



General Assembly

Distr.: General
13 July 2022
English
Original: Spanish

Human Rights Council

Fifty-first session

12 September–7 October 2022

Agenda item 3

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

Visit to Costa Rica

Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay*

Summary

The report reviews the situation of the indigenous peoples of Costa Rica on the basis of information received by the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, during his visit to the country from 6 to 17 December 2021.

The Special Rapporteur takes note of the openness to dialogue between the Government and the indigenous peoples and of the various legislative developments. Nevertheless, it is imperative that the Government give priority to addressing structural problems, in particular by guaranteeing the indigenous peoples' rights to their lands, territories and natural resources, to respect for their own authorities, to proper operationalization of consultations and to realization of their economic, social and cultural rights. The Special Rapporteur is concerned about the structural racism that pervades the judiciary, especially at the local level, the lack of effective measures to protect human rights defenders and the impunity for crimes committed against land defenders.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and in English only.



Annex

Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, on his visit to Costa Rica

Contents

	<i>Page</i>
I. Introduction	3
II. General considerations	3
III. Indigenous rights and the legal and institutional framework.....	3
IV. Key challenges pending	5
A. Self-determination, self-government and participation.....	5
B. Right to lands, territories and natural resources.....	6
C. Consultation and free, prior and informed consent.....	8
D. Protection of indigenous human rights defenders.....	9
E. Protected areas and environmental programmes.....	10
F. Access to justice	11
G. Indigenous women.....	12
V. Economic, social and cultural rights	12
VI. Conclusions and recommendations	14

I. Introduction

1. The present report reviews the situation of the indigenous peoples of Costa Rica, drawing on information received by the Special Rapporteur during his visit to the country from 6 to 17 December 2021 and taking into account the observations made by his predecessor in 2011,¹ the communications issued by mandate holders and the recommendations of other international and regional human rights mechanisms.

2. The Special Rapporteur met with, among others: the incumbent President; senior representatives of the Office of the President of the Republic and of several ministries; the Human Rights Committee of the Legislative Assembly; representatives of the judiciary, including the acting Attorney General and his team in a bilateral meeting; representatives of the National Council of Persons with Disabilities; and representatives of the Office of the Ombudsman.

3. He met with indigenous authorities, representatives of indigenous women's associations, human rights defenders, civil society organizations, trial lawyers, representatives of organizations of persons with disabilities, representatives of the United Nations system and representatives of the international community.

4. The Special Rapporteur visited indigenous communities, where he held meetings attended by around 400 representatives of some 70 different organizations, associations and networks, which included organizations of older persons, women's organizations, development and youth associations and organizations of persons with disabilities.

5. The Special Rapporteur would like to thank the Government of Costa Rica for its cooperation, which enabled him to conduct his visit independently. He also wishes to thank the Resident Coordinator Office, the United Nations system and the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their support in making the visit a success. In particular, he wishes to thank the indigenous peoples of Costa Rica for their hospitality in their territories.

II. General considerations

6. Costa Rica is home to eight indigenous peoples: the Boruca or Brunca, the Bribri, the Bröran or Terraba, the Cabecar, the Chorotega, the Huetar, the Maleku or Guatuso and the Ngäbe. According to the 2011 census, they make up 2.4 per cent of the country's total population. Of this number, 34.5 per cent live in the country's 24 indigenous territories, which account for 6.7 per cent of the national territory (3,344 km²).²

7. Although these 24 territories are protected by the Indigenous Act (Act No. 6172) of 29 November 1977, the 2011 census shows that most of these indigenous territories are in the hands of non-indigenous settlers. This is the case for 52.3 per cent of the Bribri people's Kéköldi territory; 53.1 per cent of the Brunca people's Boruca territory; 58.7 per cent of the Maleku people's Guatuso territory; 56.4 per cent of the Teribe people's Terraba territory; and 88.4 per cent of the Huetar people's Zapatón territory.

8. Although the Special Rapporteur emphasizes the importance of the inclusion, for the first time, of the ethnic self-identification rubric in the 2011 census, he finds it regrettable that the disaggregated statistical data on indigenous peoples required to set social and economic policies relevant for meeting those peoples' specific needs are lacking.

III. Indigenous rights and the legal and institutional framework

9. Costa Rica has ratified the main international and inter-American human rights treaties, in particular the International Labour Organization (ILO) Indigenous and Tribal

¹ [A/HRC/18/35/Add.8](#).

² International Work Group for Indigenous Affairs, *El Mundo Indígena 2020*, 34th ed. (Lima, 2020), pp. 400–407.

Peoples Convention, 1989 (No. 169), and voted to adopt the United Nations Declaration on the Rights of Indigenous Peoples in 2007.

10. Although article 7 of the Constitution of Costa Rica states that international treaties need to be approved by the legislature if they are to form part of the country's legal system, the Constitutional Court (Chamber IV of the Supreme Court) established that international human rights treaties may be directly transposed into the domestic legal system on the basis of the criteria laid down in the Vienna Convention on the Law of Treaties.³ Moreover, the Constitutional Court has clarified, in its final judgments, that international rights instruments have supra-constitutional rank.⁴

11. Although article 1 of the Constitution, amended in 2015, stipulates that Costa Rica is a multi-ethnic and multicultural State, it does not recognize the existence of the indigenous peoples. Only article 76 refers to the indigenous peoples, providing that the State must ensure "the maintenance and cultivation of national indigenous languages". Nevertheless, Costa Rica has specific legal instruments that address various aspects of indigenous rights, including Act No. 6172 of 1977, which, *inter alia*, establishes the legal status of indigenous peoples and provides for the recording of property in the Public Register, mechanisms for preventing the appropriation of lands by non-indigenous persons, expropriation and compensation procedures, expropriation funds, the internal administration of commercial premises and the exploitation of natural resources. However, the failure to implement the Act and the use of the term "reserves" to refer to indigenous territories are a cause for concern.

12. Other laws and policies address specific aspects of the recognition and protection of the indigenous peoples. Act No. 5251 of 11 July 1973 establishes the National Commission on Indigenous Affairs, assigning to it various functions, such as improving living conditions, safeguarding the indigenous peoples' rights, and institutional coordination. The purpose of the Act on Access to Justice for the Indigenous Peoples of Costa Rica (Act No. 9593) is to ensure respect for indigenous cultures in the State justice system; however, it incorrectly refers to the indigenous peoples as "populations", thereby minimizing their legal status. In addition, article 339 of the Code of Criminal Procedure provides for the concepts of "cultural diversity" and "cultural expertise" in criminal proceedings.

