. Therefore, it is recommended to: ...
- (c) Promote participatory water governance, strengthening skills and functions at the municipal and community levels, developing a public-community partnership strategy in rural areas that is respectful of community systems and of Indigenous and *campesino* rights, knowledge and cosmovisions;
 - (d) Highlight the value of prestigious community organizations, such as the *rondas campesinas*, and of community environmental monitors in strategies for the monitoring and protection of aquatic ecosystems;
 - (e) Strengthen the administrative boards of sanitation services as community institutions and develop the project implementation units, while promoting their reform in the territories of Indigenous Peoples in a way that guarantees

respect for their knowledge and practices, as well as their sovereignty in the design and implementation of projects....

106. The Special Rapporteur recommends combating social and territorial inequalities by guaranteeing the human rights to safe drinking water and sanitation for all as a national priority, since combating the profound social and territorial inequalities related to water and sanitation is not only a precondition for guaranteeing the human rights of the entire population, but also for preserving public health and social cohesion. In particular, he recommends:
- (a) Launching an extraordinary rural sanitation and health plan to close the gap between urban and rural areas and between territories, with specific attention paid to the Amazon, using a significant proportion of oil profits to remediate oil spills and guarantee the human rights to drinking water and sanitation of the entire population and, in particular, of Indigenous Peoples;
 - (b) Strengthening community water management and the capacities of rural municipalities, within the framework of a rural development plan that curbs migration, placing value on livestock farming and traditional economic activities;
 - (c) Co-financing, at the national level and in collaboration with district municipalities, the development of water and sanitation systems in human settlements in cities as a basis for guaranteeing the human rights to drinking water and sanitation of their inhabitants.
107. The Special Rapporteur recommends that the right of Indigenous Peoples and campesino communities to manage their territories and waters in a way that strengthens and enhances the dignity of rural life be recognized. To this end, he recommends:
- (a) Pursuing the relevant legal reforms to effectively recognize the provisions of the United Nations Declaration on the Rights of Indigenous Peoples and, in particular, their right to free, prior and informed consultation and consent before granting permits for projects that affect aquatic ecosystems in their territories;
 - (b) Guaranteeing the participation of Indigenous Peoples, on an equal footing, in the planning of river basins that exceed their territorial limits;
 - (c) Effectively recognizing the authority of Indigenous authorities and community institutions, such as the campesino patrols, in the surveillance of their aquatic ecosystems to maintain them in good condition and ensure their sustainability;
 - (d) Respecting the knowledge, practices and community governance of Indigenous Peoples in the design and implementation of water and sanitation-related projects with support from the State. In this regard, the Special Rapporteur recommends entrusting the project implementation units with overcoming and resolving the problems that have arisen with the Amazonian Peoples.
108. The Special Rapporteur recommends promoting the effective and equal participation of women. In areas where there is no public water supply, the work of fetching water falls to women and girls. Promoting their equal participation in decisionmaking is not only a matter of fairness, but also allows them to share their commitment, knowledge and skills for the benefit of all. Specifically, he recommends: (a) Giving recognition to women's organization in spaces dedicated to deliberation and the development of proposals, since such spaces pave the way for equal participation in decision-making processes. In this regard, the Special Rapporteur recommends paying special attention to organizations such as the women's campesino patrols and the Huaynakana Kamatahuara Kana of the women of the Kukama People, as guardians of water....

109. It is necessary to put an end to the criminalization of water defenders. To this end, the Government must recognize the role of water defenders in order to advance in the fulfilment of the human rights to drinking water and sanitation. The recommendations made by the Special Rapporteur on the situation of human rights defenders in his 2021 report should be addressed and implemented.

2. Fulfilling the human rights of those living in poverty and restoring the health of aquatic ecosystems: two converging challenges, A/HRC/54/32, 20 July 2023

III. Keys to the degradation of aquatic ecosystems

17. As explained, if a community settles in a territory, it is because it has a close water source. Then, why do 2 billion people lack reliable access to safe drinking water?
18. The answer can be found in the interaction of multiple and accumulative pressures driven by human activities that threaten or undermine the water sources of billions of often impoverished people.

A. Toxic pollution

19. Pollution by heavy metals, metalloids and other toxins generated by legal and illegal mining and other productive activities continues to grow in many countries. Water is the main vector for the spread of this type of pollution. Large-scale mining requires much water, but above all, it produces large volumes of toxic waste: sulphuric acid, arsenic, copper, cadmium, lead, cobalt, zinc, and chemical agents, such as cyanide. Small-scale gold mining pollutes aquatic ecosystems mainly with mercury.
23. Oil and gas extraction severely impacts freshwater ecosystems by releasing high amounts of so-called produced water during extraction (a dangerous and potentially carcinogenic mixture). The Kichwa, Quechua and Achuar Indigenous Peoples in the Department of Loreto, Peru, have been denouncing the contamination of their rivers and territories by Pluspetrol, with the discharge of some 1,669 million barrels of highly toxic produced water between 2000 and 2009.

B. Biological, organic and nutrient pollution

29. Undoubtedly, one of the reasons for the non-drinkability of water is biological contamination by pathogens. Key factors include the lack of wastewater sanitation, inadequate disinfection by chlorination or other methods, and water contamination in obsolete or poorly maintained networks with frequent water cut-offs.
34. The intensive industrial livestock sector is among the top three contributors to water quality degradation. When livestock is concentrated, the associated production of manure tends to exceed the rate of crop utilization and the buffering capacity of surrounding ecosystems, and pollutes surface waters and groundwater. Also, there is growing concern about the public health impacts of pathogens, drug residues, hormones and antibiotics in livestock waste contaminating water. Intensive farming practices in Rivadavia, Argentina, have resulted in water pollution and significant desertification of ancestral Indigenous lands, violating the human rights to water, a healthy environment, culture and other fundamental rights.

V. Intersectionality of poverty, unhealthy aquatic ecosystems, and access to safe drinking water and sanitation

77. The Special Rapporteur observes the intersectionality between the degradation of aquatic ecosystems, poverty, and lack of access to safe drinking water and sanitation, noting that human activities that cause depletion and pollution (often toxic) of an aquatic ecosystem, affecting drinking water, are disproportionately located in the territories of Indigenous Peoples ..., which cannot access effective remedies for such serious problems.

F. Indigenous Peoples

88. Indigenous Peoples' poverty and discrimination are aggravated by projects in their territories that pollute or grab their water, without consultation or free, prior and informed consent. Often, the water infrastructure in Indigenous communities is substantially inferior to that in non-Indigenous communities.

89. For example, in Canada, Indigenous Peoples experience a disproportionately higher number of drinking water advisories, warning people not to drink water that may be unsafe or is known not to be safe, and more drinking water advisories are issued for extended periods than for non-Indigenous persons.

90. In the province of Nueva Vizcaya, Philippines, the Didipio River, which is the source of drinking and irrigation water for the Bugkalot, Ifugao, Ibaloi and Kankanaey Indigenous Peoples, is poisoned by gold and copper mines.

VI. Options to protect and restore aquatic ecosystems and the human rights to water and sanitation of billions

91. Technology offers tools to tackle many problems and improve people's living conditions. There are certainly multiple solutions to the breakdown of the sustainability of aquatic ecosystems and of the human rights of the most impoverished, such as bringing water from distant sources, cleaning up pollution or even buying bottled water. However, it must be remembered that impoverished people do not have the financial means to access these solutions. They generally rely on the water cycle's complex and efficient natural engineering, powered by free solar energy.

C. Positive legal and governance alternatives

102. The Special Rapporteur on the human rights to safe drinking water and sanitation understands that the human right to a clean, healthy and sustainable environment, derived from a human-centred vision, assumes an ecosystemic approach and converges with the ecocentric vision that inspires recognition of the legal personality of rivers and other aquatic ecosystems.

104. The abundant jurisprudence of the Inter-American Commission of Human Rights, binding on the States involved, takes into account the rights of Indigenous Peoples, ecosystem health and human rights, with rulings such as that on the Marín gold and silver mine, which affects the Tzalá River and the communities that depend on it, in the case of the Santiago River and Lake Chapala with industrial pollution in Mexico, and in cases of toxic contamination from mining, such as that of Madre de Dios in Peru.

D. Recognizing the legal personality of aquatic ecosystems

108. In the Special Rapporteur's opinion, it is significant that the legal personality of rivers and aquatic ecosystems is recognized in more and more countries: the Whanganui River in New Zealand (2017), by national law; Río Atrato and other rivers in Colombia (2017), by the Colombian Constitutional Court; all rivers in Bangladesh (2019), by the Supreme Court; Snake River in the United States (2020), by the Nez Perce tribe; Magpie River in Canada (2021), by the Innu Indigenous People and the Minganie Regional Municipality; Río Monjas in Ecuador (2022), by the Constitutional Court....
109. In his report on the human rights to safe drinking water and sanitation of Indigenous Peoples, the Special Rapporteur underlines the wise coherence of Indigenous worldviews in their integrated vision of the territory. This ecocentric approach has led in many places to the proposal to endow these water bodies with legal personality, with a corresponding right to have their integrity and health respected and protected. By making the ecosystem a legal entity, a holistic approach is assumed, which includes flora, fauna and even the human communities that depend on it. It overcomes the traditional fragmented vision that leads to specific laws being developed on managing water as a resource, on fishing, on biodiversity or the river territory, when they are interdependent.
110. The approach is based on these principles: (a) Nature's capacity to be represented in court as a new legal entity; (b) Damage is not necessarily focused on impacts on humans but on nature itself; (c) Right to compensation for damage.
111. Ruling T-622/16 of the Colombian Constitutional Court complemented these principles by recognizing biocultural rights that link human rights and the rights of nature.
112. The General Assembly's "Harmony with Nature" initiative, dating from 2009, under the leadership of the Plurinational State of Bolivia, currently offers 13 resolutions based on a non-anthropocentric paradigm.
113. As the Māori proverb says, "We are the river, and the river is us."

VII. Conclusions and recommendations

114. The 2 billion people without guaranteed access to safe drinking water are mostly not thirsty people without water in their living environment but extremely impoverished people whose access to safe drinking water depends on polluted or overexploited aquatic ecosystems and/or who have no means of accessing available water.
122. Indigenous Peoples have effectively protected the good state of aquatic ecosystems through their worldviews, practices and knowledge, which today prove effective in the face of the challenges of sustainability and democratic governance of water that the world faces.
127. Water legislation – grounded in recognition of the human right to a clean, healthy and sustainable environment and the human right to safe drinking water and sanitation – must be based on an integrated vision of the water cycle that allows for the sustainable management of water, and on water being considered as a common good, accessible to all but not appropriable by anyone. ...
 - (h) States must promote transparent and participatory public management models in the river basin, aquifer institutions, and municipal water and sanitation services. In rural areas, community water management is undoubtedly the genuine expression of democratic water governance that many peasant

communities and Indigenous Peoples have traditionally practised. Therefore, States must recognize and strengthen community water management and institutions, promoting publiccommunity partnership strategies.

- (i) States must recognize and respect Indigenous worldviews, practices and knowledge in water management within the framework of the rights recognized by the United Nations Declaration on the Rights of Indigenous Peoples.

S. SPECIAL RAPPORTEUR ON TORTURE

1. Current issues and good practices in prison management, A/HRC/55/52, 20 February 2024

II. Current issues and good practices in prison management

A. Introduction

7. Too many people are imprisoned for too long, especially during pretrial detention, and in conditions that do not meet minimum international standards. A perfect storm of overcrowding, chronically neglected infrastructure and high incarceration rates creates the conditions for cruel, inhuman or degrading treatment or punishment, including in its most severe form, as torture.
8. Prisons are under pressure in many countries, as a result of too many demands and insufficient resources, and consequently administrators struggle to manage facilities safely, humanely and respectfully. The Special Rapporteur reminds the Human Rights Council of the heightened duty of care owed by States to persons deprived of their liberty.

B. Human rights-compliant management

16. Prisons are often harsh and complex environments to manage, in particular when they operate without the necessary human, physical and financial resources. While investing in prisons is rarely high on political agendas, especially in difficult economic times or when resources are stretched, that situation must change in order to ensure that prisons do not become incubators for crime and corruption, lead to high rates of recidivism, or become places where humans are “warehoused” to waste away and never fulfil their potential. Neglecting prisons and failing to treat prisoners as human beings have serious ramifications for society and do not keep the public safe.
21. An appropriate prisoner-to-staff ratio is essential for effective prison management. Prisoner-to-staff ratios vary greatly across the globe, from 1:1 to as high as 28:1. There is no international standard governing prisoner-to-staff ratios. Practice shows that where there is a relatively low prisoner-to-staff ratio, there is less violence, as well as improved conditions, attitudes and well-being of prisoners and prison staff alike. A staff profile that is representative of different social groups and includes ethnic and Indigenous recruitment also contributes to humane prison management, and reporting on the staff profile of prisons should be made public.

E. Meeting the needs of particular groups

...

Indigenous Peoples

87. Criminal legal systems, including prisons, regularly mirror and intensify the discrimination and marginalization that Indigenous Peoples may experience in

the community. Without special measures in place, the risk of cruel, inhuman or degrading treatment of Indigenous Peoples can be heightened in prisons, where the power imbalance between Indigenous prisoners and authorities increases.

88. Of great concern is the fact that Indigenous prisoners are more likely to be subjected to solitary confinement, higher security classifications and harsher disciplinary measures than non-Indigenous prisoners. Some countries have recorded higher incidences of deaths in custody and higher rates of suicide.
89. The obligation of non-discrimination includes a positive obligation on States to consider and promote the special needs and vulnerabilities of Indigenous prisoners. Discrimination against Indigenous prisoners can occur when they are not treated any differently from non-Indigenous prisoners, leading to their special cultural, religious and linguistic needs not being addressed. The Special Rapporteur is concerned that imprisonment rates among Indigenous Peoples reportedly remain high or are even increasing in some States.
90. Although Indigenous communities are diverse, a general characteristic of Indigenous justice systems is their use of restorative justice based on consensus, mediation and maintaining community ties, rather than custodial sentences, as punishment. The Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognized that conventional places of detention can subject Indigenous people to double punishment, namely the deprivation of liberty and the deprivation of cultural identity and way of life, which may lead to cruel, inhuman or degrading treatment. A guiding principle in imposing penalties on Indigenous people is to use non-custodial penalties, in conformity with their customs or customary law, where these are compatible with the legal system in force.
91. The Special Rapporteur welcomes the differentiated approach to Indigenous people deprived of liberty taken by the Inter-American Court of Human Rights in its 2022 advisory opinion. The Court emphasized that deprivation of liberty should be the exception and, where it is necessary, cultural identity should be preserved by placing Indigenous persons in prisons closest to their communities; protecting their right to practise traditional, religious or spiritual activities; ensuring access to culturally appropriate food; and providing access to medical care that includes the use of traditional medicines.
92. States should ensure that Indigenous people can communicate, receive, and understand information in their own language and that prison programmes meet their cultural needs. Indigenous inmates should be able to be accommodated in a manner that best reflects their community approach, such as in “modules” or collective rooms, and where possible be able to prepare their own food and follow their own customs. Consultation on a regular basis with Indigenous authorities and communities, including imprisoned members of those communities, is fundamental.
93. The age, sex and gender, and other characteristics of individual Indigenous prisoners should be taken into account when developing policies, as well as individual responses, to ensure a dignified stay and to prevent torture and ill-treatment. Indigenous women are, for example, overrepresented in prisons compared with non-Indigenous women, and, in some jurisdictions, with Indigenous men, and often face greater barriers to health care. Indigenous women in some countries have been found to have been subjected to strip searches more frequently than non-Indigenous women. It is reported that they have also experienced higher incidents of violence, including sexual violence.

94. Indigenous young people are also overrepresented in some jurisdictions and there have been highly concerning reports of bullying, harassment, physical and sexual violence from staff and other prisoners in some countries. Other reports have documented that Indigenous young people are more likely to receive the most punitive measures and subjected to the harshest treatments, such as being placed in solitary confinement, than non-Indigenous young people.
95. Addressing the special cultural, religious, and linguistic needs of Indigenous prisoners can minimize discrimination and allegations of ill-treatment. It is the Special Rapporteur's view that paying attention to such issues does not require substantial inputs and can be accommodated where there is political will, reaping sizeable benefits. In Brazil, there are procedures for people to self-identify as Indigenous, which establishes an obligation on the State to collect that information and provide the services of an interpreter. In Canada, justice strategies permit Indigenous people to go to cabins instead of prisons in order to maintain connections with their land and people. Canada also requires its judges to take into account unique circumstances and social histories in their sentencing decisions, with the goal of reducing overrepresentation and ensuring fairness in judicial outcomes. Chile provides intercultural facilitators to help Indigenous people navigate the judicial system and Mexico provides cultural promoters who spend time with Indigenous inmates and provide continued links with the community through the sharing of language, food and rituals in prison.
96. The Special Rapporteur recommends that:
- (a) States consider adopting the comprehensive approach taken by the Inter-American Court of Human Rights as good practice for approaches to Indigenous prisoners;
 - (b) Prison authorities improve the employment rates and representation of Indigenous staff and those with specialist expertise in Indigenous affairs;
 - (c) Prison authorities provide culturally appropriate training, risk and needs assessments, health care, rehabilitation and reintegration programmes for Indigenous people, and respect the right of Indigenous people to practise their customs and traditions.

T. SPECIAL RAPPORTEUR ON THE PROMOTION OF TRUTH, JUSTICE, REPARATION AND GUARANTEES OF NON-RECURRENCE³⁰

1. Visit to Finland and Sweden, A/HRC/57/50/Add.3, 22 July 2024

II. Finland

2. From 11 to 15 March 2024, the Special Rapporteur visited Finland to examine the transitional justice measures adopted by the Government to address the legacy of human rights violations endured by the Sami people in the context of assimilation and related policies. He met with representatives of national ministries, the Truth and Reconciliation Commission concerning the Sami, the parliamentary group monitoring the Commission, the Sami Psychosocial Support Unit, the National Museum of Finland, the Finnish Human Rights Centre, the Sami Parliament, the Skolt Sami Siida Council, representatives of the Sami people and civil society

³⁰ <https://www.ohchr.org/en/special-procedures/sr-truth-justice-reparation-and-non-recurrence>.

organizations. He visited Helsinki and Inari and had the opportunity to visit museums and academic institutions, such as the Sami Museum Siida, the primary school at Inari and the Sami Educational Institute. The Special Rapporteur thanks the authorities in Finland for their openness and cooperation in the realization of the visit.

A. Historical background

3. The Sami people, who are descendants of the first inhabitants of the northern regions and have traditionally inhabited the territory of Sapmi, were the subject of assimilation policies adopted by the State and the church in the nineteenth and twentieth centuries, including the forced accommodation of Sami children in boarding schools, where they were forbidden to speak the Sami languages and forced to integrate into the majority culture, and where some were subjected to violence, sexual violence and/or exploitation. Assimilation policies were accompanied by measures of religious conversion, racial biology examinations, land settlement and the replacement of Sami governance by Finnish administration. During that period, the Sami were removed from parts of their lands, stripped of their culture and made to believe that they were inferior. Forced accommodation in boarding schools affected Sami families until the late twentieth century, when a Sami movement began to demand reforms to the educational system. The policies of assimilation continued into the 1970s and led to a steep decline in the use of the Sami languages and traditional practices. Nowadays, of the three Sami languages that have survived, Northern, Skolt and Inari, the latter two are at risk of virtual extinction, with only 300 persons speaking Inari Sami and even fewer speaking Skolt Sami.

B. Legislative reforms to promote human rights

4. In 1995, a shift in the State's approach to the Sami, prompted by Sami activism, led to recognition of the status of the Sami in the Constitution and in the Sami Parliament Act. The Constitution recognizes the Sami as an Indigenous People and their right to linguistic and cultural self-government within their homeland. The Act further enshrines the right of the Sami as an Indigenous People to cultural autonomy within their homeland in matters concerning their language and culture, and mandates the Sami Parliament "to look after the indigenous people". Although the Act states that the authorities shall negotiate with the Sami Parliament regarding "all far-reaching and important measures that directly or indirectly may affect the status of the Sámi as an indigenous people", in practice the Parliament has limited decision-making power. The Sami Language Act of 2003 affirms that Sami people have the right to use the Sami languages before certain State authorities and in relation to certain administrative and legal procedures, especially within the Sami homeland. Education in the Sami languages is guaranteed by law within the Sami homeland and under the Act on the Financing of Education and Culture, municipalities receive increased subsidies for teaching in the Sami language within the homeland area. The Skolt Sami Act was adopted in 1995 to promote the living conditions and livelihood opportunities of the Skolt population and region, and to maintain and promote Skolt culture.

C. Transitional justice measures

1. Truth-seeking

5. In recent years, Finland has begun a process of transitional justice. It has established a truth-seeking process to shed light on the violations endured by the Sami people because of assimilation policies. Pursuant to a proposal of the Sami Parliament, in 2017 the Government of Finland and the Sami Parliament agreed to initiate a truth and reconciliation process. Negotiations between them and the Skolt Village Assembly concerning the mandate of a truth and reconciliation commission were launched in February 2019. In October 2021, the Government established the Truth and Reconciliation Commission concerning the Sami People. The five members of the Commission were appointed by the Government (two), the Sami Parliament (two) and the Skolt Village Assembly (one). The commission was inaugurated in February 2022, but its operations were delayed by resignations, due to a reported lack of resources and a failure to consider Sami perspectives. Originally expected to finalize its work by November 2023, its mandate was extended until December 2025, to compensate for the delay. A Sami psychosocial support unit was created alongside the Commission to provide support to the Sami. The Commission and the unit jointly receive a budget of 5.5 million euros for their operations from the Office of the Prime Minister. A parliamentary monitoring group for the Commission was established by the Prime Minister in November 2021. It is tasked with supporting the work of the Commission and consists of representatives of the political parties present in the Parliament, the Sami Parliament, the Skolt Village Assembly, the Evangelical Lutheran Church and the Orthodox Church. To ensure that a human rights approach is embedded in the work of the monitoring group, a representative of the Finish Human Rights Centre should be invited to participate in the group.
6. The Commission is mandated to “identify and assess historical and current discrimination, including the assimilation policy of the state and violations of rights, to find out how they affect the Sámi and their communities in the current situation, and to propose ways to promote links between the Sámi and the state of Finland and among the Sámi people”. It is also mandated to ensure that “the state of Finland will bear responsibility for its actions and, together with the Sámi Parliament, the Skolt Village Assembly and other Sámi operators, will work to strengthen the realisation of the rights of the Sámi people in Finland”. Matters related to the rights to Sami ancestral lands and natural resources are regrettably not included in the Commission’s mandate. The Commission has a mandate to provide proposals for action. That is an essential aspect of its mandate and must be carefully and effectively executed to provide a clear and enforceable road map for State and local public entities to discharge their duties to the Sami people. Recommendations must be specific, tailor-made and targeted to the relevant State and non-State actors, with duties to respect and fulfil the rights of the Sami people. The Commission will present its report in November 2025.
7. Since 2023, the Commission has been organizing consultations to collect written and oral testimonies about life as a Sami person in Finland; historical or current discrimination; and inappropriate treatment and other experiences related to the activities of the State or the authorities and their impact on the Sami people.³ Mechanisms have been established to ensure victim consent and confidentiality and 150 hearings have been held in villages and cities, both inside and outside the Sami homeland. The hearings are preceded by information sessions, at which representatives of the Commission and the psychosocial support unit explain the

methods of work of the Commission and the unit. Outreach to promote victim engagement has also been carried out on mass and social media. At the end of the Commission's work, the information gathered will be stored securely in the Sami section of the National Archives.

8. There is insufficient research and information in Finland about the forms of violence inflicted on the Sami people and the intergenerational trauma they experienced. Coping mechanisms and societal taboos have also hampered the disclosure of information about the abuses endured. The role of the Commission in shedding light on those abuses and providing recommendations for the way forward, and that of the support unit in supporting and preparing in culturally appropriate ways those victims who wish to come forward, will be vital for accountability, healing, trust-building and reconciliation. The effective implementation of the Commission's recommendations will be another crucial aspect of the process and must not be neglected in current decisions. Currently, there is no framework foreseen for monitoring the implementation of those recommendations. There is an urgent need to put in place, in consultation with the Sami people, an independent mechanism with sufficient technical and financial resources to undertake the task of implementation. Suggestions from the Commission on how to effectively monitor and enforce the implementation of its recommendations will be important in this regard and must be duly considered by the relevant authorities. The Special Rapporteur encourages the Commission to include in its final report a recommendation outlining a monitoring process.
9. Given the relevance of the work that is being carried out by the Commission, it is imperative to ensure that it has sufficient resources and the necessary support. It should also explore cooperation avenues with international experts and practitioners with experience in similar initiatives, to complement and guide its efforts.

2. Reparation

10. Alongside its truth-seeking efforts, Finland has adopted a mechanism to provide reparation for the Sami people in the form of rehabilitation, with the establishment of the Sami psychosocial support unit Uvjj – Uvjâ – Uvja – Untuva. The unit provides countrywide psychosocial support in the Sami languages and, in accordance with Sami culture, to Sami persons who require such support in connection with testimonies or other psychosocial matters. The unit operates with financing provided by the Office of the Prime Minister and comes under the Health and Welfare District of Lapland. It has a very small team of trained Sami professionals and its mandate is currently tied to the existence of the Truth and Reconciliation Commission, although virtually all interlocutors have demanded its extension on a permanent basis. The crucial work carried out by the unit is highly valued by Sami people and very well regarded by numerous other stakeholders. The Special Rapporteur commends the establishment of and the work carried out by the unit and urges the authorities to ensure that it is established as a permanent independent unit within the Ministry of Health and Welfare, with an adequate and autonomous budget and substantially increased human and financial resources to respond to the needs of the Sami population of 10,000 persons. The Government reported that the Finnish Institute for Health and Welfare had signed a cooperation agreement with the Sami Parliament in 2023 to promote the health and well-being of the Sami people.

