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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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

Report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples

Summary

The present report is submitted pursuant to Human Rights Council resolution 42/19. It contains information on relevant developments relating to human rights bodies and mechanisms and outlines the activities undertaken by the Office of the United Nations High Commissioner for Human Rights, between 1 May 2019 and 31 May 2020, at headquarters and in the field that contribute to the promotion, follow-up and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples and of the provisions in relevant international human rights treaties.



I. Introduction

1. In its resolution 42/19 concerning human rights and indigenous peoples, the Human Rights Council requested the High Commissioner for Human Rights to continue to submit to it an annual report on the rights of indigenous peoples containing information on relevant developments in human rights bodies and mechanisms and the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) 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.

2. The present report is focused on some illustrative examples of OHCHR activities and initiatives undertaken at the country, regional and global levels that contribute to the realization of the rights of indigenous peoples. It also contains an outline of recent developments within United Nations human rights bodies and mechanisms pertaining to indigenous peoples.

II. Overview of the activities of the Office of the United Nations High Commissioner for Human Rights and recent developments in human rights bodies and mechanisms

3. Towards the end of the period under review, the coronavirus disease (COVID-19) pandemic had spread across the world and had made plain the continued vulnerability of indigenous peoples. Where statistical data is available, it shows that indigenous peoples were among those most affected within the States they inhabit. Despite the clear articulation of the norms providing protection to indigenous peoples, there is a wide gap between those norms and their implementation. Although closing that gap has been among the objectives advanced through the United Nations Declaration on the Rights of Indigenous Peoples and the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, that goal is far from achieved. The global health crisis further highlighted that the full and effective participation of indigenous peoples in matters that concern them, including in the elaboration of responses to pandemics, is a human rights responsibility that many States, in which indigenous peoples live, are still failing to meet.

4. In order to address those concerns, OHCHR has continued to provide guidance and technical assistance to Member States, indigenous peoples, civil society organizations and United Nations bodies. Particular attention has been given to strengthening States' efforts to involve indigenous peoples in national and international initiatives that concern them.

5. During the reporting period, the rights of indigenous peoples were included in the recommendations of a number of human rights treaty bodies and in the reports, communications and other activities of special procedure mandate holders, including on the impact of the COVID-19 pandemic. They emphasized the need to ensure that all those whose decisions impact the rights of indigenous peoples, from State authorities to business enterprises to international financial institutions, are familiar with the standards set forth in the United Nations Declaration on the Rights of Indigenous Peoples and in international human rights treaties.

A. Coronavirus disease (COVID-19) pandemic and the rights of indigenous peoples

6. The COVID-19 pandemic is disproportionately affecting indigenous peoples, exacerbating underlying structural inequalities and pervasive discrimination. The serious impacts must be specifically addressed in the response to the aftermath of the crisis.¹ OHCHR

¹ See www.un.org/development/desa/dpad/publication/un-desa-policy-brief-70-the-impact-of-covid-19-on-indigenous-peoples/.

is supporting States' efforts to respond to the crisis, including through ensuring respect for the rights of indigenous peoples.

7. Reports indicate that, in most countries, measures to combat the COVID-19 global health crisis that directly affect indigenous peoples were adopted without the adequate participation of or meaningful consultation and cooperation with the indigenous peoples concerned.² That has resulted in some responses that may not be culturally appropriate and that may not be compatible with the requirement to seek and obtain their free, prior and informed consent.

8. Moreover, indigenous peoples in many parts of the world were already in precarious situations prior to the COVID-19 pandemic, due to the encroachment of indigenous peoples' land by illegal loggers, miners and others. That critical situation may be further exacerbated as a result of the crisis. Furthermore, lockdown measures and restrictions on freedom of movement can negatively affect the rights of indigenous peoples over their land, natural wealth and resources, in particular for those who already face food insecurity as a result of land confiscation, land grabs or the loss of their territories.

9. In the context of the COVID-19 pandemic, the work of indigenous human rights defenders has been key in ensuring that States provide accessible and reliable information in a fair and transparent manner and in raising the alarm when measures were inadequate or contrary to international human rights law. Indigenous human rights defenders are central allies in addressing the challenges posed by the COVID-19 pandemic; States should therefore recognize and protect them without discrimination at all times. During the period under review, however, threats against and attacks on indigenous people and the criminalization of their activities, in particular those carried out in defence of their lands and resources, continued to escalate in many countries, including in the context of large-scale infrastructure projects.

10. OHCHR headquarters and field presences are coordinating COVID-19-related activities with a common strategy for advocacy in the short, medium and long term, in synergy with United Nations human rights mechanisms and entities. Towards that end, OHCHR produced a guidance note on the impact of COVID-19 on indigenous peoples, including an overview of how the pandemic affects them and promising practices undertaken by States and indigenous peoples.

11. OHCHR field presences have directly engaged with Governments and provided support to ensure a rights-based response. For example, at the beginning of the pandemic, the OHCHR office in Cambodia contacted the Ministry of Health highlighting the heightened vulnerability of indigenous peoples during the COVID-19 global health crisis, including the potential impacts on access to health care and the risks of increased marginalization, social exclusion and geographical isolation. The country office continues to monitor and report on the impact of COVID-19 on vulnerable groups and has produced a thematic paper on the situation for the United Nations country team.

12. The OHCHR office in Colombia advised the Government on incorporating a rights-based approach into the formulation of Decree 546, which sets out measures for substituting prison sentences and imprisonment for home detention in the context of the state of emergency declared due to the COVID-19 pandemic. As a result, the government decree contains the recognition of the right of indigenous peoples to apply indigenous justice systems, as established in the Constitution of Colombia.