13. To ensure the protection and recognition of indigenous identity and culture, the Ethnic and Linguistic Diversity Act (Act No. 8054) of 4 December 2000, the Day of Cultures Act (Act No. 7426) of 23 August 1994 and the National Policy on Cultural Rights 2014–2023 have been adopted. Articles 9, 10 and 66 of the Biodiversity Act (Act No. 7788) and Executive Decree No. 20645 of 1991 also recognize various aspects of indigenous identity and culture, and Executive Decree No. 32454 of 2005 designates the Canton of Buenos Aires in the Province of Puntarenas as a special region for the Aboriginal cultures of Costa Rica.

14. Within that legal framework, the political participation of indigenous peoples has been promoted through the creation of permanent forums for dialogue and coordination between indigenous peoples and the State. The indigenous dialogue forums of Buenos Aires and Perez Zeledón are examples of this.

15. The Special Rapporteur recognizes as a good practice for promoting the political participation of indigenous peoples the establishment by the State in 2018, through Executive Decree No. 40932, of the General Mechanism for Consultation with Indigenous Peoples, following the recommendation made by the previous mandate holder in 2011 and in line with international human rights standards on the matter.

16. The Special Rapporteur congratulates the State on the enactment in 2019 of Act No. 9710, drafted in consultation with the indigenous peoples concerned, on the recognition of the transnational nature of the Ngäbe-Buglé people, which guarantees recognition of the right of the Ngäbe-Buglé people to Costa Rican nationality.

17. The Special Rapporteur highlights as a good practice the interministerial approach to the indigenous agenda, under the coordination of the Office of the Deputy Minister for Political Affairs and Civic Dialogue under the Office of the President. The management of

³ Supreme Court, Constitutional Chamber, judgment No. 6624, 11 November 1994.

⁴ *Ibid.*, No. 2313-1995, 9 May 1995; and No. 6856-2005, 1 July 2005.

and approach taken to processes relating to the indigenous peoples demonstrate respect for their practices, knowledge and world views. This has been a positive step towards inclusion and democracy, which are necessary in order for the country to lay the foundations required to reduce structural problems.

18. The cancellation of the Costa Rican Electrical Institute's El Diquís hydroelectric project, for administrative reasons, represented a first step by State-owned enterprises towards showing leadership as regards respect for indigenous peoples' human rights. Nevertheless, further progress needs to be made in implementing the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework to ensure that the State protects human rights and that companies, including State-owned companies, respect those rights, along with human rights due diligence processes and the right of access to effective redress mechanisms for human rights abuses relating to business activity.

IV. Key challenges pending

A. Self-determination, self-government and participation

19. The Indigenous Act (Act No. 6172) recognizes that indigenous peoples have full legal capacity (art. 2) and establishes that indigenous territories must be governed by indigenous peoples according to traditional community-based structures or the laws of the Republic governing them (art. 4). However, the councils and authorities recognized by the indigenous peoples themselves, under their own law and within indigenous territories, are not currently recognized as having legal personality.

20. The Special Rapporteur points out that legal recognition of the indigenous peoples' own authorities was hampered by the enactment of Executive Decree No. 8487 of 10 May 1978, which established, without the consent of the indigenous peoples, comprehensive development associations and imposed them as the sole form of governance within the 24 indigenous territories.

21. The Special Rapporteur received repeated claims that the comprehensive development associations, as imposed State institutions that report to the executive branch, are not suited to guaranteeing representation for indigenous peoples, which have their own system of government. The Special Rapporteur also received information from representatives of indigenous peoples, civil society and State institutions emphasizing that the comprehensive development associations were unsuitable as a system to allow indigenous peoples to exercise their right to self-government, since they are not, as public-interest entities, designed to hold major powers, such as that of governing a people.⁵

22. According to the relevant judicial decision, the comprehensive development associations are the indigenous peoples' official representatives, meaning that any initiative or project by official or private persons or bodies must be handled by them.⁶ The attribution of powers to institutions that do not represent the indigenous peoples has given rise to abuses and violations of indigenous peoples' collective and individual rights. Of particular concern are reports of non-indigenous persons participating in the institutions; the failure to apply indigenous peoples' internal laws when electing their representatives; the improper use of these laws either to appoint only supporters to or to expel opponents from comprehensive development associations; the inequitable redistribution of State funds allocated to indigenous peoples; and indigenous peoples' exclusion from the processes of devising and implementing projects in the 24 territories. The Special Rapporteur also received accounts of instances of lands being returned to non-indigenous persons by the comprehensive development associations and of conflicts, sometimes violent, with the indigenous peoples' own authorities.

⁵ Act No. 3859, art. 11.

⁶ Supreme Court, Constitutional Chamber, judgment No. 14545, 29 September 2006.

23. The Special Rapporteur was also informed that, although the comprehensive development associations do not have the power to set up their own security bodies, an unlawful security and sanctions body has been established in Cabagra to implement the comprehensive development association's decisions in the territory. Under indigenous peoples' right to autonomy, only indigenous authorities themselves may establish their own institutions, including security bodies.

24. Many communities complain that the comprehensive development associations sometimes exercise their power arbitrarily in authorizing the processing of permits for health services, the administration of water and electricity and the award of socioeconomic grants, among other things. This prevents the full enjoyment by members of the indigenous peoples of their economic, social and cultural rights.

25. The Special Rapporteur recalls that recognition of the rights to self-determination and self-government enables indigenous authorities to fulfil their role of freely determining their political status and freely pursuing their economic, social and cultural development, including maintenance of order, balance and harmony within society. Unfortunately, the Special Rapporteur was able to verify that this role had been subverted, particularly in the south of the country, by the imposition of comprehensive development associations, which has weakened the indigenous peoples' own authorities, creating intracommunity conflict and weakening the social fabric of the community as a whole.

26. The Special Rapporteur explains that, under international human rights law, the definition of "indigenous peoples" is based on individual self-identification and acceptance by the community as one of its members. Based on the principles of self-determination and self-government, only the indigenous people in question may establish the criteria for membership of that people, in accordance with its own law. The Special Rapporteur therefore considers a major step forward the promulgation in 2019 of Decree No. 41903-MP officially approving the database of persons of Terraba/Bröran ethnicity as a means of identifying genealogical patterns in the Bröran people and declaring it to be in the public interest, a joint initiative undertaken by the people's council of elders and the Supreme Electoral Tribunal.

27. The Special Rapporteur was informed that the National Commission on Indigenous Affairs, which is responsible for protecting indigenous peoples' interests, is another institution imposed on indigenous peoples by the State and is ineffective.

