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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, James Anaya

Addendum

Communications sent, replies received, and follow-up*

* The present document is reproduced as received.

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I. Introduction

1. The Special Rapporteur on the rights of indigenous peoples, James Anaya, submits to the Human Rights Council the present report on specific cases he has examined concerning alleged violations of the human rights of indigenous peoples in many parts of the world.
2. The present report is submitted pursuant to Human Rights Council resolution 15/14. It provides observations on the cases examined by the Special Rapporteur since submitting his last report on communications to the Human Rights Council in September 2011 (A/HRC/18/35/Add.1). For each case below, the date of the original letter sent, any follow-up by the Special Rapporteur, and any reply or replies received by the State concerned is indicated.
3. The electronic version of the present document has the indicated letters hyperlinked. The full texts of the communications sent and the State replies can be opened by clicking on these hyperlinks. The letters sent and replies received have also been included in the three joint communications reports of Special Procedures mandate holders issued in this timeframe (A/HRC/21/49, A/HRC/20/30, and A/HRC/19/44). Where follow up letters sent or replies received included in the present report relate to letters sent by the Special Rapporteur before the present reporting period, the original letters are also included for ease of reference.
4. Cases included in the present report have been grouped by country, with countries listed alphabetically according to their names. Each original communication in the cases examined is referenced as an urgent appeal (UA), allegation letter (AL), joint urgent appeal (JUA), or joint allegation letter (JAL). For some cases and as indicated below in each specific case, the Special Rapporteur has issued follow up letters, either containing new allegations or his observations on a case.
5. The Special Rapporteur provides his observations on the cases included in the present report on the basis of the allegations received, any responses of the Government involved, and any follow-up to his initial communications. The observations include brief summaries of the letters sent and replies received.
6. During the period under review, the Special Rapporteur sent 20 letters and received 13 replies to those letters. The Special Rapporteur also received 5 replies by States to letters sent prior to the reporting period. In total, for those letters included in the present report, the Special Rapporteur has received responses by Governments at a rate of 72 per cent.
7. The Special Rapporteur expresses his gratitude to all States that have transmitted responses to the communications sent. In this context, the Special Rapporteur recalls paragraph two of the Human Rights Council resolution 15/14, which “Requests all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, to furnish all available information requested in his/her communications, and to react promptly to his/her urgent appeals.” He urges all States that have not yet replied to his communications to do so as soon as possible.

II. Observations

1. Australia

Case no. AUS 1/2012: Alleged threat to enjoyment of human rights by indigenous peoples as a result of the Stronger Futures legislation

- Joint allegation letter: JAL 09/03/2012
- State reply: 20/07/2012

Observations

8. In his joint communication of 9 March 2012, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on extreme poverty and human rights brought to the attention of the Government of Australia concerns regarding the Stronger Futures in the Northern Territory Bill 2012 and related legislation developed in the context of reforms to the Northern Territory Emergency Response (NTER) Act of 2007.

9. Concern was expressed over the allegations that provisions of the legislation, including provisions for restricting alcohol consumption, compulsory income management and leasing arrangements within Aboriginal communities could exacerbate discrimination and stigmatization of indigenous peoples and undermine the stated objectives of the legislation. Also communicated were allegations that the legislation was not adequately consulted with the affected indigenous peoples. The concerns raised about the Stronger Futures bill and related legislation were similar to the ones expressed by the Special Rapporteur on the rights of indigenous peoples in his earlier, comprehensive examination of the NTER Act (A/HRC/15/37/Add.4, Appendix B).

10. The Special Rapporteur would like to thank the Government of Australia for its substantive response of 20 July 2012. He takes note of the Government's position that the Stronger Futures legislation, which has now been adopted, represents the Government's commitment to work in partnership with Aboriginal peoples in order to improve provision of basic services, improve education and employment, and address issues related to alcohol abuse and violence in Aboriginal communities. In its response the Government further asserted that the legislation followed consultations with Aboriginal communities during 2011 and that it was developed with due consideration to Australia's international human rights obligations.