11. With regard to restitution, in 2021 the National Museum of Finland completed the repatriation of the Sami collection to the Sami Museum Siida, which consisted of 2,200 objects, including the oldest known Sami objects in Finland. The repatriation project was funded by both museums, with additional support provided by the Government, including for the construction of an annex to the Sami Museum to store the collection. The repatriation project received national and international praise and was awarded the European 2022 Heritage Europa Nostra Award. ⁴ In 1995 and 2001, the Government undertook the repatriation to the Sami homeland of Sami remains found in the anatomical collection of the Department of Biomedicine of the University of Helsinki, which were then stored in the Sami Museum Siida. In 2022, the museum organized the reburial of those remains with State funding.⁵ At the reburial ceremony, the Director General of the Department for Art and Cultural Policy of the Ministry of Education and Culture expressed deep regret that the Ministry had granted a permit for excavations in 1934 without the consent of the Sami community. The Special Rapporteur commends these important initiatives.
12. Concerning measures of satisfaction, the State of Finland has not made other official apologies to the Sami. It is expected that the work of the Truth and Reconciliation Commission may lead to a public acknowledgment of the harm inflicted on the Sami. Consultations conducted during the negotiations for the establishment of the Commission showed that an apology from the Government was expected, with reservations by the Sami people if it was not to be accompanied by effective measures to improve their status and redress the harm suffered. During a ceremony to rebury the repatriated remains of Sami people in 2012, the Oulu Diocese of the Evangelical Lutheran Church of Finland apologized to the Sami for the anthropological research carried out on Sami skeletal remains, following their exhumation from Sami cemeteries.
13. Reparation in the form of compensation and restitution of ancestral lands or natural resources has not taken place.
14. The Special Rapporteur welcomes the adoption of important reparation measures, such as the establishment of the psychosocial support unit and the repatriation of Sami objects and skeletal remains to the Sami homeland. However, he notes with concern the scarcity of other measures to repair the harm inflicted on the Sami people. The design and implementation, in consultation with the Sami people and with their consent, of a comprehensive reparation programme that includes measures of compensation and satisfaction; strengthens the existing measures of rehabilitation; provides transformative reparation; and widens the scope of restitution measures in compliance with international standards on the rights of Indigenous Peoples, will be crucial to remedy the harm done.

3. Memorialization and guarantees of non-recurrence

15. The Special Rapporteur visited the Sami Museum Siida and witnessed the quality and relevance of the work done there to preserve, keep alive and disseminate Sami culture and history, including memories of abuse. Its operations are supported through central government transfers and discretionary grants, including 819,574 euros in central government transfers in 2024. The Special Rapporteur commends the establishment and performance of the Museum and encourages the authorities to provide it with sufficient and sustained economic and institutional support.
16. The Special Rapporteur has noted the scarcity of other measures aimed at memorializing the legacy of assimilation and related policies, such as memorials,

commemoration days and the marking as memory sites of buildings where violations took place, such as boarding schools.

17. Society seems to have little knowledge of, or information at its disposal regarding, the history, culture and status of the Sami people in Finland, and even less about the violations they have endured. The core national educational curricula touch briefly on this topic and need to be urgently updated to comprehensively incorporate instruction about the Sami at the primary, secondary and tertiary levels. In light of their public role and position in society, teachers and public officials should likewise receive training on this topic and on the human rights of Indigenous Peoples. Ignorance on this matter can and has helped to reinforce societal prejudices and stereotypes about the Sami people.
18. The outcome report of the Truth and Reconciliation Commission will be an essential tool for exposing the truth surrounding this topic, and will provide a robust and accurate account that can constitute the foundation of didactic, academic, artistic and media work on the subject. Using the report as the basis for educational and cultural policies and activities, and actively pursuing them, must be prioritized by the Government. The report should therefore be widely disseminated and accompanied by much needed work in the fields of memorialization, education and culture, in order to inform current and future generations about the past and present status of the Sami people. In that regard, the Government stated that the Ministry of Education and Culture awarded yearly grants to the Sami Parliament to support Sami initiatives to maintain and develop Sami culture, with a budget allocation of 522,000 euros for 2024. The Government resolution for the Cultural Heritage Strategy 2023-2030 includes measures aimed at strengthening the opportunities of Sami children and youth to learn about their cultural heritage; protecting the rights of Indigenous Peoples in the use and utilization of cultural heritage; and strengthening the preconditions for their realization.
19. The Special Rapporteur has been informed by numerous interlocutors, including public officials, about worrying episodes of overt racism and hate speech against the Sami people that have been voiced in social and mass media and by elected officials, such as members of parliament, and about the lack of accountability for those episodes. The Special Rapporteur expresses grave concern about this situation and would like to recall the duty of the State to ensure that freedom of expression is exercised in full compliance with international human rights standards, in particular article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (on the prohibition of incitement to discrimination and hatred), and articles 19 and 20 of the International Covenant on Civil and Political Rights (on the right to freedom of expression and on the prohibition of advocacy of national, racial or religious hatred), and the relevant general comments of the treaty bodies.
20. As a result of assimilation policies, the Sami languages have experienced pronounced deterioration, leading to the near extinction of some of them. The Government and the Sami Parliament have adopted numerous measures since 1995 to revitalize the Sami languages, which have led to positive outcomes, such as the adoption of language nests for early childhood (for example, 12 are being supported in 2024 with a budget allocation of 1.3 million euros), the establishment of Sami language education and education in the Sami languages in the Sami homeland and outside it, since over 70 per cent of the Sami population live outside the homeland, and the provision of remote education in the Sami language. Other policies to promote and monitor progress in this field include the establishment of the Sami Youth Council,

under the Sami Parliament, to promote Sami culture, identity and language among Sami youth; a language policy programme to protect and strengthen minority languages; the Sami Barometer and an indicator tool to follow up and report on the realization of the linguistic rights of Sami speakers; and a report on the application of language legislation.

21. The impact of these measures has been very positive and the results are evident in the increasing number of children, youth and adults who speak the Sami languages. However, the situation is still precarious and some languages continue to be at risk of extinction. A concern underscored by numerous interlocutors is the scarcity of basic education teachers and educational material in the Sami languages. Measures to redress this shortcoming should encompass the increase of resources aimed at paying the salaries of teachers, translating educational material into the three Sami languages, producing culturally appropriate educational material so that teachers don't have to do that themselves, and promoting sustainable working conditions for Sami teachers. The Government reported on the provision of grants to develop early education and life-long professional learning for Sami teachers; the provision of a higher education programme for early childhood education and special education with a focus on the Sami languages and culture (in Inari); and the assignment of responsibility to the Giellagas Institute of Oulu University to organize academic research on the Sami languages and culture. The Special Rapporteur commends the measures adopted to date to revitalize the Sami languages and calls on the authorities to reinforce and expand those measures to respond to the pressing challenges that remain in this field.
22. Challenges in the availability of public services in the Sami languages were underscored by interlocutors. A 2020 survey showed that Sami speakers considered these services, and information about them, inadequate and that only 7 per cent of respondents in the Sami homeland considered their availability to be good. The Government reported on the allocation of 2 million euros in 2022 to projects led by academic institutions to train Sami-speaking social and health-care personnel.
23. The current Sami Parliament Act and the interpretation of it by the Supreme Administrative Court have given rise to decisions by two United Nations human rights mechanisms that Finland has violated its international human rights obligations in respect of the Sami and their self-determination. In 2015, the Supreme Administrative Court of Finland ruled that over 100 people, who identified as Sami, but who were not recognized as Sami persons by the Sami community and the Sami Parliament, should be added to the electoral roll and therefore be eligible to vote in the elections for the Sami Parliament. In 2019, the Human Rights Committee established in two rulings that through that decision, Finland had violated the rights of the Sami people and urged the Government to pass amendments to the Sami Parliament Act that are in line with international human rights law, in particular the principle of self-determination. In June 2022, the Committee on the Elimination of Racial Discrimination also found that Finland had violated international human rights law and recommended that it urgently initiate a genuine negotiation for the review of section 3 of the Sami Parliament Act, which should be defined in a manner that respects the right of the Sami people to provide their free, prior and informed consent on matters relating to membership of their community and their political participation. However, on 27 March 2024, the Supreme Administrative Court ruled that 72 other persons should be added to the electoral roll, overturned the previous election results and ordered a new electoral process before the end of June 2024. Despite the decisions of the two human rights committees and three

attempts to revise it in the parliament, a reform of the Sami Parliament Act is still pending. A fourth draft, which aims to enhance the right to self-determination of the Sami people, in compliance with international standards and the rulings of the committees, was drafted by the Government in collaboration with the Sami Parliament and presented to the Finnish parliament, where it is pending approval. The Special Rapporteur underscores the urgent need to revise the Act to bring it into full compliance with international standards on the right of Indigenous Peoples to self-determination, including with regard to their own identity and membership, in line with the criteria established in the decisions of the human rights committees. The Special Rapporteur received worrying reports that on 13 March 2024, the police in Ivalo had announced that they were investigating whether the members of the Electoral Commission of the Sami Parliament had committed a crime when they applied the Sami Parliament Act in a manner that sought to comply with international human rights standards. He is deeply concerned that criminal prosecution may be used as a form of retaliation against the Sami for exercising their right to self-determination in determining their identity and membership.

24. In regard to the impact of economic activities on the life of the Sami people, the Special Rapporteur was informed that the protection of their rights and culture was taken into account in the amended Climate Change Act (423/2022) and the Nature Conservation Act (9/2023), however, he is concerned that the amended Mining Act of 2011 does not require the State to ensure their free, prior and informed consent, and that government logging companies continue to operate in Sami lands without consultation or consent from the Sami.
25. Despite numerous recommendations from United Nations human rights mechanisms, Finland has yet to ratify the Indigenous and Tribal Peoples Convention 1989 (No. 169). The Special Rapporteur calls on Finland to move forward with the process of ratification of that treaty as an essential guarantee of non-recurrence.

D. Conclusion

26. The Sami people in Finland have been subjected to long-term abuses and violations at the hands of the State and other authorities. The legacy of those violations has left an indelible mark on their well-being, culture, status and living conditions, which requires an urgent response.
27. Legislative reforms from the 1990s onwards have aimed to redress some of the harm inflicted on the Sami people and secure some of their rights. The Constitutional Reform of 1995, the Sami Parliament Act, the Sami Skolt Act and the Sami Language Act, among others, as well as language promotion and education policies, have provided essential tools to advance the language and cultural rights of the Sami people, revitalize their languages and reverse the deleterious effects of assimilation policies. Notwithstanding that progress, education in the Sami languages should be further strengthened. In recent years, an incipient process of transitional justice has been adopted to address the legacy of human rights violations committed against the Sami people. The Truth and Reconciliation Commission and the Sami psychosocial support unit are the hallmarks of this process and should receive full political, economic and social support.
28. Truth-seeking efforts must be directed at elucidating the scope, circumstances, responsibilities and current effects of those past abuses, but also at providing a road map for much-needed remedy, reparation and reconciliation. The Truth and Reconciliation Commission is uniquely positioned to guide future efforts aimed at

redressing the harm done and ensuring the full realization of the rights of the Sami people. Full and effective implementation of its recommendations will be vital for the transitional justice process of Finland and adequate mechanisms to achieve this task must be devised urgently.

29. With regard to reparation, the Special Rapporteur commends the vital work carried out by the psychosocial support unit and underscores the importance of the repatriation and reburial initiatives carried out by the National Museum of Finland and the Sami Museum Siida. He also notes the important memorialization work carried out by the latter and would like to encourage it to deepen its work in the memorialization of the legacy of past abuses, in order to ensure that its transmission to current and future generations will be an effective guarantee of non-recurrence. Memorialization and education on this topic must be urgently scaled up by Finnish public institutions across the country. Despite those efforts, the Special Rapporteur notes with concern the lack of progress in other areas of reparation owed to Sami victims, such as compensation and satisfaction, and calls on the authorities to design and implement, in consultation with the Sami people and with their free, prior and informed consent, adequate measures in that regard. The issue of the rights of affected communities to their ancestral lands and natural resources has not yet been addressed in the transitional justice process and requires attention in compliance with international standards on the matter.
30. The continued effects of past abuses in the status and condition of the Sami people in Finland require particular attention. Discrimination, racism and hatred with regard to the Sami people are still prevalent in Finnish society and must be urgently addressed, in compliance with international standards on freedom of expression and on the prohibition of incitement to hatred and discrimination. The right to freedom of expression does not sanction the use of hate speech or discriminatory speech.
31. The self-determination of Indigenous Peoples, such as the Sami, is a right enshrined in international standards and must be equally reflected in Finnish society. Approval of the revised Sami Parliament Act, recently brought forward by the Government, will be vital to bring the national legislation on the matter into compliance with international standards and the rulings of international bodies. Progress in this field will provide a measure of the true commitment of the State to respecting the rights of Indigenous Peoples.
32. The Special Rapporteur commends the progress made in advancing transitional justice processes to address the legacy of colonialism in relation to the rights of the Sami people in Finland and calls on the authorities to reinforce them to address the remaining challenges in compliance with international standards....

III. Sweden

33. From 18 to 22 March 2024, the Special Rapporteur conducted an official visit to Sweden to examine the transitional justice measures adopted to address the legacy of human rights violations endured by the Sami people ... in the context of assimilation and related policies. ...

A. Historical background

34. The Sami people (who descend from the first inhabitants of the northern regions and have traditionally inhabited the territory of Sápmi) ... were the subject of policies adopted by the State and the church in the nineteenth and twentieth centuries to suppress their linguistic and cultural identity and assimilate them into the

Swedish linguistic and cultural identity. During this period, the use of the Sami ... was forbidden in schools and ... the Sami ... were subjected to racial biology studies, forced conversion, land settlement and the forced accommodation of children in boarding schools, where many were subjected to abuse. Assimilation policies and boarding schools remained in force until the early 1960s, leading to a steep decline in the use of the Sami ... languages and traditional practices.

B. Legislative reforms to promote human rights

35. Since the 1990s, Sweden has established a framework for the protection of certain rights of the Sami.... In 1992, the Sami Act established the Sami Parliament as a popularly elected body and government agency with a mandate to work for a living Sami culture. That mandate was extended to jurisdiction over reindeer-herding affairs in 2007. In 1977, Sweden recognized the Sami as an Indigenous People. In 2000, the Sami and ... were recognized as official national minorities ... , and Sami ... as official minority languages.... The National Minorities and Minority Languages Act of 2009 contains provisions concerning national minorities, national minority languages, the right to use minority languages in dealings with administrative authorities and courts, and provisions concerning minority elderly care. The Constitution, as amended in 2011, recognizes the Sami as a people and states that opportunities shall be promoted for them and for other minorities to preserve and develop a cultural and social life of their own. ... In 2022, Sweden adopted the Act on Consultation on Issues Concerning the Sami People, aimed at promoting their influence over matters affecting them.

C. Transitional justice measures

1. Truth-seeking

...

38. More recently, Sweden has ignited a truth-seeking process to shed light on the violations endured by the Sami people. The Truth Commission for the Sami People was established in 2021, following a petition by the Sami Parliament. The Commission is an autonomous body, whose members were appointed by the Government, in consultation with the Sami Parliament, in June 2022. The Commission is mandated to examine and report on the policies to which the Sami were subjected and the subsequent consequences for the Sami people, and to propose recommendations that could contribute to making amends and promoting reconciliation. The Commission's recommendations will provide an enforceable road map for State and local public entities to discharge their duties towards the Sami and must therefore be comprehensively drafted. The Commission began convening meetings to collect the testimonies of victims in February 2023 and established an official website to provide access to information and receive testimonies. A number of representatives of civil society have demanded that the period for the receipt of written and oral testimonies be extended, which the Special Rapporteur supports. Given the relevance of the work of the Commission, it is imperative to ensure that it is equipped with sufficient resources and afforded the necessary support. Material from such inquiries is sent to the national archive and is available to the public.

2. Reparation

41. With regard to reparation, Sweden has adopted some incipient measures in the field of restitution and satisfaction: it has adopted measures of restitution of cultural heritage and skeletal remains belonging to the Sami people, and State museums,

institutes and universities have repatriated artifacts and human remains that had been in their possession, in some cases for centuries. Twelve repatriation initiatives have been completed or initiated so far. However, many more items remain in the collections of those institutions. The research into the provenance of artifacts and remains, and their repatriation, is a complex and resource-intensive process that involves many public institutions. In view of the complexity of the matter, it will be important to adopt a national policy that provides an overarching regulatory, technical and financial framework for action in this field. The Government stated that its 2016/17:116 Policy on Cultural Heritage regulates practice in this field and that the Swedish National Heritage Board is investigating the prerequisites for repatriation and for a coherent regulatory framework.

44. The Special Rapporteur welcomes the apologies and the repatriation of Sami objects and skeletal remains to the Sami homeland, however he notes with concern the scarcity of other measures to provide reparation to the Sami people... To repair and reverse the harm inflicted on them, it is important to design and implement a comprehensive reparation programme that includes measures of rehabilitation, compensation, satisfaction, transformative reparation and a widened scope of restitution addressed to both minorities affected, in consultation with them and with their consent, and in compliance with international standards on the rights of Indigenous Peoples...

3. Memorialization and guarantees of non-recurrence

45. The Special Rapporteur noted a scarcity of measures aimed at memorializing the legacy of assimilation and related policies. He did not receive any information about the existence of memorials or museums to commemorate and dignify the victims of abuse, or to inform current and future generations about those practices. As regards the marking as memory sites of the buildings where violations took place, the Special Rapporteur was informed that some of the five existing Sami schools were housed in former nomad boarding schools, but that official signage had not been put up in the premises to identify them as memory sites. However, the school authorities do organize teaching activities for pupils about the abuses committed in those schools and have displayed photos and commemorative objects from that time. The Special Rapporteur commends the practices carried out by teachers and urges the Government to follow suit by adopting an overarching policy to mark memory sites. As regards days of commemoration, the Sami National Day is celebrated by members of the community across Sami lands but has not been established as a national public holiday in Sweden. Nonetheless, the authorities do recommend that the Sami flag be raised on the day and some regional authorities and teachers commemorate the day on their own initiative. Such initiatives are, however, scarce and must be scaled up.
46. Society seems largely uninformed about the history and culture of the Sami people..., which is largely invisible in Swedish society, despite its status as a national minority. Knowledge of the violations they have endured is also rare. Almost all actors with whom the Special Rapporteur met noted with concern that school curricula and materials focused briefly or insufficiently on the culture and history of the Sami people and the abuses they had endured... The Government reported that recent curricular reforms had strengthened and unified the teaching about national minorities in primary and secondary schools. Comprehensive instruction on such topics at all education levels needs to be sustained to combat existing prejudices and intolerance. Teachers and public officials must likewise receive

training on the matter, and on the human rights of minorities and Indigenous Peoples more generally. Cultural and media work on the topic is also lacking and should be prioritized. ... The Living History Forum implements educational activities for school and public sector staff on combating racism and on Indigenous rights, and is currently producing educational material for secondary and tertiary level students and their teachers, as well as an exhibition for younger school children about the culture and history of the five national minorities. The educational material is expected to include information about the role of the State and the Special Rapporteur hopes that the legacy of assimilation policies will be sufficiently reflected in it. ...

49. The Special Rapporteur takes note of the overarching national policy against racism adopted by the Government and the role of the entities in charge of its implementation and related programmes. Nonetheless, he has been informed by numerous interlocutors, including public officials, about the worrying rise in racism and hate crime directed at the Sami people and other national minorities in mass and social media, and the insufficient accountability in that regard. He expresses grave concern about the situation and would like to recall the duty of the State to ensure freedom of expression is exercised in full compliance with international human rights standards, particularly article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (on the prohibition of incitement to discrimination and hatred), and articles 19 and 20 of the International Covenant on Civil and Political Rights (on the right to freedom of expression and on the prohibition of advocacy of national, racial or religious hatred), and the relevant general comments issued by the treaty bodies.
50. Consultation with and the consent of Indigenous Peoples and minorities on issues affecting them is an essential tenet of human rights. The Act on Consultation on Issues Concerning the Sami People establishes the duty of the Government, the State authorities, the regions and the municipalities to consult Sami representatives before adopting decisions that may have a direct impact on Sami languages, culture, industries or Indigenous status. The Act was developed following consultation with the Sami Parliament and Sami associations, and entered into force for State entities in 2022 and for regional ones in 2024. The adoption of the Act was a much awaited and important step towards strengthening consultation requirements. However, several interlocutors noted with concern that the Act does not ensure that the views of the Sami people will be duly taken into consideration in decision-making, since their free, prior and informed consent is not required.
51. With regard to the enforcement of the rights to lands and natural resources, pursuant to the Reindeer Husbandry Act of 1971, members of a reindeer-herding community have the right to hunt and fish in their Sami village (sameby). In a ruling, the Supreme Court decided that the Girjas reindeer herding community alone had the right to decide on issues relating to fishing and hunting small game on the reindeer-herding lands they have used since time immemorial. Non-reindeer herding Sami ..., who were living in the northern regions before the advent of the nation State, do not have their rights to traditional livelihoods and natural resources enforced by legislation or court decisions, which has created a category split, with differing sets of rights and conflicts of interest between reindeer-herding and non-reindeer-herding Sami.... Sami interlocutors expressed concern that due to insufficient State action to enforce the rights of the Sami people to land and natural resources, such as those recognized in the Reindeer Husbandry Act, they

must rely mostly on the court system to assert their rights, which is costly and time-consuming. The State does not provide free legal aid for this purpose, a situation that must be rectified.

52. Sweden has not ratified the Indigenous and Tribal Peoples Convention 1989 (No. 169), despite numerous recommendations from United Nations human rights mechanisms. The Special Rapporteur calls on Sweden to ensure its prompt ratification as an essential guarantee of non-recurrence.

D. Conclusion

53. During his visit, the Special Rapporteur heard reports about the oppression, discrimination, violence and violations of the rights to culture, language and traditional livelihoods experienced by the Sami people ... as a result of assimilation policies. The lasting effect of these violations on the well-being, identity, culture and status of those minorities has lingered for decades and requires a response by the State. Legislative reforms and related policies from the 1990s onwards have aimed to redress some of the harm inflicted on them by reversing the deleterious effect of assimilation policies on their language and culture, and securing related rights. However, the revitalization of their language and culture remains precarious and requires that language education in the years of compulsory schooling and teacher language training and certification in the Sami ... languages be strengthened, and the educational curriculum and material about the history, status and culture of those minorities improved and expanded.
54. In recent years, an incipient process of transitional justice has been adopted to address the legacy of human rights violations committed against ... the Sami people through the establishment of truth-seeking processes. The role of both truth commissions in shedding light on this dark period and providing a road map for the way forward is vital for accountability, healing, trust-building and reconciliation. It is imperative that the recommendations of the two commissions are implemented and relevant mechanisms to that end must be devised urgently.
57. In the context of development projects, including the so-called green transition, the infringement of the rights of the Sami people ... was a concern stated by numerous interlocutors. The Special Rapporteur calls on the Government to ensure that international standards regarding the effective consultation of the communities affected and the free, prior and informed consent of Indigenous Peoples are complied with in such projects.
58. The Special Rapporteur commends the progress made so far in advancing a transitional justice agenda to address the legacy of assimilation policies on the rights of the Sami people ... and calls on the authorities to reinforce that progress so as to address the remaining challenges, in compliance with the international standards applicable to this field and to the rights of Indigenous Peoples and minorities, in line with the recommendations set out below.

2. Visit to Colombia, A/HRC/57/50/Add.1, 11 July 2024

VIII. Conclusions and recommendations

...

88. The sluggish pace of land restitution, even where there the Land Restitution Unit has ordered that land be returned to the victims, is of great concern and requires greater coordination of inter-institutional efforts to allow effective and secure access to land for communities, mostly campesino, Indigenous and Afro-Colombian, affected by forced displacement.
89. The Special Rapporteur takes note of the memorialization and historical education efforts that have been made in respect of the conflict and the important institutions created to work in this area and stresses the need to adopt a comprehensive public policy on memory and historical education on the armed conflict that guides the public policy of national and regional agencies and is informed by the findings of the Truth Commission and the relevant court rulings. It will also be essential to guarantee the autonomy and independence of the National Centre for Historical Memory and the national museum of memory, making them impervious to political swings that could lead to revisionist views of past violations.
90. Guarantees of non-repetition in Colombia are clearly linked to the implementation of the provisions of the Peace Agreement and previous regulations, and in many respects those guarantees require urgent attention. The insufficient implementation of essential aspects of non-repetition set forth in the Peace Agreement and other regulations is a source of serious violations of the human rights of Indigenous victims... There are obstacles to the full implementation of guarantees of non-repetition, and significant delays passed down from the previous Administration. The Special Rapporteur highlights the renewed efforts of the current Government to take forward peace negotiations with armed and criminal groups (negotiations that should include, without delay, the victims and civil society) and the incipient proposal for much-needed and long-delayed agrarian reform.

3. Financing of reparation for victims of serious violations of human rights and humanitarian law, A/78/181, 14 July 2023

V. Funding with resources from the international community

A. Multilateral organizations and international financial institutions

56. Other entities that can play an important role in providing reparations may include multilateral organizations, such as the United Nations and international financial institutions like the World Bank or IMF.
58. Multilateral organizations and international financial institutions may also be found liable for providing reparations. The World Bank has had dual and conflicting roles in the context of reparations. On the one hand, it has directly funded reparation programmes for victims. On the other hand, it has also been charged with enabling corruption, human rights violations, marginalization and displacement in countries under dictatorship or in conflict, largely as an outcome of its economic and social policy prescriptions that accompanied IMF loans. In Guatemala, the World Bank has been linked to funding dam constructions that forced the displacement of Indigenous communities and has been asked to pay reparations, separate from what the State owes the displaced persons.

B. Funding with resources from former colonizing States

78. As noted by the Special Rapporteur, States that were colonizing powers and States where the colonization of Indigenous peoples and the oppression of people of African descent persists in various forms should consider providing reparation to victims. In most cases where former or persisting colonizing powers have been asked to provide reparations to victims in their own country or abroad, the challenge has not only been the lack of funding but also the denial of responsibility, which has led to denial of reparations to victims. In the recent joint declaration by Germany and Namibia, Germany offered €1.1 billion, to be disbursed over the next 30 years in the framework of a programme to support development and reconstruction. Germany makes no mention, however, of reparations and acknowledges only moral responsibility.
82. Similarly, in entering into a settlement with Indigenous Canadians who had been taken from their families and placed into so-called “residential schools”, Canada paid reparations – called “common experience payments” applicable to all survivors as well as those added after a process of assessing a claimant survivor’s specific harms – from its regular budget.
83. In Australia, in the absence of a State-wide reparations programme for the harm done to Indigenous communities, activists and allies of those communities have launched a fundraising initiative called “Pay the Rent”.
87. Collective reparations programmes for victims, marginalized groups, Indigenous people and conflict-affected communities may be designed so that their funding is taken into account by development planners and donors, thus complementing instead of substituting reparations owed to victims. For example, some reparations programmes, such as health care and housing, can be prioritized and funded alongside development programmes in the same areas.

VIII. Conclusions and recommendations

...

102. Former colonizing powers and States where the colonization of Indigenous peoples and the oppression of people of African descent persist in various forms should consider individual or collective mechanisms to fund reparation to victims, including financial compensation that is considered adequate and commensurate with the harm suffered by the victims and to which they have agreed; the cancelation of illegitimately incurred debt during colonization; and compensation for or the restitution of land, natural resources and cultural heritage.