28. Over the years, representatives of the indigenous peoples have submitted various, unsuccessful, proposals for a legal reform that would protect indigenous territories and recognize and protect the indigenous peoples' own self-government authorities. For example, the bill on the autonomous development of indigenous peoples was submitted in 1994 to address the issue of governance and land in a manner consistent with international standards. Enactment was delayed owing to a lack of political will and to private sector opposition. In addition, the political debate was marked by tensions that culminated, in August 2010, in the forcible removal of a group of indigenous persons from the Legislative Assembly during a peaceful protest in favour of enactment of the bill. Several human rights mechanisms, such as the universal periodic review mechanism and the Special Rapporteur,⁷ have recognized the centrality of the issue of indigenous governance and urged Costa Rica to enact the bill, which was shelved in 2018.

29. The Special Rapporteur was able to verify the scant representation of indigenous peoples in national and local State institutions. For example, no indigenous person has ever been appointed to a senior role in the judiciary or the legislature. Positive measures must be taken to ensure the inclusion, representation and participation of indigenous peoples, at all levels, in State institutions and political parties.

B. Right to lands, territories and natural resources

30. Notwithstanding the legislative stride represented by the Indigenous Act (Act No. 6172), which recognizes indigenous territories as "inalienable and imprescriptible, non-

⁷ [A/HRC/18/35/Add.8](#), para. 48; and [CERD/C/CRI/CO/18](#), para. 9.

transferable and exclusively for the indigenous peoples who live in them”, the Special Rapporteur has received allegations of serious violations of indigenous peoples’ rights on their lands, territories and natural resources.

31. The Special Rapporteur recalls that, for indigenous peoples, their territories are the place where their identity, culture and social system are passed on to the next generation. It is very worrying that much indigenous territory remains in the hands of non-indigenous persons, with none of the effective indemnification recommended by OHCHR and various other human rights mechanisms.⁸

32. According to reports received, the presence of non-indigenous persons in indigenous territories has sometimes caused the indigenous peoples to lose their identity, knowledge, language and food sovereignty, to the detriment of their individual and collective rights. It has also corroded the indigenous peoples’ social fabric, fostering division and conflict within those peoples.

33. In 2016, Costa Rica launched the National Plan for the Recovery of Indigenous Territories, led by the Rural Development Institute. The Special Rapporteur notes that, although this plan encourages the land titling, to date, no restitution has taken place. At the various meetings held with indigenous peoples, mention was made of a number of obstacles preventing this plan from ensuring the effective, fair and equitable restitution of their territories.

34. While the Special Rapporteur acknowledges the allocation of 3.2 billion colones and the preparation of 310 administrative case files by the Government for compensation proceedings, these efforts are insufficient.

35. According to information received, the National Plan for the Recovery of Indigenous Territories has created an ineffective land restitution procedure under which requirements additional to those associated with ordinary administrative eviction proceedings must be met. The comprehensive development associations’ power to request administrative evictions of possessors mala fide caused delays and procedural irregularities, since the associations lacked indigenous representation. Questions have also been raised about the Rural Development Institute’s procedure for identifying bona fide and mala fide title holders, on the one hand, and indigenous and non-indigenous persons, on the other, as the Institute does not have sufficient experts to enable it to discharge this duty.

36. The Special Rapporteur is also concerned about delays in implementing the National Plan for the Recovery of Indigenous Territories attributable to the proceedings that may be brought before the Administrative Tribunal at any stage of the process. Furthermore, the Special Rapporteur is worried about reports received about some final judgments in favour of non-indigenous persons handed down by the Administrative Tribunal due to ignorance of the legal framework on indigenous peoples’ land rights, and about failures to carry out administrative evictions of non-indigenous persons.

37. Against this backdrop, he is concerned about reports received on judicial decisions relating to forced evictions of indigenous families from their own lands, subsequent threats and violence from non-indigenous persons opposed to the indigenous peoples’ land claims – as in the case of the China Kichá indigenous territory – and the failure to adequately investigate indigenous peoples’ ownership rights to lands recognized in the Indigenous Act.

38. Although the Special Rapporteur recognizes the importance of protecting non-indigenous persons’ rights, in particular when they are in a precarious social position, it is essential that the relevant protocol provided for in the National Plan for the Recovery of Indigenous Territories, not become an instrument for postponing restitution of the indigenous people’s lands.

⁸ ILO, Committee of Experts on the Application of Conventions and Recommendations, observations and recommendations to the State of Costa Rica in accordance with Convention No. 107 (1991-78) and Convention No. 169 (2001, 2004, 2010, 2014 and 2016); CERD/C/CRI/CO/19-22, para. 28; CERD/C/60/CO/3, para. 11; CCPR/C/CRI/CO/6, para. 42; E/C.12/CRI/CO/5, para. 9; A/HRC/42/12, paras. 111.188 and 189; and A/HRC/27/12, paras. 128.11 and 128.179.

39. The peoples with whom the Special Rapporteur met reported that, in 2011, owing to the lack of political will in State institutions to indemnify them for their lands, which is demonstrated by, among other things, the failure to enact the bill on the autonomous development of indigenous peoples and the ineffectiveness of the National Plan for the Recovery of Indigenous Territories, they were obliged to start organized de facto requisitions of their own lands, since those lands are their only means of earning a living and keeping their culture alive.

40. The Special Rapporteur is concerned about documented acts of violence, such as threats against persons requisitioning lands and two murders of indigenous leaders (see section D), which are under investigation. He is also worried about reported violations of the right of access to basic services, such as water and electricity, on requisitioned plots of land.

41. Indigenous peoples reiterated that requisitioned plots of land are their only source of subsistence, all the more so during the coronavirus disease (COVID-19) pandemic. The Special Rapporteur was able to see that development schemes have been implemented on the requisitioned plots, fostering the recovery of indigenous identity and food self-sufficiency. One example of this is the Crun Shurín plot in the Terraba territory, where sustainable agriculture schemes support at least 26 families and 80 persons.

42. The Special Rapporteur received worrying reports about the environmental and social damage associated with monocultures and agrochemicals, for example, in the Canton of Buenos Aires, including the contamination of soil and water by companies.

C. Consultation and free, prior and informed consent

43. The Special Rapporteur welcomes the adoption by the Government of a mechanism for consulting the indigenous peoples, intended to guarantee their right to free, prior and informed consent and the effective protection of their collective rights. Executive Decree No. 40932 was enacted in 2018, with the participation and consent of 22 indigenous territories, and drafted following over 120 visits to indigenous territories. The decree established the Technical Unit for Indigenous Consultation, the body of the Ministry of Justice and Peace responsible for the technical and financial administration of indigenous consultation processes and the indigenous territorial consultation bodies, the Government's indigenous counterpart and interlocutor in each indigenous territory. Each indigenous territory appoints the members of its body on the basis of its own rules and representation mechanisms.