11. The Special Rapporteur remains concerned, however, about aspects of the new legislation that are similar to those of the NTER legislation that it replaces. He urges the Government to maintain ongoing consultations with Aboriginal peoples concerning the implementation of the Stronger Futures legislation and address concerns that have been expressed about discriminatory, rights-limiting effects of the legislation. The Special Rapporteur will continue to monitor this situation and may issue further observations in the future.

2. Bangladesh

Case no. BGD 7/2011: The situation of indigenous peoples affected by proposed domestic policy permitting open-pit coal mine in township of Phulbari

- Joint allegation letter: JAL 21/12/2011
- State reply acknowledging receipt of letter: 22/12/2011

- Press release: 28 February 2012

Observations

12. In this joint communication of 21 December 2011, the Special Rapporteur on the rights of indigenous peoples – along with the Special Rapporteurs on the right to food, water and sanitation, extreme poverty, adequate housing, freedom of opinion and expression, and freedom of peaceful assembly and association – expressed concern over the human rights impacts of a domestic policy permitting open-pit coal mining. Such a policy would allow for a pilot project to proceed for an open-pit coal mine in the Phulbari township, which would affect the indigenous peoples living in the area of the proposed mine with regard to a range of human rights, including their rights to traditional lands and to natural resources that are essential to their cultural and physical survival.

13. The joint communication letter was followed by a joint press statement of 28 February 2012 in which the Special Rapporteurs urged that the Government ensure that any government policy allowing open-pit coal mining include robust safeguards to protect human rights and that in the interim the Phulbari coal mine project not be allowed to proceed. They highlighted concerns about the environmental impacts of the proposed Phulbari coal mine and emphasized that any displacement of indigenous peoples caused by the mine is unacceptable without their free, prior and informed consent.

14. The Special Rapporteur takes note of the response of the Government of Bangladesh of 21 December 2011 stating that the contents of the joint communication were forwarded to relevant authorities. No substantive response has been received from the Government thus far. However, in a letter of 12 March 2012, the private company that has contracted with the Government to develop the Phulbari coal mine project, GCM Resources, provided a detailed response to the Special Rapporteurs' press release. In its response the company described studies and plans that have been undertaken to assess and mitigate environmental impacts and to develop a resettlement programme that ostensibly recognizes the rights of all affected peoples. Additionally, the company gave its views of the broader energy policy context in which the plans for the mine have proceeded and of the benefits that will derive from the mine.

15. The Special Rapporteur is thankful for the response provided by GCM Resources, which indicates a certain level of understanding of the responsibility of business enterprises to respect human rights, independently of the State's responsibility to protect human rights. However, the Special Rapporteur notes that information received from other sources provides a different view of the facts, particularly with regard to the assessment of the anticipated environmental impacts of the mine, its potential social or economic benefits, and the adequacy of the resettlement program. The Special Rapporteur further observes from the response of GMC Resources that the company may not have a full and adequate understanding of the rights of indigenous peoples to the lands and resources they traditional use and occupy, or otherwise own, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments. The Special Rapporteur urges the company to fully respect and exercise due diligence with respect to such rights.

16. Additionally, given the States' predominant role in protecting the human rights of indigenous peoples, the Special Rapporteur reiterates the call upon the Government of Bangladesh to ensure that its domestic policies and practices regarding mining provide adequate human rights safeguards and that the Phulbari mine project in particular does not proceed without them. The Special Rapporteur urges the Government of Bangladesh to respond substantively to the joint communication and to provide information on how such safeguards are being put in place. The Special Rapporteur will continue to monitor this situation and may issue further observations at a later date.

3. Bolivia (Plurinational State of)

Case no. BOL 3/2012: Alegaciones sobre la construcción de una carretera que atravesaría la reserva indígena el TIPNIS

- Llamamiento urgente: UA 27/09/2011
- Comunicado de prensa: 27 September 2011
- Respuesta del Estado: 27/10/2011
- Carta de seguimiento con nuevas alegaciones: AL 13/03/2011
- Respuesta del Estado: 15/05/2012

Observaciones

17. Las comunicaciones enviadas por el Relator Especial el 27 de septiembre de 2011 y el 13 de marzo de 2011 trataban sobre la serie de protestas por parte de miembros de pueblos indígenas en contra de la construcción de un tramo de la carretera Villa Tunari-San Ignacio de Moxos que atravesaría el Territorio Indígena y Parque Nacional Isiboro Sécore (TIPNIS) en la región amazónica de Bolivia.

