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

Report of the Special Rapporteur on the rights of indigenous peoples*

Note by the Secretariat

In the present report the Special Rapporteur provides a thematic study on the impacts of climate change and climate finance on indigenous peoples' rights.

* The present report was submitted after the deadline, in order to include the most recently available information.

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Council resolution 33/12. In the report, the Special Rapporteur provides a brief summary of her activities since her previous report to the Council as well as a thematic study on the impacts of climate change and climate finance on indigenous peoples' rights.

II. Activities of the Special Rapporteur

2. As part of her mandate from the Human Rights Council, the Special Rapporteur undertakes four interrelated areas of work; country visits; thematic studies; promotion of good practices; and communications to Governments on alleged cases of human rights violations.

3. Since she presented her last report to the Council, the Special Rapporteur carried out two official country visits; to the United States of America in February 2017 (A/HRC/36/46/Add.1) and to Australia in March and April 2017 (A/HRC/36/46/Add.2).

4. With a view to improving the effectiveness of and coordination between the existing bodies within the United Nations system with specific mandates on the rights of indigenous peoples, the Special Rapporteur participated in the annual meetings of the Permanent Forum and of the Expert Mechanism on the Rights of Indigenous Peoples.

5. In relation to climate finance, the Special Rapporteur has participated in a number of assessments and consultations over the past two years, such as the Global Training of indigenous peoples on the Green Climate Fund and Climate Finance in Bangkok, (September 2015), regional trainings on the same topic in Nairobi, Hanoi and Lima (April, 2016) and the Dialogue on the Engagement of the Green Climate Fund as a Possible Funding Window for Indigenous Peoples in Marrakech (November 2016).

III. Indigenous peoples and climate change

A. Climate change impact on indigenous peoples

6. Indigenous peoples are among those who have least contributed to the problem of climate change yet are the ones suffering from the worst impacts of this. They are disproportionately vulnerable to climate change because many of them depend on ecosystems that are particularly prone to the effects of climate change and extreme weather events such as floods, droughts, heat waves, wildfires and cyclones. Some of the most affected regions are small islands, high altitudes, humid tropics, coastal regions, deserts and polar areas. Global warming increases disease risks, changes animal migration routes, reduces biodiversity, causes saltwater inundation of freshwater, destroys crops and results in food insecurity.¹

7. Indigenous peoples are heavily dependent on lands and natural resources for their basic needs and livelihoods, such as food, medicine, shelter and fuel, and they are amongst the poorest and most marginalised people globally. While indigenous peoples account for 5 per cent of the world's population, they represent 15 per cent of those living in poverty.

¹ UNEP, *Climate Change and Human Rights*, (2015), pp.2-8

Some 33 per cent of people living in extreme rural poverty globally come from indigenous communities. The World Bank estimates that more than 100 million people across the world risk being forced into extreme poverty by 2030 due to climate change.² This carries significant implications for indigenous peoples who are already facing severe socio-economic disadvantages. These figures are particularly alarming given the wealth of natural resources that are located within indigenous territories and the valuable contributions indigenous peoples can provide in alleviating climate change. Traditional indigenous territories encompass around 22 per cent of the world's land surface and overlap with areas that hold 80 per cent of the planet's biodiversity.³ Their role is vital for sustainable environmental management of natural resources and biodiversity conservation, both of which are essential elements for combating climate change.

8. The correlation between secure indigenous land tenure and positive conservation outcomes is well-known,⁴ as are the related implications of reduced deforestation resulting in lowered global carbon dioxide emissions. For example, in the Brazilian Amazon results show that in areas where the State recognised the forest rights of indigenous peoples, the deforestation rate was 11 times lower compared to the forests where their rights were not recognised. A recent study of 80 forest areas in 10 countries in South Asia, East Africa, and Latin America shows that community-owned and managed forests delivered both superior community benefits and greater carbon storage and concludes that strengthening indigenous peoples rights to their forests is an effective way for governments to meet climate goals.⁵

9. The impact of climate change has been a long-standing concern for the mandate of the Special Rapporteur on the rights of indigenous peoples. As stated by the previous Special Rapporteur already in 2007 'extractive activities, cash crops and unsustainable consumer patterns have generated climate change, widespread pollution and environmental degradation. These phenomena have had a particularly serious impact on indigenous people, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of indigenous peoples from their ancestral territories, while increasing the levels of poverty and disease'.⁶ Climate change not only poses a grave threat to indigenous peoples' natural resources and livelihoods but also to their cultural identity and survival.

10. Examples of severe climate change impact on indigenous peoples include the large-scale thawing in the traditional Arctic territories of the Inuit. Indigenous peoples on the islands of the Pacific are directly threatened with total or partial disappearance of their lands as a result of climate change.

11. Gendered impacts of climate change such a migration (being forced to seek informal wage labour) and water scarcity (being forced to walk longer distances to seek drinkable water) are likely to affect women and girls in particular, making them more vulnerable to discrimination and exploitation.⁷

12. Compounding these vulnerabilities, programs to mitigate and adapt to climate change, if designed without consulting indigenous peoples and implemented without their participation, may adversely affect indigenous peoples' rights and undermine their customary rights to lands and natural resources.

² World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*, (2016) p. 2

³ World Bank, 'The role of indigenous peoples in biodiversity conservation', (2008). p. 5

⁴ A/71/229, (2016)

⁵ World Resources Institute and Rights and Resources Initiative, 'Securing Rights, Combating Climate Change', (2014)

⁶ A/HRC/4/32, (2007), paras. 49-51

⁷ ILO, *Indigenous Peoples and Climate Change*, (2017), p. 16-18

13. The Special Rapporteur, while in her previous role as Chairperson of the Permanent Forum on Indigenous Issues, undertook a study in 2007 on the impact of climate change mitigation measures on indigenous peoples and on their territories and lands. The study called for increased consultation with and participation of indigenous peoples in climate change mitigation processes, raised concerns over the failure to apply a human-rights based approach to such measures and highlighted that indigenous peoples had not benefited from climate change funds as these were largely market-driven.⁸

14. Since being appointed Special Rapporteur on the rights of indigenous peoples in 2014, the mandate-holder has received an increasing number of allegations over situations where climate change mitigation projects have negatively affected the rights of indigenous peoples, notably renewable energy projects such as bio-fuel production and the construction of hydroelectric dams.

15. Indigenous peoples are, however, not simply victims of climate change but have an important contribution to make to address climate change. Due to their close relationship with the environment, indigenous peoples are uniquely positioned to adapt to climate change. Indigenous peoples are also repositories of learning and knowledge on successfully coping with local-level climate change and effectively responding to major environmental changes such as natural disasters. Indigenous peoples play a fundamental role in the conservation of biological diversity, protection of forests and other natural resources, and their traditional knowledge of the environment can substantively enrich scientific knowledge and adaptation activities when taking climate change-related actions.