13. Similarly, the United Nations Joint Human Rights Office in the Democratic Republic of the Congo, as well as the OHCHR office in Honduras and its office in Guatemala, have been continuously monitoring the human rights situation of indigenous peoples during the pandemic. To positively shape the response of Honduras to COVID-19, the OHCHR office in Honduras recommended specific measures for the protection of indigenous peoples during the pandemic, in areas such as access to food, good quality water and medical supplies,

² See, for example, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25893&LangID=E and www.un.org/development/desa/indigenouspeoples/news/2020/04/chair-message-on-covid-19/.

including in the context of a high-level round table, together with the Secretariat for Human Rights and Secretariat for Social Inclusion of Honduras.

14. The OHCHR office in Mexico advised the National Council to Prevent Discrimination on possible measures to prevent and mitigate risks for indigenous peoples during the pandemic. Its policy document on essential guidelines for incorporating the perspective of human rights in the context of the COVID-19 pandemic included a section on indigenous peoples.

15. The OHCHR Regional Office for South America provided substantive support to the National Institute of Indigenous Affairs in Paraguay in the drafting of a sanitary protocol on COVID-19 and addressing its effects on indigenous peoples. The support was focused on integrating a human rights-based approach in line with relevant international standards.

16. In addition to providing policy advice, OHCHR field offices also engaged in advocacy on indigenous peoples' issues. For example, in May 2020, the OHCHR Regional Office for South America welcomed two decisions by the Federal Supreme Court of Brazil aimed at protecting indigenous peoples' rights. By its decision of 7 May 2020, the Court ordered the suspension of procedures that could result in the forced evictions of indigenous communities during the COVID-19 crisis. By its decision of 8 May 2020, the Court provisionally suspended the effects of an opinion that in practice paralysed the demarcation of indigenous lands. With those decisions, the judiciary of Brazil reaffirmed the right of indigenous peoples to lands that they have traditionally occupied.³

17. The Expert Mechanism on the Rights of Indigenous Peoples stressed the heightened vulnerability of indigenous peoples to the pandemic. The Expert Mechanism highlighted the importance of taking the rights of indigenous peoples into consideration when applying measures to respond to the pandemic.⁴

18. The Special Rapporteur on the rights of indigenous peoples has called for greater respect of indigenous peoples' right to autonomy and self-governance in managing the crisis, in order to ensure food security through their traditional crops and traditional medicine. He noted that the rights to development, self-determination and lands, territories and resources must be ensured in order for indigenous peoples to manage in such times of crisis.⁵

19. Other United Nations human rights mechanisms have also issued guidance relating to indigenous peoples during the reporting period. The Committee on the Elimination of Discrimination against Women stressed the disproportionate impact that COVID-19 had on indigenous women and girls. It called upon States parties to ensure access for women and girls to acceptable health care, equipment, testing and urgent emergency treatment, as well as education and COVID-19-related information.⁶ The Committee on Economic, Social and Cultural Rights urged States parties to adopt special, targeted measures to protect and mitigate the impact of the pandemic on communities and groups subject to structural discrimination, including by providing social relief and income-support programmes (E/C.12/2020/1, paras. 15 and 18).

B. Free, prior and informed consent and the consultative mechanisms, including in the context of business and the extractive industries

20. During the reporting period, the inadequate implementation of the appropriate mechanisms for the consultation, consent and participation of indigenous peoples in many development projects and plans that may affect them continued to undermine the protection and promotion of their rights during the period under review. OHCHR field offices worked with indigenous peoples and the relevant authorities to ensure that the rights of indigenous

³ See <https://acnudh.org/brasil-comentario-do-representante-da-onu-direitos-humanos-jan-jarab-sobre-terras-indigenas/>.

⁴ See www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx.

⁵ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25893&LangID=E.

⁶ See www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx.

peoples to participation and to be consulted in order to obtain their free, prior and informed consent regarding decisions that affect them were respected.

21. The OHCHR office in Colombia, in coordination with the Office of the Ombudsman of Colombia and the Ministry of the Interior, continued to provide support for communities of 15 indigenous groups in Putumayo, as well as to the Barí people in the Catatumbo region of Norte de Santander. It helped those communities to develop their protocol on free, prior and informed consent, ensuring compatibility with indigenous customary laws, domestic jurisprudence and international standards. The OHCHR office in Colombia also provided assistance to the governors of the departments of Amazonas and Arauca and to indigenous authorities, so as to integrate a rights-based approach into their territorial development plans for the period 2020–2023.

22. The indigenous Xinca Parliament, with technical assistance from the OHCHR office in Guatemala, promoted the implementation by the national authorities of the Constitutional Court decision in relation to the San Rafael mine. The Court had confirmed the suspension of operations of the Escobal mine, operated by Minera San Rafael, in 2018, and required that the Xinca communities be consulted. The country office organized several meetings with indigenous communities to discuss the draft policy on human settlements in protected areas of the National Commission of Natural Protected Areas, ensuring that international human rights norms and standards were included therein.

23. The OHCHR regional office for Central Africa organized a workshop on techniques and strategies to mobilize rights holders and advocate for the adoption of policies that favoured the participation of marginalized groups in public life, held in Libreville in July 2019. Challenges faced by indigenous people were highlighted. Participants identified key actions to further promote their rights, including advocating for the adoption of specific laws to facilitate the participation of indigenous persons with disabilities in voting in elections.

24. The OHCHR office in Honduras, at the request of the Congress of Honduras, provided advice on international standards to the special commission of Congress charged with the drafting of a bill on free, prior and informed consent. The country office stressed the need for public authorities to engage in a confidence-building process with broad indigenous representation in order to prevent social unrest. After its mission to Honduras, the Working Group on the issue of human rights and transnational corporations and other business enterprises recommended that the right of indigenous peoples to participate in all matters affecting them be recognized as a continuum that requires open and honest interaction between public authorities, the private sector and all members of society.

25. In 2019, representatives of the country office also visited the municipality of Lepaterique and the Lenca indigenous community of Reitoca, which have been affected by the installation of a hydroelectric plant. Representatives of the country office conducted interviews, held meetings with various actors at the local and national levels and private sector actors and expressed their concern about the lack of access to water for indigenous communities.