18. El Relator Especial quisiera agradecer al Gobierno de Bolivia por sus respuestas a las comunicaciones enviadas. En su respuesta del 27 de octubre de 2011, el Gobierno informó que a raíz de las protestas emitió una ley que declaraba la intangibilidad de la reserva del TIPNIS y la prohibía de la construcción de cualquier carretera en esa reserva. En su respuesta del 15 de mayo de 2012, el Gobierno notó que un sector de indígenas en el TIPNIS a favor de la carretera reclamaba no ser consultado sobre la prohibición de la carretera. Por consiguiente, el Gobierno promulgó una nueva legislación en febrero de 2012 que convocaba un proceso de consulta para que los pueblos indígenas que habitan el TIPNIS decidieran sobre el carácter de intangibilidad de la reserva y la construcción de la carretera. Ambas respuestas del Gobierno también informan de los avances que se han dado en las investigaciones sobre los supuestos abusos policiales durante las manifestaciones de septiembre de 2011.

19. El Relator Especial toma nota de la información proporcionada por el Gobierno, y a la vez expresa su preocupación sobre la información que ha recibido posteriormente señalando la conflictividad social que continúa en torno al proceso de consulta que el Gobierno está desarrollando en el TIPNIS. Recuerda lo dispuesto en una reciente sentencia de julio de 2012 del Tribunal Constitucional Plurinacional, que señala el deber del Gobierno de asegurar que el proceso de consulta sea realizado mediante procedimientos consensuados con todos los pueblos indígenas en el TIPNIS. El Relator Especial espera continuar el diálogo constructivo con el Gobierno de Bolivia con respecto a la situación del TIPNIS y podría en un futuro emitir observaciones adicionales al respecto.

4. Brazil

Case no. BRA 7/2011: Alleged killing of Nisio Gomes in the state of Mato Grosso do Sul

- Urgent appeal: UA 30/11/2011
- State reply: 30/12/2011
- Observations

20. In his communication to the Government of Brazil of 30 November 2011, the Special Rapporteur urgently called the attention of the Government to the alleged kidnapping and murder of Nisio Gomes, a leader of the Guarani community of Guayviri. According to the information received and transmitted to the Government, a group of masked gunmen, suspected to have been hired by local non-indigenous farmers, entered the Guayviri community and shot Mr. Gomes and removed his body. The Special Rapporteur would like to thank the Government of Brazil for its response to the communication in which it detailed the results of the investigations surrounding the alleged disappearance and death of Mr. Gomes. The Government also informed of measures it has taken to provide security and policing services to address the conflicts surrounding general land situation of the Guarani-Kaiowa people in Mato Grosso do Sul.

21. The situation of the Guaraní people in Mato Grosso do Sul has been a subject of ongoing concern of the Special Rapporteur since the beginning of his mandate. During the Special Rapporteur's mission to Brazil in 2009, he visited the region of Mato Grosso do Sul and, in his report following that visit, made observations and recommendations on the situation (A/HRC/12/34/Add.2, paras. 32, 47-54). The Special Rapporteur continues to receive troubling information about ongoing acts of violence against indigenous communities and individuals in the state of Mato Grosso do Sul, which relate to efforts by the indigenous peoples in the state to recover lands from which they were dispossessed when those lands were titled to the non-indigenous farmers decades ago. The Special Rapporteur reiterates his earlier calls upon the Government to take decided measures to resolve the conflicts, in accordance with relevant international standards relating to the rights of indigenous peoples to their traditional lands and the legitimate property rights of all concerned, and to protect the physical integrity and safety of indigenous communities and individuals.