B. Indigenous peoples contributions to adaptation and mitigation strategies

16. As they are among those most affected by climate change, indigenous peoples have for over two decades been demanding greater protection of their human rights and increased participation in the context of international discussions on climate change. They continue to advocate for the development of a human rights-based approach to climate change, in accordance with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).⁹

17. In the early days of climate change law and policy, notably in the negotiations for the United Nations Framework Convention on Climate Change (UNFCCC) in the early 1990s, indigenous peoples were not involved in any significant way. However, persistent and successful advocacy has resulted in recognition of indigenous peoples as a constituency with observer status to the UNFCCC. Indigenous peoples' organisations thus can apply for observer status under the Convention, and those accepted can nominate participants to the sessions of the different climate change bodies. The International Indigenous Peoples' Forum on Climate Change (IIPFCC) is a joint indigenous peoples' caucus established in 2008 to coordinate indigenous peoples' efforts and activities related to UNFCCC processes.¹⁰

18. International climate change law and policy revolves around the twin strategies of mitigation (the State obligation to reduce greenhouse gas emissions) and adaptation (the State obligation to protect people against the effects of climate change by supporting their capacity to adapt to its effects). Under the UNFCCC's equity principle, developed States, as

⁸ E/C.19/2008/10 (2008)

⁹ A/67/301 (2012), paras 62-65

¹⁰ <http://www.iipfcc.org/>

the principal producers of greenhouse gases historically and the most resource rich, shall carry a heavier burden in mitigation and adaptation strategies, including assistance to poorer countries and the development of technology.

19. The International Union for Conservation of Nature has raised concerns over that the emphasis on monetary, knowledge and technology transfer from developed to developing countries tends to not recognise indigenous peoples' own coping and adaptive strategies.¹¹

20. The Intergovernmental Panel on Climate Change (IPCC) is the international body for assessing the science related to climate change. The IPCC was established in 1988 by the World Meteorological Organization (WMO) and United Nations Environment Programme (UNEP) to provide policymakers with regular scientific assessments of climate change, its impacts and future risks, and options for adaptation and mitigation. IPCC assessments provide a scientific basis for governments at all levels to develop climate related policies.¹²

21. In its Fifth Assessment Report in 2014, the IPCC raised concerns that the existing climate change policies and regulations may limit the access to territories, the substitution of traditional livelihoods, reduced genetic diversity and harvesting opportunities, as well as loss of transmission of indigenous knowledge, which in turn limits the effect of climate change adaptation measures in many regions.¹³

22. The IPCC also noted that indigenous knowledge has been effective in developing measures to cope with climate hazards and it has contributed to increased food security in many parts of the world. Examples include the Inuit knowledge of climate variability when hunting, the Inca traditions of crop diversification and knowledge of genetic diversity and, in the Sahel in Africa, the use of water harvesting strategies and weather forecasting.¹⁴

23. The IPCC confirmed the long-standing claim of indigenous peoples asserted in relation to traditional knowledge. Namely that 'indigenous, local, and traditional knowledge systems and practices, including indigenous peoples' holistic view of community and environment, are a major resource for adapting to climate change, but these have not been used consistently in existing adaptation efforts. Integrating such forms of knowledge with existing practices increases the effectiveness of adaptation'.¹⁵

24. Indigenous peoples can assist in providing solutions to mitigate and adapt to the effects of climate change. The International Indigenous Peoples Forum on Climate Change and UNEP have noted that indigenous peoples can contribute to numerous potential adaptation activities by drawing on their traditional knowledge. Examples of such activities include capacity building, documentation of traditional knowledge, climate monitoring and reporting, disaster preparedness, response and early warning systems, rain water harvesting, traditional farming techniques and agriculture, coastal marine management, alternative energy development and the development of sustainable livelihoods. Furthermore, indigenous peoples can play a role in stopping deforestation by land titling, forest management and conservation and local governance strengthening.¹⁶

¹¹ IUCN, 'Indigenous and Traditional Peoples and Climate Change', (2008), p. 4

¹² <http://www.ipcc.ch/>

¹³ IPCC, Fifth Assessment Report, Chapter 7, (2014), p. 517

¹⁴ Ibid, Chapter 11, (2014) p. 718

¹⁵ Ibid, Summary, (2014) p. 26

¹⁶ UNEP, *Climate Change and Human Rights*, p. 27; <http://www.iipfcc.org/key-issues>

IV. Human rights bodies, indigenous peoples and climate change

25. Human rights bodies are dedicating increased attention to violations of indigenous peoples' rights in the context of climate change.

26. The Permanent Forum on Indigenous Issues, which as part of its advisory mandate addresses human rights issues, already a decade ago decided to debate climate as a special theme at its annual session and has undertaken several studies on the impact climate change has on indigenous peoples.¹⁷

27. Human rights treaty bodies, notably the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have addressed the impact of climate change on indigenous peoples in the context of periodic reviews of State parties. Human rights treaty bodies have specifically called on States to develop national plans, policies and programmes to address climate change, while fully engaging indigenous peoples in their design. They have also called for disaster preparedness and emergency management and strengthened social protection frameworks to more effectively mitigate the multiple social, economic and environmental impacts on indigenous peoples. Furthermore, they have urged States to intensify the efforts to address climate change, including through carbon reduction schemes and to take all the necessary measures to mitigate the adverse consequences on the rights to food and to water of indigenous peoples.¹⁸

28. OHCHR has addressed the adverse effects of climate change on human rights¹⁹ and in October 2016 hosted an expert meeting which highlighted the impact climate change has on indigenous peoples.²⁰ OHCHR's key messages on climate change and human rights, published prior to the COP 21 in Paris, emphasised the right of indigenous peoples to participate in decision making and to benefit from the use of their knowledge, innovations and practices.

29. On the World Environment Day 5 June 2015, a public statement issued jointly by 27 special procedures mandate-holders, including the Special Rapporteur on the rights of indigenous peoples, urged States to make sure that human rights are at the core of climate change governance.²¹

30. In 2016, the Special Rapporteur on human rights and the environment examined States' human rights obligations in the context of climate change and highlighted the rights of indigenous peoples.²²

31. Concerns over climate change are also increasingly being raised by States in the context of the universal periodic review process, further highlighting the growing recognition of climate change as a human rights issue. The Council has adopted several resolutions related to climate change and indigenous peoples.²³

¹⁷ E/C.19/2008/10 (2008); E/C.19/2010/7 (2010)

¹⁸ CEDAW/C/HND/CO/7-8 (CEDAW, 2016) , CEDAW/C/VCT/CO/4-8 (CEDAW, 2015) , CRC/C/SUR/CO/3-4 (CRC, 2016), CRC/C/NZL/CO/5 (CRC, 2016), E/C.12/CAN/CO/6 (CESCR 2016), E/C.12/FIN/CO/6 (CESCR, 2014), E/C.12/AUS/CO/4 (CESCR, 2009). Treaty body concluding observations at; <http://uhri.ohchr.org/>

¹⁹ <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>; A/HRC/10/61 (2009)

²⁰ <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/ClimateChange.aspx>

²¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E>

²² A/HRC/31/52 (2016)

²³ HRC resolutions 10/4 (2009), 18/22 (2011), 26/27 (2014), 29/15 (2015) and 32/33 (2016)

V. Human rights and other international standards, including the United Nations Framework Convention on Climate Change and the Paris Agreement

32. Climate change impacts negatively on a broad range of human rights and indigenous peoples are particularly vulnerable due to the exposure of their traditional lands and territories. Human rights obligations entail State obligations to respect, protect, fulfil and redress human rights. These duties require States to take actions to meet their obligations on human rights issues stemming from climate change. Human rights bodies have established that States' human rights obligations include their duty to protect rights-holders against foreseeable environmental impairment of human rights whether or not the particular environmental harm violates human rights law, and even when the harm is not directly caused by the State.²⁴ States have specifically committed to international cooperation through a range of international treaties.