26. The OHCHR office in Mexico continued to monitor consultation processes with indigenous groups. The office supported the consultation of 16 Zapotec indigenous communities in the State of Oaxaca on community water management. The country office assisted with the consultation process led by the National Water Commission and held meetings in parallel with relevant federal authorities. Representatives of the office attended the historical meeting, held in Oaxaca, at which the parties signed agreements to harmonize national law with traditional law, recognizing the right to water of the indigenous communities and their right to participate in water resources management.

27. The OHCHR office in Mexico also engaged in a dialogue with the National Fund for Tourism Development, which is in charge of the Mayan train project, and the other United Nations entities involved to ensure that the rights of indigenous peoples were taken into consideration in all phases of the project. The construction of 1,460 km of railway, which would pass through five states that are predominantly inhabited by indigenous peoples, is envisaged.

28. The OHCHR Regional Office for South America and the International Labour Organization (ILO) signed a memorandum of understanding to jointly conduct seminars and workshops on the use of international human rights protection mechanisms. The objectives of those activities are to strengthen the capacity of indigenous peoples to participate effectively in the design of laws and public policies. The Regional Office and the Working Group on business and human rights, in cooperation with ILO and the Organization for Economic Cooperation and Development, organized the fourth regional consultation on business and human rights for Latin America and the Caribbean, held in September 2019 in Santiago. Two sessions were focused on the rights of indigenous peoples, including on access to remedy for indigenous peoples in the context of business activities.⁷ The Regional Office also supported the first international, interdisciplinary and intercultural course on the international protection of the rights of indigenous peoples, organized jointly with the International Institute for Law and Society in Lima.

29. OHCHR documented the impact on indigenous peoples in the Bolivarian Republic of Venezuela affected by the Arco Minero del Orinoco mining project and the expansion of illegal mining, including on their collective rights, particularly in Bolívar State (A/HRC/44/54). The discriminatory impact of such projects on the individual rights of indigenous peoples was also highlighted in a report to the forty-third session of the Human Rights Council (see A/HRC/43/3/Add.3).

30. In February 2020, representatives of OHCHR met with representatives of the Ministry of the People's Power for Indigenous Peoples of the Bolivarian Republic of Venezuela. The Ministry subsequently facilitated meetings between OHCHR and the council of elders of the Pemón Peoples and between OHCHR and 25 indigenous authorities representing nine indigenous groups living within the Arco Minero del Orinoco region of Bolívar State, in order to engage with them and monitor the human rights situation among the population.

31. During the reporting period, the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights recommended that several States guarantee the free, prior and informed consent of indigenous peoples prior to the approval of any project or any legislative or administrative measure affecting them (see, for example, E/C.12/ECU/CO/4 and E/C.12/CMR/CO/4). States were also requested by the Committee on the Elimination of Racial Discrimination to undertake consultations with indigenous groups and impartial human rights impact studies prior to project development (CERD/C/COL/CO/17-19, para. 19 (a)–(c); CERD/C/SLV/CO/18-19, para. 23 (a)–(f); CERD/C/GTM/CO/16-17, para. 20 (a)–(d); and CERD/C/MEX/CO/18-21, para. 21 (a)–(d)).

32. The Committee on the Rights of the Child recommended that States adhere to the United Nations Declaration on the Rights of Indigenous Peoples and involve children in processes affecting their lives, ensuring that development projects, hydroelectric projects, business activities and the implementation of legislative or administrative measures, such as the establishment of protected areas, are subject to consultations and adhere to the provisions of the Declaration (CRC/C/CRI/CO/5-6, para. 44 (d)).

C. Land rights

33. In many States, the lack of or the inadequate recognition of indigenous land rights and the expropriation of indigenous lands and natural resources continues, placing indigenous peoples in a particularly precarious situation and leading to increases in conflicts on their territories (A/HRC/36/46, para. 50; and A/HRC/39/17, para. 17), which hindered the enjoyment by indigenous peoples of their rights to development, self-determination and control over their traditional lands, territories and resources, during the reporting period.

34. In 2019, the OHCHR office in Cambodia continued to work with the Ministry of Rural Development, the Ministry of the Interior and the Ministry of Land Management, Urban Planning and Construction, local governments and civil society organizations to support indigenous peoples' efforts to apply for collective land titles. The country office provided

⁷ Information on the session is available at <https://sched.co/TKvN> and <https://sched.co/TKvW>.

legal aid through grants, in an effort to ensure access to justice and remedy for communities who have suffered from land rights violations.

35. In February 2020, the country office also joined an assessment mission to Kratie and Stung Treng provinces, Cambodia, to evaluate the difficulties faced by indigenous communities living in government-claimed environmentally protected areas. Those communities have been unable to register their traditional land as communal land, because the Ministry of Environment declined to change the legal land status. The Ministry of Land Management, Urban Planning and Construction and OHCHR are exploring options for assisting the Ministry of Environment in ensuring that the right to land of indigenous peoples is protected.

36. During the period under review, the OHCHR office in Colombia contributed to advancing 23 legal processes, which resulted in returning almost 5 million hectares to indigenous communities, including to the Hitnu people of Arauca, the Jiw people of the Barrancón and La Fuga territories in the Guaviare region and the Arhuaco people of the Sierra Nevada de Santa Marta. The country office also continues to support 50 ongoing legal processes related to 130 requests for protection from 14 indigenous groups in Putumayo, 13 of which are facing risks of physical and cultural extermination. The country office further provided technical assistance to the Land Restitution Unit and the National Land Agency to strengthen their protection mechanisms in accordance with international standards. In coordination with the Office of the Ombudsman of Colombia, the country office established an inter-institutional commission aimed at developing biocultural indicators to measure the risk to indigenous peoples of physical and cultural extermination.