5. Canada

Case no. Can 1/2011: The situation of violence against Aboriginal women

- Allegation letter: AL 06/10/2011
- State reply: 25/11/2011

Observations

22. In his communication of 6 October 2011, the Special Rapporteur brought to the urgent attention of the Government of Canada information about an alarming pattern of violence afflicting indigenous women throughout Canada and allegations of an inadequate response by the Government and police authorities to the situation. In addition, it was alleged that the Native Women's Association of Canada, the principal national Aboriginal women's organization in the country, was excluded from participating effectively in an official fact-finding inquiry because of a lack of funding.

23. The Special Rapporteur would like to thank the Government of Canada for its response of 25 November 2011. In its response, the Government informed of the creation of provincial taskforces to investigate cases of missing and murdered women that include collaborative efforts with Aboriginal peoples. It informed of its investment of CAN\$10 million in a series of initiatives to improve its response to these cases. With respect to the British Columbia Missing Women Commission of Inquiry, the Government stated that the British Columbia Attorney General seldom provides organizations with funding to obtain counsel in non-adversarial proceedings.

24. The Special Rapporteur takes note of the attention and resources that provincial and federal authorities have directed at the issue of missing and murdered Aboriginal women,

and he urges further such efforts, including efforts to address the root causes of violence against indigenous women in Canada. The various initiatives to address this situation should be carried out with the participation and input of Aboriginal peoples and women in order to ensure that they respond to their needs and concerns.

6. Canada

Case no. CAN 3/201: The situation the Attawapiskat First Nation

- Urgent appeal: UA 19/12/2011
- State reply: 14/02/2012
- Follow-up letter by Special Rapporteur with observations and additional questions: 10/05/2012

Observations

25. The Special Rapporteur's communication of 19 December 2011 brought to the urgent attention of the Government of Canada the dire housing situation of the Attawapiskat First Nation, which allegedly exemplified the generally poor living conditions of First Nations communities in Canada. The Special Rapporteur would like to thank the Government of Canada for its detailed response of 14 February 2012.

26. In his follow-up communication of 10 May 2012, the Special Rapporteur noted the steps taken by Canada to address the social and economic conditions of the Attawapiskat First Nation and other First Nations. He also noted as a positive development that the Government had removed the third party manager that it had put in place to administer housing funds for Attawapiskat, a development that was reportedly due to improvements in the health and safety situation of the Attawapiskat First Nation. The Special Rapporteur pointed out the need for further consultations between the Government and the Attawapiskat to develop medium and long-term solutions to the housing and other social and economic conditions of that First Nation, and emphasized that any such measures should be designed to enhance the First Nation's self-determination and decision-making authority. Finally, the Special Rapporteur addressed related issues that generally concern the social and economic conditions of First Nations in Canada.

27. In his letter of 10 May 2012, the Special Rapporteur asked a series of follow up questions regarding the formula for providing funding to First Nations in the country, in light of the information provided in the Government's letter of 14 February 2012. The Special Rapporteur looks forward to receiving Canada's response to the questions contained in this last communication.

7. Chile

Caso no. CHL 1/2011: La situación de personas mapuches imputados bajo la ley antiterrorista

- Carta de alegación conjunta: JAL 26/10/2011
- Respuesta del Estado: 20/12/2011

Observaciones

28. En su comunicación conjunta de 26 de octubre del 2011, el Relator Especial sobre los derechos de los pueblos indígenas, el Relator Especial sobre la promoción y la

protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo, y el Relator Especial sobre la tortura y otros tratos crueles, inhumanos o degradantes llevaron a la atención del Gobierno de Chile las alegaciones sobre violaciones de los derechos humanos de cuatro individuos mapuches quienes habían sido imputados bajo la ley antiterrorista de Chile. El tema de la aplicación de la ley antiterrorista para imputar a personas mapuche en el contexto de actividades en que se plantean demandas sociales es un tema que el Relator Especial había llamado a la atención del Gobierno de Chile mediante comunicaciones previas (A/HRC/15/37/Add.1 y A/HRC/18/35/Add.1), así como en su informe sobre la situación de los pueblos indígenas en Chile de septiembre de 2009 (A/HRC/12/34/Add.6).