33. As noted by the Permanent Forum, the international system as a whole requires that all the various international legal 'subsystems', including human rights and climate change, act consistently.²⁵

34. The rights of indigenous peoples pertinent to climate change are firmly established in a range of international standards that converge through various branches of international law, notably international human rights law, international environmental law and international labour law. In the preparation of this report, the Special Rapporteur requested States to reply to a questionnaire and notes as positive that in their responses States recognised the importance of applying the rights of indigenous people to climate change adaptation and mitigation measures and that additional funding is being allocated for such purposes.

35. Among the key rights affected are self-determination, the right to development, free, prior informed consent and the right to participation, land rights, the rights to health, food water and an adequate standard of living as well as cultural rights. All these rights are closely linked and thus their interrelatedness requires consideration. The list of rights enumerated is non-exhaustive.²⁶

36. The UNFCCC, which entered into force in 1994, sets a lofty goal to stabilise greenhouse gas concentrations at a level that would prevent dangerous human induced interference with the climate system, based on a dual strategy of mitigation and adaptation measures.²⁷

37. Building on the UNFCCC, the Paris Agreement, which entered into force in 2016, aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.²⁸ As of 1 September 2017, 160 States Parties had ratified the Paris Agreement, out of the 197 Parties to the United Nations Framework Convention on Climate Change.

²⁴ A/HRC/25/53, A/HRC/31/52

²⁵ E/C.19/2010/7 (2010)

²⁶ <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/63-panel-hrc-cc>, A/HRC/31/52 (2016)

²⁷ http://unfccc.int/essential_background/convention/items/6036.php

²⁸ http://unfccc.int/paris_agreement/items/9485.php

38. The Paris Agreement is the first climate change treaty to explicitly recognise human rights and the rights of indigenous peoples.²⁹ The preamble of the Paris Agreement acknowledges that climate change is a common concern of humankind and that States should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health and the rights of indigenous peoples. The references provide an important milestone and commitment as subsequent implementation of the Paris Agreement should ensure that indigenous peoples' rights are respected in future climate change measures.

39. Despite these important developments, indigenous peoples were disappointed over the insufficient inclusion of indigenous peoples' rights in the Paris Agreement. A key objective was to include references to the rights of indigenous peoples in all the relevant provisions on mitigation and adaptation. Mexico, Peru, Nicaragua, Guatemala, the Philippines and Canada, as well as several Pacific island states, supported the inclusion of references to indigenous peoples in the negotiations. On the other hand, some other countries argued against their inclusion on the grounds that it was not directly relevant to the purposes of the Paris Agreement and due to concern over the potential liability of including references to the rights of indigenous people in the operative part of the text. The voluntary nature of the references to indigenous knowledge systems in the article 7.5 on adaptation is viewed as falling short of the goals of indigenous peoples.

A. Self-determination and the right to development

40. Self-determination is a fundamental principle in international law and of utmost importance for indigenous peoples as it affirms their right to freely pursue their economic, social and cultural development. It is a key right to climate change and climate finance because of its links with land rights and the right of indigenous peoples to participate in processes and decisions affecting them. The right to self-determination is enshrined in articles 1 of both the ICESCR and the ICCPR and article 3 of UNDRIP.

41. Denial of indigenous peoples' right to self-determination and their economic, social and cultural rights are strongly linked to indigenous peoples' historical experiences of marginalisation, dispossession, the environmental destruction of their ancestral lands and their lack of autonomy. Unless climate finance recognises this inequality, it could contribute to the causes of poverty and further denial of the right to self-determination among indigenous communities.

42. The right to development is affirmed by UNDRIP in several provisions, notably in article 32(1), which states that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.³⁰

43. Climate actions that do not consider differentiated responsibilities among states may undermine indigenous people's right to development, especially those who live in developing countries. When the burden for climate change is not shared in a differentiated manner, it compels developing countries to divert funding away from social policies in order to deal with the emergency and long-term impacts of climate change.

²⁹ Preamble, Paris Agreement

³⁰ Article 32(1), also articles 21 and 23

B. Land rights, the right to participation and free, prior informed consent

44. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the ILO enshrines land rights for indigenous peoples in articles 14 to 19. UNDRIP, which consolidates the rights of indigenous peoples already recognised in other human rights instruments and through the jurisprudence of human rights treaty bodies, affirms the right of indigenous peoples to own and control their lands (articles 25, 26 and 27).

45. UNDRIP sets out that States shall consult and cooperate with indigenous peoples to obtain their free, prior and informed consent before adopting measures or the approval of projects that may affect them (articles 27 and 32). The Declaration furthermore affirms that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.³¹

46. The right to participation is also entrenched in the UNFCCC. Article 6 establishes that all States parties shall promote and facilitate public access to information on climate change and its effects and public participation in addressing climate change and its effects and developing adequate responses.

47. The Cancun agreements, adopted at the Conference of the Parties (COP 16) to the UNFCCC in 2010, recognised that the participation of indigenous peoples is important for effective action on all aspects of climate change.³² The GA has, in an analogous manner, also recognised the importance of public participation in addressing the impacts of climate change and referred to ‘the need to engage a broad range of stakeholders at the global, regional, national and local levels...indigenous peoples are important for effective action on all aspects of climate change.’³³

48. A pre-requisite element in order to ensure effective participation is the provision of and access to information. As set out in article 6 (1) f of the UNFCCC, States should undertake environmental impact assessments and ensure that such information is publicly available.³⁴ The Special Rapporteur on human rights and the environment has underlined the importance of undertaking assessments on actions designed to alleviate the effects of climate change.³⁵ The International Court of Justice has furthermore affirmed that it is a requirement under general international law to undertake an environmental impact assessment where there is a risk that an activity may have a significant adverse impact in a transboundary context, and in particular, on a shared resource.³⁶

49. The participation of indigenous peoples in decision-making, and the availability of information and engagement mechanisms for them to do so, are crucial elements in efforts to tackle climate change in a manner that is consistent with human rights obligations.