37. In the framework of the Maya programme, the OHCHR office in Guatemala provided assistance and advice on international standards for the strategic litigation of the Chuarrancho case. In May 2019, the Constitutional Court ruled in favour of the Chuarrancho indigenous community for the restitution of their lands and, in a separate decision, ordered the restitution of lands and territories to the Ajawab's indigenous authorities of San Pedro Jocopilas-Quiché.

38. In 2017, the African Court on Human and Peoples' Rights found that Kenya had breached the Ogiek's rights after repeated evictions from their lands in the Mau forest. In September 2019, an expert meeting was held to formulate solutions that would become the recommendations of the task force on issues raised in the Court decision. OHCHR provided financial and technical assistance, including for the development of the programme of work of the expert meeting, and facilitated the session on the constitutional thresholds for public forests and community forests. During the reporting period, the task force appointed by the Government of Kenya, mandated to implement the Court decision, acknowledged the role played by, and expressed its thanks for, the assistance of OHCHR in the process.

39. The Special Rapporteur on the rights of indigenous peoples also submitted expert testimony to the African Court on Human and Peoples' Rights as an *amicus curiae* in the examination of the reparation due to the Ogiek community following the Court's ruling in 2017.⁸

40. In August 2019, OHCHR organized a regional workshop on the role of young people as agents of change in the promotion and protection of indigenous peoples' land rights, the environment and climate change, which was held in Bangkok. Twenty-eight youth representatives from indigenous communities in Indonesia, Malaysia, the Philippines and Thailand participated. The workshop increased participants' capacities to monitor the impact of the activities of transnational corporations and extractive industries on economic, social and cultural rights.

41. OHCHR representatives participated in an event in Hokkaido, Japan, in October 2019 organized by the Ainu Women's Association with the support of Slow Food International and the International Fund for Agricultural Development, among others. The event took place in the homeland of the Ainu people and brought together 200 indigenous delegates representing peoples from 27 countries of the Asia and Pacific region. The role of indigenous

⁸ Available from www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/ExpertTestimony.aspx.

women in protecting agricultural biodiversity and the importance of empowering young people to rediscover the value of their cultural heritage was discussed at length. During the event, OHCHR representatives held several meetings with indigenous representatives and participated in a panel discussion focused on land rights and access for the revival of indigenous food culture.

42. During the reporting period, the Committee on the Elimination of Discrimination against Women recommended that States parties to the Convention on the Elimination of All Forms of Discrimination against Women protect the rights of indigenous women and communities to their lands and resources by amending relevant laws and ensuring the free, prior and informed consent of indigenous peoples before any development projects affecting them were initiated, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (CEDAW/C/GUY/CO/9, para. 44 (b) and (c)).

43. The Committee on Economic, Social and Cultural Rights called upon States parties to the International Covenant on Economic, Social and Cultural Rights to guarantee the right of indigenous peoples to freely dispose of their lands and territories, to protect collective and customary forms of land tenure systems and to resolve pending claims of land ownership (see E/C.12/ECU/CO/4 and E/C.12/ISR/CO/4). The Committee is developing a general comment on the right to land under the Covenant.⁹

44. The Committee on the Elimination of Racial Discrimination underlined the lack of measures to protect indigenous peoples living in voluntary isolation or in a situation of initial contact among States parties to the International Convention on the Elimination of All Forms of Racial Discrimination. States parties to the Convention were also advised to guarantee the rights of indigenous peoples living in protected areas and to recognize and ensure their access to lands and ability to dispose of their natural resources. The Committee requested that States parties ensure protection against forced displacement or eviction and to stop the eviction of indigenous peoples from their homes and traditional lands (see CERD/C/SLV/CO/18-19, CERD/C/MEX/CO/18-21 and CERD/C/COL/CO/17-19).

45. In October 2019, the Expert Mechanism on the Rights of Indigenous Peoples held an intersessional meeting in Pretoria on the right to land under the United Nations Declaration on the Rights of Indigenous Peoples. The issue is also the focus of the draft study on the right to land under the Declaration (A/HRC/EMRIP/2020/2), the final version of which will be submitted to the Human Rights Council for consideration at its forty-fifth session.

46. The Special Rapporteur on the rights of indigenous peoples submitted an amicus brief to the Constitutional Court of Peru¹⁰ in October 2019 regarding the situation of the Community of Santa Clara de Uchunya, in relation to its efforts to obtain legal recognition of its territory and to protect it from the expansion of monocultures in the region, in particular palm oil plantations. The brief was submitted against the backdrop of increasing violence and threats against members of the community who were defending their rights to their lands.¹¹ She also made a submission to the Constitutional Court of Brazil highlighting the importance of using the United Nations Declaration on the Rights of Indigenous Peoples as a frame of reference when examining indigenous people's traditional lands, territories and natural resources and grounding the recognition of indigenous lands in criteria such as traditional use and possession, without temporal limitation.

47. The Working Group on business and human rights and the United Nations Development Programme organized the inaugural South Asia Forum on Business and Human Rights in March 2019 in New Delhi. A session was held on the adverse impact of developments projects, including those funded by international financial institutions, on the human rights of individuals and communities, recognizing that such large-scale economic

⁹ For more information, see www.ohchr.org/EN/HRBodies/CESCR/Pages/GeneralDiscussionLand.aspx.

¹⁰ Peru, Constitutional Court, case No. 03696-2017-AA/TC.

¹¹ Available from www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/ExpertTestimony.aspx.

and industrial development often has a disproportionate impact on indigenous peoples and their rights to lands, territories and natural resources.¹²

48. In the context of the third review cycle of the universal periodic review, several States were urged to enable the inclusion and participation of indigenous peoples in devising holistic strategies towards managing climate change and its impacts on livelihoods and land rights issues and to ensure that indigenous peoples were involved in the development of legislation, policies and programmes on climate change and risk reduction (see A/HRC/41/6, A/HRC/41/8, A/HRC/43/11 and A/HRC/43/13).