U. SPECIAL RAPPORTEUR ON TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

1. Visit to Colombia, A/HRC/56/60/Add.1, 20 May 2024

II. Background and context

6. The Special Rapporteur notes that the current situation in Colombia continues to be characterized by serious human rights violations, including serious risks of trafficking in persons, in particular where non-State armed groups maintain control over territories and control and restrict freedom of movement through measures of confinement and systemic violence targeted at Indigenous ... communities in particular. In addition, local and regional organized criminal groups and transnational criminal organizations are engaged in trafficking in persons for all purposes of exploitation.

8. Serious concerns remain in relation to continuing violence and crime, including kidnapping, extortion, forced recruitment and conflict-related sexual violence, that have persisted or increased and are considered to be closely linked to economic dynamics and social and territorial control. These crimes are closely linked to and may be indicators of trafficking in persons for purposes of sexual exploitation, sexual slavery, child and forced marriage and forced criminality. Indigenous Peoples, Afro-Colombians and communities in Antioquia, Bolívar, Cauca, Chocó, Nariño and Putumayo Departments are particularly affected. The Special Rapporteur welcomes the differential approach adopted by the Agency for Reintegration and Normalization to combat the recruitment and use of children, promote gender equality and combat gender-based violence.

A. 2030 Agenda for Sustainable Development and the Sustainable Development Goals

10. Trafficking in persons is deeply rooted in inequality, poverty, gender inequality, discrimination and displacement. Of particular relevance to action to combat trafficking in persons are Sustainable Development Goals 5, 8 and 16. The upcoming voluntary national review of Colombia is an important opportunity to highlight the action taken to combat trafficking in persons.
11. The Special Rapporteur welcomes the attention paid, in the humanitarian response plan for 2023, to protection risks in areas at high risk of climate-related disasters and in conflict-affected areas, and the priority given to women, children, Afro-Colombian and Indigenous Peoples, and persons with disabilities. The Special Rapporteur also welcomes the adoption of the National Development Plan 2022–2026. Actions to prevent trafficking in persons must be integral to development planning and the achievement of the Sustainable Development Goals.
15. The continued incidence of forced recruitment by armed groups among Indigenous and Afro-Colombian communities, as well as the recruitment and use of children, is a serious concern. The holding of the first national gathering of Indigenous and Afro-Colombian former combatants, in October 2023, and the agreement between the Agency for Reintegration and Normalization and ethnic organizations regarding the special harmonization programme for Afro-Colombian and Indigenous communities are welcome.

C. Conflict-related sexual violence and trafficking in persons

18. The prevalence of conflict-related sexual violence has been well documented and remains an urgent concern. Conflict-related trafficking includes trafficking for purposes of sexual exploitation, sexual slavery, child and forced marriage, domestic servitude and the recruitment and use of children by armed groups. Gender stereotypes and systemic gender-based discrimination against women and girls and persistent racial discrimination affecting Afro-Colombian and Indigenous communities in particular contribute to the normalization of the recruitment of girls for purposes of sexual exploitation, child and forced marriage and sexual slavery.

D. Displacement and trafficking in persons

19. In Colombia, more than 6.8 million people are internally displaced, and more than 1 million new displacements have occurred since the signing, in 2016, of the Peace Agreement.
20. Displacement, including climate- and disaster-related displacement, contributes to increased risks of trafficking in persons due to loss of livelihoods (in particular

for rural and campesino communities), loss of housing, disruption in access to education and breakdown of community and family networks. Displacement and confinement have a disproportionate impact on Afro-Colombian and Indigenous communities.

III. General trends

A. Trafficking in the context of migration

...

26. The presence of and control exercised by armed groups and criminal organizations hinder prevention and protection measures and limit the functioning of civilian authorities. During the visit, concerns were raised in relation to possible corruption within law enforcement bodies and the weakness of law enforcement in some regions, in particular rural, border and conflict-affected areas. Trafficking by criminal networks and armed groups has affected children and young people from Afro-Colombian and Indigenous communities in border areas and along smuggling routes in particular. They are targeted and recruited for purposes of forced criminality, recruitment and use, including as guides and baggage carriers through the Darién Gap.

B. Trafficking in children, including conflict-related trafficking in children

...

33. In addition to combat roles, children are used by armed groups in support roles, such as acting as lookouts and assisting in activities such as the supply of narcotics and smuggling. Girls are specifically targeted for purposes of sexual exploitation, sexual slavery, child marriage and domestic servitude. Strategies of recruitment such as “enamoramiento”, in which girls are made to believe that they are entering into a relationship with members of armed groups, are used to target schools, communities and families. Afro-Colombian and Indigenous children are particularly at risk. The Human Rights Committee has recommended comprehensive, differentiated measures to prevent the recruitment of children and adolescents by armed groups for purposes of sexual exploitation and to strengthen protective environments in families, schools and communities.
37. Trafficking in children by armed groups and criminal organizations for purposes of child marriage remains a serious concern. Trafficking in girls from rural to urban areas for purposes of domestic servitude is also a serious concern and has an impact on communities living in extreme poverty. Trafficking in children affects Afro-Colombian and Indigenous communities in particular.
39. The Special Rapporteur was informed of continuing concerns relating to child labour, including trafficking for purposes of child labour in agriculture, coca production and mining, in particular in small-scale and informal mining. Measures to formalize the mining sector and the engagement of the private sector to ensure the enforcement of labour laws and anti-trafficking laws are essential, as is ensuring the effectiveness of the Labour Inspectorate and the police to identify, assist and ensure the protection of children who are victims of trafficking. Accountability for trafficking of children in domestic work and in mining remains limited, as reflected in the low rates of identification of victims, with continued impunity for perpetrators, including business enterprises. She welcomes the Latin America and the Caribbean Free of Child Labour Regional Initiative and the Government’s institutionalization of the Risk of Child Labour Identification Model in order to identify the territories

at higher risk of child labour, taking into account such criteria as armed conflict, economic production sectors, poverty figures and unemployment rates. Effective implementation and proactive identification of children who are victims and children at risk are essential. Continuing serious concerns remain in relation to the school dropout rates among Indigenous, Afro-Colombian and rural children, which results in high risks of trafficking.

C. Trafficking for purposes of labour exploitation

43. The Special Rapporteur expresses concern at the limited allocation of resources and capacity to respond effectively to trafficking for purposes of forced labour, which disproportionately affects Afro-Colombian, Indigenous and campesino communities, and migrants and refugees. Trafficking for purposes of forced labour occurs in sectors such as mining, construction, agriculture and domestic work and in illicit activities including coca production and illegal mining. She highlights the need to strengthen prevention, assistance and protection measures in relation to trafficking in at-risk sectors. She commends the actions taken for the prevention of trafficking in persons for purposes of labour exploitation and the further training and capacity-building measures undertaken with the Ministry of Labour, the Attorney General's Office, the national police, the Ombudsman's Office, territorial entities and private companies at both the national and regional levels.
44. Data on trafficking in persons for purposes of labour exploitation are limited and do not reflect the scale of the human rights violations occurring. Under-identification and underreporting of trafficking for purposes of labour exploitation are serious concerns. In 2022, 8.8 per cent of identified victims of trafficking in persons were victims of trafficking for purposes of domestic servitude, 4.8 per cent for forced labour and 1.6 per cent for purposes of slavery.
45. The Special Rapporteur welcomes the commitment to comprehensive rural reform to promote the rights of rural communities, in particular women, and recalls the importance of continued measures to strengthen the rights of Indigenous... women.

V. Assistance to and protection of trafficked persons

...

74. The provision of assistance and reparations to victims of conflict-related trafficking in persons is ongoing; however, it remains a challenge, in particular in areas under the control of armed groups. Concerns were raised during the visit that limited attention is paid to the specific needs and rights of Indigenous Peoples....

VII. Peacebuilding and trafficking in persons

90. The Special Rapporteur highlights the urgency of continuing peacebuilding efforts. Combating trafficking in persons requires a sustainable, durable peace and accountability for conflict-related trafficking, including reparations and effective remedies for victims. The signing of the Peace Agreement was a significant achievement in progress towards peace. Act No. 2272 of 2022 establishes the legal framework for the State policy of total peace and confirms the new human security-centred approach and the commitment to full implementation of the Peace Agreement and dialogue with all armed groups present in the country. She welcomes the commitment to achieving total peace and commends the continuing dialogue, including through the ongoing ceasefires and negotiations between the Government and the Ejército de Liberación Nacional (National Liberation Army).

91. Significantly, the new policy of total peace is a commitment to ensuring the effective participation of women and civil society in the peace process and requires differential approaches on an intersectional and regional basis, placing the needs and interests of victims at the centre of all processes. The Special Rapporteur welcomes this commitment to meaningful participation and to the prioritization of an intersectional response to the impact of the conflict that recognizes the differentiated impact of conflict on ... Indigenous Peoples....

IX. Rights of persons with disabilities

104. The intersections of discrimination on grounds of race, ethnicity, gender and disability status increase the risks of exploitation. Accessible information on anti-trafficking measures, assistance and protection programmes is limited. Concerns persist at the risks of trafficking in children with disabilities for purposes of exploitation in begging and sexual exploitation. Such risks are higher among Indigenous and Afro-Colombian children with disabilities.

X. Climate change

106. The Special Rapporteur highlights that climate change and environmental degradation contribute to displacement and to food and economic insecurity, and may increase vulnerability to trafficking in persons, in particular among Afro-Colombian and Indigenous women and women in rural areas. Risks of exploitation are exacerbated by gendered inequalities in land tenure. Loss of livelihoods contributes to increased recruitment by armed groups and criminal organizations, including the recruitment and use of children in illicit activities.

XI. Conclusions and recommendations

...

108. In the context of conflict-related trafficking, the Special Rapporteur recommends that the Government: (a) Strengthen measures to implement the ethnic chapter of the Peace Agreement and to prevent conflict-related trafficking, in particular among Afro-Colombian and Indigenous communities....

110. In the context of trafficking in children, the Special Rapporteur recommends that the Government: ... (b) Strengthen and expand the implementation of community-led measures to prevent trafficking (including recruitment and use) in Indigenous and Afro-Colombian children, ensuring the primacy of the best interests of the child and promoting gender and racial equality and the rights of Indigenous children, including rights to culture....

2. Visit to Central African Republic, A/HRC/56/60/Add.2, 15 May 2024

IX. Statelessness

52. The Special Rapporteur remains concerned about low rates of birth registration, with high risks of de facto statelessness and consequent increased risks of trafficking in children. The Special Rapporteur welcomes the N'Djamena Initiative on the Eradication of Statelessness in Central Africa, launched by States members of the Central African Economic and Monetary Community. In particular, under the Initiative, States called for the strengthening of civil status systems, including to make them more accessible to persons at risk of statelessness, and ensuring that every child is registered immediately at birth and that every child possesses a birth certificate. They also recognized the importance of a coordinated regional approach

in the fight against statelessness. An estimated 1.1 million persons in the Central African Republic are at risk of statelessness. Continued delays in securing identity documents and civil status, in particular for internally displaced person returnees, pastoralists and persons belonging to minorities and Indigenous Peoples, increase the risks of statelessness and of trafficking in persons.

XII. Trafficking in persons for purposes of forced labour

66. During her visit, serious concerns were raised with the Special Rapporteur about the prevalence of trafficking in persons, especially women and girls, for purposes of domestic servitude. Persons belonging to minorities and Indigenous Peoples, including children, are also particularly vulnerable to trafficking for this purpose, which continues with impunity. The Special Rapporteur highlights that such practices are serious crimes and serious violations of human rights and often result in other related violations, including sexual violence.

XXIV. Conclusions and recommendations

111. Trafficking in persons for all purposes of exploitation is a serious human rights violation, an international crime and a violation of international humanitarian law. While efforts have been made to combat trafficking in persons in the Central African Republic, urgent action is needed to progress a human rights-based response to trafficking, prioritize effective prevention and ensure the rights of victims to assistance and protection. Accountability and effective measures to combat impunity will be essential to the peacebuilding process. The Special Rapporteur is particularly concerned at the devastating impact of trafficking in persons on children and young people. The prioritization of gender equality and the rights and empowerment of women and girls is critical to combating trafficking in persons.
113. The Special Rapporteur recommends that the authorities of the Central African Republic: ... (aa) Take action to combat trafficking in persons from minority groups and Indigenous Peoples for all purposes of exploitation, in particular forced labour and slavery-like practices; ... (jj) Take measures to combat all forms of trafficking in persons, in particular that affecting minorities and Indigenous Peoples...

V. SPECIAL RAPPORTEUR ON THE SALE AND SEXUAL EXPLOITATION OF CHILDREN, INCLUDING CHILD PROSTITUTION, CHILD PORNOGRAPHY AND OTHER CHILD SEXUAL ABUSE MATERIAL

1. Visit to the Philippines, A/HRC/55/55/Add.1, 3 January 2024

I. Introduction

A. Programme of the visit

1. At the invitation of the Government of the Philippines, the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children undertook an official visit to the country from 28 November to 8 December 2022. ...

B. Context

4. The Philippines is an archipelagic country in South-East Asia, located in the western Pacific Ocean, with islands broadly categorized into three main geographical divisions, namely, from north to south, Luzon, Visayan and Mindanao. In 2020, it had an estimated population of 109,035,343,1 of which the population of children aged 5 to 17 was estimated at 31.17 million.

5. Since regaining its independence in 1946, following periods of governance by Spain and, subsequently, the United States of America, the Philippines has been a constitutional republic with a presidential system. It has substantial ethnic diversity as a product of the seas and mountain ranges dividing the archipelago, with over 100 ethnolinguistic minority groups whose members number around 14 to 17 million. Indigenous Peoples include the Igorot, the Lumad, the Mangyan and smaller Indigenous groups. While the official languages are Filipino and English, local dialects are widely used.
8. The Philippine Development Plan 2017–2022 includes a chapter entitled “Reducing vulnerability of individuals and families”, which covers strategies for reducing vulnerabilities and risks faced by women, children and other vulnerable groups, such as persons with disabilities, members of Indigenous Peoples and older persons.

II. Scope of the sale, sexual exploitation and sexual abuse of children

A. Manifestations of the sale, sexual exploitation and sexual abuse of children

...

2. Child marriage

14. Child marriage may amount to sale of children for the purposes of sexual exploitation, forced labour and financial exploitation. The Philippines currently has the twelfth highest rate of child marriage in the world. One in every six girls in the Philippines is wedded before the age of 18. There are reports that the practice is prevalent among Indigenous and ethnic communities and minority groups, mostly owing to social exclusion, conflict, disasters and poverty, among other factors. While both girls and boys are affected by the practice of child marriage, girls face disproportionate impacts. The high incidence of child marriage in those groups is often manifest in poorer health and educational outcomes, reduced employability and higher risks of abuse and sexual violence. Data reveal that the Philippines has shown very little change in the percentage of women married between the ages of 15 and 19.

5. Children at risk

...

(b) Indigenous, ethnic, minority and unregistered children

31. Children from Indigenous and ethnic communities and children belonging to minorities, such as the Badjao and Moro Peoples, are negatively affected by unequal opportunities and limited access to social services. That makes them vulnerable to child marriage, trafficking in children and labour and sexual exploitation. There have been concerns that unregistered children living in the context of forced displacement have not been mapped or appropriately provided for through legislation and the provision of services.

(d) Migrant, refugee, asylum-seeking children and children in detention and street situations

35. In line with the observation made by the Committee on the Rights of the Child, the Special Rapporteur noted with concern during discussions with interlocutors that a large number of children, in particular Muslim and Indigenous children, children of Indonesian and Japanese descent and the children of Filipinos working overseas, remain unregistered, which may lead to detachment from their families, statelessness and deprivation of access to protection and basic services.

III. Measures to combat and prevent the sale, sexual exploitation and sexual abuse of children

38. The Philippines has made significant efforts to improve its policies and programmes and the legal and institutional framework for prevention and for the protection and rehabilitation of children. Despite the positive steps made, persistent gaps remain.

A. Legal framework

...

2. Domestic legal framework

...

49. The Special Rapporteur notes that the mixed legal system of the Philippines, which consists of civil law, Indigenous law and sharia or Islamic law, including the Code of Muslim Personal Laws, results in a conflict with regard to the definition of the child in family and religious matters.

C. National policies, strategies and programmes

61. The Philippine National Strategic Framework for Plan Development for Children (2000–2025) is a long-term strategic framework for planning programmes and interventions that promote and safeguard the rights of Filipino children, including by addressing the concerns of children who were previously overlooked, such as children belonging to Indigenous Peoples, children with disabilities, children in situations of armed conflict, pregnant adolescents and children in conflict with the law.

66. As part of efforts to strengthen protection programmes for children, families and members of Indigenous Peoples in street situations, national government agencies and local government units are guided through procedures to establish child protection mechanisms and strategies, including to provide long-term programmes and services for families and children.

W. INDEPENDENT EXPERT ON HUMAN RIGHTS AND INTERNATIONAL SOLIDARITY

1. Participation of civil society organizations seeking to express international solidarity through transnational, international and regional networks, A/HRC/56/57, 23 April 2024

I. Introduction

1. In his 2021 report entitled “Our Common Agenda”, the Secretary-General envisioned a multilateralism for the twenty-first century, one that is built on networks of global and regional institutions, as well as civil society actors, businesses, academics and others, all pursuing a deeper commitment to solidarity. The aim of international solidarity is to realize the right of all people to enjoy their human rights without discrimination or exclusion, in recognition of the inalienable principles of human dignity and equality. Expressions of international solidarity are oriented towards the transformative emancipation of vulnerable groups and individuals who are often marginalized and silenced. They concern, inter alia: ... (h) Recognition of Indigenous territorial claims in the context of encroachment by extractive industries; (i) Recognition of the right to self-determination, the end of apartheid and the prevention of genocide....

IV. Risks: State restrictions on civil society solidarity actions

...

31. Women's civil society organizations are at high risk of being met with repression, including when they engage in intersectoral solidarity issues, such as opposition to mining projects that are considered harmful to the environment.⁵¹ However, counter-solidarity alliances between local elites and transnational mining companies are capable of defeating solidarity opposition movements of civil society organizations, including those involving Indigenous communities, thereby maintaining neocolonial structural injustice.
32. Similarly, "infrastructure of care" solidarity groups have been criminalized, as the land, water and ecological areas that they address have been identified by State actors as strategic sectors to be protected. It is notable that the Special Rapporteur on the right to food called for the establishment of a multilateral system based on solidarity to support farmers' rights. Article 9(1)(d) of the revised draft declaration on the right to international solidarity concerns the creation of "a global enabling environment for sustainable development that is centred on individuals and peoples and is grounded in intergenerational justice and equity. This includes the increased use of sustainable agriculture and fishing, as well as the transition to renewable energy."
33. International businesses should provide mechanisms for the presentation of solidarity demands by civil society and the provision of remedies in accordance with business and human rights standards. According to article 6(3) of the revised draft declaration: "Non-State actors also have the duty to respect the right to international solidarity. Non-State actors uphold this duty also by refraining from conduct that aids, assists, controls or coerces a State or non-State actor to breach obligations under international or national law and by providing transparent, accessible mechanisms for communication and response to solidarity demands presented to them by civil society, labor unions, indigenous peoples and other groups."

V. Networks of human rights institutions, non-governmental organizations and faith-based institutions promoting solidarity

34. There are networks of national human rights institutions, non-governmental organizations (NGOs) and faith-based institutions that engage in expressing international solidarity with women, children, older persons, persons with disabilities, human rights defenders, workers, stateless persons, refugees, migrants, prisoners and detainees, victims of terrorism or violent extremism and other vulnerable groups, before national and regional bodies, as well as before the Human Rights Council, other Charter-based mechanisms and the human rights treaty bodies and at international conferences. They also call for solidarity to address the increased level of inequality around the world following the COVID-19 pandemic, in addition to the human rights impact of climate change and natural disasters or environmental issues. Moreover, they call for foreign debt relief, the abolition of the death penalty and ceasefires.
35. Some NGOs focus their solidarity actions within their respective geographical regions, but others reach different regions of the world. Both national human rights institutions and NGOs recognize the importance of promoting inclusivity and intersectionality within their solidarity advocacy actions; hence, several of them seek to include the perspectives of women, youth, Indigenous communities and ethnic and gender identity minority groups. NGOs and faith-based institutions often collaborate on intersectoral international solidarity issues, such as access to

vaccines or the protection of women victims of domestic violence, but some groups indicated that they lacked the means to connect with other groups with similar experiences or that they lacked funding to address other topics. It was noted that NGOs needed to be cautious in their solidarity expressions if there was a risk of harm to their partner communities.

VIII. Conclusions and recommendations for States and stakeholders

A. Conclusions

54. International solidarity provides a future-oriented universal narrative of inclusion and recognition of the diversity of civil society in the enjoyment of human rights that also serves to combat inequality, polarization and fragmentation among and within nations. There is an imperative to create strategic networks and coalition alliances between civil society, States, international organizations, academia, businesses, human rights institutions and faith-based institutions in order to design and implement international solidarity initiatives. The surge in resilient civil society engagement around the world confirms that international solidarity merits both normative recognition and institutional implementation to guarantee its fair enjoyment and protection from censorship and oppression. International solidarity provides a path towards a renewed global social contract based on equality and non-discrimination to reopen civic spaces. It underscores the principle of self-determination, decolonization and the ending of apartheid everywhere.

B. Recommendations

56. The Independent Expert recommends that: ... (o) Special funding should be directed towards empowering marginalized women, girls, youth groups, minorities and members of Indigenous Peoples who are at risk of systematic silencing of their voices within the public and digital spheres and may be prevented from communicating with political or judicial institutions to engage in expressions of international solidarity online; ... (q) The facilitation of online education initiatives should be considered as a form of international solidarity for vulnerable members of civil society, such as girls and young people from minority or Indigenous groups who are unable to access physical schools due to discrimination or other forms of exclusion; ... (u) States should review, in the context of the universal periodic review, the wrongful criminalization of international solidarity actors as extremist, terrorist or subversive due to their work on the environment or climate change, gender, peace, Indigenous or minority rights, refugee or migrant rights or other human rights issues....
57. The Independent Expert also recommends that: ... (b) The United Nations treaty bodies and Charter-based mechanisms should explore ways to further improve accessibility for the participation of ... Indigenous and other persons in their interactions with civil society. Such persons should be given active voices and not be passive recipients of information and should be granted the right to remote participation in the context of the universal periodic review and in the sessions of the Human Rights Council and the treaty bodies. ...
58. The Independent Expert further recommends that: ... (b) Companies should establish transparent channels for the presentation of solidarity demands by civil society, in accordance with article 6 (3) of the revised draft declaration on the right to international solidarity, and non-State actors, including transnational companies, should provide transparent, accessible mechanisms for communication and

response to solidarity demands presented to them by civil society, labour unions, Indigenous Peoples and other groups.

2. Visit to Costa Rica, A/HRC/53/32/Add.1, 18 May 2023

I. Introduction

1. The Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, visited Costa Rica from 21 February to 2 March 2022, at the invitation of the Government.
6. With a view to the possible global dissemination of any good practices noted during the visit, the Independent Expert was also particularly interested to learn about how the principle of solidarity is applied at the national level with regard to redistribution of wealth through taxation and social and economic welfare programmes, how Costa Rica addresses the challenges of environmental issues, cross-border migration and international cooperation in that regard, as well as with regard to women and minorities such as Indigenous Peoples and Afrodescendants.

IV. International cooperation and development assistance as forms of good practice in international solidarity

...

C. Environmental initiatives

47. During his visit, the Independent Expert also witnessed first-hand the numerous efforts made and initiatives undertaken by all stakeholders to protect the environment and mitigate the impact of climate change. He learned about several projects that are addressing the rights and needs of Indigenous communities, inhabitants of rural areas and women, aiming at reforesting the country and protecting biodiversity. Costa Rica has been an innovator when it comes to living in a more sustainable and environmentally friendly way. During his visit, the Independent Expert was pleased to hear about the many innovative policies that are being implemented and measures taken to ensure a more sustainable society at home and abroad. They are an important contribution to international human rights solidarity in the field of climate change and protection of the environment that could be replicated in other countries around the world that have similar geographical features.

D. Situation of women, Indigenous Peoples, Afrodescendants and lesbian, gay, bisexual, transgender and intersex persons

81. The Independent Expert was made aware that women, Indigenous Peoples ... continue to face discrimination and violence in many areas.
85. The Independent Expert was made aware that Costa Rica is not complying with its Indigenous Law, which establishes the State's obligation to return Indigenous lands belonging to the eight Indigenous populations in the country, despite the fact that the law was adopted some 40 years ago. He was also informed about attacks on human rights defenders and Indigenous leaders, who suffer intimidation and death threats in the context of defending their lands, territories and natural resources, despite precautionary measures granted by the Inter-American Commission on Human Rights.
86. The Independent Expert received information about structural racism and racial discrimination against Indigenous Peoples, which hinders their enjoyment of collective and individual rights, and about obstacles faced by Indigenous Peoples

regarding access to justice and reparation mechanisms. That is particularly the case for Indigenous women, who play a crucial role in defending Indigenous lands, territories and resources and in passing on their language, culture and scientific knowledge to future generations.

87. The Independent Expert was informed that most Indigenous lands are occupied by non-Indigenous settlers, and about the resulting conflicts. In that regard, an important case came before the Supreme Court concerning the return of land to Indigenous communities.
88. The information received during the Independent Expert's visit was in line with the comments made by the Special Rapporteur on the rights of Indigenous Peoples, who had concluded a visit to Costa Rica in December 2021 and submitted a report on his visit to the Human Rights Council at its fifty-first session in September 2022.

E. Poverty and land tenure

92. The Independent Expert heard about the issue of access to land for historically disadvantaged groups, such as Afrodescendants, Indigenous Peoples and women. He was informed that many Afrodescendants and Indigenous Peoples have faced the threat or reality of losing their lands. ...

VI. Conclusions and recommendations

...

99. The Independent Expert was impressed by the ability and will of the Government, the international organizations present in Costa Rica and all the individuals that he met from civil society, business and social partners and Costa Ricans to make the effort to rethink how to address the many global challenges currently facing the world, especially social cohesion, minority and Indigenous rights, climate change ... to name but a few. The broad consensus within society and across the political spectrum on the imperative of practising human rights-based international solidarity, witnessed by the Independent Expert during his visit, is admirable.
100. Nevertheless, the Independent Expert would like to stress that those efforts to express human rights-based solidarity should also extend to all the parts of the country, especially rural regions, and to the various groups that constitute the rich multiethnicity of Costa Rican society, including Indigenous Peoples....
101. The Independent Expert, in a constructive and open spirit, would like to make the following recommendations to the Government, the international organizations present in Costa Rica and civil society, businesses and other entities with a view to further improving and reinforcing their efforts to enhance human rights-based international solidarity: ...
 - (f) The Government should continue its efforts to implement policies and programmes that seek to strengthen groups that face discrimination, especially Indigenous Peoples and Afrodescendants, that are left behind in the socioeconomic progress enjoyed to date by Costa Rica and that tend to live in remote areas, far away from the capital city. The unemployment rate, discrimination and poverty these groups face represent an enormous challenge and require more resources, especially more State presence in those areas, more cooperation and resources from international organizations and donor countries in order to effectively address the issues they are facing; ...