50. Climate change projects may create barriers to indigenous land ownership. This is underlined by concerns that climate finance has been provided for mitigation measures such as biofuel production and renewable energy projects including hydro-electric dams on indigenous territories without undertaking consultations to ensure the free, prior and

³¹ Article 18, also articles. 5 and 27

³² FCCC/CP/2010/7/Add.1 (2010)

³³ General Assembly resolution 67/210 (2013)

³⁴ UNEP, *Climate Change and Human Rights*, pp. 16-17; A/HRC/31/52 (2016), pp.13-17

³⁵ A/HRC/31/52 (2016), p.13

³⁶ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 83

informed consent of the affected peoples. Such projects risks compounding long-standing and systemic violations of the rights of indigenous peoples. Displacements caused by the loss of land and territory further undermine the cultural integrity and protection of indigenous peoples.

C. The rights to health, water and food and an adequate standard of living

51. Article 11 of the ICESCR upholds the fundamental right of everyone to be free from hunger. While the ICESCR does not explicitly refer to the right to water, the Committee on Economic, Social and Cultural Rights has underlined that the right to water is part of the right to an adequate standard of living and has stressed that the right to water is inextricably linked to the rights to health, adequate housing and food. It has also affirmed that States should adopt comprehensive programs to ensure sufficient water for future generations by assessing the impacts of actions that may impinge upon water availability and natural-ecosystems, such as climate change.³⁷ States are obliged to progressively realise the rights contained in the ICESCR.

52. Both the articles 2 of the UNFCCC and the Paris Agreement affirm the objective to ensure that food production is not threatened by climate change. The right to health is explicitly referred to in the Paris Agreement preamble. In relation to indigenous people and climate change, human rights treaty bodies have expressed concern over how climate change mitigation measures, such as biofuel projects, affect indigenous peoples and in particular the threats monocultivations pose to food security.³⁸

53. The Fifth Assessment Report of the IPCC concludes that indigenous peoples, who depend heavily on local resources, and live in parts of the world where the climate is changing quickly, are generally at greater risk of economic losses and poor health.³⁹ The report furthermore notes that indigenous knowledge is important for food security in many parts of the world and that climate change policies may risk reducing the contribution that indigenous knowledge can make to effective climate adaptation.⁴⁰

D. Culture and traditional knowledge

54. The UNDRIP establishes, in article 31, that ‘indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora’.

55. Article 7 paragraph 5 of the Paris Agreement provides that ‘Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and

³⁷ CESCR, General Comment No. 15 (2002); Submission of OHCHR to the COP 21 of UNFCCC (2015)

³⁸ E/C.12/IDN/CO/1 (CESCR, 2014), CERD/C/IDN/CO/3 (CERD, 2010), CERD/C/COL/CO/14 (CERD, 2009), CERD/C/NLD/CO/19-21 (CERD, 2015)

³⁹ IPCC, Fifth Assessment Report, Chapter 11, p. 718 (2014).

⁴⁰ Ibid. Chapter 7, p. 520

environmental policies and actions'. The recognition of these knowledge systems provides an important foundation for climate change adaptation and mitigation policies.

56. The Outcome Document adopted at the 2014 World Conference for Indigenous Peoples States explicitly 'confirms that indigenous peoples' knowledge and strategies to sustain their environment should be respected and taken into account in developing national and international approaches to climate change mitigation and adaptation.'⁴¹

57. The Fifth Assessment Report of the IPCC notes that indigenous knowledge is challenged by climate change impacts and is often neglected in policy and research, and that its mutual recognition and integration with scientific knowledge will increase the effectiveness of adaptation strategies.⁴² The report furthermore states that local and indigenous knowledge and diverse stakeholder interests, values, and expectations are fundamental to building trust within climate change decision-making processes.⁴³

58. In a positive development, the accompanying COP 21 decision to the Paris Agreement, which lays out the programme of work for the coming years, specifically 'recognises the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and to establish a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner.'⁴⁴

59. As noted by the International Indigenous Peoples' Forum on Climate Change, it is essential to respect the traditional knowledge that indigenous peoples bring to address causes, adaptation, mitigations, and solutions to climate change. Indigenous peoples are committed to protect, use and apply traditional knowledge and practices to implement solutions and ways to adapt to climate change within indigenous communities. Climate change solutions cannot be limited to Western scientific knowledge, but must include indigenous peoples' traditional knowledge, innovations and practices, which have historically contributed to the efforts of conservation of ecosystems and biodiversity.⁴⁵

E. International cooperation

60. Under the UNFCCC, industrialised nations agree to support climate change activities in developing countries by providing financial support for action. The Convention acknowledges the vulnerability of all countries to the effects of climate change and calls for special efforts to ease the consequences, especially in developing countries which lack the resources to do so on their own.⁴⁶

61. International cooperation to promote and protect human rights lies at the heart of the Charter of the United Nations.⁴⁷ The obligation to undertake such cooperation is explicitly

⁴¹ A/RES/69/2, para. 36

⁴² IPCC, Fifth Assessment Report, Chapter 12, p. 758 (2014)

⁴³ Ibid. Chapter 2, p. 198

⁴⁴ FCCC/CP/2015/10/Add.1, para 135

⁴⁵ <http://www.iipfcc.org/key-issues/>

⁴⁶ http://unfccc.int/essential_background/convention/items/6036.php

⁴⁷ A/HRC/10/61, para. 85

affirmed in provisions of the UNDRIP,⁴⁸ the ICESCR⁴⁹ and the Convention on the Rights of the Child.⁵⁰

62. The specific reference to conservation in article 29 of the UNDRIP is also relevant to many climate change mitigation projects. This article states that indigenous peoples have the right to the conservation and protection of the environment and to the productive capacity of their lands or territories and resources and that States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

63. International cooperation is imperative in order to address climate change. The effects of climate change are significantly higher in developing countries, where indigenous peoples often are the most exposed due to their geographic location and high poverty rates.

F. The right to redress and reparation

64. Climate change is already impacting severely on indigenous peoples by damaging their natural resources. Climate mitigation measures undertaken without their free, prior informed consent are forcing indigenous peoples to displace from their lands and territories.

65. The rights to redress and reparation are well-established principles of international law⁵¹ and reflected in human rights treaties⁵². The UNDRIP in article 8 sets out the right to effective mechanisms for prevention of, and redress for, actions which have the aim or effect of dispossessing them of their lands, territories or resources (article 8).

66. The ILO Convention No. 169 (article 16) and the UNDRIP (article 10) stipulate that indigenous peoples shall not be forcibly removed from their lands unless they have provided their free, prior and informed consent. Should such violations have occurred, they have the right to fair redress including restitution and compensation and, where possible, the option of returning to their lands. When this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress (article 28 of the Declaration).