D. Human rights defenders and reprisals

49. During the reporting period, threats against and attacks on indigenous people and the criminalization of their activities, in particular those carried out in defence of their lands and resources, continued to escalate in many countries, including in the context of large-scale projects relating to the extractive industries and agribusiness, infrastructure projects and hydroelectric dams.¹³

50. The OHCHR office in Colombia provided support for the implementation of protective measures in regions with high levels of violence against traditional authorities and indigenous guards, namely, Arauca, Meta and Norte de Santander. In May 2019, representatives of the country office participated in a public hearing convened by the Inter-American Commission on Human Rights on the precautionary measures taken with regard to the rights of indigenous peoples in Colombia.

51. On 21 May 2019, the national human rights institution and the OHCHR office in Guatemala issued a joint report on the situation of human rights defenders in the country.¹⁴ In the report, covering the period from 1 January 2017 to 30 April 2019, they identify patterns of criminalization, including the participation of private companies from the mining, hydroelectric and agro-industries in attacks against indigenous human rights defenders, and the lack of an independent and impartial judicial system. They also documented attacks against indigenous women human rights defenders in their communities for challenging traditional gender roles in society.

52. The OHCHR office in Honduras supported indigenous human rights defenders before the national mechanism for the protection of human rights defenders and the Ministry of Human Rights. In 2019, the country office registered and monitored 12 cases filed against human rights defenders from the Tolupan tribe of San Francisco de Locomapa for opposing commercial logging exploitation projects in their territories that were initiated without their free, prior and informed consent.

53. The OHCHR office in Mexico contributed to the protection of indigenous human rights defenders through continued dialogue with the authorities and a media strategy and by supporting communities and defenders at risk and advocating that the federal authorities respect their human rights obligations. The country office contributed to the release from prison, in February 2019, of a renowned indigenous human rights defender and member of an organization of the Me'phaa indigenous peoples, Otilia Eugenio Manuel.

54. In December 2019, the OHCHR Regional Office for South America, jointly with the Inter-American Commission on Human Rights, publicly condemned the murders of indigenous leaders Firmino Praxede Guajajara, from the Cana Brava Indigenous Land, and Raimundo Belnício Guajajara, from the Lagoa Comprida Indigenous Land, perpetrated on 7 December 2019 in Maranhão State, Brazil. The Guajajara leaders were shot to death when they were returning from a meeting with the National Indian Foundation and the Eletrobras

¹² Further information is available at <https://sched.co/LLkd>.

¹³ See www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=24513&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25416&LangID=E.

¹⁴ See www.oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Informe_personas_defensoras.pdf (in Spanish).

Eletronorte company. Authorities were urged to carry out immediately an independent and impartial investigation into the killings.¹⁵

55. The Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights highlighted cases of the criminalization of the work of indigenous rights defenders (CERD/C/COL/CO/17-19, para. 15 (b); CERD/C/GTM/CO/16-17, paras. 27 and 28 (a)–(c); and CERD/C/MEX/CO/18-21, paras. 30 and 31 (a)), attacks and assassinations of indigenous leaders and indigenous human rights defenders (CERD/C/KHM/CO/14-17, para. 28 (d); CERD/C/COL/CO/17-19, para. 29 (a), (b) and (d); CERD/C/GTM/CO/16-17, paras. 27 and 28 (a)–(c); and CERD/C/MEX/CO/18-21, paras. 30 and 31 (a)) and sexual and gender-based violence (CERD/C/KHM/CO/14-17, paras. 29–30; CERD/C/COL/CO/17-19, para. 25 (b) and (c); CERD/C/SLV/CO/18-19, paras. 26 and 27 (d); and CERD/C/GTM/CO/16-17, paras. 33 and 34 (d)), including cases of forced sterilization (CERD/C/MEX/CO/18-21, paras. 24 and 25 (b) and (c)).

56. The Human Rights Committee expressed its concern about the lack of access to justice for indigenous peoples, underlining cases of impunity in relation to extrajudicial killings, enforced disappearances and torture. The Committee also expressed its concern about the criminalization of the work of indigenous human rights defenders opposing development projects, including arbitrary arrest and detention (CCPR/C/ERI/CO/1, paras. 17–18; and CCPR/C/PRY/CO/4, paras. 22–23).

57. The Special Rapporteur in the field of cultural rights addressed cultural rights defenders as a subcategory of human rights defenders, noting that cultural rights were essential in the struggles for self-determination of indigenous peoples, including for their right to land (see A/HRC/43/50).

58. OHCHR recorded several cases of harassment and reprisals against indigenous representatives participating at sessions of United Nations mechanisms, during the reporting period. Those representatives had all received a participation grant from the United Nations Voluntary Fund for Indigenous Peoples. Five cases of harassment and reprisals were recorded in relation to the eighteenth session of the Permanent Forum on Indigenous Issues, held in New York in April 2019, and 10 during or after the twelfth session of the Expert Mechanism on the Rights of Indigenous Peoples, held in July 2019 in Geneva.

E. Early warning mechanisms and the monitoring of human rights violations

59. From 31 May to 4 June 2019, the OHCHR office in Mexico visited the State of Chiapas to document cases of the forced internal displacement of indigenous peoples. It met with relevant authorities and supported the signing of ceasefire agreements between municipal authorities.

60. The OHCHR office in Colombia played an active role in supporting the work of the commission for ethnic peace and defence of territorial rights. The commission workplan for the period 2018–2019 addresses the vulnerable human rights situation of ethnic minority groups and indigenous peoples, highlighting challenges to the effective implementation of the peace agreement and the risks faced by leaders of indigenous communities.

61. The country office noticed a lack of prompt and efficient responses by the early warning system for possible imminent attacks against defenders, coordinated jointly by the Ministry of the Interior and the national office of the ombudsman. The country office supported the development of warning signals to help indigenous peoples living in high-risk areas, in particular in the department of La Guajira.