- (j) In this regard, access to land tenure and security is a fundamental right and should be fully applied for all those who have legally acquired a home or a business, including ... Indigenous Peoples.... Not only can land tenure guarantees contribute to stability and integration in Costa Rica, but they are also a precondition for accessing many social services, such as water supply, electricity and garbage collection. Land tenure guarantees can also help avoid the different tensions that can arise when property titles are unclear or not registered....

3. Revised draft declaration on human rights and international solidarity, A/HRC/53/32, 2 May 2023

I. Introduction

...

3. In the present report, the Independent Expert discusses his work over the last year revising the existing draft declaration on the right to international solidarity.¹⁰ Following this introduction, a set of rationales for undertaking these revisions are offered in section II of the report. In section III, the Independent Expert discusses the process he adopted in preparing a revised draft declaration. Section IV is devoted to an exposition on the nature of the main revisions made to the pre-existing draft declaration. In section V, the Independent Expert reiterates the case for the adoption or endorsement by the Human Rights Council of a declaration on the right to international solidarity. Following this discussion, a set of conclusions and recommendations are offered. The report ends with the presentation in two annexes of the revised draft declaration (annex I), and a set of explanatory notes for the amendments that are introduced in the revised text (annex II).

IV. Nature of the main revisions made to the pre-existing draft declaration

6. The main revisions that were made to the pre-existing draft declaration were largely aimed at: ... (b) Recognizing and incorporating into the preamble both the latest relevant developments at the United Nations and in the world and some other key instruments or documents, such as ... the United Nations Declaration on the Rights of Indigenous Peoples....

Annex I

Revised draft declaration on the right to international solidarity

Preamble

...

Reaffirming all the rights of indigenous peoples recognized in the United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect, especially their right to freely pursue their development in all spheres, in accordance with their own needs and interests, their right to participate in decision-making in matters which would affect their rights, their right to free, prior and informed consent, and their right to cooperate with other peoples across borders,

Part II International solidarity as a right and a duty

Article 6. ... 3. Non-State actors also have the duty to respect the right to international solidarity. Non-State actors uphold this duty also by refraining from conduct that aids, assists, controls or coerces a State or non-State actor to breach obligations under

international or national law and by providing transparent, accessible mechanisms for communication and response to solidarity demands presented to them by civil society, labor unions, indigenous peoples and other groups.

Annex II

Explanatory notes on revisions to the draft declaration on the right to international solidarity

Preambular paragraphs

...

12. A new thirteenth preambular paragraph was added on indigenous peoples and their right cooperate with other peoples across borders.

X. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

1. Pathways to peace: women human rights defenders in conflict, post-conflict and crisis-affected settings, A/78/131, 7 July 2023

IV. Contribution of women human rights defenders to peace and security

...

C. Promoting women's rights, participation and agency

...

44. As noted in the 2021 report of the Special Rapporteur in which the situation of the killing of human rights defenders is analysed, Indigenous defenders are at a disproportionately high risk of being killed as a result of their human rights work. In certain crisis-affected areas, where structural violence is imposed on Indigenous communities and is compounded by attempts by businesses to clear Indigenous lands, Indigenous women human rights defenders and others are engaging in capacity-building work to address the root causes of conflict. This includes awareness-raising on free, prior and informed consent, the rights that they have as Indigenous Peoples and the avenues they can use to object to the appropriation of their land. In the Province of West Papua (Indonesia), women human rights defenders are acting as mediators between local populations and the extractive industry in an attempt to reduce the scale of conflict that has arisen between the parties.
45. In the Philippines, where human rights defenders report that they are frequently red-tagged and targeted in government counter-insurgency campaigns, an association of women human rights defenders, known as Tanggol Bayi, works to promote a culture of respect for human rights, advance the rights and capacity of other women human rights defenders and develop strategies for their protection.

VII. Elevated levels of risk according to type of work

...

79. In its report to the Human Rights Council in early 2023, the Independent Fact Finding Mission on Libya noted that “persons were tortured, raped, arbitrarily detained and subjected to enforced disappearance after expressing their views on women's rights and gender equality, sexual and gender diversity, the rights of Indigenous groups and religion”.

86. As noted in the 2022 report of the Secretary-General on women and peace and security, human rights defenders who work at the intersection of access to land rights, environmental rights and/or Indigenous Peoples' rights face a multitude of overlapping risks. Human rights defenders who work on these issues in pockets of a number of countries, including Brazil, Colombia and the Philippines, are targeted with extreme violence. A Guarani-Kaiowá Indigenous leader who has been spearheading a campaign to reclaim Indigenous lands in Brazil described in a consultation with the Special Rapporteur the threats of sexual violence and death threats that she and her children face owing to her opposition to ranchers planting soya beans and raising cattle in Indigenous territories.

Y. WORKING GROUP ON ARBITRARY DETENTION

1. Opinion No. 30/2024, concerning Ignacio Celso Lino, Argüello Celso Lino, Donald Andrés Bruno Arcángel and Dionisio Robins Zacarías (Nicaragua), A/HRC/WGAD/2024/30, 2 October 2024 (unoff. Transl.)

2. In accordance with its methods of work, the Working Group transmitted on 23 June 2023 to the Government of Nicaragua a communication concerning Ignacio Celso Lino, Argüello Celso Lino, Donald Andrés Bruno Arcángel and Dionisio Robins Zacarías. The Government has not responded to the communication. The State is a party to the International Covenant on Civil and Political Rights.

1. Information received

(a) Communication from the source

4. Ignacio Celso Lino is a Nicaraguan national and indigenous, a member of the Mayangna Indigenous People and territorial trustee of the Mayangna community of Suniwás (Bonanza), in charge of ensuring the preservation of the collective lands of his community. He is also a member of the group of volunteer rangers defending mother earth in Mayangna Sauni As territory, in the Bosawás biosphere reserve.
5. Argüello Celso Lino is a Nicaraguan national and indigenous, a member of the Mayangna Indigenous People and Communal Judge of the Mayangna community of Suniwás, in charge of ensuring the collective security of his community. He is a member of the group of volunteer rangers who defend mother earth in the Suniwás-Saubí sector in the Mayangna Sauni As territory.
6. Donald Andrés Bruno Arcángel is a Nicaraguan national and indigenous, a member of the Mayangna Indigenous People of Suniwás, and an artisanal miner of a gold vein located near Kiwakumbaih. He is a member of the group of volunteer rangers who defend mother earth in the Kahka sector (Kibusna, Pisbawas and Alal communities) in Mayangna Sauni As territory.
7. Dionisio Robins Zacarías is a Nicaraguan national and indigenous, a member of the Mayangna Indigenous People of Suniwás. Mr. Robins Zacarías has been a member of the Constitutionalist Liberal Party, a traditional opposition to the Sandinista National Liberation Front party. He is a member of the group of volunteer rangers who defend mother earth in Mayangna Sauni As Territory.

i. Context

8. According to the source, the indigenous communities in the area are experiencing a difficult situation due to the invasion of non-indigenous settlers in the Mayangna Sauni As territory. The source adds that the indigenous lands have been invaded by criminal gangs made up of non-indigenous people, specifically former demobilized military personnel from the Army and the Nicaraguan resistance of the 1980s who claim to have protection from the Sandinista National Liberation Front party.
9. The source reports that there were threats against the indigenous people who managed the Kiwakumbaih mine, located in the Mayangna Sauni As Territory, since, in 2021, settlers had been evicted from it by the indigenous rangers of the Mayangna Sauni As territory. The president of the Mayangna Sauni As Indigenous Territorial Government, on August 11, 2021, sent a letter to the Bonanza National Police, requesting their accompaniment to the Kiwakumbaih mine due to “an emergency situation of conflict”. However, the authorities did not attend.
10. On August 23, 2021, around 37 people were working at the Kiwakumbaih mine on Pukna Hill. Traditionally, the hill has been used by indigenous communities for their subsistence activities. At 3:00 p.m., a group of armed men surrounded the place and began to attack the community members present. Around 22 people managed to escape and survive the attack, including several children. During the massacre, several people were killed and several women were raped, including minors.
11. According to the source, while the victims have repeatedly indicated that the massacre was perpetrated by a group of non-indigenous men, the National Police has assured that a group of Mayangna indigenous people were responsible. Subsequently, he accused 14 members of the Mayangna Indigenous People. Many of the accused are volunteer rangers and defenders of indigenous lands, including Mr. Celso Lino, Mr. Bruno Arcángel and Mr. Robins Zacarías.
12. Tensions in the territory due to the presence of settlers are constant. On January 25, 2023, the Office of the United Nations High Commissioner for Human Rights publicly called on the Government to protect the human rights of these indigenous communities.

ii. Detention and judicial proceedings

13. Five days after the Kiwakumbaih massacre, on 28 August 2021, Mr. Celso Lino was arrested at 4:00 p.m. by the National Police at their homes in the community of Suniwás. The source alleges that the arrest was without a warrant, allegedly for illegal possession of firearms.
14. Mr. Bruno Arcángel was arrested on 4 September 2021 at 4.00 a.m. by the National Police at his home in the community of Kibusna. According to the source, the arrest was carried out without a warrant. The police searched the house without finding anything strange.
15. Mr. Robins Zacarías was arrested on 3 December 2021 at 3.00 p.m. when he was withdrawing his children’s pension at the office of the Nicaraguan Social Security Institute in Bonanza. The Police also did not present a court order at the time of his arrest.
16. According to the source, the National Police identified the four indigenous people, along with ten others, as perpetrators of the Kiwakumbaih massacre. This contradicted more than 20 surviving witnesses to the massacre who testified that the perpetrators were non-indigenous men, who wore military clothing, were heavily armed and spoke Spanish.

17. Of the 14 indigenous people identified as perpetrators by the National Police, only four persons were captured: Mr. Robins Zacarías, Mr. Bruno Arcángel and Mr. Celso Lino.
18. According to the source, the three initially arrested, Mr. Bruno Arcángel (arrested on September 4, 2021) and Mr. Celso Lino (arrested on August 28, 2021), were presented to the media on September 8, 2021, without having been tried and in violation of the constitutional guarantee of the presumption of innocence, as the perpetrators of the Kiwakumbaih massacre². The news was widely reported.
19. According to the source, once Mr. Celso Lino and Mr. Bruno Arcángel were captured, they were held incommunicado for several months, without access to trusted lawyers, in the delegation of District No. 3 of the National Police in Managua. During the first two hearings, court-appointed lawyers were imposed on them.
20. On 16 September 2021, not knowing where and in what condition the detainees were, the relatives of Messrs. Celso Lino and Mr. Bruno Arcángel filed writs of habeas corpus, but the judicial system did not protect them.
21. On September 9, 2021, a special hearing called “protection of constitutional guarantees” was held and Messrs. Celso Lino and Mr. Bruno Arcángel were imprisoned for 90 days in order to deepen the investigations. This is based on Act No. 1060, which allows the detention periods to be extended from 48 hours, as established by the Constitution, to between 15 and 90 days for filing formal charges. For the source, this law violates the presumption of innocence and the right to know without delay the accusation against the accused persons.
22. On September 13, 2021, the initial hearing was held and the means of evidence proposed by the Public Prosecutor’s Office were reviewed. The source alleges that the State agents arbitrarily proceeded to carry out illegal interrogations and beat them during the investigation stage of the process.
23. On 8 December 2021, following the capture of Mr. Robins Zacarías (3 December 2021), the four were transferred to the Tipitapa “Jorge Navarro” prison system near Managua. Only then were the detainees, using a cell phone from another inmate, able to call their relatives and inform them of where and how they were.
24. On December 13, 2021, the Public Prosecutor’s Office charged the four individuals before the Fifth Criminal District Court of Hearings of the Managua district for the alleged crimes of threats with weapons and aggravated murder, in real competition with the crime of simple kidnapping, on the basis of Secondary Law No. 952. In this way, the detainees were removed from their natural judge, since the events occurred in the territorial jurisdiction of Bonanza, so the competent judge to hear the case was the District Judge of Siuna.
25. The source states that the four individuals were tried without a translator, despite the fact that their mother tongue is not Spanish. It also points out that in the trial hearing (held on February 18, 2022), the Public Prosecutor’s Office did not present witnesses and only presented several judicial experts. However, all the defense witnesses were consistent in stating that the defendants were not responsible for the massacre.
26. The source reports that the Seventh Criminal District Trial Judge of Managua, based exclusively on police testimony, found the four indigenous people guilty in a trial hearing, held on February 18, and through the sentence handed down on March 10, 2022. Chamber One of the Court of Appeals of Managua confirmed the ruling

on July 28, 2022, dismissing the appeals filed in favor of the four convicted and, in October 2022, extraordinary appeals for cassation were filed.

27. The Seventh Criminal District Trial Judge of Managua sentenced the detainees to life imprisonment for the crime of aggravated murder to nine persons during the Kiwakumbaih massacre (some of the victims were in-laws of the detainees), and they were also sentenced to four years' imprisonment for the crime of simple kidnapping to the detriment of an indigenous woman and girl.
28. According to the source, the sentence was handed down by the Seventh Criminal District Trial Judge of Managua, a judge who has been sanctioned by the European Parliament and the United States of America for his lack of judicial independence. The source adds that Criminal Chamber One of the Court of Appeals of the Managua district, which upheld the first instance judgment on July 28, 2022, has also been sanctioned by the European Parliament for its lack of judicial independence.
29. In response to the confirmation of the conviction by the Court of Appeals, extraordinary appeals for cassation were filed in October 2022 in favor of the four indigenous people. On January 13, 2023, a hearing was requested before the Supreme Court of Justice of Nicaragua, on which there is still no pronouncement.
30. The source argues that on the day of the massacre, Messrs. Celso Lino, in their capacity as indigenous community authorities, were coming from Managua along with other community members to meet with representatives of the Government and the Sandinista National Liberation Front party, to whom they had explained the situation in which the indigenous communities in the area are living due to the invasion of non-indigenous settlers in the Mayangna Sauni As territory. The source adds that there were witnesses who testified during the trial hearing that the Celso Lino brothers were far from Kiwakumbaih at the time and date the massacre occurred. It also maintains that Mr. Bruno Arcángel, who worked in a vein of gold near the site, fled like the rest of the survivors of the massacre.
31. At the meeting with representatives of the Government and the Sandinista National Liberation Front party, Messrs. Celso Lino did not reach any agreement with respect to the invasions of settlers on the lands of the Mayangna Sauni As territory. The source adds that their lack of consent at the meeting may have led to them being unjustly blamed for the Kiwakumbaih massacre.
32. According to the source, during the trial hearings, the publicity of the trial was restricted to the media and the presence of the relatives of the detainees, in contradiction to the constitutional guarantee of publicity in criminal proceedings.
33. The source points out that the witnesses interviewed were coerced by police officers to blame the indigenous people. In addition, during the process, the participation of the defendants and the evidence regarding each alleged action were not individualized.
34. The source reports that the relatives have limited economic resources, and that it is expensive and difficult to visit the detainees or bring them food and medicine. The relatives, originally from Bonanza, must travel to the Tipitapa "Jorge Navarro" prison system, located near Managua (about 500 km away). When relatives manage to reach the prison, the prison authorities do not always allow them to visit the detainees or authorize them to deliver food.
35. The source states that the parents of some detainees are elderly and that the women who visit these inmates have a limited knowledge of Spanish. In addition, in the community of Suniwás, where most of the relatives live, there is no access

to cell phones so they have to move to a hill or to the municipal seat of the town of Bonanza to be able to communicate by telephone.

36. According to the source, detainees have never been allowed conjugal visits. They receive visits from their relatives during the last week of each month and not every fortnight as they were allowed before August 2022. It also adds that, as of December 2022, family members have only been allowed to talk to them for five to ten minutes, several meters away and through a glass window, and using cell phones provided by prison guards. Before December 2022, family members could talk to detainees for up to an hour, hug them and touch them.
37. With respect to food, since August 2022 the four individuals have not been allowed to cook in the prison. Since this date, they have not been allowed to receive rice grains and beans from their relatives and currently they can only receive oatmeal and cookies. The food in the prison is little, raw, not well cooked and the water they drink is dirty, which affects the health of the detainees.
38. The source alleges that Messrs. Celso Lino and Mr. Bruno Arcángel asked for improvements in the prison's food. As a result, during the month of April 2023, the guards poured buckets of very cold water on them every morning while they were still asleep. He also points out that they were left lying there, wet and immobilized hand and foot. This has caused colds and infections (mainly in the sores, caused by shackles and chains) in the detainees.
39. The source argues that the detainees have been subjected to ill-treatment and torture. From the beginning, the prison authorities interrogated them constantly. As of August 2022, the indigenous people were separated and placed in three-person cells in which each of them was held with two other unknown people (common criminals). Common inmates mistreated them mainly when they spoke in the Mayangna language. In addition, they beat them and threatened them with razor blades or metal spell knives and told them that they were going to rot there in prison. After 10:00 p.m. the detainees cannot speak, if they speak, the guards pour cold water on them.
40. The source adds that since December 2022 they had been transferred to punishment cells and the relatives saw them chained hand and foot. Since they are kept chained hand and foot 24 hours a day, it is difficult for them to eat, relieve themselves, sleep or bathe. When they come to light, they cannot see, their eyes and head hurt.
41. The source alleges that the four indigenous people face sexual torture in two forms. In the first place, those perpetrated by the other inmates (common criminals), who sexually penetrate them while threatening them with knives. Secondly, by the prison guards, with objects such as the tips of the weapons or the batons, among others.
42. According to the source, the relatives have brought these abuses to the attention of the lawyers who handle their cases so that they can complain to the judge and so that they can go to see them in the prison system. But lawyers have expressed fear of reprisals if they complain to the authorities, not allowing them to visit the prison system, so they have never visited them in prison.
43. The source argues that the fundamental rights of the detainees have been violated by denying them medical care despite suffering from serious illnesses. Mr. Bruno Arcángel has been denied medical attention despite suffering from heart disease. Mr. Argüello Celso Lino has not received assistance, although his belly is swollen and he complains of pain. Mr. Argüello Celso Lino has serious gallbladder conditions. Sometimes, the prison authorities put them in the ambulance and take them to

the city, leaving them in the ambulance all day dehydrating without giving them water and, without arriving at the medical appointment, return them at the end of the day to the prison. The prison system also does not allow family members to bring them medicine. The source adds that a surgical intervention had been scheduled and was denied.

44. The source states that Mr. Robins Zacarías looks swollen and pale, suffers from high blood pressure and cataracts, which has been aggravated by the lack of light in the solitary confinement cell. You also suffer from a kidney infection and have not been examined or evaluated by a doctor. Mr. Robins Zacharias was the President of the Moravian Church Committee of the community of Saubí, although his relatives have tried to bring him a Bible, the system has not allowed him to do so.
45. Mr. Ignacio Celso Lino suffers from a hernia and claims to have severe pain in his stomach, untreated gastritis. He has asked the prison authorities for help, but has not received medical assistance.
46. The source alleges that the suffering of detainees without being properly treated may also constitute torture or, at least, ill-treatment. Failure to obtain adequate assistance can significantly undermine their health, which, coupled with poor prison conditions, places them in imminent and serious danger of harm, which can lead to death and therefore be irreparable.
47. The source adds that indigenous leaders are only allowed one conjugal visit once a month, instead of the fortnightly visits received by the other prisoners. In addition, they continue to sleep on cement tiles without mattresses or sheets, they continue to be kept in their underwear or naked, subjected to physical and sexual punishment, isolated in maximum security cells called by the inmates “El Infiernillo” (full of mosquitoes) without ventilation and in total darkness.
48. The source reports that, on April 13, 2023, the Inter-American Commission on Human Rights granted precautionary measures in favor of the four indigenous people. But the government did not implement them. On June 22, 2023, the Inter-American Commission on Human Rights asked the Inter-American Court of Human Rights to issue provisional measures. On June 27, 2023, the Inter-American Court of Human Rights ordered Nicaragua to adopt the necessary measures to protect the life, personal integrity, health, and personal liberty of the four indigenous people and granted Nicaragua until July 10, 2023 as the deadline to release them.

iii. Legal analysis

49. The source alleges that the detentions of the four indigenous people are arbitrary and fall within categories I, II, III and V of the Working Group.

a. Category I

50. The source argues that the arrests were without a warrant. It also states that it is not a case of flagrante delicto due to the lack of evidence against the indigenous people, due to the testimonies of the survivors of the massacre in which they affirmed that the attackers were non-indigenous men, heavily armed with weapons of war and unknown to the indigenous communities. In addition, the witnesses place Mr. Bruno Arcángel as the victim of the attack and the other three detainees are located far from the scene of the events.

b. Category II

51. The source alleges that the four detainees are members of an Indigenous People that constitutes an ethnic, religious and linguistic minority in Nicaragua, and that they are discriminated against on the basis of race, color, language, religion, political opinion, national or social origin, economic status, birth or any other social condition. The source states that this has limited them from having access to a simple legal remedy, from obtaining equal protection from the law and from being heard by a competent, independent and impartial tribunal. They have also been discriminated against in their right not to be subjected to arbitrary arrest or detention, as well as the right of their people to be protected from persecution, forced displacement and genocide. In addition, their right to participate in government, in the defense of their communities' lands, and their right to self-determination and definition of development from their worldview as Mayangna Indigenous People have been violated.
52. The source affirms that the Celso Lino family has a long history of communal leadership in Suniwás and in the defense of the Mayangna Sauni As territory. They have played a prominent role in confronting settlers who encroach on the lands and usurp their communal natural resources.
53. The source adds that Mr. Ignacio Celso Lino, in his capacity as Communal Trustee, with the support of the community members, continued to defend everything within his reach. Once he was arrested, his property was invaded by non-indigenous settlers.
54. The source alleges that the community members consider that Mr. Ignacio Celso Lino has been deprived of his liberty as a result of the exercise of his fundamental rights and freedoms as a communal trustee, by defending the collective rights to indigenous land and territories titled by the State in favor of his communities. His actions contradicted an illegal policy of internal colonization imposed by the State that resulted in the usurpation of the lands of the indigenous and Afro-descendant communities of the Caribbean Coast of Nicaragua. Indigenous communities have been attacked for nearly a decade by non-indigenous settlers with impunity. For this reason, the community members consider that the State uses the convicted indigenous people as an example for other members of the indigenous communities to refrain from defending their traditional and ancestral lands and territories.
55. The source adds that Mr. Argüello Celso Lino has been deprived of his liberty as a result of the exercise of his function as a communal judge, in the exercise of his fundamental rights and freedoms, to defend the collective rights to indigenous land and territories titled by the State in favor of his community.
56. According to the source, in the particular case of Mr. Robins Zacarías, the fact that he was deprived of his liberty could also be the result of his long career as a volunteer ranger and as a member of the Constitutionalist Liberal Party, an opponent of the Sandinista National Liberation Front.
57. The source states that, in the case of Mr. Bruno Arcángel, the fact that his gold vein was taken by the settlers after his arrest raises the suspicion that this may be one of the reasons for his illegal conviction.
58. The source states that, if the indigenous authorities and leaders were the perpetrators of the attacks, since they were deprived of their liberty, the attacks on the indigenous communities should have stopped. However, the attacks have not stopped.

c. Category III

59. The source alleges that the lack of an impartial, professional, and independent judicial system has violated due process of law and the fundamental guarantees of the four indigenous peoples, and that their imprisonment has been accompanied by incommunicado detention, isolation, and ill-treatment.

d. Category V

60. The source alleges that the results of the criminal proceedings transcend the parties directly involved and also affect all members of the Mayangna Sauni As territory, since the criminalization and severe penalties imposed on indigenous leaders, defenders of their lands and territory, are reprisals for having carried out such a defense.

61. The indigenous origin of the detainees is a definitive element in the discrimination to which they have been subjected in deprivation of their liberty, on the basis of their ethnic or social origin, language, religion and economic condition, since their defence of their lands and other natural resources is due to spiritual dependence, cultural and economic that indigenous communities have of their lands and territories.

2. Deliberations

64. In the absence of a reply from the Government, the Working Group has decided to render the present opinion in accordance with paragraph 15 of its methods of work.

65. In determining whether the detention of Messrs. Celso Lino, Mr. Bruno Arcángel and Mr. Robins Zacarías was arbitrary, the Working Group takes into account the principles established in its jurisprudence on evidentiary matters. If the source has presented prima facie evidence of a violation of international law constituting arbitrary detention, the burden of proof must be understood to be on the Government if it wishes to refute the allegations. Mere assertions that domestic legal procedures have been followed are not sufficient to refute the source's allegations.

a. Category I

66. The source states that the detention of the four individuals is arbitrary because it lacks a legal basis under Category I.

67. The Working Group recalls that the rule of law is a principle of governance that requires that measures be taken to ensure respect for the principles of the primacy of the law, equality before the law, accountability before the law, equity in their application, separation of powers, participation in decision-making, legality, non-arbitrariness and procedural and legal transparency. The need for States parties to comply with this criterion is explained by the fact that the rule of law is the cornerstone on which due process, which is essential for the protection of human rights, is based. Thus, the violation of these concepts is reflected in the different categories of arbitrary detention identified by the Working Group.

68. The Working Group has reflected on the context in which the arrests analysed took place, that is, the massacre that took place in the Mayangna Suani As territory, ancestral indigenous territory that has been, according to the source, invaded by criminal gangs made up of non-indigenous persons, specifically former demobilized members of the Army and the Nicaraguan resistance of the eighties who claim to have protection from the Sandinista National Liberation Front party. Between 9 and 16 people were killed in the massacre, almost all of them Miskitu and Mayangna indigenous people who worked as artisanal miners.