67. Human rights treaty bodies have expressed concerns over the forcible displacement of indigenous peoples, noting the special relationship that indigenous peoples have with their land and the profound impact forced displacement has on their survival, and urged States to provide reparation, with emphasis on the obligation to provide restitution of their original lands.⁵³ Reparation measures should be provided in accordance with international

⁴⁸ UNDRIP, Arts. 39, 41

⁴⁹ ICESCR, Arts. 2, para. 1, 11, para. 2, 15, para. 4, 22 and 23

⁵⁰ CRC, Arts. 4 and 24, para. 4

⁵¹ *Factory at Chorzów Case*, (Germany v. Poland) Jurisdiction, 1927, P.C.I.J., Ser A, No. 9, p. 21, 47; International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, A/56/10, chap IV, E.1 Art. 40

⁵² UDHR Art. 8, ICCPR Art. 2(3a), ICERD Art. 6

⁵³ CERD, general recommendation No. 23; CERD/C/BWA/CO/16 (CERD, 2006), CERD/C/NAM/CO/12 (CERD, 2008), E/C.12/MEX/CO/4 (CESCR, 2006)

standards and, where appropriate, entail elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.⁵⁴

68. The UNFCCC did not recognise a right to access to justice or remedies for individuals, it only refers to modalities for dispute settlement between States. At COP19 in 2013, Parties established the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts to address loss and damage associated with impacts of climate change, including extreme events and slow onset events in developing countries that are particularly vulnerable to the adverse effects of climate change.⁵⁵

69. The Paris Agreement affirms in article 8 that Parties should enhance understanding, action and support, including through the Warsaw International Mechanism on a cooperative basis with respect to loss and damage associated with the adverse effects of climate change. As noted by the Special Rapporteur on human rights and the environment, it is important to apply a human rights perspective when identifying the types of loss and damage.⁵⁶ It is furthermore of crucial importance that the rights of indigenous peoples are taken into due account when addressing loss and damage caused by climate change.

70. In conclusion, this section demonstrates the synergies and complementarity between human rights and international environmental law. There is increasing convergence regarding key principles and standards, notably in relation to the right to access information, the right to participation and the rights to seek redress and receive reparation. It is an important positive development that climate change law and policy are gradually recognising and incorporating human rights provisions in response to calls from indigenous peoples and human rights bodies.

G. Sustainable Development Goals

71. Although not legally binding, the Sustainable Development Goals (SDGs), adopted in 2015, constitute the global development agenda until 2030.⁵⁷ They incorporate several important elements relevant to climate change and indigenous peoples' rights.

72. The voice of indigenous peoples is key in order to move towards greater policy coherence. This is particularly the case when development interventions seek to attain intrinsically linked objectives related to economic growth, poverty reduction, sustainable development and climate change.⁵⁸ The following highlights certain SDGs that climate change policy and finance need to take into account to address the rights of indigenous peoples.

73. The SDG relating to climate change calls for targets for the promotion of mechanisms for raising capacity for effective climate change-related planning and management in least developed countries, including focusing on women, youth and local and marginalized communities (13.b). This target relates to and should be read in conjunction with the UNDRIP which in article 5 provides 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,

⁵⁴ GA resolution 60/147 (2005)

⁵⁵ http://unfccc.int/adaptation/workstreams/loss_and_damage/items/8134.php

⁵⁶ A/HRC/31/52, para.64

⁵⁷ A/RES/70/1

⁵⁸ ILO, *Indigenous Peoples and Climate Change*, (2017), p. 20

economic, social and cultural life of the State’ and to article 18 which provides indigenous peoples with the “right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions’.

74. The SGD relating to the need to sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss, calls for the mobilisation and significant increase of financial resources from all sources to conserve and sustainably use biodiversity and ecosystems (15.a). It also calls for the mobilisation of significant resources from all sources and at all levels to finance sustainable forest management and provide adequate incentives to developing countries to advance such management, including for conservation and reforestation (15.b). This target relates to article 39 of the UNDRIP, which provides for the right of indigenous peoples to access financial and technical assistance from States and through international cooperation for the enjoyment of the rights contained in the Declaration.

VI. State commitments, national reports and intended nationally determined contributions

75. Parties to the UNFCCC must submit national reports, also known as Communications, on implementation of the Convention to the Conference of the Parties.⁵⁹ The required contents of national reports and the timetable for their submission are different for Annex I and non-Annex I Parties. This is in accordance with the principle of ‘common but differentiated responsibilities’ enshrined in the Convention.⁶⁰

76. A study by the Mary Robinson Foundation of national reports submitted between 2010 and 2015 concluded that the majority did not refer to human rights, such the right to health, the right to adequate food or the right to water and sanitation. This despite that the majority of the reports contained references to domestic policies and measures that relate to human rights protection. The vast majority, over 95%, of the references to substantive rights were in reports from developing countries, probably because these countries are already feeling the impacts of climate change on rights such as water, food, health and shelter due to extreme events, rising sea levels and changing seasons.

77. The study concluded that international reporting processes still tend to deal with human rights and climate change as separate issues and urged the adoption of a more cohesive approach, which would better reflect realities on the ground, where rights, development and climate change are interlinked.⁶¹

78. Furthermore, in 2013 the COP of the UNFCCC invited all Parties to develop reports by 2015 on intended nationally determined contributions (INDCs) towards achieving the objective of the Convention as set out in its Article 2.⁶² The INDCs play an important role in the framework established by the Paris Agreement as they form the implementation plans through which each national government defines the level of its commitment and identifies how it will implement its obligations. Unless decided otherwise by the Parties themselves, submitted INDCs become the first periodic Nationally Determined Contribution (NDC) for

⁵⁹ Article 7

⁶⁰ http://unfccc.int/national_reports/non-annex_i_natcom/items/10124.php

⁶¹ <http://www.mrfcj.org/wp-content/uploads/2016/05/Incorporating-Human-Rights-into-Climate-Action-Version-2-May-2016.pdf>

⁶² http://unfccc.int/files/focus/indc_portal/application/pdf/synthesis_report_-_overview.pdf
http://unfccc.int/focus/indc_portal/items/8766.php

all Parties of the Paris Agreement. UNEP has raised concerns that only 14 of the first 119 INDCs submitted referred to linkages between climate change and the impact of mitigation and or adaptation measures on indigenous peoples.⁶³ Of concern is that references in INDCs to respect for human rights tend to be general without concrete detail.

79. A review undertaken by the NGO Rights and Resources Initiative of 161 INDCs, noted that only 21 INDCs, representing less than 13 percent of the world's tropical and subtropical forest area, included clear commitments to implement community-based tenure or natural resource management strategies as part of their climate change mitigation plans or adaptation actions.⁶⁴

80. States should prepare their INDCs in a manner that enables the full and effective participation by indigenous peoples and civil society, as well as other parts of the population particularly affected by climate response measures.⁶⁵ Furthermore, States should explain the steps taken to increase participation of all stakeholders in developing the INDC reports.