29. El Relator Especial quisiera agradecer al Gobierno de Chile por su respuesta de 20 de diciembre de 2011, en que el Gobierno da una explicación de los antecedentes de la detención, y del procesamiento y eventual sentencia de los cuatro miembros del pueblo mapuche mencionados. Se señala que los imputados mapuches fueron absueltos por delitos calificados como terroristas, aunque fueron condenados por delitos ordinarios.

30. El Relator Especial expresa nuevamente su preocupación sobre la imputación de personas mapuches bajo la ley antiterrorista, a pesar de que eventualmente en casos específicos esa imputación pueda ser desechada. Considera que, en el caso de una imputación bajo la ley antiterrorista, es demasiado alto el riesgo que las restricciones procesales permitidas por esta ley impidan el pleno goce del derecho del debido proceso, aun cuando el imputado pueda eventualmente ser condenado por un delito no calificado como terrorista. Además, el Relator Especial considera que la imputación de personas mapuches por actos realizados en el marco de la realización de protestas o actividades en que se presentan demandas sociales fomenta un ambiente de conflictividad y de falta de confianza en el sistema penal. Por lo tanto el Relator Especial reitera sus observaciones y recomendaciones al respecto en su comunicación de 26 de octubre de 2011 y en comunicaciones anteriores.

8. China

Case no. CHN 4/2011: Situation of the human rights effects of the Gibe III hydroelectric dam in Ethiopia

- Allegation letter: AL 18/02/2011
- State reply: 15/07/2011
- Follow-up letter with observations: AL 24/11/2011

Observations

31. In his communication of 18 February 2011, Special Rapporteur communicated to the Government of China his concerns about the construction of the Gibe III dam. Specifically, he noted allegations that, if constructed according to current plans and without proper mitigation, the Gibe III dam could result in serious food insecurity and health concerns for affected communities, as well as potentially cause conflict among indigenous communities as they compete for dwindling resources. The Special Rapporteur directed this communication to the Government of China because of the alleged involvement of financial institutions of the People's Republic of China in the project. The Government of China responded by a letter of 12 July 2011, in which it clarified the involvement of Chinese banks in the project and provided an overall favorable assessment of the project, contrary to information received by the Special Rapporteur from sources that predict catastrophic consequences on the environment and local communities from the dam.

32. Subsequently the Special Rapporteur, by a letter of 24 November 2011, communicated to the Government of China relevant parts of the observations and recommendations he had made to the Government of Ethiopia about this case (A/HRC/18/35/Add.1). The Special Rapporteur reiterates here those observations and recommendations, along with his hope that the People's Republic of China will, within the scope of its responsibility and influence over the Gibe III project, continue to evaluate the project and take measures to ensure its compliance with relevant international human rights standards, including those related specifically to indigenous peoples.

9. Costa Rica

Case no. CRI 1/2011: Seguimiento al diálogo sobre la situación del pueblo Térraba y otros pueblos indígenas afectados por la posible construcción del proyecto hidroeléctrico El Diquís

- Carta de seguimiento: AL 22/11/2011
- Respuesta del Estado: 10/01/2012

Observaciones

33. En su carta del 22 de noviembre de 2011, el Relator Especial dio seguimiento a las recomendaciones expuestas en su informe sobre la situación de los pueblos indígenas que serían afectados por la posible construcción del proyecto hidroeléctrico el Diquís (A/HRC/18/35/Add.8). La carta expresaba preocupación sobre la actuación del Instituto Costarricense de Electricidad (ICE), la empresa estatal a cargo del proyecto El Diquís, en torno a sus contactos con personas y representantes indígenas en relación al proyecto. Además expresaba preocupación por la sentencia de la Sala Constitucional de la Corte Suprema de Justicia (Sala IV) del 23 de septiembre de 2011, que establecía un “plazo improrrogable de 6 meses” para un procedimiento de consulta con los pueblos indígenas afectados por el proyecto El Diquís.