62. The Special Rapporteur on the human rights of internally displaced persons highlighted the role of national human rights institutions in the prevention of arbitrary displacement caused by development projects, business activities or forced evictions that

¹⁵ See <https://acnudh.org/escritorio-regional-e-cidh-condenam-assassinatos-de-liderancas-indigenas-no-brasil/> (in Spanish).

were not regulated or conducted according to national law and international standards, which often affected indigenous peoples (A/HRC/41/40, para. 41).

F. Access to justice and legal protection of the rights of indigenous peoples

63. The OHCHR office in Colombia fostered the harmonization of the self-government systems of indigenous peoples, formal justice systems and related mechanisms created during the peace process. That joint effort was aimed at investigating and prosecuting attacks and killings of indigenous leaders that occurred between May 2019 and May 2020. It supported the Regional Indigenous Council of Cauca in its interactions with local justice sector institutions in northern Cauca. In 2019, the country office also supported Wayúu women, the Office of the Attorney General and the national forensics institute in designing a protocol for the handling of cadavers during technical inspections, taking into account the traditions of the Wayúu people.

64. The country office in Guatemala observed the hearings, and provided technical assistance to judges, prosecutors and representatives of civil society organizations on international norms and standards, in the context of the trials against the perpetrators of sexual violence committed against Maya Achí women between 1981 and 1985. The office also assisted State institutions, including the Office of the Attorney General, in developing a master plan for the implementation of the sentence in the Sepur Zarco case rendered in 2018, a landmark judgment, in which, for the first time, a national court ruled on charges of sexual slavery during the internal armed conflict.

65. During its monitoring work, the Committee against Torture addressed the attacks on indigenous peoples and communities by security forces, police and non-State armed militia (CAT/C/COD/CO/2, para. 30; CAT/C/ARG/QPR/7, para. 28; CAT/C/BGD/CO/1, para. 23; CAT/C/PRY/QPR/8, para. 27 (b); and CAT/C/MLI/QPR/1, para. 29). The Committee requested States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to establish mechanisms and procedures to ensure coordination and cooperation between the indigenous and formal justice systems (CAT/C/ECU/QPR/8, para. 6; and CAT/C/PAN/QPR/5, para. 5) and to take appropriate measures to prevent intercommunity conflict and violence (CAT/C/MLI/QPR/1, para. 30).

66. The Committee on the Elimination of Racial Discrimination, during country reviews, called upon States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to prevent the criminalization of the activities of indigenous leaders and human rights defenders and to ensure their protection. It recommended that States parties ensure access to justice for victims, investigate cases, prosecute the perpetrators of and sanction such acts as involuntary sterilization and the recruitment of indigenous children by non-State armed groups (see CERD/C/KHM/CO/14-17, CERD/C/COL/CO/17-19 and CERD/C/SLV/CO/18-19).

67. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment paid particular attention to the analysis of the situation of indigenous peoples before prison visits to determine whether indigenous peoples in detention were victims of multiple forms of discrimination or ill-treatment, in order to address those concerns with specific recommendations in its confidential reports.

68. The Committee on the Rights of the Child adopted its general comment No. 24 (2019) on children's rights in the child justice system, in September 2019, in which it addresses children coming into contact with justice systems parallel to or on the margins of the formal justice system, including customary, tribal, indigenous or other justice systems.

69. The Special Rapporteur on the rights of indigenous peoples submitted a report on indigenous peoples and access to justice (A/HRC/42/37) in September 2019.

70. During the 2019 session of the Forum on Business and Human Rights, indigenous peoples' representatives emphasized the importance of the third pillar of the Guiding Principles on Business and Human Rights. The Guiding Principles contain three pillars: protect, respect and remedy. The representatives emphasized in particular issues related to

access to justice for victims and to an effective remedy when the rights of indigenous peoples are breached.

71. The Special Rapporteur on the human rights of internally displaced persons urged government institutions and civil society organizations to continue efforts on the prevention and protection of internally displaced persons with a differentiated approach for indigenous communities (A/HRC/41/40/Add.1, para. 49).

72. In the context of the third review cycle of the universal periodic review, States were urged to recognize the status of indigenous communities in their own States, with the occasional suggestion of constitutional additions, and to recognize the legal personality of indigenous peoples (see A/HRC/42/4, A/HRC/42/7, A/HRC/42/8, A/HRC/42/9, A/HRC/42/10, A/HRC/42/12 and A/HRC/42/13).

G. Indigenous languages and other issues

73. In the context of the twenty-fifth commemoration of the International Day of Indigenous People, the OHCHR regional office for Central Africa organized a workshop on the political participation of indigenous peoples, from 27 to 31 August 2019 in Bertoua, Cameroon, in cooperation with the Ministry of Social Affairs of Cameroon and the electoral management body. Participants included municipal councillors from the Baka and Mbororo communities, public administrators and traditional leaders. They were informed about the challenges faced by indigenous communities in electoral processes, including with regard to the social barriers to participation, negative stereotypes and lack of identity cards. As a result, the regional office developed a documentary film on the participation of indigenous peoples in electoral processes, as a sensitization tool for other countries of the subregion.

74. The Russian State Library, with OHCHR support, organized a round table devoted to the International Year of Indigenous Languages, in Moscow in September 2019. The event was also supported by the Republic of Sakha (Yakutiya), where numerous indigenous peoples live. OHCHR representatives gave a presentation on indigenous peoples rights and the preservation and revival of indigenous languages.

75. The Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights underlined the difficulties faced by indigenous peoples in gaining access to bilingual intercultural education (see E/C.12/CMR/CO/4, E/C.12/DNK/CO/6, E/C.12/ECU/CO/4 and E/C.12/ISR/CO/4). States were urged to ensure the use of indigenous languages in the public sphere. The treaty bodies also emphasized the need for the protection of intellectual property rights of indigenous peoples to native seeds. States were urged to respect the right to self-identification of indigenous communities and to protect their cultural diversity, including by protecting indigenous handicrafts and traditional knowledge (see CERD/C/PSE/CO/1-2).