44. Although the Government has trained the staff of the Technical Unit for Indigenous Consultation with the support of the United Nations system, more staff still need to be recruited, the Unit's capacity to duly handle all the requests for consultations still needs to be enhanced and staff knowledge of indigenous peoples' rights still needs to be improved. It is also worrying that, in territories where there are no indigenous territorial consultation bodies, consultations are conducted through comprehensive development associations.

45. The Special Rapporteur notes that the consultation on the adoption of the draft public policy for indigenous peoples was the first time that use had been made of the Government's General Mechanism for Consultation with Indigenous Peoples and will serve to evaluate its effectiveness. The public policy for indigenous peoples will address important issues, such as the recognition of indigenous autonomy and territoriality, self-development and well-being, the indigenous peoples' social inclusion and institutional effectiveness in support for indigenous peoples. The Special Rapporteur congratulates the Government of Costa Rica on the progress it has made with the consultation, in particular in the Boruca territory, but reminds the Government that the Mechanism must be implemented in full in all indigenous territories.

46. The Special Rapporteur recognizes that the other branches of government have replicated this consultation mechanism for specific processes, such as Act No. 9710 and the draft institutional policy on indigenous peoples' access to justice. However, both the Legislative Assembly and the judiciary need to set out their internal consultation procedures, in coordination with indigenous peoples and in line with applicable human rights standards.

D. Protection of indigenous human rights defenders

47. The Special Rapporteur received worrying reports about attacks on indigenous leaders and human rights defenders, especially in the south of the country, where they have been subjected to intimidation and death threats – including with firearms – and have had their homes and crops burned in the context of defending their lands, territories and natural resources, without the State having taken appropriate and culturally relevant protection measures. The most common underlying cause is indigenous people’s lack of land tenure security.

48. Social conflict has escalated after over 40 years of indigenous territories’ being occupied by non-indigenous persons without the introduction of an effective State policy on land restitution, which has led to some farmers systematically resorting to violence, particularly in the south (Cabagra, China Kichá, Salitre and Terraba).

49. Attacks on indigenous peoples have not stopped despite the action taken in response to early warnings and the international community’s continuous calls for indigenous peoples’ rights to be protected, including the precautionary measures imposed by the Inter-American Commission on Human Rights in favour of the Teribe (Bröran) and Bribri indigenous peoples of Salitre⁹. According to one report, a total of 86 acts of violence against indigenous peoples were documented in 2020.¹⁰

50. The Special Rapporteur is concerned about the murder of the indigenous leaders Sergio Rojas, in 2019, and Jehry Rivera, in 2020, along with the attempted murder of Minor Ortiz, a Bribri of the Tubölwak clan, and the numerous, persistent threats against and attempts on the life of Pablo Sibar, the leader of the Bröran people; they were all beneficiaries of the above-mentioned precautionary measures.

51. He also finds regrettable the accounts received on the continued threats, violence and acts of racism against indigenous persons involved in requisitioning land, including women and children, for example, in the territories of China Kichá and Maleku. Following the Special Rapporteur’s visit to the country, he is concerned about the information received on the attempted murder of a Cabecar indigenous leader for defending his land in Bajo Chirripo, Canton of Matina, Province of Limón, on 30 December 2021, and about the persistent threats and even attacks against persons requisitioning land in China Kichá in 2022. There is no information about the measures taken by law enforcement agencies to prevent these events from recurring or about the outcome of the investigations, prosecutions or how the judiciary has held the perpetrators to account.

52. The impunity for the murder of the indigenous leader Sergio Rojas is particularly worrying. The Special Rapporteur hopes that this impunity will not recur in relation to the murder of the indigenous leader Jehry Rivera, the trial for which was set for October 2021 but, to date, has not taken place. It is especially worrying that, to date, the State has not connected the murder of the two leaders with the conflict over the restitution of indigenous lands and that none of the culprits have been sentenced. Impunity fosters a climate of violence and insecurity for indigenous peoples.¹¹

53. The Special Rapporteur also received information about a lack of adequate individual and collective protection measures that include an intercultural and gender perspective and have been the subject of proper consultations and agreed with the affected indigenous peoples.

54. A further cause for concern is the information provided to the Special Rapporteur in China Kichá about the alleged excessive use of force by the police against indigenous persons involved in requisitioning land in March 2020.

⁹ Precautionary measure No. 321/12, 30 April 2015.

¹⁰ N. Chaves García, *Informe de agresiones y violaciones a los Derechos Humanos contra los pueblos originarios en la Zona Sur de Costa Rica: Enero-Diciembre 2020*, 1st ed. (San José, 2021), pp. 13–31.

¹¹ See: <https://www.ohchr.org/en/press-releases/2020/06/costa-rica-ongoing-impunity-prevents-effective-protection-indigenous>.

55. The Special Rapporteur wishes to underscore indigenous peoples' right to peacefully defend their rights to land, territories and natural resources, and the State's obligation to return indigenous land under Act No. 6162 and international law.

E. Protected areas and environmental programmes

56. The Special Rapporteur recognizes the important role that Costa Rica plays in environmental protection at the international level. The Special Rapporteur notes that some State institutions are starting to recognize the indigenous peoples' role in biodiversity policy and strategy. Using the consultation mechanism established by Executive Decree No. 40932 to fulfil the requirement to put in place a participatory process for indigenous peoples under article 83 of the Biodiversity Act is a particularly important step.

57. According to information received, a total of 5,844 km², land and sea, is under the protection of the eight indigenous peoples, which means that their ecosystems are highly protected. Within the indigenous territories, there is 1,728 km² of protected forest, such as national parks, wildlife refuges and three places declared World Natural Heritage sites by the United Nations Educational, Scientific and Cultural Organization.

58. However, the Special Rapporteur received reports that indigenous peoples had not been duly consulted about the delineation of protected areas and their management. Where protected areas overlap with indigenous territories and lands, as is the case with the Bribri and Cabecar peoples in the Talamanca area and in the territories of Maleku and Boruca, the peoples and their leaders informed the Special Rapporteur about the obstacles that they were facing in gaining access to their sacred places and medicinal plants and in engaging in ancestral activities. In relation to the Maleku territory, the Special Rapporteur was informed of obstacles impeding ancestral fishing practices and the prohibition of some types of ancestral hunting, even though these activities take place in accordance with their scientific knowledge, in a way that ensures the conservation of the species in question and of the environment.

59. According to reports received, although the indigenous peoples have been caring for the forests for centuries, they are not taken into account in the management of protected areas and do not receive fair and equitable environmental benefits. Indigenous peoples' lack of participation in the drawing up of management plans that affect their collective rights is particularly worrying.