34. En su respuesta de 10 de enero de 2011, el Gobierno informó que recibía con satisfacción la noticia que representantes del pueblo indígena Térraba estaban dispuestos a participar en un proceso de consulta con el apoyo de un equipo de facilitadores. Informó que el ICE había reunido con organizaciones indígenas de los pueblos indígenas China Kichá, Boruca y Curré. El Gobierno explicó que en el caso de algunas comunidades indígenas, las respectivas Asociaciones de Desarrollo Integral han fungido como las organizaciones representativas por lo que el ICE ha dialogado con estas entidades si así lo solicitaban. También se informó sobre el supuesto apoyo del ICE al proceso de consulta y conformación del equipo de facilitadores.

35. Luego de este intercambio de comunicaciones, el Relator Especial realizó una visita de seguimiento a Costa Rica en marzo de 2012. Durante su visita, el Relator Especial participó en un primer encuentro entre los representantes de las comunidades indígenas afectadas por el proyecto y del Gobierno donde se intercambiaron ideas respecto al procedimiento del proceso de consulta que se llevaría a cabo. En un comunicado de prensa emitido el 28 de marzo de 2012, el Relator Especial reconoció este encuentro como un paso importante para abrir un espacio a un eventual diálogo, reconociendo como positiva la disposición del Gobierno de realizar un proceso de consulta de acuerdo con la normativa internacional de derechos humanos y las recomendaciones expuestas en su informe de 2011 sobre esta situación. Asimismo, enfatizó que el proceso de consulta debe constituir un “diálogo verdadero que no parta de decisiones predeterminadas, sino que sea una oportunidad para los pueblos indígenas de expresarse libremente sobre el proyecto y considerar todas las opciones de avanzar o no con la represa de Diquís.”

36. El Relator Especial enfatiza la necesidad de construir procesos de consulta con los pueblos que sean adecuados y conformes a las normas internacionales relevantes, en relación a proyectos de desarrollo – tales como el proyecto hidroeléctrico El Diquís y otros proyectos para el aprovechamiento de recursos naturales – que les puedan afectar. El proceso de consulta que se pretende construir para el proyecto El Diquís puede llegar a ser una buena práctica, pero requiere de varios aspectos de fortalecimiento de capacidades tanto de la parte indígena como de la parte del Gobierno. Además es necesario la cooperación y apoyo de la comunidad internacional, en particular el sistema de Naciones Unidas.

10. Costa Rica

Case no. CRI 1/2012: La situación de supuestas agresiones cometidas contra miembros de la comunidad indígena Térraba quienes exigían derechos a la educación

- Llamamiento urgente: UA 29/02/2012
- Respuesta del Estado: ninguna

Observaciones

37. En su carta del 29 de febrero 2012, el Relator Especial presentó a la atención del Gobierno de Costa Rica información recibida sobre supuestas agresiones cometidas contra miembros de la comunidad indígena Térraba quienes ocupaban el liceo de su comunidad para exigir el nombramiento de docentes y personal administrativo indígena, con el fin de asegurar que la educación en la comunidad fuera culturalmente apropiada.

38. El Relator Especial notó que, después de estos eventos, el Gobierno de Costa Rica habría tomado unos pasos para atender a las demandas de las personas Térraba quienes ocupaban el liceo. Según la información, el Ministerio de Educación Público acordó con la comunidad Térraba que el liceo será administrado por una persona indígena y que se empezarán gestiones para la construcción de un nuevo liceo. Además se acordó que se los profesores que trabajen en el liceo serán indígenas y que la comunidad entregaría opciones de candidatos para estos puestos. Por otra parte, los miembros de la comunidad Térraba que ocupaban el liceo acordaron salir de las instalaciones de la escuela para que los estudiantes pudieran regresar a sus clases.

39. El Relator Especial toma nota que no consta en los expedientes de la Oficina del Alto Comisionado para los Derechos Humanos una respuesta a su comunicación de 29 de febrero de 2012. El Relator Especial quisiera animar al Gobierno de Costa Rica a que proporcione información actualizada sobre la implementación de los acuerdos entre el Ministerio de Educación Público y la comunidad Térraba y el estado de la situación educativa en la comunidad.