76. OHCHR continued to support the Expert Mechanism on the Rights of Indigenous Peoples and the implementation of its amended mandate, which allows the Expert Mechanism to engage with and assist Member States, indigenous peoples and/or the private sector, upon their request, by facilitating dialogue and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, when agreeable to all parties, in order to achieve the ends of the Declaration. In March 2020, the Expert Mechanism facilitated a dialogue between the Yaqui people and Sweden regarding a repatriation request for a ceremonial object, a deer head of great cultural significance for the Yaqui, which had been acquired by a Swedish museum in 1937 in Tlaxcala, Mexico.

77. 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 her report on the right to housing of indigenous peoples (A/74/183), outlined eight key principles for the realization of the right to housing of indigenous peoples, underscoring that the adequacy of housing must be defined and determined by indigenous peoples themselves.

78. In the preliminary findings on her visit to Brazil, from 28 October to 8 November 2019, the Independent Expert on the enjoyment of human rights by persons with albinism noted the relatively high prevalence of albinism among indigenous people in Brazil and

recommended that the State undertake a survey to better understand the human rights challenges faced by persons with albinism, in particular among indigenous communities.¹⁶

H. Rights of indigenous women and girls

79. The OHCHR office in Guatemala continued to support indigenous Mayan midwives. It organized several workshops, legal clinics and capacity-building activities for developing a road map for implementing the ruling of the Constitutional Court ordering the Ministry of Health to adopt nine culturally appropriate measures to guarantee access to sexual and reproductive health and rights for indigenous women. During the reporting period, the country office also continued its partnership with the Women's Association for the Development of Sacatepéquez and the national movement of women weavers to advocate for the development of adequate legislation for the protection of the collective intellectual property rights of indigenous peoples.

80. In 2019, the country office in Guatemala helped the Tz'ununija' indigenous women's movement to develop specific indicators to monitor the implementation of recommendations on indigenous women's rights adopted by Guatemala in the context of the universal periodic review process.

81. In Paraguay, the OHCHR Regional Office for South America, together with the Plurales Foundation, Tierraviva, Grupo Sunú de Acción Intercultural, Mujeres Rurales and Fundación Hugo, held a workshop on the theme "Human rights, indigenous peoples and gender: strategies for advocacy in global spaces" in October 2019. Twenty-five indigenous women leaders participated in the workshop, strengthening their knowledge and their capacity to engage with international human rights mechanisms.¹⁷

82. In February 2020, representatives of OHCHR conducted a visit to the internally displaced Warao indigenous peoples from Delta Amacuro State, Bolivarian Republic of Venezuela, now living outside urban areas in Bolívar State. They expressed particular concern about the incidence of early pregnancy among internally displaced Warao girls, who begin having children at 12 years old, and noted the lack of access for those girls to sexual and reproductive health services.

83. In its findings during the reporting period, the Committee on the Elimination of Discrimination against Women expressed concern about the marginalization and lack of representation of indigenous women in political and public life, the absence of consultation with them and their limited access to justice. The Committee is elaborating a general recommendation on combating trafficking in women and girls in the context of global migration.¹⁸

84. At the twelfth session of the Expert Mechanism on the Rights of Indigenous Peoples, a panel discussion was organized on the theme "Indigenous women in power", bringing together six indigenous women from different regions currently serving or having recently served in parliamentary or government roles, who discussed their motivation, experiences, challenges and what they envisaged for the future.¹⁹

I. Development of national action plans

85. The United Nations Joint Human Rights Office in the Democratic Republic of the Congo held several working-level meetings in Kinshasa in 2019 with the ministry in charge of people living with disabilities and other vulnerable persons, at which it advocated for the development of a policy and national action plan on indigenous peoples. Within that

¹⁶ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25250&LangID=E.

¹⁷ See <https://acnudh.org/acnudh-brindo-capacitacion-a-mujeres-lideres-indigenas-de-paraguay/> (in Spanish).

¹⁸ See www.ohchr.org/EN/HRBodies/CEDAW/Pages/GRTrafficking.aspx.

¹⁹ See A/HRC/42/55 and www.ohchr.org/EN/NewsEvents/Pages/IndigenousWomen.aspx.

framework, the Joint Human Rights Office facilitated the sharing of good practices between the ministry and the Indigenous Peoples and Minorities Section of OHCHR in October 2019.

86. The OHCHR office in Uganda participated in an event from 26 to 28 August 2019, organized by the Department of Economic and Social Affairs of the Secretariat to contribute to the development of an affirmative action plan on the rights of indigenous peoples, an initiative led by the Ministry on Gender, Labour and Social Development. The event brought together 23 members of the newly established national indigenous peoples committee. The latter includes 10 indigenous representatives of the Batwa, Benet, Ik, Karamojong and Tepeth peoples, as well as representatives of the Office of the Prime Minister and a number of government ministries. At the meeting, the committee members decided on terms of reference, methods of work and the thematic foci of the affirmative action plan.

III. Participation of indigenous peoples in United Nations processes

87. From 24 June to 19 July 2019, the annual OHCHR Indigenous Fellowship Programme, the most comprehensive training initiative within the United Nations system specifically designed for indigenous peoples, was held in four linguistic components (English, French, Russian and Spanish). Thirty-five fellows (18 women and 17 men) from 28 countries and one senior fellow participated in the programme. For the Russian and Spanish linguistic components, the programme began with a preparatory course at the Peoples' Friendship University of Russia in Moscow and at the University of Deusto in Bilbao, Spain, respectively. Several United Nations entities, including ILO, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the World Intellectual Property Organization, were involved in the programme.