69. The source adds that the existing tensions are constant. The situation has escalated to the point that on January 25, 2023, the Office of the United Nations High Commissioner for Human Rights made a new public call to Nicaragua to protect the human rights of these indigenous communities.
70. The source indicates that the accused are indigenous, have lived within their communities doing agricultural work for their subsistence, and hold positions of authority and respect in the community, being judges, trustees and protectors and defenders of their ancestral territory.
71. The Working Group notes that, according to the source, the arrests were carried out by the police in an abusive manner and that all authorities persist in treating the four human rights defenders as accused of murder despite the testimony of 20 surviving witnesses of the massacre who testified that the perpetrators were not indigenous.
72. In the absence of information provided by the Government, the Working Group concludes that the four human rights defenders were detained without any legal basis, in violation of article 9 of the Covenant in the circumstances set out below.
73. The source reports that, five days after the Kiwakumbaih massacre, on 28 August 2021, Mr. and Mrs. Celso Lino were arrested at 4:00 p.m. by the National Police at their homes in the community of Suniwás. Mr. Bruno Arcángel was arrested on 4 September 2021, at 4.00 a.m., by the National Police at his home in the community of Kibusna. The arrests were carried out without a warrant. Mr. Robins Zacarías was arrested on 3 December 2021 at 3:00 p.m., when he was withdrawing his children's pension at the office of the Nicaraguan Social Security Institute in Bonanza. Police also did not present any warrant at the time of his arrest.
74. The Working Group notes that in none of the four arrests described was an arrest warrant presented, nor were the detainees informed of the reason for the arrest nor were they explained their right to have recourse to a lawyer or an interpreter, since their mother tongue is not Spanish. On the contrary, the arrests took place with force, while the detainees were at home and one of them at his children's school. In addition, the homes of the aforementioned detainees were searched without any judicial warrant, and no evidence was obtained.
75. The Working Group notes with alarm that these arrests cannot be considered "flagrante delicto" either, since they were carried out against the specific testimony of 20 persons who have asserted that the aggressors were not indigenous, were dressed in military uniforms and spoke Spanish.
76. The Working Group recalls that, under international law, the authorities must invoke the legal basis and apply it to the circumstances of the case, and that the accused is therefore entitled to an arrest warrant or court order (or equivalent document), in order to ensure that effective control is exercised by a competent judicial authority. This is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, article 9, paragraph 1, of the Covenant and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
77. The Working Group considers that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed detainees of the reasons for their arrest at the time of their detention. By failing to do so, they violated article 9 of the Universal Declaration of Human Rights, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and deprived their detention of any legal basis.

78. The Working Group reiterates its grave concern in establishing that the four indigenous people have been held in pretrial detention and recalls that the deprivation of liberty is not only a matter of legal definition, but also of fact, and must be justified as reasonable, necessary and proportionate in the light of the circumstances and must be reevaluated as time extends. It should not be punitive in nature and should be based on the individual assessment of each case. In addition, article 9, paragraph 3, of the Covenant requires that a reasoned judicial decision examine the merits of pretrial detention in each case, which has not been the case in the case of the four indigenous people who were arrested, held incommunicado, obstructed and delayed in all procedural proceedings, and were denied, in addition, alternative measures of imprisonment and access to a lawyer of their confidence.
79. The Working Group emphasizes that, in accordance with article 9, paragraph 3, of the Covenant, pretrial detention should be the exception rather than the norm, and should be ordered for the shortest possible time. This must be strictly based on an individualized determination made as reasonable and necessary for purposes such as avoiding flight, interference with evidence, or repetition of the offense. The Working Group has not received an effective disclaimer of these facts and notes that the source has attached documentation proving non-compliance with these assertions.
80. The Working Group stresses that the legal safeguards against arbitrary deprivation of liberty, contained in article 9 of the Universal Declaration of Human Rights and the Covenant, require that any person arrested or detained on a criminal charge be brought promptly before a judge in order to decide his or her situation. As has been reiterated in its jurisprudence, normally 48 hours are sufficient to meet such a requirement, any additional delay must be absolutely exceptional and justified in the circumstances.
81. The Working Group concludes that the four indigenous people were not promptly brought before a judicial authority, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.
82. Having examined all the libel, the Working Group concludes that the detention of the four indigenous people is arbitrary because it lacks a legal basis and falls within category I.

b. Category II

83. The source alleges that the detention of the four indigenous people is arbitrary under category II as it results from the exercise of fundamental rights or freedoms, including the right to equality before the law, freedom of movement, freedom of expression, freedom of assembly and association and freedom of participation in public affairs. all of which are guaranteed by the Universal Declaration of Human Rights and the Covenant.
84. The detainees are members of an Indigenous People that constitutes an ethnic, religious and linguistic minority. The source affirms that the detainees have dedicated their lives to defending their territory, although they do not obtain equal protection from the law and their people are not protected against persecution, forced displacement and genocide, nor have they been guaranteed the rights to participate in government, the defense of the lands of their communities and to self-determination and definition of development from their worldview as Mayangna Indigenous People.
85. The Working Group is convinced (in the absence of information to the contrary) that the source's assertions that the real reasons for the detention of the four

indigenous people revolve around repression by the Government to suppress the right to promotion, protection and participation in public affairs.

86. This description of the facts leads the Working Group to emphasize that the work of human rights defenders is essential for the strengthening of democracy. The obstacles and constraints faced by environmentally-related human rights defenders have been of particular interest to the Working Group, as well as to the Human Rights Council. The latter adopted a resolution recognizing the importance of environmental human rights defenders and their protection, expressing grave concern about their situation worldwide and strongly condemning all violations or abuses against environmental human rights defenders committed by State and non-State actors, stressing that such acts may violate international law and undermine sustainable development at the local level, national, regional and international.
87. The Working Group notes that the Celso Lino family has a long history of community leadership in Suniwás and in the defence of the Mayangna Sauni As territory. They have played a leading role in confronting settlers who encroach on the land and usurp its community's natural resources.
88. The Working Group observes that Mr. Celso Lino have been deprived of their liberty as a result of the exercise of their fundamental rights and freedoms in their capacity as communal trustees and communal judges, in defence of the collective rights to indigenous lands and territories entitled by the State in favour of their communities. Mr. Robins Zacarías has been deprived of his liberty as a result of his long career as a volunteer ranger and as a member of the Constitutionalist Liberal Party, an opponent of the Sandinista National Liberation Front.
89. The Working Group is convinced that Indigenous Peoples defending their territory are being persecuted and intimidated. In the instant case, both the Inter-American Court and the Office of the United Nations High Commissioner for Human Rights have warned about this situation. The indigenous people have repelled the settlers by exercising community resistance, which they have carried out by expressing their demands and protests, mobilizing for the territory that was being defended and disseminating information about the situation through different media. These activities were carried out peacefully, which is guaranteed by international human rights law. These rights – freedom of expression, peaceful assembly and association – have been restricted to detainees, resulting in their arrest and prosecution.
90. The Working Group does not find that the circumstances under which articles 19, paragraph 3, 21 and 22, paragraph 2, of the Covenant permit the restriction of these rights, i.e., to ensure respect for the rights or reputations of others or the protection of national security, have been analysed and verified. order, health or public morals. In addition, it is recalled that the standard of protection and review of detention is higher in cases where freedom of expression and opinion appears to have been restricted, particularly when human rights defenders are involved in these detentions.
91. The source maintains that the right to seek, receive, and impart information and ideas of all kinds has been violated, since since 2015 they have been officially and repeatedly denied information on the processes for granting the mining concession, the environmental license, and the municipal operating permits granted to the mining company.
92. The source points out that the above-mentioned detentions violate article 25 of the Covenant, insisting that they are due solely to activities in defence of the right

to live in their ancestral territories and to their opposition to the Government's concession of these lands, which are protected areas to settlers and outsiders for mining exploitation.

93. The Working Group notes that environmental defenders are entitled to the rights and protections set out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, including the rights to freedom of expression, assembly and association, and the right to an effective remedy.
94. According to the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to self-determination, autonomy or self-government in matters relating to their internal and local affairs, as well as to have the means to finance their autonomous functions. This approach is reinforced by the Human Rights Council's view that environmental defenders have the right to be protected in their work. In addition, it has called on States to promote a safe and enabling environment in which individuals, groups and organs of society, including those working on human rights and environmental rights, including biodiversity, can operate without threats, impediments and insecurity.
95. In the absence of information provided by the Government, the Working Group considers that the source has demonstrated that the four human rights defenders were detained for exercising their rights enshrined in the Declaration on Human Rights Defenders, for promoting democratic participation and combating attacks on the environmental rights of their population.
96. The Working Group has determined that the detention of persons for their activities as human rights defenders is a violation of their right to equality before the law and the right to equal protection of the law, as well as the rights to freedom of opinion and expression, freedom of association and the right to participate in political affairs recognized both in the Universal Declaration of Human Rights and in the United States. in the Covenant. Thus, these are long-standing fundamental principles in the defense of human rights and that configure the situation of the four human rights defenders as an arbitrary detention under category II.
97. Given the seriousness of the case, the Working Group will refer this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on human rights and the environment and the Special Rapporteur on the rights of indigenous peoples.

c. Category III

98. In view of the category II findings that the detention results from the exercise of the rights to freedom of opinion and expression, association and political participation, the Working Group considers that there are no grounds for prosecution. However, since the trial did take place, and in the light of the allegations of the source, the Working Group will consider whether the fundamental elements of a fair, independent and impartial trial were respected during the trial.
99. The source reports that, once detained, the four indigenous people disappeared and were held incommunicado for several months without access to trusted lawyers. On 16 September 2021, without knowing where or in what condition the detainees were being held, the relatives of Messrs. Celso Lino and Mr. Bruno Arcángel filed writs of habeas corpus, which were denied.

100. The source reports that, since the arrest of Mr. Robins Zacarías on December 3, 2021, the police transferred the four defendants to the “Jorge Navarro” prison system in Tipitapa, near Managua. Only then were the detainees, using another inmate’s mobile phone, able to call their relatives and inform them where and how they were.
101. During the disappearance and incommunicado detention, the detainees were tortured, according to the source. In addition to the constant interrogations, they were placed in common cells with other dangerous prisoners they did not know. They abused them by beating them and threatening them with razor blades. After 10:00 p.m. they could not speak because the guards poured ice water on them.
102. Since December 2022, they have been transferred to punishment cells and their relatives saw them chained hand and foot 24 hours a day, making it difficult for them to eat, relieve themselves, sleep or bathe. They were then held in solitary confinement, in complete darkness during the day and night. In addition, according to the source, detainees face sexual torture, both by other inmates and by prison guards.
103. This situation has contributed to the physical and psychological deterioration of the detainees, whose integrity is beginning to show serious and irreparable consequences for their health and endangers their lives. The aim is to break their resistance and serve as an example to other members of their communities, so that they do not continue to defend their lands. This situation is also directly linked to the context of violence caused by the internal colonization of the lands of the Indigenous Peoples of the Caribbean Coast.
104. The abuses and torture described have been reported to their lawyers, who are afraid to report for fear of reprisals. In addition, against all rights, lawyers cannot visit their clients. The source maintains that the most fundamental rights of the detainees have been violated by denying them medical attention despite suffering from serious illnesses.
105. The Working Group is satisfied that the State has violated article 9, paragraphs 3 and 4, of the Covenant and the right to an effective remedy provided for in article 2, paragraph 3, of the Covenant and articles 6 and 8 of the Universal Declaration of Human Rights. It is reiterated with concern that holding persons in an unknown location is prima facie considered an enforced disappearance, and holding them incommunicado violates their right to challenge the lawfulness of their detention before a court, as enforced disappearance constitutes a particularly aggravated form of arbitrary detention. In this case, the appellants were abducted for several months, and the Working Group therefore refers the present case to the Working Group on Enforced or Involuntary Disappearances.
106. The detainees have been constantly subjected to torture, which has led the Inter-American Court of Human Rights to issue provisional measures in their favour. However, torture continues to cause the Working Group to receive with alarm the information from the source that these indigenous authorities and leaders are currently not allowed conjugal visits and receive visits from their families only once a month (unlike other prisoners who receive fortnightly visits). Likewise, they continue to be poorly fed and the water they ingest continues to be dirty; continue to suffer from chronic illnesses without getting medical care or medication. In addition, they continue to sleep on cement tiles without mattresses or sheets; they continue to keep them in their underwear or naked, subjected to physical and sexual punishment, and isolated in maximum security cells called by the inmates “El Infiernillo” (full of mosquitoes) without ventilation and in total darkness.

107. The torture suffered by the four detainees and not investigated by the authorities, as stated by the source, would be contrary to the absolute prohibition of torture as a peremptory norm of international law, as well as to article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The situation alleged is so serious that the Working Group decides to bring the case to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.
108. The Working Group recalls that the denial of medical care may constitute a form of torture and cruel and inhuman treatment. Noting the seriousness of the allegations, the Working Group considers that violations related to the conditions of detention of the four indigenous people and the lack of medical care significantly undermined their ability to defend themselves adequately. The Working Group has consistently concluded that torture or other forms of ill-treatment or punishment that make it impossible for the person concerned to prepare an adequate defence before the judicial process constitutes a violation of the individual's right to a fair trial.
109. The Working Group notes that everyone has the right not to be arbitrarily deprived of his liberty and to be presumed innocent until proven guilty. The right of the accused to be presumed innocent is one of the cornerstones of the right to a fair trial. The presumption of innocence is enshrined in article 14, paragraph 2, of the Covenant. In essence, the presumption of innocence means that a person charged with a criminal offence should be treated and considered as if he or she had not committed a crime until he or she is found guilty with a final verdict from an independent and impartial tribunal.
110. In the case of the four defenders, the police recorded and presented a video (see para. 18) to the public at the national level, in which they presented them as the culprits of the massacre committed. Subsequently, according to the source, the police and other authorities gave extensive statements to the press on the matter.
111. In this way, the four accused were exposed and exhibited as convicted criminals, in contravention of article 11, paragraph 1, of the Universal Declaration of Human Rights and article 14, paragraph 2, of the Covenant, which recognize the right to the presumption of innocence.
112. The Working Group recalls that, according to the Human Rights Committee, in its general comment No. 32 (2007), the right to equality before the courts and tribunals and to a fair trial is a fundamental element of the protection of human rights and serves as a procedural means of safeguarding the rule of law. Moreover, article 14 of the Covenant is intended to ensure the proper administration of justice; guaranteeing a series of specific rights, which have been violated against the four indigenous people.
113. The Working Group emphasizes that one of the fundamental guarantees of due process is the principle of legality. The use of accusations that are not consistent with the reality of the facts does not meet the requirement of legal certainty and allows guilt by analogy, as has been shown to have occurred in the present case.
114. One of the various procedural defects is pointed out to be the fact that the indictment hearing was convened without the defendants being able to speak with their lawyers or family, without being able to prepare to defend themselves against the charges, ignoring 20 witnesses who affirmed that it was not them, and without establishing what they were accused of. The detainees were not provided with an interpreter, in violation of article 14, paragraph 3, of the Covenant.

115. The proceedings of the trial were repeatedly suspended because of the coronavirus disease (COVID-19) pandemic. The Working Group notes with alarm the source's assertion that there was a lack of territorial jurisdiction in the present case. The Working Group is aware that it was the Managua district that heard the crimes of which the four indigenous people were charged, and that this is not the place of their homes or the place where the crime was allegedly committed. Therefore, there is no jurisdiction or competence of the Court that convicted them.
116. It is emphasized that the four indigenous people should be in the jurisdiction and under the jurisdiction of the judge of the district of Bonanza, the jurisdiction to which the indigenous territory where the events allegedly occurred belongs.
117. The Working Group has repeatedly considered in its jurisprudence that the criminal prosecution of persons accused of crimes committed in a particular territory by courts located in another jurisdiction constitutes a violation of the right to be tried by a competent or natural judge, when national legislation expressly attributes jurisdiction to the jurisdiction of the locality where the alleged crime was committed.
118. In view of the foregoing, and in the absence of information provided by the Government, the Working Group considers that the court that heard the case of the four indigenous people was not competent, which violated the right to be tried by a natural judge, in contravention of the provisions of article 14, paragraph 1, of the Covenant.
119. The Working Group notes the ineffectiveness of the remedies filed by the four defendants both to request a review of the measure of deprivation of liberty against them and to request medical examinations and medicines.
120. The Working Group further notes that, in order to ensure the effective exercise of the right to challenge the lawfulness of detention, detainees must have access to legal aid of their choice immediately after their arrest, and such access must be provided without delay. In addition, legal consultations and all communications with attorneys must remain confidential. The Working Group notes with alarm that lawyers have not been able to approach their clients, as this is prohibited in the place where they are being held.
121. This fact alarms the Working Group, which considers that the months during which the four indigenous people did not have access to legal assistance prevented them from having a fair trial in accordance with the principle of equality of arms, or the right to adequate and sufficient time and facilities to prepare their defence in violation of articles 10 and 11, paragraph 1 of the Universal Declaration of Human Rights and article 14, paragraph 3(b), of the Covenant.
122. In the light of the foregoing, the Working Group is convinced that the authorities failed to comply with international standards relating to the right to a fair, independent and impartial trial. The Working Group therefore declares the detention of the four indigenous people arbitrary and places them in category III.

d. Category V

123. The source states that the deprivation of liberty of the four detainees was due to their activities as defenders of human rights and environmental rights of their population and their ancestral territories, and to their status as indigenous peoples, to which was added their political opinion critical of the Government, which does not comply with its obligation to protect those territories.

124. The Working Group recalls that detention is arbitrary under category V when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic status, political or other opinion, sex, orientation, disability, or any other condition that points to or may result in the disregard of the equality of human beings.
125. The Working Group notes that one of the factors that tend to establish the discriminatory nature of a deprivation of liberty is that it is part of a pattern of persecution against persons in custody, through, for example, previous detentions, acts of violence or threats.
126. As discussed in category II, the detention of the four defenders was the result of the exercise of their fundamental rights under international law. When a deprivation of liberty is due to the active exercise of civil and political rights, there are solid reasons to suppose that it also constitutes a violation of international law because it is discrimination. In this context, the Working Group refers to the allegations of the source, which are not refuted by the Government, and which have already been considered in this opinion.
127. The Working Group endorses the statements of the Committee on the Elimination of Racial Discrimination, which affirms that, with regard to indigenous territories, Nicaragua has been urged to ensure the protection of the rights of indigenous peoples to possess, use, develop and control their lands, territories and resources in full security; to advance in the demarcation and titling of these territories, and to ensure their legal recognition and legal protection. Referring to the reports of acts of violence and attacks on the life and physical integrity of members of Indigenous Peoples and Afro-descendants, specifically in the Mayangna Sauni As territory in the area of the Bosawás biosphere reserve, the experts deplored not having information that these abuses have been investigated and fear that they may go unpunished.
128. In addition, the source has stated that, during the proceedings, the four defenders were treated with obvious contempt and with particular viciousness because of their status as indigenous people, even denying them the possibility of an interpreter.
129. The Working Group considers this detention under category V to be arbitrary because of the discrimination against the four indigenous peoples. They were arrested because of the political opposition of the four defenders, because of their position within their community and with the purpose of teaching the other inhabitants of the place a lesson, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2, paragraph 1, and 26 of the Covenant.

e. Concluding remarks

130. In order to enable the Working Group to establish a direct dialogue with all State authorities, representatives of civil society and persons in detention, in order to achieve a better understanding of the situation of deprivation of liberty in the country, the Working Group would welcome the opportunity to visit Nicaragua, as requested in its notes verbales of 24 April and 21 November 2018. The Working Group recalls that, on 26 April 2006, the Government of Nicaragua extended an open invitation to the special procedures and that their most recent visit to Nicaragua was from 15 to 23 May 2006.

3. Decision

131. In the light of the above, the Working Group renders the following opinion: The deprivation of liberty of Ignacio Celso Lino, Argüello Celso Lino, Donald Andrés Bruno

Arcángel and Dionisio Robins Zacarías is arbitrary, in that it contravenes articles 2, 3, 6, 7, 8, 9, 10, 11, 18, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 19, 21, 22, 25 and 26 of the Covenant. and is included in categories I, II, III and V.

132. The Working Group requests the Government of Nicaragua to take the necessary measures to remedy the situation of the four individuals without delay and to bring it into conformity with relevant international standards, including those set out in the Universal Declaration of Human Rights and the Covenant.
133. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the four individuals immediately and grant them the effective right to compensation and other types of reparation, in accordance with international law.
134. The Working Group urges the Government to carry out a thorough and independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of the four individuals and to take appropriate measures against those responsible for the violation of their rights.
135. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on human rights and the environment, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Torture and the Special Rapporteur on the Rights of Indigenous Peoples.
136. The Working Group requests the Government to disseminate this opinion by all available means and as widely as possible.

4. Follow-up procedure

137. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on the follow-up action taken on the recommendations contained in this opinion, in particular:
 - (a) Whether the four individuals have been released and, if so, on what date;
 - (b) Whether compensation or other reparations have been awarded to the four individuals;
 - (c) Whether the violation of the rights of the four individuals has been investigated and, if so, the outcome of the investigation;
 - (d) Whether legislative amendments have been adopted or modifications have been made in practice to harmonize Nicaragua's laws and practices with its international obligations in accordance with this opinion;
 - (e) Whether any other measures have been taken to implement this opinion.
138. The Government is invited to inform the Working Group of any difficulties it may have encountered in the implementation of the recommendations made in this Opinion and to indicate whether it requires additional technical assistance, for example through a visit by the Working Group.
139. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of this opinion. However, the Working Group reserves the right to undertake its own follow-up to the Opinion if new areas of concern are brought to its attention in connection

with the case. This follow-up procedure will enable the Working Group to keep the Human Rights Council informed of the progress made in implementing its recommendations, as well as, where appropriate, of any shortcomings identified.

140. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group, and has requested them to take into account their views and, if necessary, to take appropriate measures to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the measures they have taken....

2. Visit to Mexico, A/HRC/57/44/Add.1, 16 July 2024

D. National Human Rights Commission, state human rights commissions and non-governmental human rights organizations

22. The Working Group is concerned about cases of human rights defenders who have been subjected to reprisals by State authorities, including threats that charges would be fabricated against them. Among them were members of civil society who defend the rights of LGBTI+ people and Indigenous and Afro-Mexican persons. Such reprisals are a violation, inter alia, of article 12 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Detention of members of Indigenous Peoples

60. The Working Group heard of cases in which members of Indigenous Peoples suffered discrimination that led to their being arrested and subjected to considerable violence by security forces. In some of these cases, the Indigenous persons were defending the rights of their people, including in government facilities and projects that they considered to affect their territories, and were accused of invasions and damage to third-party property. In this regard, the Working Group stresses that individuals should not be arrested simply for exercising their rights. This is particularly important for Indigenous groups engaged in non-violent protest actions. The Working Group notes that many Indigenous persons advocate for environmental protection and therefore play a dual role in defence of both the rights of their peoples' members and of nature.

61. These activities should not be punishable by criminal penalties unless they involve serious offences that cannot be addressed by alternative means. At the same time, if Indigenous groups administer traditional justice that involves detention, it must be in accordance with the human rights obligations of Mexico, including the prohibition of arbitrary detention and the prohibition of torture and cruel, inhuman and degrading treatment. The Working Group was informed that for Indigenous persons in detention, who make up a significant proportion of all inmates, particularly in Chiapas, culturally appropriate food was not always available and they were not always able to observe their traditional practices. When it comes to language, the Working Group notes the efforts of the National Institute of Indigenous Peoples, which assisted over 500,000 people in 2022 and a growing number in 2023. This is important from the outset of detention, when the risk of their rights being violated is greatest. The Working Group encourages the authorities to be proactive in training prosecutors, judges and other officials on the needs of Indigenous persons in detention, which go beyond language and also include socioeconomic challenges, remoteness and alienation from their peoples.

79. The Working Group identified several challenges within the criminal justice system that place accused persons at risk of arbitrary detention, namely: ... (j) The discrimination suffered by several Indigenous persons has led to their being arrested and subjected to violence by the security forces. In many cases they are detained for exercising and defending their rights, which could potentially contravene articles 2 (1) and 26 of the Covenant.
86. The Working Group recommends that the Government take the following measures with respect to the detention of Indigenous persons:
- (a) Redouble efforts to ensure that Indigenous persons subject to criminal proceedings are assisted by interpreters, translators and defenders with knowledge of their language and culture. Implement care protocols for Indigenous persons in prisons;
 - (b) Strengthen the necessary measures so that leaders and defenders of Indigenous Peoples can carry out their work without fear of criminal penalties.

3. Report of the Working Group on Arbitrary Detention, A/HRC/54/51, 31 July 2023

C. Deprivation of liberty of environmental human rights defenders

55. The Working Group has addressed, in past annual reports, the problematic practice of targeting and detaining human rights defenders in general, and the steady increase in communications pertaining to this phenomenon. Among these communications, the Working Group has noted a rise in the arbitrary detention of environmental human rights defenders. The term “environmental human rights defenders” has been defined as 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. In 2016, the Special Rapporteur on the situation of human rights defenders denounced the growing risks faced by environmental human rights defenders, including threats, harassment, intimidation, arbitrary arrest, detention and even death. The Human Rights Council, in its resolution No. 40/11 of 2019, expressed grave concern at the situation of environmental human rights defenders around the world, strongly condemned the killing of and all other human rights violations or abuses against environmental human rights defenders, by State or non-State actors, and stressed that such acts might violate international law.
56. The Working Group has found the detention of environmental human rights defenders to be arbitrary in a range of countries over recent years. There are reports that during COVID-19, the situation with regard to such arbitrary detention worsened. In some States, the detention of environmental human rights defenders along with other human rights defenders is widespread, prompting the Working Group to warn that systematic violations of the right to freedom from arbitrary arrest and detention may constitute a serious violation of international law. The Working Group has observed that human rights defenders targeted by the authorities were members of a group, such as environmental defenders, whose work had been repeatedly criminalized by States, indicating that their detention was based on discriminatory grounds such as their political or other opinion or their status as a human rights defender. Indigenous environmental human rights defenders, in particular, experience higher rates of criminalization and targeting as they engage in the defence of their rights against, inter alia, land grabbing, the

industrial timber trade and large-scale development projects. In certain countries, Indigenous environmental human rights defenders are at a higher risk of being held in pretrial detention and subjected to longer prison sentences.

57. Recent developments regarding sustainable development and the environment have highlighted the fact that the right to a safe, clean, healthy and sustainable environment and other human rights are interdependent and interrelated, and that the former right underlies the effective realization of a number of fundamental rights. The Working Group considers that environmental human rights defenders are pivotal actors in protecting and promoting fundamental human rights. In addition to defending and upholding the fundamental rights of others, they strive to protect the environment itself.
58. The Working Group wishes to highlight the duties of States to protect and take all necessary measures to empower environmental human rights defenders to participate in activities related to the protection and promotion of environmental human rights, as set out in article 12 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and as reflected, more broadly, in the Covenant and the Universal Declaration of Human Rights.