60. The Special Rapporteur was also informed of a lack of proportionality in the funds allocated, under the Programme of Payments for Environmental Services, to the indigenous peoples' conservation work. Some peoples have not been able to gain access to the Programme and others reported that it had been discontinued, thus jeopardizing the stability of the social schemes funded by it, including education and assistance projects for vulnerable groups, such as older persons, persons with disabilities and young addicts.

61. Some indigenous persons reported that administrative requirements that are culturally inappropriate and do not take account of the indigenous peoples' specific situation are blocking access to the Programme of Payments for Environmental Services. The Special Rapporteur is concerned about several cases in which a lack of specialist bodies and knowledge relating to the administration of the Programme's funds has led to indigenous officials working for comprehensive development associations being accused of embezzlement. Indigenous peoples have also expressed concern about the associations' administration of the Programme.

62. The indigenous peoples who met with the Special Rapporteur expressed concern about bill No. 21.087 on the modernization of the National Seed Office. According to reports received, indigenous peoples were not consulted about this bill, which could be detrimental to food self-sufficiency, indigenous control over native seeds and the indigenous economy.

63. The Special Rapporteur is concerned by reports that the agrifood industry sometimes pollutes buffer zones in protected areas, which has a negative impact on indigenous territories and sacred places, such as the Maleku territory.

F. Access to justice

64. The Special Rapporteur acknowledges the judiciary's commitment to protecting indigenous peoples' rights, in particular the progress that has been made towards guaranteeing access to justice. Of particular note are the establishment of a special prosecutor's office for indigenous affairs and the issuance of internal agreements and circulars intended to protect the indigenous peoples' rights, such as the adoption, in 2008, of the Brasilia Regulations Regarding Access to Justice for Vulnerable People and Circular No. 188-2019 of the Supreme Court, which sets out actions to be taken in several areas of the institution. The Special Rapporteur also acknowledges the progress achieved by means of the Act on Access to Justice for the Indigenous Peoples of Costa Rica, which includes recognition of the right to an interpreter and translator at the State's expense; the prioritization of cases involving indigenous persons; free legal aid and the waiving of any fees or expenses in related court proceedings whenever requested by an indigenous person; and ongoing training for judicial staff.

65. The Special Rapporteur welcomes the start of the process of jointly drafting an institutional policy on access to justice based on an assessment conducted with the broad-based, effective participation of indigenous peoples, including women, in line with international human rights standards and with technical support from OHCHR and funding from the universal periodic review. This progress represents a major step forward in addressing challenges as regards access to justice, in line with the recommendations of human rights mechanisms.

66. Indigenous leaders informed the Special Rapporteur of their continued mistrust of judicial staff at the local level, for reasons that included partiality, failure to investigate attacks on indigenous leaders and racial discrimination against indigenous persons, particularly in the Canton of Buenos Aires. For example, according to reports received, prosecutorial authorities often fail to investigate complaints filed by indigenous persons and ask them to provide evidence of the acts committed. Even when they are reported, acts are often categorized incorrectly and are not investigated *ex officio*. This situation has been brought to the attention of the competent authorities, but no action has been taken. The Special Rapporteur is particularly concerned about the ineffectiveness of internal mechanisms within the judiciary for punishing discriminatory and racist behaviour by officials.

67. The Special Rapporteur is particularly concerned about the situation of indigenous women, who reportedly face obstacles in reporting acts of violence suffered during land requisition processes and acts of domestic violence. The Special Rapporteur received information about cases in which indigenous women had suffered racism and discrimination at the hands of the prosecutor's office in the southern territories and in the territory of Maleku; the processing of their complaints was delayed or their complaints were rejected, and the failure to adopt a culturally appropriate approach exposed the women to revictimization. The impunity for sexual violence against indigenous girls and women is particularly worrying. This is due to the absence of a gender-sensitive and culturally appropriate judicial service competent to handle this type of case and to a climate of women-blaming.

68. The Special Rapporteur received reports that local judges, particularly in the Canton of Buenos Aires, are unaware of international standards for indigenous peoples' human rights, of indigenous world views and of the concept of reviewing treaty compliance. The Special Rapporteur was informed that agrarian judges called upon to adjudicate on indigenous peoples' land rights sometimes draw out proceedings, fail to be impartial and do not apply indigenous law as a means of resolving conflicts.

69. Indigenous peoples complained that several judicial services are not culturally appropriate. For example, interpreters do not always have the cultural and technical skills to perform their duties properly, resulting in the indigenous persons concerned failing to understand the proceedings, thereby giving rise to a violation of due process guarantees.

70. The Special Rapporteur received information about the procedural concepts of "cultural diversity" and "cultural expertise". While these concepts could be useful for analysing historical factors, they are not a suitable tool for understanding contemporary

indigenous affairs because they do not entail asking the indigenous people concerned about its culture, society and world view, in keeping with the right to self-determination.

71. Indigenous peoples' right of effective access to justice comprises access to both the State legal system and their own systems of justice. Yet there is no clarity about how the two systems interact. The Special Rapporteur received reports of a failure to recognize indigenous law and a lack of mechanisms for collective redress. Some indigenous communities informed the Special Rapporteur that the State was unaware of the decisions of indigenous authorities and indigenous courts. He also received reports about the "imposition of the Western system" on indigenous peoples and governments by requesting that they meet culturally inappropriate administrative requirements that take no account of their oral tradition or justice systems.

G. Indigenous women

72. Indigenous women play a crucial role in defending indigenous lands, territories and resources and in passing on their language, culture and scientific knowledge to the next generation. Indigenous women and youth reported an increase in attacks, intimidation and threats, which is detrimental to their social role of passing on indigenous scientific knowledge, reduces food sovereignty and hampers the development of their entrepreneurial skills.

73. The Special Rapporteur met with several indigenous women's organizations and was informed of, among other things, the distress suffered by women in the context of indigenous land conflicts. Some women reported daily verbal abuse, including threats, and physical violence, sometimes even against children, by non-indigenous persons.

74. The Special Rapporteur is concerned about the National Child Welfare Agency's handling of some cases involving indigenous children engaged in land requisition processes. According to reports received, the Agency deems this conduct to be an act that triggers the process of removing minors from their families and resettling them in facilities outside their indigenous territories of origin, sometimes without interpretation into their native language. The Special Rapporteur recalls that, under international law, State authorities should, when determining indigenous children's best interests, take into account their cultural rights and their need to exercise those rights collectively with members of their own people.¹²

75. Despite the important role they play within their communities, indigenous women are generally excluded from decision-making, do not exercise proportional political or economic power and do not own land or manage resources. Moreover, some women complained of the sexist and degrading attitudes that some members of their people have towards them. The Special Rapporteur received reports that women working plots of land have no access to the Programme of Payments for Environmental Services managed by the comprehensive development associations.