88. The United Nations Voluntary Fund for Indigenous Peoples continued to be instrumental in ensuring that the voices of indigenous peoples were heard within the United Nations system. During the reporting period, the Fund provided support for 45 participants in the eighteenth session of the Permanent Forum on Indigenous Issues, 45 participants in the twelfth session of the Expert Mechanism on the Rights of Indigenous Peoples, 40 grants to attend meetings of the human rights treaty bodies, the Human Rights Council and the universal periodic review and 14 grants for participation in a consultation on measures to enhance the participation of representatives and institutions of indigenous peoples in relevant United Nations meetings on issues affecting them. In addition, the Fund also provides capacity-building and training to its grantees, ensures their constructive participation in United Nations meetings and contributes to strengthening and supporting their work when they return home.

89. In its resolution 74/135, the General Assembly expanded the mandate of the Fund, enabling the participation of indigenous peoples in the Forum of Business and Human Rights and the United Nations Framework Convention on Climate Change, in addition to other meetings under its mandate.

90. OHCHR, together with UN-Women, the Department of Economic and Social Affairs and ILO, participated in a two-day meeting of the African Commission Working Group on Indigenous Populations/Communities in Africa, held on the margins of the sixty-fifth session of the African Commission on Human and Peoples' Rights. The meeting discussed enhanced cooperation with the Working Group and yielded results that included the establishment of a steering committee on indigenous peoples of Africa. The steering committee is a subsidiary of the Inter-Agency Support Group on Indigenous Peoples' Issues and its focus is aimed at implementing the Secretary-General's system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples in Africa, under the leadership of the Working Group and in close partnership with indigenous peoples' organizations, through greater engagement with United Nations country teams and meaningful contributions to the ongoing design of the United Nations Sustainable Development Cooperation Framework.

91. The OHCHR Regional Office for South America organized a workshop in Brazil in August 2019 for 30 indigenous leaders, in partnership with the main national indigenous networks and the Amazon Cooperation Network. Participants identified recommendations emanating from the universal periodic review related to the rights of indigenous peoples and assessed the status of their implementation.

92. Organizations of indigenous persons with disabilities from Canada reported for the first time to the Committee on the Rights of Persons with Disabilities in 2019, in follow-up to the Committee's previous concluding observations. In addition, at meetings of the eleventh pre-sessional working group of the Committee, representative organizations of indigenous persons with disabilities took part in private meetings and bilateral briefings with Committee members and shared their views about the remaining challenges for protecting their rights under the Convention on the Rights of Persons with Disabilities.

93. The Independent Expert on the promotion of a democratic and equitable international order organized a consultation on the intersectional topic of public participation and decision-making in global governance, with the participation of a number of indigenous representatives. On the basis of that consultation, he recommended that global governance spaces and their respective member States and non-State members ensure that engagement with civil society is diverse and inclusive, in particular in relation to indigenous peoples (A/HRC/42/48, para. 78 (d)).

94. In November 2019, the Special Rapporteur on the rights of indigenous peoples and the OHCHR Regional Office for South-East Asia jointly organized a civil society consultation with almost 100 participants, most of whom were indigenous human rights defenders, from 11 countries in the region. The regional office also held a training session to support Thai civil society organizations preparing shadow reports in the context of the review of the periodic report of Thailand by the Committee on the Elimination of Racial Discrimination.

IV. Conclusions

95. **Indigenous peoples in many parts of the world continue to face significant challenges in claiming their human rights, as highlighted by United Nations human rights mechanisms. In particular, concerns regarding how indigenous communities are being adversely affected by the COVID-19 pandemic, including beyond the health threat, were reported during the period under review.**

96. **The lack of appropriate mechanisms for the meaningful consultation, cooperation and participation of indigenous peoples in some States resulted in the adoption of insufficient or inappropriate measures to address the needs of indigenous communities affected by the COVID-19 pandemic. In that context, OHCHR has assisted States in fulfilling their duty to consult and cooperate with indigenous peoples in order to obtain their free, prior and informed consent in all steps leading to the adoption and implementation of measures that may affect them, including during such global health crises.**

97. **An alarming increase in attacks, killings and the criminalization of the activities of indigenous human rights defenders, especially those defending their traditional lands and natural resources, was reported, placing indigenous peoples in a very precarious situation even prior to the COVID-19 crisis. The impact of the global health crisis increased risks, in particular in the case of human rights defenders from indigenous communities without secure tenure over their lands and territories. In that context, OHCHR continues to draw attention to cases in which rights are being denied and to support States in enhancing their capacity to protect indigenous human rights defenders, so that they are able to carry out their vital work.**

98. **Indigenous peoples worldwide continue to face numerous challenges in gaining access to formal justice systems. OHCHR assists indigenous peoples in acquiring access to legal remedies and in advocating for the recognition of their own traditional justice systems. OHCHR also supports States in strengthening the participation of indigenous**

peoples in government decision-making through their own representative institutions, ensuring that their views and specific rights are respected when adopting and implementing policy, legislative, administrative, budgetary or regulatory measures, including in response to the COVID-19 pandemic. Moreover, in many countries, OHCHR supports the effective participation of indigenous peoples in decision-making processes that directly or indirectly concern their collective rights, their way of life, their right to self-determination, their traditional lands and territories and their cultural integrity. OHCHR also continues to provide training and capacity-building to indigenous peoples, targeting young people and women in particular, including through its Indigenous Fellowship Programme.

99. Sustained, transparent and participatory measures are required by all stakeholders, and States in particular, to effectively ensure the full and equal enjoyment of human rights for all indigenous peoples. This is particularly important in the context of the COVID-19 pandemic. To that end, programmes, policies and legislation, must be aligned with the requirements of the United Nations Declaration on the Rights of Indigenous Peoples and the provisions of international human rights treaties. Furthermore, responses to the COVID-19 global crisis cannot be dissociated from the 2030 Agenda for Sustainable Development and the commitments made in that context by States to reduce inequalities and to leave no one behind, which includes during and in the recovery phases of pandemics.