4. Opinion No. 14/2023 concerning Gus Kuster, A/HRC/WGAD/2023/14, 11 May 2023

Submissions

Communication from the source

4. Gus Kuster is a stateless person of Torres Strait Islander descent, born in Lorengau, Papua New Guinea, on 31 October 1978. The Government of Papua New Guinea, however, has no record of his birth there and does not recognize Mr. Kuster as a citizen.
5. The source explains that Mr. Kuster's grandmother was born in the Torres Strait Islands and moved to Papua New Guinea for marriage. There are, however, no written records of Mr. Kuster's maternal family in the Torres Strait Islands. This is in keeping with the deep oral traditions of family lore and the fact that no written records were kept in remote communities. Mr. Kuster and his family identify themselves as Torres Strait Islanders. The paternal side of Mr. Kuster's family is European Australian.
6. Mr. Kuster arrived in Australia on 9 September 1983 at the age of 4 with his family and was granted a permanent entry permit upon arrival. On 1 September 1994, a legal determination was made that he was the holder of a transitional (permanent) BF-C visa. Mr. Kuster understood that, like his siblings, he was an Australian citizen. Mr. Kuster has never left Australia.
7. Mr. Kuster has criminal convictions for various offences, for which he has received fines, been subject to numerous court orders and been sentenced to terms of imprisonment ranging from seven days to two years. On 20 December 2017, Mr. Kuster was convicted of contravening a domestic violence order (aggravated offence) and sentenced to 12 months' imprisonment. On 21 December 2017, Mr. Kuster's visa was mandatorily cancelled by a delegate of the Minister for Home Affairs under section 501 (3A) of the Migration Act 1958, due to his having a substantial criminal record, as defined by the Act. At that time, Mr. Kuster was serving a custodial sentence at the Woodford Correctional Centre. A notice of visa cancellation was sent to Mr. Kuster. It was at this time that Mr. Kuster realized that he was not an Australian citizen.

8. On 18 January 2018, Mr. Kuster made a request for revocation of the mandatory visa cancellation under section 501 (3A) of the Migration Act. On 24 January 2018, the Minister received the request and, on 29 January 2018, informed Mr. Kuster that the request was invalid.
9. On 14 March 2018, Mr. Kuster lodged an application for a review of the determination of the Department of Home Affairs that he had not made a valid request for revocation to the Administrative Appeals Tribunal. On 13 April 2018, the Tribunal found that it had no jurisdiction to review Mr. Kuster's visa cancellation, as Mr. Kuster had not sought review within the relevant time frame.
10. On 23 July 2018, Mr. Kuster was released from the correctional institution and, on the same day, was detained by officials from the Department of Home Affairs under section 189 of the Migration Act. The source explains, that upon cancellation of Mr. Kuster's Class BF transitional (permanent) visa under section 501 (3A) of the Migration Act, Mr. Kuster became an unlawful non-citizen. As required by section 189, an officer must detain an unlawful non-citizen.
11. The Migration Act specifically provides, in sections 189 (1), 196 (1) and 196 (3), that unlawful non-citizens must be detained and kept in detention until they are removed or deported from Australia, or granted a visa. Section 196 (3) specifically provides that even a court cannot release an unlawful non-citizen from detention unless the person has been granted a visa. In addition, section 501 (3A) of the Migration Act provides that the Minister must cancel a person's visa if the Minister is satisfied that the person does not pass the character test because they have a substantial criminal record and are serving a sentence of imprisonment on a full-time basis at a custodial institution for an offence against an Australian law.
12. On 31 July 2018, Mr. Kuster was referred for removal. It appears that, in the time period between 31 July 2018 and 16 April 2019, steps were taken towards removing Mr. Kuster, although his citizenship status was never finalized, and the matter was addressed only on 20 May 2020. On 13 February 2019, Mr. Kuster's representatives wrote to the Minister requesting a review of his case owing to the exceptional circumstances.
13. On 20 February 2019, the High Commission of Papua New Guinea wrote to a departmental officer at the Australian Border Force, copying the Department of Foreign Affairs and Trade, stating that Papua New Guinea had no records showing that Mr. Kuster was a citizen of that country. The Commission reaffirmed that Mr. Kuster was not a citizen of Papua New Guinea and therefore could not be deported to that country.
14. On 4 March 2019, the departmental officer noted that Mr. Kuster's request for a review of his case due to exceptional circumstances raised claims about his Australian citizenship, which, based upon a cursory view of the file, did not appear to have been assessed.
15. On 16 April 2019, the Australian Border Force notified Mr. Kuster of the acceptance of the revocation request and, on 23 May 2019, Mr. Kuster's case was allocated to a revocation officer. On 6 June 2019, Mr. Kuster provided the Force with a personal circumstances form and a statement in relation to the revocation request.
16. On 20 June 2019, Mr. Kuster requested voluntary removal from Australia. The source recalls that the departmental officers noted the citizenship concerns regarding Papua New Guinea and requested further information relevant to the decision under section 501 (3A) of the Migration Act on whether to revoke the original decision to cancel his visa. The source further recalls that this request was made more than

two months after the department had accepted the revocation request as valid and related to information dating to 2018 and to a departmental file note regarding Mr. Kuster's son, created the day before the request for further information was made. Mr. Kuster received an extension of the deadline, to 15 August 2019, to reply.

17. On 20 August 2019, a departmental officer decided not to wait for further submissions from Mr. Kuster and to move to finalize the submission of the request for voluntary removal. Departmental officers started preparing the submission and a draft statement of the reasons for a decision.
18. On 21 August 2019, Mr. Kuster attempted voluntary departure to Papua New Guinea and was denied entry, as the Immigration and Citizenship Authority of Papua New Guinea was not satisfied that he was a citizen of the country. Mr. Kuster was returned to detention in Australia pending the decision on his request for revocation of the mandatory cancellation of his visa, which he had lodged on 18 January 2018. Subsequent review of Mr. Kuster's case, in November 2020, five months after the voluntary deportation attempt to Papua New Guinea, determined that Mr. Kuster was stateless.
19. The source highlights the fact that considerable delay occurred in the consideration of the revocation request such that Mr. Kuster sought judicial review of the unreasonable delay. The case was scheduled for a hearing on 16 April 2021. On 12 April 2021, the Minister decided not to revoke the cancellation of Mr. Kuster's visa. Mr. Kuster sought review of the decision in the Federal Court. On 23 November 2021, the Federal Court found for the Minister, and Mr. Kuster's appeal based on unreasonable delay in the consideration of the visa revocation request was dismissed.
20. In February 2022, Mr. Kuster applied for Australian citizenship. On 31 May 2022, the Department of Home Affairs invited Mr. Kuster to provide further comments in relation to his application for Australian citizenship, specifically with regard to his criminal history and citizenship status (i.e. statelessness), in a letter entitled "Invitation to comment on adverse information: application for Australian citizenship by descent". On 27 June 2022, Mr. Kuster responded to the invitation to comment.
21. The source submits that Mr. Kuster's mental health has increasingly deteriorated during his period in immigration detention. He suffers from depression, anxiety and suicidal ideation, for which he is being medicated. He is also taking medication for depression and has requested mental health support while in immigration detention. For example, on 30 August 2019, a delegate of the Minister for Home Affairs in the Character and Cancellations Branch of the Department of Home Affairs referred Mr. Kuster's case for escalation to the Assistant Secretary of the Branch, citing concerns about Mr. Kuster's significant mental and physical health issues. The delegate also confirmed that Mr. Kuster was taking medication for depression, anxiety, panic attacks, skin rashes, depigmentation, asthma and headaches.
22. Mr. Kuster's open-ended and continued lengthy detention and complex series of appeals and the uncertainty of his visa situation have both caused and exacerbated his mental health issues. On 25 July 2022, Mr Kuster was diagnosed with coronavirus disease (COVID19) and was transferred to a quarantine hotel. He remains in detention.
23. The source submits that Mr. Kuster's detention as an unlawful non-citizen under section 189 (1) of the Migration Act is arbitrary because there is no consideration of the unique circumstances of this individual and the ways in which those circumstances affect the appropriateness of his immigration detention. It is noted that once a person becomes an unlawful non-citizen, there is no assessment of whether the

person's detention is reasonable, necessary and proportionate in the light of the circumstances, nor is it appropriately reassessed by an independent body as it extends in time. The Minister for Home Affairs has the power, under section 195 A of the Migration Act, to release Mr. Kuster from detention. However, the source notes that that power is non-compellable and non-reviewable.

24. The source also submits that Mr. Kuster has been deprived of liberty and of his rights guaranteed under article 7 of the Universal Declaration of Human Rights, which provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. The source recalls that Mr. Kuster has been detained since 23 July 2018, following his release from prison.
25. According to the source, Mr. Kuster has also been deprived of his rights in contravention of article 26 of the International Covenant on Civil and Political Rights, in which it is stated that all people are entitled without any discrimination to the equal protection of the law. Both article 7 of the Universal Declaration and article 26 of the Covenant have been violated because, as a non-citizen, Mr. Kuster is unable to effectively challenge his detention. The source states that Australian citizens are not subject to the Migration Act and, as such, are not subject to indefinite or open-ended immigration detention.
26. The source recalls that the Minister, in the statement of reasons for cancellation of the visa dated 12 April 2021, accepted that it was not reasonably practicable to remove Mr. Kuster from Australia to Papua New Guinea or to remove him to another country, and found the possibility of indefinite detention for Mr. Kuster to weigh in favour of revocation of the cancellation of his visa. The Minister also noted that it was unclear whether and when Mr. Kuster's removal from Australia would become reasonably practicable.
27. The source notes that immigration detention is described by the Department of Home Affairs as a last resort and reserved for a very small proportion of those whose citizenship status requires resolution, sometimes through protracted legal proceedings. This is not the case for Mr. Kuster, who has been clear from the outset that he is stateless and not a citizen of Papua New Guinea.
28. The source recalls that the Human Rights Committee, in its general comment No. 35 (2014) on liberty and security of person, required that detention be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extended in time. In this context, it is submitted that Mr. Kuster has been held in administrative detention for over four years. There is no mechanism under Australian law to challenge such detention because it is authorized by the Migration Act and by case law.
29. The source argues that Mr. Kuster has no effective right to appeal his detention under Australian law. It notes that the High Court of Australia, in *Al-Kateb v. Godwin*, upheld the mandatory detention of non-citizens as a practice that is not contrary to the Constitution of Australia. It further notes that the Human Rights Committee, in *Mr. C. v. Australia*, held that there was no effective remedy for people subject to mandatory detention in Australia.
30. Finally, the source submits that Mr. Kuster was deprived of his liberty for reasons of discrimination. It states that Australian citizens and non-citizens are not equal before the courts and tribunals of Australia. The decision of the High Court of Australia in *Al-Kateb v. Godwin* stands for the proposition that the detention of non-citizens pursuant to, inter alia, section 189 of the Migration Act does not contravene

the Constitution. The effective result of this is that while Australian citizens can challenge administrative detention, non-citizens cannot.

31. The source concludes by stating that Mr. Kuster has taken all the necessary steps to seek his release from arbitrary detention in Australia and to use the appeal avenues available to him by law. He has also made a complaint regarding his detention to the Australian Human Rights Commission. The Commission, however, does not have the power to order Mr. Kuster's release from detention. Furthermore, while the Commonwealth Ombudsman reviews places of detention and the department of Home Affairs is required to provide a report to the Ombudsman on the detention of people detained for more than two years, the Ombudsman has no power to order the release of a person from detention. Finally, the department has an internal detention review committee, which reviews the legality of a person's detention on a monthly basis. This committee, however, is not independent nor is it a judicial or administrative body to which submissions can be made.

...

Discussion

64. The Working Group thanks the source and the Government for their submissions.
65. In determining whether the deprivation of liberty of Mr. Kuster is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.

Category I

66. The Working Group refers to its line of jurisprudence in relation to Australia. Since 2017, the Working Group has considered 20 cases, all of which concern the same issue, namely mandatory immigration detention in Australia in accordance with the Migration Act 1958.⁶ The Working Group reiterates its views on the Migration Act.
67. The Working Group furthermore reiterates its alarm that, in all these cases, the Government has argued that the detention is lawful purely because it follows the stipulations of the Migration Act. The Working Group once again wishes to clarify that such arguments can never be accepted as legitimate in international human rights law. The fact that a State is following its own domestic legislation does not in itself prove that the legislation conforms with the obligations that the State has undertaken under international human rights law. No State can legitimately avoid its obligations under international human rights law by citing its domestic laws and regulations.
68. The Working Group again emphasizes that it is the duty of the Government to bring its national legislation, including the Migration Act, into alignment with its obligations under international human rights law. Since 2017, the Government has been consistently and repeatedly reminded of these obligations by numerous international human rights bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on the human rights of migrants and the Working Group. The Working Group calls upon the Government to urgently review the Migration Act in the light of its obligations under international human rights law.

69. Noting this and the numerous occasions on which the Working Group and other United Nations human rights bodies and mechanisms have alerted the Government of Australia to the affront to its obligations under international human rights law posed by the Migration Act, and noting the failure of the Government to take any action, the Working Group concludes that the detention of Mr. Kuster under the said legislation is arbitrary under category I as it violates article 9 (1) of the Covenant. Domestic law that violates international human rights law, and which has been brought to the attention of the Government on so many occasions, cannot be accepted as a valid legal basis for detention, especially in the light of the findings below.

Category II

70. The Working Group observes that Mr. Kuster arrived in Australia on 9 September 1983, aged 4, with his family, was granted a permanent entry permit upon arrival, which was subsequently replaced with a permanent visa, and since that time, was free to live in the community. He served terms of imprisonment in the criminal justice context in 2017 and was then moved to immigration detention due to the mandatory cancellation of his visa as a result of his imprisonment. Following an unsuccessful attempt to enter Papua New Guinea, he remains in immigration detention for the purpose of removal to another country. The Government, however, admits that his removal is not possible while the status of his Papua New Guinean citizenship is still contested. He is also detained for the purpose of allowing the Minister for Home Affairs to determine, once Mr. Kuster's Papua New Guinean citizenship status has been clarified, whether the visa cancellation should be revoked.
71. Notwithstanding the views and findings of the Working Group regarding the Migration Act and its compatibility with the obligations of Australia under international human rights law, the Working Group observes that it is not disputed that Mr. Kuster remains detained today on the basis of that Act. The source argues that Mr. Kuster is detained in violation of article 26 of the Covenant and article 7 of the Universal Declaration of Human Rights.
72. The Working Group notes that the Government has given no indication as to when Mr. Kuster's detention could end. Noting that he has already been detained for about four years, the Working Group is bound to conclude that his detention appears to be indefinite.
73. As the Working Group has explained in its revised deliberation No. 5, any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording claims or initial verification of identity if in doubt.¹⁴ This echoes the views of the Human Rights Committee, which stated, in paragraph 18 of its general comment No. 35 (2014), that asylum-seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity, if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.
74. The Working Group cannot accept that detention for over four years could be described as a brief initial period, to use the language of the Human Rights Committee. The Government has not presented any particular reason specific to Mr. Kuster, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security, that would justify his detention. The

Working Group also notes Mr. Kuster's health problems as a significant factor in favour of his release. The Working Group concludes that there was no reason for detaining Mr. Kuster other than his migration status. As his visa was mandatorily cancelled due to his criminal conviction, as required by the Migration Act, he has been subjected to the automatic immigration detention policy. The Working Group concludes that Mr. Kuster was detained due to the exercise of his legitimate rights under article 14 of the Universal Declaration of Human Rights.

75. Furthermore, while the Working Group agrees with the argument presented again by the Government in relation to article 26 of the Covenant, it must nevertheless emphasize that the Human Rights Committee, in its general comment No. 15 (1986), quoted by the Government, also makes it clear that "aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof" and that "aliens have the full right to liberty and security of the person".
76. Mr. Kuster is therefore entitled to the right to liberty and security of person, as guaranteed in article 9 of the Covenant, and, when guaranteeing these rights to him, Australia must ensure that it is done without distinction of any kind, as required by article 2 of the Covenant. Mr. Kuster has been subjected to de facto indefinite detention due to his immigration status, in clear breach of articles 2 and 9 of the Covenant.
77. Noting that Mr. Kuster has been detained due to the legitimate exercise of his rights under article 14 of the Universal Declaration of Human Rights and articles 2 and 9 of the Covenant, the Working Group finds his detention to be arbitrary, falling under category II. In making this finding, the Working Group notes the submission of the Government that Mr. Kuster has always been treated in accordance with the stipulations of the Migration Act. Be that as it may, such treatment is not compatible with the obligations that Australia has undertaken under international law. The Working Group refers the present case to the Special Rapporteur on the human rights of migrants, for appropriate action.

Category IV

78. The source has argued that Mr. Kuster has been subjected to prolonged administrative custody without remedy. The Government denies these allegations, arguing that persons in immigration detention can seek judicial review of the lawfulness of their detention before the Federal Court or the High Court and that the case of Mr. Kuster has been reviewed by the Commonwealth Ombudsman.
79. The Working Group recalls that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. This right, which is a peremptory norm of international law, applies to all forms of deprivation of liberty and to all situations of deprivation of liberty, including not only detention for purposes of criminal proceedings, but also migration detention.
80. The facts of Mr. Kuster's case since his immigration detention, as presented to the Working Group, are characterized by various visa and citizenship applications, their rejection and challenges to those rejections. However, as already observed by the Working Group, none of these has concerned the necessity to detain Mr. Kuster or indeed the proportionality of such detention to his individual circumstances. Rather, these actions assessed the claims of Mr. Kuster against the legal framework set out

by the Migration Act. As is evident by the Working Group's examination, as set out above, the Migration Act is incompatible with the obligations of Australia under international law and the assessments carried out in accordance with the Migration Act are therefore equally incompatible with the requirements of international human rights law.

81. The Government has argued that the case of Mr. Kuster is periodically reviewed by the Commonwealth Ombudsman. However, the Government has not explained how such a review satisfies the requirement of article 9 (4) of the Covenant for a review of legality of detention by a judicial body, a point that the Working Group has already explained to the Government in earlier jurisprudence. The Working Group is particularly mindful that the Commonwealth Ombudsman has no power to compel the Department of Home Affairs to release a person from immigration detention, as clearly stipulated by the Government itself.
82. The Government has also argued that the Minister has reviewed the detention of Mr. Kuster. Noting that this is a review by an executive body, the Working Group observes, as it has on previous occasions, that it does not satisfy the criteria of article 9 (4) of the Covenant.
83. The Working Group therefore concludes that, during his more than four years of detention, no judicial body has been involved in the assessment of the legality of Mr. Kuster's detention and notes that international human rights law requires that such consideration by a judicial body necessarily involves an assessment of the legitimacy, necessity and proportionality of detention.
84. The Working Group must therefore reiterate that the indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary, which is why the Working Group has required that a maximum period for detention in the course of migration proceedings must be set by legislation and, upon the expiry of the period for detention set by law, the detained person must automatically be released. There cannot be a situation whereby individuals are caught up in an endless cycle of periodic reviews of their detention without any prospect of actual release. This is a situation akin to indefinite detention, which cannot be remedied, even by the most meaningful review of detention on an ongoing basis. As the Working Group stated in paragraph 27 of its revised deliberation No. 5: There may be instances when the obstacle for identifying or removal of persons in an irregular situation from the territory is not attributable to them – including non-cooperation of the consular representation of the country of origin, the principle of non-refoulement or the unavailability of means of transportation – thus rendering expulsion impossible. In such cases, the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary.
85. The Working Group recalls the numerous findings by the Human Rights Committee that the application of mandatory immigration detention in Australia and the impossibility of challenging such detention is in breach of article 9 (1) of the Covenant.²⁵ Moreover, as the Working Group notes in its revised deliberation No. 5, detention in migration settings must be exceptional and, in order to ensure this, alternatives to detention must be sought. In the case of Mr. Kuster, the Working Group has already established that no alternatives to detention have been considered.
86. Moreover, despite the claims of the Government to the contrary, the Working Group considers that the detention of Mr. Kuster is, in fact, punitive in nature, which, as it highlighted in its revised deliberation No. 5, should never be the case and is in

breach of article 9 of the Covenant. Presently, Mr. Kuster has been detained for over four years and the Government has not been able to identify how long his detention will last, which means that it is de facto indefinite.

87. Consequently, the Working Group finds that Mr. Kuster has been subjected to de facto indefinite detention due to his migratory status without the possibility of challenging the legality of such detention before a judicial body, which is the right encapsulated in article 9 (4) of the Covenant. This is therefore arbitrary, falling under category IV. In making this finding, the Working Group also recalls the numerous findings by the Human Rights Committee in which the application of mandatory immigration detention in Australia and the impossibility of challenging such detention have been found to be in breach of article 9 of the Covenant.

Category V

88. The Working Group notes the source's argument that Mr. Kuster, as a non-citizen, appears to be in a different situation from Australian citizens in relation to his ability to effectively challenge the legality of his detention before the domestic courts and tribunals, owing to the effective result of the decision of the High Court in *Al-Kateb v. Godwin*. According to that decision, while Australian citizens can challenge administrative detention, non-citizens cannot. In its reply, the Government denies those allegations, arguing that, in that case, the High Court held that the provisions of the Migration Act requiring the detention of non-citizens until they were removed, deported or granted a visa, even if removal were not reasonably practicable in the foreseeable future, were valid. The decision in *Al-Kateb v. Godwin* does not alter the ability of non-citizens to challenge the lawfulness of their detention under Australian law.
89. The Working Group remains perplexed by the repeated explanation submitted by the Government, since this confirms only that the High Court has affirmed the legality of the detention of non-citizens until they are removed, deported or granted a visa, even if removal is not reasonably practicable in the foreseeable future.
90. However, as the Working Group has repeatedly noted, the Government is failing to explain how such non-citizens can effectively challenge their continued detention after that decision of the High Court, which is what the Government must show in order to comply with articles 9 and 26 of the Covenant. To this end, the Working Group once again specifically recalls the consistent jurisprudence of the Human Rights Committee, in which it examined the implications of the High Court's judgment in the case of *Al-Kateb v. Godwin* and concluded that its effects were such that there was no effective remedy to challenge the legality of continued administrative detention.
91. As in the past, the Working Group cannot but again concur with the views of the Human Rights Committee on this matter, and this remains the position of the Working Group in the present case. The Working Group underlines that this situation is discriminatory and contrary to article 26 of the Covenant. It therefore concludes that the detention of Mr. Kuster is arbitrary, falling under category V. Concluding remarks.
92. The Working Group makes its determination without prejudice to other criminal proceedings to which Mr. Kuster is subjected. Moreover, it wishes to place on record its very serious concern regarding the state of Mr. Kuster's mental and physical health. Although the Working Group acknowledges submissions by the Government concerning the health-care provision for Mr. Kuster, it nevertheless

reminds the Government that article 10 of the Covenant requires that all persons deprived of their liberty are to be treated with respect for their human dignity, and that this also applies to those held in the context of migration. As the Working Group has explained in its revised deliberation No. 5, all detained migrants must be treated humanely and with respect for their inherent dignity. The conditions of their detention must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings. The Working Group refers the case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

93. The Working Group welcomes the Government's invitation of 27 March 2019 for the Working Group to conduct a visit to Australia in 2020. Although the visit had to be postponed owing to the worldwide coronavirus disease (COVID-19) pandemic, the Working Group looks forward to carrying out the visit as soon as practicable. It views the visit as an opportunity to engage with the Government constructively and to offer its assistance in addressing its serious concerns relating to instances of arbitrary deprivation of liberty.

Disposition

94. In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Gus Kuster, being in contravention of articles 2, 3, 7–9 and 14 of the Universal Declaration of Human Rights and articles 2, 9 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, IV and V.
95. The Working Group requests the Government of Australia to take the steps necessary to remedy the situation of Mr. Kuster without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
96. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Kuster immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.
97. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Kuster and to take appropriate measures against those responsible for the violation of his rights.
98. The Working Group requests the Government to bring its laws, particularly the Migration Act 1958, into conformity with the recommendations made in the present opinion and with the commitments made by Australia under international human rights law.
99. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.
100. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

101. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:
- (a) Whether Mr. Kuster has been released and, if so, on what date;
 - (b) Whether compensation or other reparations have been made to Mr. Kuster;
 - (c) Whether an investigation has been conducted into the violation of Mr. Kuster's rights and, if so, the outcome of the investigation;
 - (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Australia with its international obligations in line with the present opinion;
 - (e) Whether any other action has been taken to implement the present opinion.
102. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.
103. The Working Group requests the source and the Government to provide the abovementioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

Z. SPECIAL RAPPOREUR ON THE SITUATION OF HUMAN RIGHTS IN CAMBODIA

1. Report on the situation of human rights in Cambodia, A/HRC/57/82, 5 August 2024

22. On a parallel front, there are calls for respect for the rights of Indigenous Peoples, especially with regard to customary land rights and related resources. The impact of the new Environment and Natural Resources Code, which streamlines various environmental laws, is an emerging issue of concern.¹⁸ The law itself fails to recognize the right of Indigenous Peoples to access, protect and patrol the forests in their communities. Their traditional lands have been invaded by incoming commercial interests, at times steeped in corruption, corroding their ownership of the land. In this regard, it is important to abide by the principle of free, prior and informed consent in all negotiations linked with relocation of Indigenous communities.
23. A number of environmentalists and Indigenous advocates have been harassed, detained and/or prosecuted in attempts to protect land and related forestry and other resources. In view of the global movement to reduce global warming and address climate change, the country's policy and planning on this front should aim to respect Indigenous Peoples as guardians of the land and forests.
76. The Special Rapporteur makes the following recommendations with regard to elections and related space: ...
- (f) End all forms of harassment, violence and intimidation against political opponents, land rights activists, labour activists, environmentalists, journalists

and other human rights defenders, immediately release them from prison and drop all charges against them during and in post-election periods; ...

- (i) End systemic land-grabbing and forced evictions and prioritize systematic land titling in areas where there are longstanding land conflicts and streamline the process for collective titling of Indigenous lands...

2. Statement: ‘National action plan on indigenous rights among measures needed to improve human rights, says expert’, 24 July 2024

The Special Rapporteur’s visits to several indigenous groups reveal the following scenario. The country should be commended for recognizing in law the notion of indigenous peoples and their rights. Yet, there remain various impediments in realizing those rights. At one level, while there is the possibility of self identification of those groups, several have not yet been listed by the authorities and the waiting period can be long. Another key concern is their claim to ancestral land. While the law provides for the possibility of collective title for community land, the registration process is longwinded and it needs to be expedited. In the meantime, indigenous peoples are faced with the negative impact of economic land concessions and encroachments on their land by vested interests, often business actors and outsiders, at times in collusion with officialdom.

Many communities suffer from debt, partly caused by predatory lending and moneyed sharks which prey upon them. Matters are aggravated by the use of community land as collateral for loans sought by some members of the community, even though this should not be done. This use of collective land title as a kind of “soft” title undermines the community holding that should not be for individual benefits.

A key concern is that there is inadequate consultation and participation of these peoples. The principle of “free, prior and informed consent” is very relevant to negotiations which should take place between the authorities and these groups to prevent pressure which might cause dislocation. There is a need to involve them in the mapping process of their land rather than to rely on satellite images which superimpose demarcations, inconsistent with community boundaries. Public inquiries should be organized involving indigenous and other groups before projects are initiated, impacting upon their livelihood and environment. This is all the more relevant since, in the context of global warming and climate change under the UN Framework Convention on Climate Change, the Conferences of States Parties (COP) now recognize the role of indigenous peoples as guardians of the forests and related environment.