76. The Special Rapporteur wishes to specifically acknowledge the indigenous women who have clear suggestions for building a genuinely plurinational State in which there is a desire to recognize, among other things, the critical role that they play in caring for forests and in preserving biodiversity, in passing on scientific knowledge to future generations and in securing tenure of their lands. Indigenous women's organizations, such as the National Forum of Indigenous Women, express regret over their lack of resources and the failure of State institutions to recognize their work.

V. Economic, social and cultural rights

77. Indigenous peoples continue to suffer severe inequalities, for example with respect to the full enjoyment of their economic, social and cultural rights. The Special Rapporteur observed, during his visit, high levels of poverty among indigenous peoples, exacerbated for vulnerable groups, such as women, persons with disabilities and persons with diverse sexual orientations and gender identities. It has not been possible to locate official information about

¹² Committee on the Rights of the Child, general comment No. 11 (2009), paras. 30–33.

disaggregated data on poverty. According to the latest census, however, 61.2 per cent of indigenous persons have their health insurance provided by the State and the indigenous unemployment rate stands at 59.3 per cent.¹³ These figures bear testament to the high poverty levels among indigenous peoples, due to structural social, political and economic exclusion.

78. The Special Rapporteur is concerned about the official figures showing that 70.1 per cent of indigenous households cannot meet their basic needs, compared with a rate of 24.6 per cent for the population as a whole.¹⁴ Moreover, 27.8 per cent of the population in indigenous territories do not have access to adequate housing. The Special Rapporteur was informed about the obstacles single women face in gaining access to housing under the State programmes.

79. The Special Rapporteur welcomes the installation of 13 base station radios in 6 indigenous territories in 2021, as part of the Connected Communities Programme of the National Telecommunications Fund, and the installation of 19 telecommunications masts in 2022. However, the Special Rapporteur is concerned about inequality of access to technology, which is having a growing negative impact on the right to education,¹⁵ particularly in the wake of the coronavirus disease (COVID-19) pandemic, and on indigenous peoples' ability to complete the administrative procedures necessary in order for them to fully enjoy all their rights.

80. Statistical data show marked inequalities in access to quality education: children in indigenous territories have an average of 5.7 years' formal schooling, compared with a national average of 8.7 years; illiteracy rates are also much higher among indigenous peoples.

81. The Special Rapporteur notes the recognition of indigenous education from a cultural perspective by Executive Decree No. 37801-MEP. However, intercultural education in which indigenous peoples can see their science and knowledge reflected as part of the country's cultural heritage needs to be guaranteed. The curricula for the various levels of education do not include modules or courses on indigenous peoples.

82. The Special Rapporteur received reports that there is no national strategy for incorporating young people's perspectives on education, technology, employment and recreation.

83. The Special Rapporteur congratulates Costa Rica on the establishment of the National Health Council for Indigenous Peoples and the insurance scheme for cross-border Ngäbe-Buglé indigenous persons in Talamanca; the creation of the role of community indigenous assistant; and the introduction of the Standardization Programme for Indigenous Peoples' Health Care. He also encourages the State to continue working to guarantee equitable and culturally appropriate access to medical care.

84. Indigenous women reported a lack of quality, appropriate and intercultural health-care services in indigenous communities, access-related difficulties due to lack of an Internet connection and discriminatory treatment when receiving health care.

85. The Special Rapporteur is concerned about inequalities in indigenous women's access to sexual and reproductive health services, which is evidenced by the reported indigenous teenage pregnancy rate of 10.2 per cent, compared with a rate of 4.3 per cent for the population as a whole.

86. Despite the existence of official data on indigenous persons with disabilities, during his visit, the Special Rapporteur noted that nothing was being done to raise awareness of the rights of indigenous persons with disabilities within their territories and there was no human rights-based State policy that would allow indigenous persons with disabilities to be

¹³ United Nations Development Programme, Costa Rica, *Visión 2030 – Poblaciones Excluidas en Costa Rica*, 2011 National Population Census (National Institute of Statistics and Censuses of Costa Rica, 2016).

¹⁴ Ibid.

¹⁵ Only 17 per cent of indigenous persons over 4 years of age have access to a computer, compared with an average rate of 48.7 per cent for the population as a whole. Only 14.9 per cent of indigenous persons have access to the Internet, compared with an average rate of 63 per cent for the population as a whole.

recognized as full subjects of rights and as rights holders, instead of recipients of charity. It is particularly worrying that State programmes to support persons with disabilities are not promoted at the community level and that the scant support available for indigenous persons with disabilities tends to be provided through community-led schemes, as in the case of Kéköldi, the funding for which is often temporary. There is a lack of State programmes to support indigenous persons with disabilities and their families in the areas of education, employment and assistance.

87. The Special Rapporteur is concerned about the absence of State-run programmes to prevent suicide and to prevent and treat addiction among indigenous persons, despite the high rate of attempted suicide of 27.4 per cent recorded among indigenous persons in 2017, compared with a rate of 14.94 per cent for the population as a whole.¹⁶ He is also concerned that the loss of cultural identity, the lack of appropriate education and job opportunities and the presence of drug trafficking are the chief factors driving the high rates of suicide and addiction among indigenous young people, particularly in the Talamanca region. Indigenous young persons have no choice but to resort to assistance schemes set up by their own peoples.

88. The Special Rapporteur congratulates Costa Rica for its efforts to promote culturally appropriate schemes, such as *Mujeres Semilla Gestoras de Vida*. In indigenous territories, however, public investment in economic programmes to increase production and output is limited, inaccessible and fails to take account of indigenous peoples' realities, which is not conducive to the self-sufficient, comprehensive development or well-being of indigenous peoples.

89. The Special Rapporteur wishes to note that undocumented indigenous migrants, such as the Miskito, suffer even more from unemployment and insufficient pay and protection for their rights.

VI. Conclusions and recommendations

90. **The Special Rapporteur wishes to underscore the openness and cooperativeness of the Government and various State institutions. They acknowledge the challenges identified and the need to undertake a reform process, in order to advance the protection of indigenous peoples' rights, and are prepared to accept the observations constructively. The Special Rapporteur acknowledges the new Government's political will and the progress it has made; he urges the Government to continue making progress.**

91. **The Special Rapporteur points out that the structural causes of violations of indigenous peoples' rights are the lack of an appropriate land restitution policy and of a legal framework ensuring recognition of indigenous peoples and their own authorities. He is particularly concerned about the structural racism that permeates State institutions, in particular at the local level; the failure to realize indigenous peoples' economic, social and cultural rights; and the lack of effective measures to protect human rights defenders.**

92. **The Special Rapporteur underscores that the State must work together cooperatively with the indigenous peoples on applying all the recommendations included in this report.**

Legal and institutional framework

93. **The Special Rapporteur recommends that the State:**

(a) **Comprehensively revise the current legal framework by incorporating the recognition of indigenous peoples and their collective rights, including the right to indigenous justice at the constitutional and legal levels, and adjustments to the terminology relating to peoples and territories;**

¹⁶ Ibid.