81. Without a participatory approach and public access and awareness of reporting processes, States may seek to eschew their obligations under human rights law by conceptualising climate change processes as disconnected from human rights. In order to prove their commitment to honouring their human rights obligations, States must acknowledge the implications climate change has on human rights in the context of climate change mitigation and adaptation law and policies.

82. It is encouraging that an increasing number of countries are recognising the importance of integrating adaptation measures into agriculture and food production, while ensuring food security and sustainability of agriculture in a manner that supports indigenous farming practices and traditional knowledge.

83. Global and national climate change interventions are gradually acknowledging the benefit of collaboration with indigenous peoples to identify and document trends in regional and local climate changes in order to understand their long-term implications and to develop effective and appropriate adaptation responses based on traditional knowledge. Recognition of the important role indigenous peoples can play not only assists in combating climate change but also helps revitalise and strengthen indigenous peoples, their knowledge and culture.

VII. Climate finance and safeguards

84. Considerable investments are required in both developed and developing countries to adapt to climate change. However, developing and geographically vulnerable countries States face by far the greatest adaptation challenges. Indigenous peoples are at particularly high risk of being pushed into extreme poverty.

85. UNEP has warned that a significant gap is likely between the resources needed to adapt to 2°C of warming and the funding that will be made available through international climate funds and other finance mechanisms. The existing estimates of global adaptation costs are probably significantly underestimated, notably in the period after 2030. Most of

⁶³ UNEP, *Climate Change and Human Rights*, pp. 30-31

⁶⁴ http://rightsandresources.org/wp-content/uploads/2016/04/Indigenous-Peoples-and-Local-Community-Tenure-in-the-INDCs-Status-and-Recommendations_RRI_April-2016.pdf

⁶⁵ <http://www.ciel.org/wp-content/uploads/2017/05/Delivering-On-Paris-Web.pdf>

international climate finance to developing countries in the past few years has been channeled towards mitigation, rather than adaptation.⁶⁶

86. Article 9 of the Paris Agreement provides that ‘developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation’, and that the ‘mobilization of climate finance should represent a progression beyond previous efforts.’ It furthermore states that ‘such mobilization of climate finance should represent a progression beyond previous efforts’ and that ‘the provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties.’

87. Already in 2009, developed countries committed to a goal of mobilising US\$100 billion per year by 2020 to address the needs of developing countries in the context of ‘meaningful mitigation actions’. However, pledges have remained far below the \$100 billion annual target and financial commitments for loss and damage caused by the effects of climate change remain pending.

88. Climate finance refers to funding, sourced from public and private sectors, channeled through various mechanisms and funds for climate change mitigation and adaptation projects and programs. A key concern of developing countries is that climate finance prioritises financial support for mitigation over adaptation measures. They prefer that climate finance be channeled through a global mechanism or fund to ensure that the allocations are more equally distributed between adaptation and mitigation.

89. While it is beyond the scope of this report to refer to the multitude of climate finance mechanisms and funds which exist, some observations are presented on those that particularly affect indigenous peoples’ rights.

A. Global Environment Facility

90. The Global Environmental Facility (GEF) is the oldest UNFCCC financial mechanism, established in 1991 through the World Bank. Between 15 to 20 per cent of GEF projects involve indigenous peoples and some projects have indigenous executing agencies. Important steps have been undertaken by the GEF to support indigenous participation. Principles and Guidelines for Engagement with Indigenous Peoples were adopted in 2012.⁶⁷ Among the positive initiatives undertaken by the GEF is the establishment of an Indigenous Peoples Advisory Group and the creation of an Indigenous Peoples Fellowship Programme.

91. The GEF has created a Small Grants Programme which has provided over US\$850 million to over 22,000 projects in 129 countries. However, it has to be noted that there is not yet disaggregated data available on how much of these funds went directly to indigenous peoples’ communities. An assessment is needed on the lessons learned in terms of impact and of ensuring that the rights and priorities of indigenous peoples are respected. This has to be undertaken to show the real amount of funds received by indigenous peoples compared the overall amounts released.

⁶⁶ UNEP, *Climate Change and Human Rights*, (2015), p. 32

⁶⁷ <https://www.thegef.org/publications/principles-and-guidelines-engagement-indigenous-peoples>

B. Clean Development Mechanism

92. The Clean Development Mechanism (CDM) is operational since 2006. Through its emission-reduction projects in developing countries earn certified emission reduction credits, which can be used by developed countries to meet a part of their emission reduction targets under the Kyoto Protocol.⁶⁸ The mechanism has been widely criticised for not having failed to safeguard human rights as its lack of safeguards has resulted in support for projects which have resulted in the displacement of local communities,⁶⁹ and the Special Rapporteur has received allegations of violations of indigenous peoples rights experienced in CDM funded renewable energy projects such as hydroelectric dams and tree plantations. The International Indigenous Peoples' Forum on Climate Change has been very critical of CDM projects set up in indigenous communities without consultation or obtaining the free, prior and informed consent of the affect community.

93. UNEP also notes that the CDM projects have been characterised by insufficient local stakeholder consultations and clear evidence that the projects have caused harm to the local populations and/or ecosystems.⁷⁰ The Special Rapporteur on human rights and the environment has referred to the Clean Development Mechanism in 2016 as the one climate mechanism which most obviously lacks effective social and environmental safeguards and which has been dogged by the strongest accusations of supporting projects with serious human rights abuses.⁷¹

94. Another criticism is on the vary nature of the CDM. Developed countries are the main greenhouse gas emitters and in the Convention they are the ones who should carry the heavier burden of mitigating. The CDM, however, allows them to transfer to developing countries their burden of cutting back emissions. Through subsidies in the form of loans or grants they support mitigation projects in developing countries and the certified emission reductions from such CDM projects will be owned by the developed countries to add to their emission reduction targets.

C. REDD+

95. At COP 13 in 2007, the Parties of the UNFCCC agreed that a comprehensive approach to mitigating climate change should include 'policy approaches and positive incentives in reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.' REDD+ is a global initiative to pay countries to protect their forests in order to reduce emissions of greenhouse gases.

96. The strong advocacy of indigenous peoples and NGOs at the COP 13 of the UNFCCC in 2010 resulted into the adoption of the REDD+ Safeguards which affirm; 'respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the GA has adopted the UNDRIP.'⁷²

⁶⁸ <http://cdm.unfccc.int/index.html>

⁶⁹ International Bar Association, *Achieving Justice and Human Rights in an Era of Climate Disruption*, (2014), p. 49

⁷⁰ UNEP, *Climate Change and Human Rights*, (2015), p. 36

⁷¹ http://www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf;
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19962&LangID=E>

⁷² FCCC/CP/2010/7/Add.1 p.26-27

97. ‘The Cancun Safeguards’ also include the need to ensure the full and effective participation of indigenous peoples and local communities. Subsequent guidance notes developed by the UN-REDD Programme have further elaborated on how free, prior and informed consent of indigenous peoples will be obtained. However, implementation of these safeguards has proved problematic. Indigenous peoples and local communities are often not recognised as owners of forests by the State in national laws, therefore there is concern that they will not see equitable benefits from REDD+ projects and that forest and climate schemes risk driving a global green land grab.⁷³

98. Several indigenous peoples in countries where REDD+ is being implemented have actively engaged with governments to ensure that the safeguards are implemented. REDD+ finance provided by certain governments including Norway, Germany, the USA and Australia include resources to help build capacities of governments to implement these safeguards. There are still serious challenges met in the efforts to implement REDD+ safeguards but opportunities for indigenous peoples to enter into constructive dialogues with governments have been enhanced.