The Special Rapporteur was also concerned that in one area, a company had come on to community land to fence the land with pillars, without the knowledge of the indigenous community. The company also issued a threat to take action against the latter if it tried to remove the pillars. In another situation, the Special Rapporteur learned that the community was told to accept a smaller area of community land for collective titling, in exchange for the termination of criminal charges against its members. What a *quid pro quo*!

A new law in the form of the Environmental and Resources Code was criticized by many groups for its omission to mention indigenous peoples and their rights. The law is also linked with protected areas which might overlap with the ancestral land of these communities. One community added that they had been subjected to an agreement or “contract” with the authorities limiting their activities in protected areas overlapping with ancestral land and that they wished to see re-negotiation of the arrangement with fuller recognition of their rights.

Where they try to assert their rights, such as through demonstrations, regrettably they are prosecuted for incitement under the criminal law and related charges. In exercising their rights, paradoxically members of indigenous peoples are criminalized in the process. In the words of a member of that community: *“If we raise our land issues, we are called the “opposition””*

The Special Rapporteur was also briefed about various court cases facing representatives of indigenous communities, and the preferred solution is to drop the cases to ensure justice, based on broader respect for freedom of expression and peaceful assembly.

In regard to the emergence of a new land law, it is hoped that indigenous peoples and their rights will be mentioned explicitly.

The communities are also marginalized in their access to education, health care and occupational opportunities. While multilingual education with space for indigenous languages is available to some extent, it is provided with a view to subsuming those languages under the national language rather than to preserve those indigenous languages for posterity.

It is essential that indigenous peoples have more access to decision-making positions; they should have the space to be their own advocates of change in their access to justice and the wherewithal of life. There should be more space for them in law enforcement and the political field from the local to the national level. One commentator added in the discussions: “Rangers should be drawn from indigenous communities rather than outsiders to patrol the forests and related resources.” Another added: “They should become sub-district officials, judges and members of political parties.”

While there have been policies on indigenous peoples, a national action plan on their rights is still missing. There should be a one stop-service to help these communities in their quest for indigenous rights. There is a need for a national forum or working group to enable them to dialogue with authorities, with concomitant budgeting. Social awareness on indigenous peoples can also be nurtured through more education on their culture, as well as possibly a national and or international festival on indigenous arts and culture. Cultural diversity derived from indigenous communities under the umbrella of international law should be part of cross-cultural education as their value added.

3. Report on the situation of human rights in Cambodia, A/HRC/54/75, 20 July 2023

Ensure comprehensive and gender-sensitive protection and assistance for special groups, including ... Indigenous Peoples ...

73. There are a plurality of Indigenous Peoples in the country, and there is a specific national policy for such communities. Much of the debate is on the issue of the right to land, timely land titling and the preservation of their cultures and surrounding natural resources, including action against illegal logging and deforestation committed by outsiders. Two draft laws, on forestry and on protected areas, give rise to problems. There are concerns that the former law will impede the participation of local communities and Indigenous Peoples in patrolling and safeguarding forests, which is jeopardized by the presence of armed hunters and outsiders. There are concerns about the latter law’s lack of recognition of the rights of Indigenous Peoples and non-respect for the principles of protection against displacement and of free, prior and informed consent, to prevent evictions.

Enable the effective participation of local communities in the protection of natural resources, in particular land holdings, land titling and the related privatization of State land, and guarantee against the seepage of vested interests often linked with the power base

78. Competition for land and resources in a growing economy has been one of the most visible points of conflict in recent years and poses challenges for the conservation of natural resources. For a period, there was a moratorium on economic land concessions, but this is now in doubt, with the report of a recent concession to those close to the power base. During the reporting period, the spread of special economic zones raised the issue of whether land would be readily taken over by the authorities and their cohorts.
79. Another problem is the privatization of State land, especially when facilitated by those in power in favour of their vested interests in the business sector. It is linked with evictions and the displacement of communities, including low-income settlements and Indigenous groups. During the reporting period, there were incidents of mass evictions around Angkor Wat, with some United Nations monitoring.

AA. SPECIAL RAPPOREUR ON THE RIGHT TO DEVELOPMENT

1. Right to development of children and future generations, A/HRC/57/43, 24 July 2024

II. Selected normative standards concerning the rights of children and child development

...

C. Convention on the Rights of the Child

17. The Convention affirms that “both parents have common responsibilities for the upbringing and development of the child” (art. 18 (1)) and recognizes the special needs of certain children, such as children with disabilities (art. 23) and children in States in which ethnic, religious or linguistic minorities or persons of Indigenous origin exist (art. 30). The Convention acknowledges that a child who “is capable of forming his or her own views” has “the right to express those views freely in all matters affecting” him or her (art. 12). Children also have “the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds” (art. 13) and the rights “to freedom of association and to freedom of peaceful assembly” (art. 15). These rights are especially relevant in the context of children’s participation in decision-making processes concerning the right to development.

III. Right to development of children

...

B. Value addition of the right to development

29. Using a right to development lens to interpret the rights of children adds multiple values. First, the right to development entitles every human person and all peoples to not merely enjoy but also participate in and contribute to economic, social, cultural and political development. Since the process of development under the right to development is as important as the outcome of development,²⁰ children can

participate in the process of conceiving and implementing various development-related policies, programmes and projects. Children have agency not merely over their own development but also over the development of other human beings.

30. Second, intergenerational equity is one of the overarching principles of the right to development. This principle is useful in the context of equity not only between children and adults of present generations but also between children and future generations. This principle could be relevant in a variety of contexts such as managing future effects of climate change and disruptive technologies or support needed to provide a dignified life to older persons and the ageing population.
31. Third, fair distribution is another overarching principle of the right to development. In relation to children's rights, this could be harnessed to demand that government policies at the national, regional and international levels do not result in the concentration of wealth among a small group of people and in turn trap millions of children in cycles of poverty. This principle is also relevant in the context of access to nutritious food, water and sanitation, higher education, housing, health facilities, public transport, the Internet and new technologies (including learning tools).
32. Fourth, the right to development also has a collective component. This means that children can collectively raise issues as a group about policies or decisions affecting their right to development. To illustrate, this collective dimension will be relevant in exercising the right to a clean, healthy and sustainable environment, assessing the impact of a major development project on several villages or cities, and asserting the right to self-determination in relation to preserving Indigenous culture, land, language or traditions.

IV. Five action pillars to overcome ongoing challenges

...

37. Moreover, like adults, children are not a homogenous group. Children face different or disproportionate impacts of various policies, programmes and projects concerning development or phenomena such as migration, environmental pollution, climate change and conflicts. A case in point are children trapped in poverty or modern slavery, those who are orphaned, those who suffer discrimination because of their gender identity, those who ... who are members of Indigenous communities...

B. Nurturing responsible leadership

42. Today's leaders in both the public and the private sectors are failing everyone. This explains multiple ongoing crises. Children should be nurtured to do better in the future as responsible leaders. They should uphold and promote human rights beyond borders, respect diversity of views and cultures, rise above populism and polarization, fight against all forms of discrimination, racism and xenophobia, work for peace, defend civic space, have empathy and solidarity towards fellow citizens, and promote inclusive development within planetary boundaries.
43. Education – not only in the formal settings of schools and universities, but also at home and through religious institutions – plays a crucial role in building the necessary character for responsible leadership. Article 26 of the Universal Declaration of Human Rights acknowledges the role of education not only in “the full development of the human personality”, but also in “the strengthening of respect for human rights and fundamental freedoms” and promoting “understanding, tolerance and friendship among all nations, racial or religious groups”. Article 13(1) of the International Covenant on Economic, Social and Cultural Rights and article 29 of

the Convention on the Rights of the Child reinforce this goal. Article 29 underscores that the education of children should, among other aims, develop respect for the natural environment and prepare them for responsible life in a free society, “in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of Indigenous origin”.

C. Enabling participation

45. The right to participation in decision-making – which brings several governance benefits – is a key element of the right to development under the Declaration on the Right to Development. The importance of participation in the context of development or human rights generally is also recognized in several other regional and international human rights instruments.
46. Children have agency and are entitled to participate in decisions affecting them, as affirmed by the Convention on the Rights of the Child. Based on the Declaration on the Right to Development, the Special Rapporteur asserts that children’s right to participation extends also to matters or decisions that do not affect them directly. All decision makers should therefore create enabling conditions to facilitate active, free and meaningful participation of children in diverse settings – from families to schools and universities, city councils, businesses, civil society organizations, religious institutions, State agencies, regional institutions and international organizations. As noted above, such participation should be responsive to intersectional conditions involving children. For example, the participation process for Indigenous children should be culturally sensitive and based on free, prior and informed consent.

V. Human rights of future generations: evolving standards

58. There are diverse views among scholars on whether future generations should be treated as rights holders under international human rights law. Most international standards do not explicitly elaborate on human rights in relation to future generations. At the same time, they do not expressly limit the protection of human rights to present generations. Due to a better recognition of planetary limits to economic development, States and policymakers for decades have been underscoring the importance of safeguarding the interests and needs of future generations. The Declaration of the United Nations Conference on the Human Environment, of 1972, acknowledges that humanity “bears a solemn responsibility to protect and improve the environment for present and future generations” (principle 1). The famous definition of sustainable development – a development that “meets the needs of the present without compromising the ability of future generations to meet their own needs” – also illustrates the focus on future generations. One can see a continuation of this approach to safeguarding the needs of future generations in the 2030 Agenda.
59. In addition to the concept of sustainable development, the principle of intergenerational equity has provided a basis to assert the stake of future generations in present-time decisions, as reflected in various standards clarifying or elaborating on the human rights of future generations. There is also a provision in the draft convention on the right to development requiring States parties to ensure that their decisions and actions do not compromise the ability of present and future generations to realize their right to development (art. 23 (b)).

C. Maastricht Principles on the Human Rights of Future Generations

64. The Maastricht Principles provide a detailed statement of the human rights of future generations. They find the legal basis of the human rights of future generations in: (a) international law not limiting human rights to present generations; (b) international law recognizing obligations and responsibilities towards future generations; and (c) other general principles of law, norms, customs and values recognizing obligations and responsibilities towards future generations (principle 2).
65. In addition to elaborating on intragenerational and intergenerational human rights obligations (principle 7), the Maastricht Principles outline the principle of international solidarity (principle 10). “Each generation must act as trustees of the Earth for future generations” and “this trusteeship must be carried out in harmony with all living beings and Nature” (principle 8). In “upholding the rights of future generations, States and non-state actors should draw inspiration and guidance from Indigenous Peoples’ knowledges, cultures and traditional practices” (principle 11).

2. Climate justice: loss and damage, A/79/168, 17 July 2024

I. Introduction

A. Context

1. The present report is submitted to the General Assembly pursuant to Human Rights Council resolutions 33/14 and 51/7.
2. Climate change is a common concern of humanity because it “represents an existential threat and raises human rights concerns”. It is affecting everyone, everywhere. The adverse impact is not limited to human beings: all living organisms and the entire natural ecosystem are being changed for the worse. Moreover, the impact of climate change is not experienced equally. Peoples as well as countries are affected differently and disproportionately. Although only one tenth of the world’s greenhouse gases are emitted by the 74 lowest income countries, they will be the most affected by the effects of climate change.
3. Climate change requires collective, coordinated and coherent actions on the part of multiple actors to mitigate, adapt and build resilience. These actions must be taken persistently by States and other actors responsible for the current situation in line with the principle of common but differentiated responsibilities and respective capabilities of the United Nations Framework Convention on Climate Change.
4. However, mitigation and adaptation strategies cannot prevent all climate-related loss and damage. One can see in this light the decision taken at the Conference of the Parties and the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement to establish a Fund for Responding to Loss and Damage to assist developing countries that are particularly vulnerable to the adverse effects of climate change (decisions 2/CP.27 and 2/CMA.4). The Fund will be accountable to and function under the guidance of the Conference of the Parties and the Meeting of the Parties. The Fund was operationalized at the twenty-eighth Conference of the Parties (decisions 1/CP.28 and 5/CMA.5). Subsequently, the Fund’s Board, comprising 26 members, was elected. The Board, at its second meeting, held in July 2024, agreed on the formal name of the Fund (Fund for Responding to Loss and Damage) and accepted the proposal of the Philippines to host the Fund.
5. In the present report, the Special Rapporteur analyses climate change-related loss and damage in the context of climate justice, because the countries and people that are the least responsible for climate change are the most affected by

it. He examines the adverse impacts of loss and damage on realizing the right to development and articulates the nature of the obligations of developed countries, multilateral development banks and large corporations in assisting climate vulnerable countries. He also outlines how a human rights-based approach to administer the Fund should look.

B. Objectives

6. The Special Rapporteur seeks to achieve four objectives. First, building on existing normative standards and literature, he proposes a climate justice framework comprising four interrelated pillars: mitigation, adaptation, remediation and transformation. Decisions across these four pillars should be informed by 12 overarching human rights principles. The Special Rapporteur also argues that addressing climate change-related loss and damage should be seen as part of the remediation pillar of the climate justice framework.
7. Secondly, the Special Rapporteur highlights the importance of interpreting loss and damage in a holistic way to encompass both economic and non-economic dimensions. He also outlines diverse ways in which climate change-related loss and damage affects the realization of the right to development. Moreover, that impact is experienced by people (such as children, women and Indigenous Peoples) and countries (such as least developed countries and small island developing States) differently and disproportionately.
8. Thirdly, the Special Rapporteur articulates legal, historical and economic reasons for a duty of developed countries and large corporations to address loss and damage by taking a range of measures. In addition to providing financial assistance, they should facilitate the transfer of green technologies, build capacity, provide technical assistance and offer migration pathways to climate-induced migrants.
9. Fourthly, the Special Rapporteur provides guidance to the World Bank, as an interim trustee of the Fund, and the Fund's Board to integrate a human rights-based approach to administering the Fund. He does so by outlining several principles that must be embedded in all policies, processes and mechanisms of the Fund.

II. Unpacking climate justice

...

A. Four pillars

...

Adaptation

22. Adaptation entails making changes in processes, practices and structures to reduce potential damages linked with climate change.¹⁸ Such changes could take the form of planting trees, building sea walls, relocating to higher ground, setting up early warning systems for cyclones, switching to drought-resistant crops and building climate-resilient shelters and infrastructure. Adaptation also requires building resilience.
23. In line with article 7 of the Paris Agreement, adaptation strategies should be gender-responsive, participatory and fully transparent. They should be based on and guided by the best available science, as well as Indigenous and local community knowledge. International cooperation is critical for adaptation, including to meet the needs of developing countries. Over the years, States have taken several measures, with a varying degree of success, to strengthen the adaptation response.

B. 12 overarching principles

33. All four pillars of climate justice articulated above should be informed by the following 12 overarching principles rooted in international human rights law: ...
- (b) Intergenerational equity. Intergenerational equity is one of the overarching principles of the right to development, as well as of sustainable development. As climate change will affect future generations, present generations should factor in how climate change will affect their human rights or their capabilities to realize those rights. Moreover, the concept of future generations should not be confined to human beings: rather, the impact of climate change on all organisms as part of an ecosystem approach should be considered;
 - (c) Non-discrimination. States must ensure that existing multilayered inequalities are not exacerbated by climate change. People living in vulnerable areas (e.g. small islands, low-lying coastal zones) or in marginalized or vulnerable situations should not be left behind in building adaptive capacities. Nor should such people be unable to seek remediation due to additional barriers;
 - (d) Participation. Individuals and communities should be able to participate in all climate action decisions. The participation should be active, free and meaningful. Such a participation requires access to reliable and accessible information as well as adequate civic space and no intimidation of environmental human rights defenders. The participation of children, youth, women, peasants and Indigenous Peoples, who are a source of innovative solutions and a repository of traditional knowledge, as agents of change should be especially ensured. Participation processes should embed an intersectional approach and pay special attention to ensure the representation of marginalized or vulnerable individuals and communities. Moreover, as climate change-related loss and damage will also affect non-human beings and future generations, their representatives should also be able to participate in decision-making processes and mechanisms;
 - (e) Intersectionality. There is evidence to indicate that ... Indigenous Peoples ... will be affected differently or disproportionately by climate change. ... Nomadic herders will experience devastating losses to their livestock due to climate change, while fishing communities in low-lying island countries might need to relocate and might lose their livelihoods due to the rise of sea levels. Indigenous Peoples' right to self-determination will also be at peril due to loss and damage. Since climate change is affecting people differently and disproportionately, an intersectional approach must be adopted; ...
 - (j) Just transitions. The much-needed transitions concerning energy, food and infrastructure should be just, fair and equitable so as not to leave behind marginalized or vulnerable groups of people. For example, there is evidence that the push for renewable energy could be irresponsible, because a quest for critical minerals might displace Indigenous Peoples without free, prior and informed consent.... Similarly, the phasing out of fossil fuels should be complemented with access to affordable renewable means of energy for poor people;

III. Loss and damage and its effect on the right to development

A. Defining loss and damage

37. Loss and damage refer to negative impacts of climate change that occur despite adaptation and mitigation efforts. There are different ways to categorize loss and damage: direct and indirect loss and damage; and avoided, unavoided and unavoidable loss and damage. Another distinction is made on the basis of whether

loss and damage is economic or non-economic. Non-economic loss and damage are defined as the loss of resources, goods and services that are not commonly traded in markets. Examples of non-economic loss and damage include loss of life, loss or damage to biodiversity and habitats, forced displacement, psychological trauma, loss of ancestral land, cultural heritage and Indigenous or local knowledge, and loss of livelihoods.

B. Effect on the realization of the right to development

40. Climate change affects the realization of all civil, political, economic, social and cultural human rights. The right to development is no exception. Climate change-related extreme weather events, natural disasters, rising sea levels, floods, heat waves, droughts, desertification and the spread of vector-borne diseases will affect all four facets of the right to development: economic, social, cultural and political. Climate-induced mobility will also affect the cultural facet of the right to development, including of Indigenous Peoples. It is also difficult to obtain affordable insurance coverage for climate change-induced natural disasters, thus making it harder for a developing country to rebuild, recover and continue on its development path. Climate change-induced natural disasters and sea level rise will affect the right to self-determination of peoples living in low-lying island States as well as Indigenous Peoples generally by threatening the territorial integrity and loss of traditional territories, cultural practices and sources of livelihoods.

C. Capturing differentiated and disproportionate impacts

43. Climate change does not affect countries or people equally. The frequency and intensity of hurricanes in the Caribbean region have increased due to climate change, while the rising seawater temperatures are severely affecting small fishing businesses.⁸³ It is paradoxical that States (least developed countries and small island developing States) that have contributed the least to climate change are the most exposed to its impacts. ...

44. In addition, climate change affects people differently and disproportionately. ... Moreover, Indigenous Peoples are not only risking a disconnection from their cultural heritage due to loss of land from rising sea levels but are also facing forced dislocation for carbon credit projects or extraction of critical minerals needed for renewable energy.

45. If these children, women, older persons, peasants, migrants, persons with a disability and Indigenous Peoples live in developing countries, they will experience “dual disproportionality” of climate change: one for being who they are and a second due to the countries in which they live.

IV. Obligations of various actors and the nature of their responses

A. Basis of obligations

46. There are moral, legal, historical and economic reasons why developed countries and large corporations have a duty to prevent, mitigate and remediate climate change-related loss and damage. In addition to refraining from causing or contributing to climate change-related human rights violations, all States have a duty under international human rights law to protect people from climate change-related harms by taking multiple measures both individually and collectively. Such a duty will include regulating corporate behaviour effectively. These State obligations also have an extraterritorial dimension, which is especially relevant in the context of the transboundary nature of climate change-related loss and damage.

C. Nature of responses to loss and damage

...

60. Building capacity and the transfer of green technologies should also be part of the rainbow approach. In addition, States and businesses must keep central consideration of Indigenous sovereignty and the rights of Indigenous Peoples, including the requirement to obtain free, prior and informed consent.

V. World Bank's role as an interim trustee of the Fund

...

B. Embedding a human rights-based approach

71. The Special Rapporteur recommends that the World Bank as an interim trustee, as well as the Fund's Board, embed the following human rights principles in implementing the Fund's mandate.
78. Participatory. The Fund's decision-making process should involve active, free and meaningful participation of climate vulnerable countries and affected communities, as well as the civil society organizations representing them. The needs and priorities of developing countries should shape the Fund's future. Special efforts should be made to ensure the participation of ... Indigenous Peoples in designing, implementing and revising the policies of the Fund, as well as in all Board meetings. To ensure meaningful participation, enabling conditions should be created such as access to information, visa support and funding for technical preparatory assistance, translation facilities, language interpretation and travel. In addition to inviting active observers, the Fund should establish, in line with paragraph 28 of its governing instrument, an advisory panel comprising a diverse group of civil society organizations, trade unions, community leaders and climate activists.

VI. Conclusions and recommendations

...

B. Recommendations

85. The Special Rapporteur recommends that States: ... (j) Enable meaningful participation of children, youth, women, peasants, persons with a disability, Indigenous Peoples and marginalized groups in all climate change-related decision-making processes....

3. Visit to Vietnam, A/HRC/57/43/Add.1, 8 July 2024

I. Introduction

1. The Special Rapporteur on the right to development, Surya Deva, visited Viet Nam from 6 to 15 November 2023 at the invitation of the Government.
6. The Special Rapporteur paid special attention to the gender dimension, considering the special developmental challenges faced by women and girls. He also focused on the situation of the most disadvantaged sections of society and, mindful of article 1 of the Declaration on the Right to Development, paid particular attention to the challenges faced by persons belonging to minority groups, Indigenous Peoples and persons with disabilities in participating in, contributing to and enjoying economic, social, cultural and political development.

IV. Key thematic issues

...

B. Vulnerable or marginalized groups

...

52. The Special Rapporteur notes that the Government of Viet Nam does not accept the concept of Indigenous Peoples, although it voted for the General Assembly resolution in which the Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. This results in certain groups being unable to benefit from important rights such as self-identification and free, prior and informed consent.
53. The Special Rapporteur has received reports that some legislative provisions have been interpreted and applied in such a way as to have the effect of intimidating or restricting the rights of those working on the rights of ethnic minorities, Indigenous Peoples and non-citizens, including human rights defenders, lawyers and journalists. In particular, chapter XIII (offences against national security), article 117 (information designed to oppose the State) and article 331 (abusing democratic freedoms) of the Criminal Code have been utilized in such a manner. The Special Rapporteur has also received information that a disproportionate number of individuals belonging to ethnic minority groups have been charged and convicted under articles 109, 113 and 229 of the Law on Counter-Terrorism in relation to offences classified as “terrorist”, which are defined as acts designed to “oppose the people’s Government” or to “cause panic”.

V. Conclusions and recommendations

...

B. Vulnerable or marginalized groups

...

89. As self-identification is a fundamental principle of the United Nations Declaration on the Rights of Indigenous Peoples, the Special Rapporteur recommends that the Government consider allowing individuals, alone or in association with others, to choose their identity, including the right to identify as Indigenous Peoples. The Special Rapporteur also recommends that the Government consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). The cultural rights of affected communities should be taken into consideration in planning and implementing development programmes. Due consideration should also be given to ethnic minorities’ right to free, prior and informed consent.

4. Role of business in realizing the right to development, A/78/160, 12 July 2023

IV. Role of business regarding the right to development

44. Businesses have an indispensable role in realizing the right to development.⁴⁷ They construct houses, build infrastructure, offer loans and banking services, create employment opportunities, foster vocational capabilities, develop new medicines and vaccines, provide Internet services, offer various means of transport and provide access to essential public services. At the same time, business activities can also undermine the right to development, e.g., through evading tax payment, promoting the sale of unhealthy products, exploiting migrant workers, causing environmental pollution or displacing Indigenous Peoples for development projects.

C. Cultural development

57. Businesses can also contribute to cultural development. We can take the rights of Indigenous Peoples as an example. Article 23 of the United Nations Declaration on the Rights of Indigenous Peoples provides that Indigenous Peoples “have the right to determine and develop priorities and strategies for exercising their right to development”. Under article 32, they also have “the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources”.
58. Indigenous peoples all over the world have been living in harmony with nature for centuries. However, the current development model often results in the dispossession or forced displacement of Indigenous Peoples from their traditional lands, territories and resources, which has a direct impact on their cultural development. While Indigenous Peoples have contributed least to the current climate crisis, they are highly vulnerable to mining or hydropower projects aimed at transition to a low-carbon economy.
59. It is worrying that many companies continue to ignore climate change risks or mislead their stakeholders about the seriousness of these risks. For example, the Carbon Tracker Initiative reported that “more than 70 per cent of listed companies that represent some of the world’s largest carbon-polluters, alongside most of their external auditors, are not fully accounting for climate-related risks in financial statements”. It is widely accepted that the impact of climate change will be felt disproportionately by lower-income countries and marginalized individuals or groups such as women, girls, persons with disabilities and Indigenous Peoples. While some mining may be necessary to sustain current development needs and support renewable energy transition, mining could also have significant adverse impacts on all human rights, including the right to development, environmental rights and the rights of human rights defenders.
60. In this context, business can play a critical role by ensuring that mining or other development projects in which they are involved promote – rather than undermine – cultural development not only of the present generation but also future generations. Businesses must ensure that mining is not only responsible and sustainable but also conducted only after obtaining a social licence from the affected communities through their active, free and meaningful participation. If the rights of Indigenous Peoples are impacted by any mining or other development project, then businesses must obtain a free, prior and informed consent in line with the United Nations Declaration on the Rights of Indigenous Peoples and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). As noted in the Maastricht Principles on the Human Rights of Future Generations, businesses “should draw inspiration and guidance from Indigenous Peoples’ knowledges, cultures and traditional practices which contribute to sustainable and equitable development and the proper management of the environment”.

VII. Conclusions and recommendations

A. Conclusion

89. The right to development, if taken in a holistic way in accordance with the relevant normative standards, provides a pathway to realize all human rights and achieve inclusive, equitable and sustainable development. Businesses have a key role in realizing all four facets of the right to development: economic, social, cultural and political development. States, civil society organizations and other actors have an enabling role in ensuring that businesses perform their responsibilities.

90. At the same time, the current economic order and many business models are inconsistent with a holistic understanding of the right to development, because they are promoting cumulative economic growth, creating inequalities and destroying the planet. Similarly, the existing development narrative which embodies a sequencing mindset between economic development and human rights is problematic from the perspective of the right to development.
91. The world therefore needs a new model of “planet-centred participatory development”. A fundamental shift is also needed in how businesses operate in society by reorienting the purpose of business, changing irresponsible business models and going beyond the “do no harm” approach. Businesses earning profit should be seen as part of a wider social good, that is, achieving inclusive, equitable and sustainable development. States must take several measures to bring this fundamental shift, including by changing the legal architecture that facilitates irresponsible or unsustainable business practices.