(b) Respect each people's membership criteria based on its self-identification processes and guarantee explicit and formal recognition of indigenous peoples in domestic law by means of constitutional, statutory or judicial measures, in accordance with the principle of self-identification and self-determination;

(c) Provide the indigenous peoples with appropriate redress for human rights violations relating to the lack of indemnification in respect of their lands, for ignorance of their self-governance structures and for imposition of the comprehensive development associations;

(d) Foster constructive dialogue with the indigenous peoples, in order to carry out a comprehensive and participatory legislative reform that meets international human rights standards, with a view to guaranteeing self-determination and recognition of each people's own institutions, in accordance with their specific characteristics;

(e) Provide indigenous peoples' own institutions with the financial and technical resources necessary to ensure that they function properly, in coordination and consultation with the peoples themselves;

(f) Draw up a national action plan on business and human rights that complies with the United Nations Guiding Principles on Business and Human Rights, in consultation with stakeholders, including the indigenous peoples, and in accordance with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the United Nations Declaration on the Rights of Indigenous Peoples.

Self-determination, self-government and political participation

94. The Special Rapporteur recommends that the State:

(a) Guarantee the legal personality of each indigenous territory's own governance institutions in accordance with the principle of self-identification, even though the indigenous peoples existed before the State and the granting of legal personality is merely a declaratory rather than a constitutive act and is not a condition for the exercise of their rights;

(b) Refrain from making the granting of legal personality to a given indigenous people subject to formalistic or excessive requirements;

(c) Create, in consultation with the indigenous peoples, an agile, simple and effective mechanism for granting legal personality to indigenous authorities, in accordance with international standards;

(d) Evaluate, in consultation and coordination with the indigenous peoples, any changes to domestic political and administrative divisions that might be necessary, in order for those peoples' autonomous territories to actually function;

(e) Amend, in consultation with the indigenous peoples, Executive Decree No. 8487, in order to ensure that the use of comprehensive development associations in indigenous territories is optional and not compulsory, as it has been to date, in anticipation of a comprehensive legislative reform that includes the restructuring of the associations in the indigenous territories, in cases where the association has been accepted by the indigenous authorities;

(f) Foster and enhance indigenous peoples' direct participation in all areas of decision-making and take positive measures, in accordance with the international human rights framework, to encourage indigenous persons' participation in all State institutions and political parties;

(g) Reform, in consultation with the indigenous peoples, the National Commission on Indigenous Affairs.

95. The Special Rapporteur recommends that the indigenous peoples:

(a) Foster internal dialogue between different parties or persons representing different positions within the indigenous authorities, in order to reach a joint position

on governance and autonomy, including through mediation by authorized external actors, if that is deemed necessary.

Right to lands, territories and natural resources

96. The Special Rapporteur recommends that the State:

(a) Allocate sufficient financial and human resources to the National Plan for the Recovery of Indigenous Territories and set out, in partnership with the indigenous peoples, a strategy for prioritizing land restitution that includes:

- (i) Identification and monitoring of obstacles and progress;
- (ii) Accountability for moving the Plan forward, including measurement of lands.

(b) Ensure that the evictions resulting from the implementation of the National Plan for the Recovery of Indigenous Territories are conducted in accordance with international standards;

(c) Adopt an appropriate financial plan for compensating possessors bona fide within reasonable time frames;

(d) Work with indigenous authorities on ad hoc land restitution plans for each territory that prioritize administrative evictions of non-indigenous persons who are making threats and causing violence within the territories, including the indigenous territories protected by precautionary measure No. 321/12 of the Inter-American Commission on Human Rights;

(e) Publicly recognize the legitimacy of requisitioned plots of land and guarantee their possessors' right of access to basic services, such as water.

Consultation and free, prior and informed consent

97. The Special Rapporteur recommends that the State:

(a) Allocate to the Technical Unit for Indigenous Consultation the financial resources and technical staff it needs to duly handle requests for consultations;

(b) Provide each territory with appropriate resources to enable it to establish its own indigenous territorial consultation body competent to handle requests for consultations;

(c) Ensure that indigenous people's own authorities participate in all consultations, including those held by the General Mechanism for Consultation with Indigenous Peoples;

(d) Amend the Legislative Assembly's rules of procedure to equip it with a consultation mechanism that complies with international standards for the enactment of future legislation;

(e) Establish an internal consultation mechanism that complies with international standards for the judiciary.

Protection of indigenous human rights defenders

98. The Special Rapporteur recommends that the State:

(a) Address the situation of systematized violence with a suitable policy on land requisition;

(b) Agree on, with the indigenous peoples affected, appropriate individual and collective preventive and protective measures to be taken by law enforcement agencies, ensuring that these measures include an intercultural and gender perspective;

(c) Provide State law enforcement agencies with the financial and human resources they need to properly apply the above-mentioned preventive and protective measures;

- (d) **Take steps to ensure the presence of indigenous officials in State law enforcement agencies, including in leadership positions;**
- (e) **Ensure that there are appropriate mechanisms in place to punish discriminatory or racist behaviour against indigenous persons by law enforcement agencies;**
- (f) **Investigate, try and punish the perpetrators of attacks, including threats, against indigenous leaders;**
- (g) **Ensure the administrative and judicial investigation, prosecution and punishment of the perpetrators of the alleged excessive use of force by the police against indigenous persons involved in requisitioning land in China Kichá in March 2020;**
- (h) **Take appropriate individual and collective redress measures in respect of indigenous victims, in particular those belonging to the Bribri and Bröran indigenous peoples of Salitre and Terraba, respectively, for the murders of the indigenous leaders Sergio Rojas Ortiz and Jehry Rivera, including, but not limited to:**
 - (i) **Guarantees of non-recurrence by means of preventive programmes and an early warning system, with the participation of the Office of the Ombudsman;**
 - (ii) **Measures of satisfaction, such as a public apology.**
- (i) **Ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.**

Protected areas and environmental programmes

99. **The Special Rapporteur recommends that the State:**

- (a) **Include free, prior and informed consultation of and consent from indigenous peoples as a prerequisite for the establishment of protected areas in indigenous territories and in territories of cultural significance to indigenous peoples;**
- (b) **Ensure indigenous peoples' participation in the management, administration and control of protected areas;**
- (c) **Guarantee access to and enjoyment by indigenous peoples of natural resources so that they may engage in cultural, ancestral and subsistence activities;**
- (d) **Allocate adequate environmental funds, managed by indigenous people's own authorities, and ensure accessibility for management of those funds.**