11. Ethiopia

Case no. ETH 1/2011. Situation of the human rights effects of Gibe III hydroelectric dam

- Allegation letter: AL 18/02/2011
- Follow-up letter with observations: AL 13/07/2011
- State reply: 24/08/2011

Observations

40. In his communication of 18 February 2011, Special Rapporteur relayed to the Government of Ethiopia his concerns about the construction of the Gibe III dam. The letter followed up on a previous communication sent by the Special Rapporteur on the issue of 10 June 2009 (A/HRC/12/34/Add.1, paras. 113-122). Specifically, the Special Rapporteur expressed concern that, if constructed according to current plans and without proper mitigation, the Gibe III dam could result in serious food insecurity and health concerns for affected communities, as well as potentially cause conflict among indigenous communities as they compete for dwindling resources.

41. Subsequently, the Special Rapporteur issued observations on the situations with corresponding recommendations. In that follow-up letter, the Special Rapporteur noted that, although he had not received a response from Ethiopia to the letters sent, many of the concerns that he had raised in those letters had been directly addressed by the Government in various public documents issued over past months. On the basis of this information, the Special Rapporteur issued observations in relation to (1) the effect of the Gibe III dam on the traditional flooding cycles of the Omo River, and consequently on the livelihoods of the indigenous peoples who depend on that river; (2) the effect of the Gibe III project on Lake Turkana indigenous groups that depend on that lake in Kenya; and (3) the adequacy of consultations carried out with affected indigenous peoples.

42. The Government of Ethiopia responded to the observations of the Special Rapporteur in its letter of 24 August 2011. In its response, the Government outlined the benefits of the Gibe III dam, both for the generation of electricity for the country and on the ecosystem of the region, in particular with respect to hydro resources. The Government also listed the consultations that have taken place with affected communities and the mitigation measures it plans to. The Government stated generally that “[m]ost of the issues raised regarding the Gibe III Hydroelectric Project seem to originate from misunderstandings of the facts and are not supported by any kind of independent studies. The feasibility studies conducted for the Gibe III Hydroelectric Project have proved that the Project most attractive in technical, economic, social and environmental aspects.”

43. The Special Rapporteur would like to thank the Government of Ethiopia for its detailed response to his communications of 18 February 2011 and of 12 July 2011 regarding the Gibe III dam. As the Special Rapporteur expressed in his observations of 12 July 2011, he cannot help but notice the significantly divergent points of view regarding the Gibe III project. On the one hand, the Government hails the benefits of the project in almost all aspects and, on the other hand, representatives of indigenous groups and civil society predict catastrophic social and environmental consequences if the dam is constructed. The Special Rapporteur would like to reiterate the observations and recommendations issued in his communication of 12 July 2011 and encourage Ethiopia to continue to evaluate the Gibe III project and ensure its compliance with relevant international human rights standards, including those related specifically to indigenous peoples.

12. Ethiopia

Case no. ETH 3/2012. The situation of alleged incidents of violence against members of the Anywa community and involuntary displacement of indigenous communities in the Gambella region

- Joint urgent appeal: JUA 22/05/2012
- State reply: None to date

Observations

44. In the urgent appeal, the Special Rapporteur brought to the attention of the Government information regarding a series of violent incidents in the Gambella region triggered by the forced displacement of the minority/indigenous people of the region from their traditional territories in order to make way for agro business enterprises supported by the Government.

45. The letter was sent jointly with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Independent Expert on minority issues; and the Special Rapporteur on extrajudicial, summary or arbitrary executions. The communication it followed-up on a letter previously sent jointly with the Independent Expert on minority issues on 13 May 2011 (A/HRC/18/51) regarding the Anywa community and other ethno-linguistic communities in the Gambella region and their alleged involuntary displacement from their land, to which no reply had been received from the Government.

46. The Special Rapporteur regrets that there is no response to the joint communications sent on 22 May 2012 in the files of the Office of the High Commissioner for Human Rights. The Special Rapporteur will continue to monitor this situation may issue observations in the future.