B. Recommendations

92. The Special Rapporteur recommends that businesses: ... (b) Consider the four overarching principles of the right to development – self-determination, intersectionality, intergenerational equity and fair distribution – while contributing to the realization of the right to development; (c) Conduct meaningful human rights due diligence, secure a social licence from the relevant communities before commencing any mining, hydropower or other development projects and respect Indigenous Peoples’ right to free, prior and informed consent...

BB. WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

1. Enforced disappearances and elections, A/HRC/57/54/Add.4, 21 August 2024

F. Groups in situation of vulnerability

30. The Working Group emphasizes the vulnerability of certain groups such as women and indigenous peoples. The Working Group highlights that the targeting of women and indigenous communities can have an impact on their involvement in elections and political participation which could lead to their further marginalization.
32. Indigenous peoples are also exposed to enforced disappearances in the context of elections. Such violence against indigenous political figures has concerning implications on these peoples’ political participation, which influences their involvement in democratic processes, including elections. The Working Group was particularly alarmed by the recent incidents in 2022 and 2024 elections in Nicaragua, where indigenous leaders were targeted. Notably, according to the information received, 30 indigenous members of the YATAMA political party were detained in 2022 for anti-fraud protests. Brooklyn Rivera, a Miskitu Indigenous leader, member of the National Assembly of Nicaragua and YATAMA, an indigenous political party, was forcibly disappeared on 29 September 2023. Against this backdrop, the Working Group observed with great apprehension that the Supreme Electoral Council in Nicaragua cancelled YATAMA’s judicial personality and prevented them from participating in the elections.

V. Conclusions and recommendations

63. Enforced disappearances in the electoral context are employed by States not just to suppress political dissent and intimidate the opposition but also to instil fear among voters, thereby compromising the democratic process. By targeting key opposition political figures, activists, community leaders, opinion makers, journalists, outspoken members of society and human rights defenders, authorities seek to silence dissent through coercion and repression of political freedoms and rights.
65. The Working Group underlines the lack of data and research specifically focusing on enforced disappearances in the electoral context. To date, available electoral data and academic studies appear to have treated electoral violence as a broad phenomenon that may or may not encompass enforced disappearance. The Working Group believes that, in order to effectively address enforced disappearance in the context of elections, there is a need to gather, compile and disaggregate data on electoral violence with the understanding that election-related enforced disappearances can take place within a broad time frame encompassing, but not limited to, the brief period surrounding the elections. Disaggregated data can elucidate different aspects of enforced disappearance, such as ... (c) feature particularly vulnerable groups of victims, including women, children and indigenous peoples.
71. In the light of the foregoing, the Working Group makes the recommendations below.

A. States

...

- (c) Design and implement awareness-raising and prevention activities throughout electoral cycles, with different segments of the population, including the representatives of political parties, civil society organizations, community leaders, youth groups, women, journalists, human rights defenders and indigenous peoples....

2. Visit to Honduras, A/HRC/54/22/Add.2, 9 August 2023

III. Legal framework

...

19. Furthermore, in accordance with article 7 of the Convention, the aggravating circumstances listed in article 141 of the Criminal Code should cover other categories of persons in vulnerable situations, such as Indigenous Peoples.

V. Justice

37. During the visit, the Working Group noted the prevalence of structural, widespread impunity. With regard to the enforced disappearances already described in different contexts, the Working Group was able to confirm that no perpetrators have been convicted and no real progress has been made in the criminal proceedings.
47. During the visit, the Working Group received information, confirmed by the State authorities themselves, about the seriousness of the corruption practised by public officials and their collusion with organized criminal groups, particularly those linked to drug trafficking, organized crime and the irregular and violent control of territories, to the detriment of Indigenous or ancestral communities. Although note was taken of the functions and competencies of the Office of the Special Prosecutor for Human Rights and the Specialist Criminal Investigation Agency of the Public Prosecution Service, the authorities themselves acknowledged their lack

of resources and the fact that their activities are restricted to large cities such as Tegucigalpa and San Pedro Sula. In the rest of the country, including in regions with high levels of conflict, their role is limited to providing advice and support to local prosecutors' offices.

VI. Reparation and memory

...

61. During the visit to the Garifuna community of Triunfo de la Cruz, the Working Group walked with the community's members to honour the victims and reconstruct the events that led to the disappearance of four of those members, including a community leader, in July 2020. The Working Group stresses that the disappearance of Indigenous community leaders has an adverse effect on the community as a whole and on the ways in which Indigenous communities exercise their right to culture. It also stresses that the State must publicly and clearly repudiate the use of enforced disappearance as retaliation for exercising or promoting economic, social and cultural rights, including land-related claims.

IX. Concluding observations

...

75. The Working Group considers that Honduras must assume its responsibilities and leadership role and redouble its efforts to guarantee the rights of victims of enforced disappearance in the areas of truth, justice, reparation and memory. The Working Group sets out a series of recommendations on issues ranging from prevention, investigation, punishment and reparation for the harm suffered by victims of enforced disappearance to the protection of groups in situations of particular vulnerability, such as Indigenous Peoples, migrants and persons living in poverty.

X. Recommendations

76. The Working Group recommends that Honduras: ...

Reparation and memory

...

- (z) Comply with the decisions taken by the bodies of the inter-American system, including the judgments concerning the Garifuna communities of Punta Piedra and Triunfo de la Cruz, and take concrete measures in relation to the demarcation and titling of the territories of Indigenous communities.

CC. SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

1. Visit to Honduras, A/HRC/56/56/Add.1, 24 June 2024

I. Introduction

1. At the invitation of the Government of Honduras, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, conducted an official visit to Honduras from 22 May to 2 June November 2023. The purpose of the visit was to obtain first-hand information on the situation with regard to extrajudicial, summary or arbitrary executions and to identify good practices and challenges in relation to efforts to uphold the right to life. The Special Rapporteur also examined progress made towards ensuring protection for individuals and groups – especially those in vulnerable situations, as well as accountability for victims and members of their families – and preventing future attacks on the right to life in Honduras.

5. ...The Special Rapporteur also met with organizations representing victims killed for having defended land rights, the rights of Indigenous and Afro-Honduran Peoples and the protection of the environment.

II. Background

A. Political, economic and social context

9. The scars of a history of political and economic instability are visible in the deep inequalities and high levels of crime, including drug smuggling and gang violence, that permeate Honduran society. These problems, combined with entrenched corruption, excessive use of force and repressive policies, have for decades facilitated grave human rights violations committed with impunity.
16. Inherited political and security challenges, compounded by high levels of corruption, including organized crime, have had a devastating effect on the economy of Honduras, which remains one of the poorest and most unequal countries in the region. The coronavirus disease (COVID-19) pandemic coupled with the effect of hurricanes Eta and Iota pushed the rate of extreme poverty up to 57.7 per cent in 2020. Economic recovery had helped to reduce this rate to 41.5 per cent by 2023, but extreme poverty remains high, mainly owing to the absence of equitable access to land and natural resources, particularly for Indigenous Peoples, persons of African descent and campesinos.

V. Principal conclusions on the right to life

A. *Right to life of groups and individuals in situations of vulnerability*

30. During his visit, the Special Rapporteur was alerted to the long history of attacks on the right to life that has characterized the country's recent past. These attacks, which are still happening, entail death threats and executions targeting vulnerable groups and individuals, including ... Indigenous persons, children, human rights defenders, including land and environmental defenders, journalists and social media activists. In the 70 cases of killings of human rights defenders documented by OHCHR between 2018 and 2023, 67.1 per cent of the victims were dedicated to the defence of land, territory and/or the environment. The victims were from Indigenous groups in 13 cases and were persons of African descent in 14 cases. In the same period, OHCHR documented at least five cases of enforced disappearance, involving four Garifuna women and one transgender woman.

3. Indigenous Peoples and persons of African descent

39. The Indigenous and Afro-Honduran population represents slightly more than 8 per cent of the country's total population. The Lenca, Maya Ch'orti, Miskito, Pech, Tawahka and Xicaque Peoples are classified as Indigenous, while the Garifuna and Bay Island Creoles are Honduran ethnic groups of Afro-Caribbean origin. Indigenous Peoples and Hondurans of African descent have historically faced structural barriers that have given rise to systematic discrimination.
40. The Special Rapporteur noted a lack of effective and timely investigation of the serious violations committed against members of both groups and their communities as well as a lack of protection measures that leaves these communities in a situation of increased vulnerability and exposed to a high risk of further abuse. Echoing the recent judgment of the Inter-American Court of Human Rights in *Garifuna Community of San Juan and its Members v. Honduras*, the Special Rapporteur notes with concern the threats and attacks that the community has suffered as a result

of its struggle to prevent the misappropriation of its lands, including for tourism development projects, and the reported failures to adequately investigate such violations and provide protection for members of the community. On 28 January 2023, Ricardo Arnault Montero, a fisherman, Garifuna land rights activist and member of the Land Defence Committee, was killed in mysterious circumstances near his home in the community of Triunfo de la Cruz on the north coast. It was in this same location that four Garifuna leaders, including Alberth Sneider Centeno, the first young president of the community's governing board and a member of the Black Fraternal Organization of Honduras, disappeared from their homes after being arrested in July 2020 by unidentified men wearing National Police uniforms. There has been no news of them since.

41. In another example of such violations, in 2021 Erick Barú Rivera, a Miskito fisherman, was killed when a sizeable contingent of soldiers of the Armed Forces fired indiscriminately at members of his community, including women and children gathered peacefully on the beach. The Special Rapporteur, as a forensic doctor, met with members of the community, examined their healed gunshot wounds and viewed photographs taken immediately after the attack of the injuries sustained by some of the children, all of which were fully consistent with their testimonies. At the time of his visit, the authorities had not yet visited the community to investigate the attack, supposedly for security reasons and because they lacked the resources to travel to this remote location. No one has been held accountable for these violations.
42. In November 2022, Marcos Antonio Pineda, a member of the Lenca community of El Encinal, in La Paz department, was arbitrarily killed by members of the National Police while they were conducting an inspection in a village settlement. In October 2023, the local courts acquitted the only officer charged with the murder, so ensuring total impunity for a homicide that, according to reports, was just part of the systematic and unpunished attacks suffered by the Lenca people.
43. An exception to this pattern of impunity is the case of Berta Cáceres, a Lenca Indigenous activist and environmentalist and the national coordinator of the Civic Council of Popular and Indigenous Organizations of Honduras, who was assassinated in 2016 because of her activism against a hydroelectric project planned on ancestral lands. Those responsible for planning, ordering and carrying out her murder were arrested, charged and found guilty, and were sentenced in June 2022.
44. The Special Rapporteur takes note of the public apology issued by the State in Puerto Lempira in March 2023, when it acknowledged its responsibility for the crimes committed against members of the Miskito community, making an important first step towards ensuring accountability, truth and reconciliation.

5. Activists and defenders of land, territory and environmental rights

49. In 2023, OHCHR recorded at least 17 killings. In 15 of these cases, the victims were human rights defenders, mainly defenders of land and environmental rights, while in 2 cases, the victims were journalists. During his visit to the Bajo Aguán region, the Special Rapporteur noted with grave concern the frequent conflicts related to access to land and natural resources, including threats, attacks and killings targeting campesinos, especially land rights and environmental activists and members of campesino cooperatives in the region.
50. Despite the urgent need for human and material resources to ensure prompt and reliable investigations, the Special Rapporteur learned of reductions in the number of prosecutors and expert personnel assigned to investigative units and a lack of

basic resources for the medico-legal investigation of these serious crimes. He also noted with grave concern a lack of due diligence and serious conflicts of interest likely to result in negligence and procedural omissions in the investigation of some of the murders. On 14 October 2023, Kevin Meza, an 18-year-old campesino, was murdered in the municipality of Tocoa, in Colón department, during peaceful protests in defence of land rights. He is alleged to have been killed by members of the National Police who intervened to disperse the campesinos and later took over the investigation of his murder. Those responsible are still at large.

51. The Special Rapporteur welcomes the signature of the agreement between the Government, the Agrarian Platform and the Coordinating Committee of Community Organizations of Bajo Aguán in 2022. The agreement provided for the creation of a tripartite commission, which had already been established as at April 2024, to mediate in the conflict and prevent and investigate related human rights violations. However, he remains deeply concerned about the impunity that prevails in respect of the deaths of and attacks on defenders of land and territory that have continued to occur since the signature of the agreement. Security guards and agents of private security companies have allegedly been involved in these threats, attacks and killings.
52. These attacks are not limited to the Bajo Aguán region. Pablo Hernández Rivera, a local media worker and member of the Lenca Indigenous community who denounced local government corruption, was murdered in early 2022 in Tierra Colorada, in Lempira department, allegedly by order of the local authorities, due to his activism. Two persons from his community were arrested and charged with murder in June 2022 and are now awaiting sentencing. Mr. Hernández Rivera's family are reported to have suffered threats for having demanded accountability, including from those who ordered the murder.
53. The Special Rapporteur noted with grave concern that many of the victims of the recent attacks and killings were persons benefiting from precautionary measures under the National Protection System for Human Rights Defenders, Journalists, Social Communicators and Justice Operators. The State has a duty to protect the right to life and any breach of this obligation may in itself equate to a violation of the right.

VIII. Conclusions and recommendations

A. Conclusions

73. The Special Rapporteur welcomes the fact that the authorities have made an express commitment to investigate and prevent unlawful killings, have acknowledged the problems existing in the area of human rights and have identified the measures needed to address them. Their stated political will must be translated into specific and measurable actions that allow for prompt, effective, thorough, independent and impartial investigations of all cases of unlawful killings, even in the absence of a complaint (i.e. *ex officio*), for full reparations to be granted to victims and their families and for all those responsible, including those who ordered, planned or agreed to violations of the right to life, to be brought to justice.
74. The Special Rapporteur recalls that the duty to combat impunity for unlawful killings is a State obligation, not an option. Bringing those responsible for unlawful killings to justice is also essential to preventing the recurrence of such violations and enforcing the victims' right to reparations.

B. Recommendations

...

85. With regard to Indigenous Peoples and persons of African descent, the Special Rapporteur recommends that the Government: (a) Protect the right to life of persons belonging to Indigenous and Afro-Honduran communities and ensure that a differentiated approach is applied in the investigation of all potentially unlawful deaths, threats and attempts on their lives, taking the context of historical discrimination into account and ensuring the availability of the human and financial resources necessary for this purpose.

2. Protection of the dead, A/HRC/56/56, 25 April 2024

B. Applicable legal framework

1. General considerations

7. Across societies and cultures, paying respect to the dead through specific customs and rituals is almost universal. There is a myriad of approaches through which this occurs, and a rich debate regarding, and extensive documentation of the diversity of, what is considered dignified treatment of the dead. In the present report, the Special Rapporteur does not examine the philosophical, anthropological, religious and cultural foundations, or the debates, that underpin the obligations to protect the dead. However, he examines from a normative and legal perspective whether human rights apply only to the living and whether it is even appropriate to discuss rights as applied to the deceased. While jurisdictions and courts are divided about whether or not a deceased person retains residual rights, they still all find that obligations to protect and respect the dead arise from the human rights of the relatives of the deceased. Additionally, most countries have detailed laws, upheld by courts, designed to respect the wishes of the deceased person in relation to their posthumous affairs, notably as part of their wills and the honouring of their burial wishes and wishes relating to organ donorship.

2. International and regional human rights provisions

10. States are required to investigate all potentially unlawful killings as part of the duty to uphold the right to life. Death investigations must be prompt, effective, thorough, independent, impartial and transparent. All evidence must be collected and analysed, following internationally accepted protocols and procedures. This includes a full forensic investigation of relevant crime scenes and an autopsy of the human remains. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Minnesota Protocol on the Investigation of Potentially Unlawful Death set common investigative standards, procedures and guidelines. In situations of violations of the right to life, the search for the deceased, the identification of human remains and their return to relatives for dignified burials according to the family's customs and beliefs can be a means to advance the right to remedy. Additionally, the prohibition against torture and ill-treatment requires ensuring that the remains of a deceased person are treated with dignity and protected, to prevent the infliction of severe harm and suffering on the relatives of the deceased.
12. Other international human rights that relate to the protection of the dead include the rights to privacy, to culture and to religion, and Indigenous rights. The right to privacy has been applied broadly by different jurisdictions, including the right of families to carry out dignified burials, to protect the medical information of the decedent and to ensure that organs are managed in accordance with the decedent's

wishes. ... The rights to culture and to religion also relate to protection of the dead, by ensuring that different communities have the opportunity to carry out final rites and burial practices in accordance with their cultural and religious beliefs.

13. International human rights law also has specific provisions on protection of the dead for Indigenous Peoples, as part of their broader right to culture and self-determination. The United Nations Declaration on the Rights of Indigenous Peoples, which provides for the promotion of Indigenous Peoples' full and effective participation in all matters that concern them, contains, in article 12 thereof, specific requirements about the repatriation of ancestral remains.

C. Discrimination in practices relating to treatment of the dead

25. Many of the inequities, discrimination and injustices that occur in life continue to persist in death. While the mandate of the Special Rapporteur relates to potentially unlawful killings, and therefore the present report is focused on protection of the dead in those situations, there is nonetheless significant overlap of laws, regulations and practices relating to non-violent and everyday deaths. In those instances, there remain significant challenges to protection of the dead, which compound the grief and loss of those seeking to mourn their loved ones. In particular, there are challenges pertaining to the upholding of the rights of members of minorities and Indigenous persons; the situations of indigent persons; and unidentified or unclaimed bodies.

1. Rights of minority groups

...

27. Concerns relating to protection of the dead are heightened for Indigenous Peoples, who have faced prior harm and lack of respect for their cultural beliefs and rights, including their right to self-determination, and who continue to experience critical challenges. Argentina, Colombia and the United States offer examples of the recognition of rights of Indigenous Peoples to the repatriation of remains within legal mechanisms. Yet, in practice, general acknowledgment of the right to repatriation does not always result in actual repatriation. For one, those who have the right to the remains may go undetermined, or Indigenous concepts of ancestors may not align with the laws in a particular country. Other challenges include the lack of mechanisms for international repatriation and the placing of the burden of proof on Indigenous Peoples.

DD. SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE RUSSIAN FEDERATION

1. Situation of human rights in the Russian Federation, A/HRC/57/59, 13 September 2024

I. Introduction

1. In the present report, the Special Rapporteur, Mariana Katzarova, has focused on recent developments contributing to the continued deterioration of human rights in the Russian Federation.
4. The risk of severe punishment for any form of public dissent is very high, particularly for individuals and groups vulnerable to discrimination based on gender, sexual orientation, political opinion, religion, Indigenous status or minority background.

IV. Overview of the human rights situation

A. Freedom of peaceful assembly

33. There were fewer mass protests in 2023 and 2024, indicating that the impunity of law enforcement officials for their violent crackdown on peaceful anti-war gatherings in 2022 has had a deterring effect. None of the police officers involved in the torture and ill-treatment, including sexualized violence, against the 2022 protestors have been held accountable.
34. Protests by ethnic minorities and Indigenous Peoples in the regions of the Russian Federation are ruthlessly suppressed, particularly those in support of environmental rights. ...

V. Human rights violations in the name of national security

65. Russian criminal law concerning crimes against the constitutional order and national security is increasingly being used to suppress freedom of expression and infringe on fundamental human rights. A record number of criminal trials on those issues were held in 2023 and convictions increased to 862 in 2023, compared with 668 in 2022.

A. Extremism

66. The definitions of “extremism” are imprecise, too vague and broad, allowing arbitrary interpretation and application and thus enabling the targeting of anti-war activists, political opposition and other perceived critics with disproportionate sanctions. ...
69. The “anti-Russian separatist movement” was banned as “extremist” by a 2024 decision of the Supreme Court, although no such organization or movement exists in the Russian Federation or abroad. This was followed by the inclusion on the “extremist” list of 55 organizations of Indigenous Peoples and national minorities.

VII. Conscientious objection and mobilization

84. Military service of 12 months is compulsory for all Russian men between the ages of 18 and 30 years. Reservists may be called up in the event of mobilization, which currently means serving in the war against Ukraine.
86. In 2023 and 2024, mobilization focused on recruiting specific groups, including socioeconomically vulnerable people, prisoners, Indigenous Peoples, Russian citizens who had recently acquired citizenship, men with military-related specializations and, in some cases, migrants with temporary residence. Physical violence and underhanded tactics have been used to force men into signing contracts to join the war. Individuals who avoid mobilization can be prosecuted.

VIII. Groups vulnerable to human rights violations

...

C. Indigenous Peoples, minorities and migrants

99. Since the start of the war against Ukraine, the Russian State’s emphasis on national unity and patriotism has led to increasing attrition of a range of rights for minorities and Indigenous Peoples, from language and land rights to freedom of expression and security.
100. A lack of comprehensive anti-discrimination legislation has resulted in violent hate crimes, murder, torture and ill-treatment, especially against migrant workers from

Central Asia and non-Slavic minorities. Violent hate crimes against them have increased since the March 2024 terrorist attack in Moscow. Indigenous and national minority rights organizations have been branded as “extremist”, “foreign agents” or “undesirable”, forced to close and their activists imprisoned.

101. Indigenous Peoples (by Russian legal definition, groups with fewer than 50,000 people), small-numbered Indigenous Peoples (under 10,000 people, who are exempt from conscription) and national minorities have been disproportionately mobilized, some by force, to fight against Ukraine. As a result, some small-numbered groups may face extinction from war casualties.
102. The Russian Government has not disclosed information on the ethnic composition of its army or casualties in the Ukraine war. Independent analysis shows wide ethnic disparities in fatalities, however, with minority groups approximately four times more likely to be killed in Ukraine than ethnic Russians and 100 times more likely than people from Moscow. The data suggest that Indigenous Peoples of the Russian North are suffering the greatest war losses relative to the size of their populations.
103. Indigenous Peoples are one of the most impoverished demographic groups, with social and economic development and life expectancy far below the national average. Yet in 2022, Russian authorities cut the subsidies mandated by law for Indigenous Peoples and imposed onerous and arbitrary new requirements for registration to have access to these and other benefits.
104. Amendments to laws limiting the stay of foreigners in the Russian Federation, which would expand the grounds for the extrajudicial restriction of their rights, are currently under consideration.
105. A new law on citizenship entered into force in October 2023, which, among other things, drastically expanded the grounds for annulment of Russian nationality (for naturalized citizens) to include convictions for anti-war activities or on unspecified grounds of national security. The particular charge is to be determined at the discretion of the Russian Federal Security Service.

X. Reprisals for cooperation with the United Nations

131. Reprisals are used as another egregious way to attack civil society. Many Russian civil society members have sought anonymity when engaging with the Special Rapporteur, fearing intimidation and reprisals from their Government.
133. In May 2024, the Government requested that the Centre for Support of Indigenous Peoples of the North be deprived of its Economic and Social Council consultative status on the grounds that it lacked legal recognition in the Russian Federation. The Russian authorities closed the organization in 2019, after having designated it as a “foreign agent” in 2015.
134. The 2024 designation of the International Committee of Indigenous Peoples of Russia as “extremist” was a possible reprisal for their cooperation with the Expert Mechanism on the Rights of Indigenous Peoples and other human rights mechanisms.

XI. Conclusions and recommendations

...

143. Entrenched impunity and a lack of accountability, purposefully orchestrated by the Russian authorities, have further crushed any dissent or differing opinion or expression. Law enforcement officials have been given, de facto, a free hand to deal with “undesirables”, leading to the institutionalization of torture and arbitrary detention.

144. The impact of these measures is especially detrimental to already vulnerable groups, such as ... Indigenous Peoples ..., who have been targeted and victimized.

150. The Special Rapporteur recommends that the Russian authorities: ...

(j) Repeal urgently restrictive legislation on “foreign agents” and “undesirable organizations” and cease the practice of designating as “foreign agents” those exercising their freedoms of opinion and expression, especially independent media organizations, political associations, LGBT advocates, feminist, environmental and Indigenous activists and other civil society activists and organizations and ensure that women human rights defenders are especially protected and that journalists and media organizations can operate without fear of reprisals; ...

(s) Fully protect the rights of all persons belonging to ethnic minorities, ensure respect for the rights of Indigenous Peoples of the Russian Federation, especially their rights to land, natural resources and cultural practices, and eliminate all forms of discrimination and violence against them...

2. Situation of human rights in the Russian Federation, A/HRC/54/54, 15 September 2023

V. Key human rights observations and challenges

A. Freedom of opinion and expression

6. Application of anti-terrorism, anti-extremism and historical remembrance legislation

64. Laws on anti-terrorism, anti-extremism and historical remembrance are also used to limit freedom of expression.

66. Article 282 of the Criminal Code is used to punish “inciting hatred” against social groups, such as the “authorities” or “law enforcement agencies”, and can be applied after a prior administrative sanction for the same crime. It has been used to silence criticism, stifle dissent and prosecute journalists and civil society activists. Indigenous peoples and other minority groups seeking to foster their language or identity have instead been accused of fostering “hatred” towards ethnic Russians.

C. Freedom of association

81. Despite constitutional guarantees, the right to form, join and participate in associations is heavily restricted in the Russian Federation. Among a range of effects, these restrictions have isolated much of Russian civil society. Russian non-governmental organizations have been blocked from engagement at the international level as their foreign partners have been labelled “undesirable organizations” or “foreign agents” by the Government, in effect criminalizing such cross-border associations.

1. Forced closure of human rights organizations

84. Human rights organizations have been forced to close throughout the Russian Federation. In 2019, the Centre for Support of Indigenous Peoples of the North was closed following its designation as a “foreign agent” in 2015. The organization protected the rights of Indigenous peoples of Siberia and the Russian North and Far East, and had United Nations accreditation. ...

E. Conscientious objection to military service and mobilization

96. Federal Law No. 113-FZ of 25 July 2002 “on alternative civilian service” allows conscientious objection for army conscripts under mandatory military service, but not to reservists and others called up during military mobilizations, such as that announced in September 2022. Many reservists who have been mobilized were denied their right to conscientious objection by military commissions, despite a 1996 Constitutional Court decision that the right to alternative civilian service must be respected.
97. Although mobilization is purportedly regulated by Federal Law No. 31-FZ of 26 February 1997 “on mobilization in the Russian Federation”, many men have been mobilized by deception, the use of force, or by taking advantage of their vulnerability. Mobilized men have been immediately sent to military units, with or without their consent and without regard for their age, health or family situation. Those refusing to fight have been put in “detention centres for the mobilized” in Russian-occupied areas of Ukraine and threatened with execution, violence or a prison sentence if they did not return to the front lines.
98. Mobilization has been particularly aggressive in the most remote and poor regions of the Russian Federation with minimal population, disproportionately mobilizing men from minority ethnic groups and Indigenous peoples with populations of less than 10,000 (such as the Yukagirs and peoples of Dagestan). The authorities have imposed travel restrictions, blocking exit routes from towns and villages during mobilization sweeps. They have broken into people’s homes at night and taken away all the male working-age population from whole village.