Access to justice

100. **The Special Rapporteur recommends that the State:**

- (a) **Continue to draft the policy on access to justice and conduct the necessary assessments with the active participation of indigenous peoples, in accordance with international standards, and with the technical assistance of OHCHR;**
- (b) **Investigate, prosecute and punish acts of violence, including sexual violence against indigenous women, and discrimination against indigenous persons;**
- (c) **Remove the barriers to access to justice faced by indigenous women, including women with disabilities;**
- (d) **Provide effective ongoing training on indigenous peoples' rights, their world view and reviewing treaty compliance for all local-level judicial staff, with a particular focus on the elimination of racial discrimination, and take appropriate measures to prevent and punish discriminatory and racist behaviour by prosecutors, judges and the investigators of the Judicial Investigation Agency, especially in the Canton of Buenos Aires;**
- (e) **Provide sufficient financial and human resources to ensure the availability of culturally appropriate support services during judicial proceedings involving**

indigenous persons, including the provision of interpreters free of charge, whenever necessary or upon request;

(f) Include indigenous peoples' rights and their world view as compulsory subjects in the competitive recruitment examinations for the judiciary and for State law enforcement agencies;

(g) Incorporate the study of indigenous law into the curricula of university law faculties and of the police training academy as a compulsory subject, with the relevant teaching materials being put together in partnership with experts in the field and with the participation of the indigenous peoples;

(h) Ensure that it is the indigenous peoples themselves who define the procedural concepts of "cultural diversity" and "cultural expertise", based on their own cultures and world views;

(i) Promote and bolster processes of establishing indigenous justice institutions and equip them with the material resources and tools they need to exercise their jurisdiction autonomously and, where appropriate, ensure sufficient cooperation and coordination between the ordinary and indigenous justice systems.

Indigenous women and participation

101. The Special Rapporteur recommends that the State:

(a) Take effective measures to prevent and provide redress for the physical and psychological abuse suffered by indigenous women in the context of land conflicts;

(b) Ensure that indigenous children's rights are respected by the legislature, executive and judiciary, in accordance with international standards, and that, in accordance with the Convention on the Rights of the Child, as interpreted by the Committee on the Rights of the Child, State institutions, such as the National Child Welfare Agency:

(i) Apply the principle of the best interests of the child in consultation with the indigenous peoples;

(ii) Offer the indigenous peoples the opportunity to participate in determining the best interests of indigenous children in general so that the applicable cultural context is taken into account;

(iii) Take measures that systematically apply the principle of the best interests of the indigenous child, assessing the impact of their decisions and actions on children's rights and interests;

(iv) Train their staff on indigenous children's rights;

(v) Reconsider cases in which indigenous children have been removed from their families as a result of women's participation in land requisition processes.

(c) Promote indigenous women's participation in the enjoyment of fair access to land and resources in land restitution processes;

(d) Recognize, by means of specific funds, indigenous women's role in environmental conservation;

(e) Increase the resources allocated to fostering entrepreneurship among indigenous women and, in coordination with those women, offer them whatever capacity-building opportunities they think necessary to enhance their skills;

(f) Take affirmative action to ensure indigenous women's participation in politics, including recognition of the National Forum of Indigenous Women as a public stakeholder in its own right;

(g) Promote, in coordination with indigenous women's organizations, initiatives for raising awareness within indigenous communities of women's rights, discrimination, violence against women and other relevant issues.

102. **The Special Rapporteur recommends that the indigenous peoples:**

- (a) **Undertake to guarantee indigenous women's access to land tenure within their jurisdictions;**
- (b) **Ensure that indigenous women have significant opportunities to participate in making decisions on, among other things, the use of indigenous lands.**

Economic, social and cultural rights

103. **The Special Rapporteur recommends that the State:**

- (a) **Gather statistics disaggregated by gender, age and disability on the indigenous peoples, in order to safeguard their rights, including those to health care and education. To this end, State institutions should work together with representatives of the indigenous peoples, including women, to develop suitable indicators that will, among other things, prevent interrelated forms of discrimination;**
- (b) **Adopt a holistic and culturally appropriate approach to eradicating poverty in indigenous communities: To this end, the State should, among other things:**
 - (i) **Allocate sufficient financial resources to enable the indigenous peoples to design and implement their own development and well-being models relating to food sovereignty, protection of biodiversity, cultural heritage and other relevant issues;**
 - (ii) **Design the national development plan with the participation of indigenous peoples;**
 - (iii) **Guarantee equitable and quality access to public services, including water.**
- (c) **Remove barriers preventing communities from gaining access to equitable education, and improve Internet access in all territories;**
- (d) **Bolster existing human, technical and financial resources to ensure the full implementation of intercultural bilingual education in cooperation with the indigenous peoples;**
- (e) **Move forward with an intercultural education model by updating the curricula of all the country's educational institutions, incorporating the teaching of indigenous history, culture, sciences and world views and improving the teaching of indigenous languages;**
- (f) **Increase existing human, technical and financial resources and provide cultural training to ensure the delivery of education, health-care and social services in indigenous communities, and continue to support the social programmes implemented in those communities;**
- (g) **Remove the barriers preventing indigenous peoples, in particular women and persons with disabilities, from gaining access to social assistance schemes;**
- (h) **Train health-care personnel with a view to eliminating all racist or discriminatory practices from the health-care system, and provide appropriate, quality services;**
- (i) **Prioritize sexual and reproductive health programmes for indigenous girls and women;**
- (j) **Develop an intercultural health-care system that ensures respect for indigenous medicine and science and that provides services in indigenous languages;**
- (k) **Adopt appropriate policies and programmes for indigenous persons with disabilities, in particular at the community level, in cooperation with the indigenous peoples and with persons with disabilities;**

(l) **Devise a holistic and culturally appropriate strategy for preventing suicide, alcoholism and drug abuse among indigenous persons, including young persons;**

(m) **Take appropriate measures, in line with the Guiding Principles on Business and Human Rights, to prevent and provide redress for the environmental damage and human rights abuses associated with monocultures, including pollution of soil and water, paying particular attention to the buffer zones of protected areas.**

104. **The Special Rapporteur recommends that public and private companies:**

Refrain from breaching human rights and adopt human rights due diligence processes, with a view to identifying, preventing, mitigating and providing redress for, where applicable, actual or potential impacts on the human rights of indigenous peoples.

105. **The Special Rapporteur recommends that the United Nations system:**

(a) **Continue working on its action plan,¹⁷ in coordination with the indigenous peoples and the State, focusing on prevention and protection;**

(b) **Support the State in implementing the recommendations made in this report and by other United Nations mechanisms.**

¹⁷ See [E/C.19/2016/5](#).