D. Adaptation Fund

99. The Adaptation Fund (AF) was created in 2001 under the UNFCCC and designed to finance climate change adaptation projects based on the priorities of eligible developing countries. Its primary funding comes from a 2% share of proceeds of the Certified Emission Reductions issued by the CDM).⁷⁴

100. The AF Environmental and Social Policy requires that all projects comply with the rights and responsibilities in UNDRIP and other applicable international instruments relating to indigenous peoples. The implementing entity has to describe the project’s compliance with the Declaration, and particularly with regard to Free, Prior, Informed Consent (FPIC) during project design, implementation and expected outcomes related to the impacts affecting the communities of indigenous peoples. The implementing entity must provide documentary evidence including detailed outcomes of the consultation process.

101. The Policy also requires that environmental and social assessments be available for public consultations. The Adaptation Fund is one the mechanisms that addresses the relevant human rights obligations in a better way.

E. Green Climate Fund

102. In 2010, the UNFCCC COP established the Green Climate Fund (GCF) as its financial operating entity to disburse funds for low emission and climate resilient projects, taking into account the needs of nations that are particularly vulnerable to climate change impacts.⁷⁵ The Fund aims for an equal balance between mitigation and adaptation investments. The GCF is the largest international climate fund helping developing countries respond to climate change and began approving proposals in October 2015.

103. In 2014, the GCF Board decided to adopt, on an interim basis, the International Finance Corporation’s environmental and social performance standards for GCF-funded projects. These and GCF’s governing instrument include the need to demonstrate full

⁷³ <https://www.forestpeoples.org/en/work-themes/climate-forests/redd-and-related-initiatives>

⁷⁴ <https://www.adaptation-fund.org/about/>

⁷⁵ <http://www.greenclimate.fund/>

respect of rights of indigenous people and protection of cultural heritage. The Board also adopted terms of reference for an independent redress mechanism to receive complaints related to the operation of the Fund.⁷⁶

104. Despite these aims, barriers remain for indigenous peoples to effectively engage in the Fund's activities and access funding. For example, indigenous peoples' organisations have yet to be accredited or apply to become accredited entities or executing entities for projects. The high costs and complexities of preparing GCF proposals disadvantage indigenous peoples, given their limited resources.

105. At its 15th meeting, the Board requested the Secretariat to develop a GCF-wide Indigenous Peoples Policy for the Green Climate Fund. A draft policy was published on 12 July 2017 for consultation.⁷⁷ The overall objective is to provide a framework for ensuring that activities of the GCF are developed and implemented while fostering full respect for indigenous peoples' dignity, human rights, and cultural uniqueness so that they (a) receive culturally appropriate social and economic benefits; and (b) do not suffer adverse effects during the development process. The Policy provides an opportunity for the GCF to incorporate indigenous peoples' considerations into its decision-making and operations in ways that not only include safeguard measures of 'do no harm,' but also identify opportunities to 'do good' and improve outcomes.

106. In conclusion, the safeguards, policies and practices, including for redress, that have been developed for indigenous peoples, in particular by the AF and the GCF, are significant. The practical application of these does however require continuous independent monitoring

VIII. Examples of mitigation projects of concern

107. Since assuming her tenure in 2014, the Special Rapporteur has received a number of allegations regarding specific projects funded in the context of climate finance which have not followed safeguards and have negatively affected indigenous peoples' rights. Cases relating to renewable energy projects as mitigation measures, which have been subject to urgent actions by the mandate, include the Barro Blanco Hydropower Project in Panama,⁷⁸ the Water Towers Protection and Climate Change Mitigation and Adaptation Programme in Kenya⁷⁹ and the Agua Zarca dam in the Río Blanco region in Intibucá in Honduras⁸⁰. The cases highlight the risks associated with climate change mitigation projects which do not uphold respect for indigenous peoples' rights, notably their rights to be consulted and that their free prior and informed consent be obtained.

108. Alleged human rights violations include evictions and forced displacements, suppression of the freedom of expression and assembly, arbitrary arrests and extrajudicial executions. Indigenous peoples who defend the rights to their lands are increasing coming under threat and being persecuted in the context of investment projects, which may include climate change mitigation measures. As a result projects may come to a halt and result in withholding of financial support by multilateral funds, as was the case in Honduras.

⁷⁶ <http://www.greenclimate.fund/independent-redress-mechanism>

⁷⁷ Tebtebba Foundation, *Indigenous Peoples and the Green Climate Fund*, (2017)

⁷⁸ PAN1/2016

⁷⁹ KEN1/2017

⁸⁰ HND4/2013, HND3/2014, HND2/2016, HND4/2016, HND4/2017

All public cases are available

<http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>

A. The Barro Blanco hydroelectric project in Panama

109. Test flooding at the Barro Blanco reservoir project in 2016 prompted allegations of displacement and negative impacts on the traditional lands and cultural sites of the Ngäbe peoples. The project was eligible for carbon credits and registered under the Clean Development Mechanism (CDM), which as previously noted does not have standards to protect against human rights violations nor does it provide a forum for affected communities to register complaints. In late 2016, under pressure from indigenous communities and international organizations, Panama withdrew the project's CDM registration.⁸¹ The Center for International Environmental Law reported that this was the first time ever that a host country did so because of human rights concerns.⁸²

B. Water Tower Protection and Climate Change Mitigation and Adaptation (WaTER) Programme in Kenya

110. Despite the Sengwer's strong ties to their ancestral lands in the Embobut forest, they have been subjected to numerous displacements by the Kenyan authorities since the 1970s. An escalation of the situation took place in December 2016, despite ongoing judicial proceedings to clarify the rights of the Sengwer to remain in the forest. Conservation projects in the past have resulted loss of access to the forest, as was recognised by the World Bank's Inspection Panel in the context of activities undertaken by the Natural Resource Management Project, run by the World Bank from 2007 to 2013. A World Bank investigation report⁸³ concluded that the project neglected the customary rights of the Sengwer and that the project's implementation agent, the Kenya Forest Service, then funded by the World Bank, applied a policy based on undertaking evictions, in violation of the World Bank safeguards and international law.

111. In the context of climate change projects, concern for the intensification of forced evictions and the threats to the Sengwer peoples' rights to lands and livelihoods remain. Allegations have been received regarding of the Water Towers Protection and Climate Change Mitigation and Adaptation Programme, supported by the European Union. The Kenya Forest Service is among the implementation agencies. The project has reportedly failed to consult adequately with the indigenous peoples affected and undertake an assessment of human rights impacts.

C. The Agua Zarca hydroelectric project in Honduras

112. The case of the Agua Zarca dam in Honduras is another case emblematic of violence, impunity and lack of access to justice that threatens indigenous peoples in the context of climate change related investment projects. Following her country visit to Honduras in 2015, the Special Rapporteur drew attention to the impacts generated by investment projects on the lands, natural resources, cultures, spirituality, social coexistence and the lives and personal integrity of the indigenous peoples in Honduras. Between 2010

⁸¹ <http://carbonmarketwatch.org/press-statement-in-landmark-decision-panama-withdraws-un-registration-for-barro-blanco-hydrodam-project/>

⁸² <http://www.ciel.org/panama-withdraws-problematic-barro-blanco-dam-project-cdm-registry/>

⁸³ The World Bank's Inspection Panel. Kenya: Natural Resource Management Project, Investigation Report (2014)

and 2014, 101 human rights defenders were killed in Honduras, many of them from indigenous communities who resisted development projects on their territory.⁸⁴

113. The Agua Zarca dam is a renewable energy project carried out on the Gualcarque River by the government of Honduras as part of its larger energy policy supporting the implementation of hydroelectric and wind projects to reduce the use of fossil fuels. It is part of about forty hydroelectric projects. The project involves a 20-year concession in favour of the Honduran company Desarrollo Energéticos S.A. (DESA) and was initially funded by a private equity fund whose main contributor is the International Finance Corporation, part of the World Bank Group. In 2011, DESA began to acquire lands that were part of the ancestral territory of indigenous Lenca communities. The communities objected to the project as it affected their lands, crops, water sources and habitat. In addition, they consider the Gualcarque River sacred as it is home to female spiritual beings. The dam has resulted in great community divisions, death threats, harassment, criminalisation and the extrajudicial executions of indigenous Lenca leaders opposed to the project.

114. Protests against the dam in 2013 led to the withdrawal of the private equity fund, so the World Bank ceased to have an active participation in the project. In March 2016, the Lenca leaders Ms. Berta Caceres and Mr. Nelson Garcia, who had both led protests against the Agua Zarca project were executed. Following their deaths, the investors FMO (the Dutch development bank), Cabei (the Central American Bank for Economic Integration) and Finnfund suspended funding for Agua Zarca.

D. Other related situations

116. There are numerous projects related to human rights violations against indigenous peoples in the context of renewable energy projects but where the funding cannot be certifiably linked to climate finance. A potential example includes the construction of the Don Sahong Dam in Lao People's Democratic Republic.⁸⁵

117. The Don Sahong Dam project is currently under construction in Lao PDR affects indigenous peoples living along the banks of the Lower Mekong River (which spans Laos, Cambodia, Thailand and Vietnam). Mega First, a Malaysian company which is leading the construction of the dam manifests its intention to increase investments in clean renewable sources of energy.⁸⁶

118. The company makes no references to respect for human rights in its reports. A number of violations including to the right to information and participation, rights to food, health, housing and cultural rights of indigenous peoples have occurred. No known efforts have been made to obtain the free prior and informed consent of the indigenous peoples whose lands, territories and resources are affected.

IX. Conclusions and recommendations

119. Indigenous peoples have been engaged with the climate change processes since 1992, the ratification of the UNFCCC, and have consistently advocated for respect and protection of their rights. While there are no references to indigenous peoples in the Convention, in subsequent COP decisions and in the Paris Agreement, indigenous

⁸⁴ <https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

⁸⁵ LAO1/2016

⁸⁶ http://mega-first.com/pdf/ar_2016.pdf

peoples' rights have been recognised. Respect for human rights must be an integral component in all decisions and actions taken on climate change mitigation and adaptation measures.

120. In order to prove their commitment to honouring their human rights obligations, States must acknowledge the implications climate change has on human rights in the context of climate change mitigation and adaptation law and policies. As noted by the IPCC, indigenous traditional knowledge systems and practice are a major resource for adapting to climate change and will contribute to making such measures more effective.

121. Climate finance has the potential to reinforce the efforts of indigenous peoples to adapt to the climate change impacts and contribute to climate change mitigation. However, it also has the potential to create adverse impacts which undermine the rights of indigenous peoples. Violations of indigenous peoples' rights have been seen in the implementation of renewable energy projects such as hydroelectric dams and windmills and REDD+ projects.

122. Regarding climate change funds, indigenous peoples' rights are referred to in the policies and safeguards of the REDD+ , the Green Climate Fund, the Adaptation Fund and the Global Environmental Facility. The practical application of these policies however require continuous independent monitoring. Some climate finance mechanisms still fail to acknowledge the UNDRIP and human rights standards. The adoption of a human rights based approach to climate finance is crucial.

Recommendations

To States:

123. Adopt all necessary policy, legal and administrative measures to effectively engage indigenous peoples in climate change adaptation and mitigation measures with the full recognition of their rights over their lands, territories and resources as enshrined in international human rights law and recognised in the UNFCCC and SDGs.

124. Ensure that indigenous peoples are effectively included in national climate change planning and monitoring processes.

125. Comply with the duty to consult and obtain the free, prior and informed consent of indigenous peoples at all stages in the development of climate change initiatives which may affect their rights.

126. Promote participation of indigenous self-governance structures which should be formally included in decision-making relating to international climate change policies and finance measures.

127. Devote resources to providing capacity building for all stakeholders relating to climate finance in particular supporting long-term, capacity building that enhances the transfer of technical knowledge.

128. Support partnerships between government authorities and indigenous peoples to encourage intercultural engagement in order to build trust and collaboration to favour of shared goals of climate change action.

129. Ensure that gender considerations are adequately integrated into the development of climate change adaptation and mitigation policies and projects.

130. Provide funding for reparation and notably for the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts.

To funds and donors:

131. Respect and support the rights of indigenous peoples as recognised in international human rights law and enhance their ability to engage in climate change activities by advocating for recognition of their collective and individual rights.

132. Implement existing policies and safeguards and ensure effective dissemination of these and trainings for staff, especially for those involved in implementation at regional and national levels.

133. Develop more dedicated direct funding mechanisms to support indigenous peoples' own initiatives for climate change and sustainable development.

134. Support indigenous peoples to develop and implement their own initiatives and exchange experiences with them. This will allow learning from indigenous traditional measures and transfer of technical skills to engage indigenous peoples in climate change management.

135. As part of due diligence, improve monitoring and include compliance with indigenous peoples' rights in regular project, programme and policy assessments.

136. Promote awareness of grievance mechanisms for indigenous peoples in the context of climate change projects and ensure that such mechanisms are culturally appropriate.