13. Finland

Case no. FIN 1/2011. Alleged imminent slaughter of reindeer in the Nellim Area

- Urgent appeal: UA 28/09/2011
- State reply: 28/10/2011

Observations

47. In his urgent appeal of 28 September 2011, the Special Rapporteur raised concerns regarding the imminent slaughter of reindeer belonging to a cooperative of Sami reindeer herders. The slaughter was reportedly planned in order to regulate the number of reindeer that can be in a certain area, given limited land available for grazing. However, it was reported that the decision to slaughter Sami reindeer did not take into consideration the fact that Sami reindeer herders must keep larger herds because their nomadic practices tend to result in the loss of more reindeer to predators and other factors than the fenced-in reindeer herding methods of non-Sami reindeer owners. In his letter, the Special Rapporteur urged the Government take steps to prevent the imminent slaughter of reindeer owned by Sami reindeer herders, at least until such time as the rights of Sami reindeer herders can be clarified in accordance with relevant international standards.

48. In its response of 28 October 2011, the Government informed the Special Rapporteur that the United Nations Human Rights Committee had been in contact with Finland and had requested that the planned reindeer slaughter be halted until the Committee had the opportunity to review the merits of case. The Government noted that it had agreed to comply with this interim measure. The Special Rapporteur thanks the Government of Finland for its timely response and takes note of this positive step. The Special Rapporteur will continue to monitor this situation in light of the Human Rights Committee's review of this case and in coordination with that body. The Special Rapporteur notes, however, that the underlying issues that gave rise to this situation have yet to be addressed. In this connection, he would like to reiterate the recommendation made in his report on the situation of Sami people in the Sápmi region of Norway, Sweden, and Finland

(A/HRC/15/37.Add.2) that Finland “ensure special protections for Sami reindeer husbandry, given the centrality of this means of livelihood to the culture and heritage of the Sami people” (para. 84).

14. Finland

Case no. FIN 1/2012: The situation of the alleged diminishment of Sami self-determination resulting from a decision by the Finland Supreme Administrative Court

- Allegation letter: AL 24/05/2012
- State reply: 09/07/2012

Observations

49. The letter of the Special Rapporteur of 24 May 2012 brought to the attention of the Government information concerning a decision by the Finland Supreme Administrative Court that allegedly diminishes Sami self-determination. According to that information, in order to register on the Sami electoral roll to elect representatives of the Sami Parliament, the Parliament has traditionally required that potential registrants meet both a self-identification and a language requirement. On the basis of these criteria, the Sami Parliament of Finland did not admit four individuals onto its electoral register. However, in September 2011, the Finland Supreme Administrative Court reversed the decision of the Sami Parliament and decided that self-identification by any person with any ancestor registered as “Lapp” dating back to as far as 1763 should be a sufficient criterion for registration. However, concern was expressed that elimination of the language requirement will result in an influx of registrants and the diluting of Sami decision-making power within the Sami Parliament.

50. In its response of 9 July 2012, the Government of Finland affirmed the allegations made in the Special Rapporteur’s letter. The Government reviewed constitutional provisions and legislation relevant to issue, and reviewed in detail the decision of the Supreme Administrative Court. While the Government did not dispute the facts outlined in the Special Rapporteur’s 25 May 2012 letter, it indicated that the Supreme Administrative Court’s decision to allow for registration to the Sami Parliament electoral roll on the basis of self-identification is consistent with relevant international standards, including those of the International Convention on the Elimination of all Forms of Racial Discrimination. The Government concluded by noting that “the Supreme Administrative Court has thoroughly examined the case and taken comprehensive account of different aspects related to the assessment of the matter. The criterion concerning the knowledge of the Sami language has been duly taken into account.”

51. The Special Rapporteur thanks the Government of Finland for its response of 9 July 2012 and for its openness to engage in a constructive dialogue on this issue. Despite the Government’s response, the Special Rapporteur continues to be troubled by the concern expressed by Sami representatives that the elimination of the language requirement will result in a massive influx of registrants to the Sami electoral roll and in a significant dilution of Sami decision making authority within their own representative body. The Special Rapporteur urges the Government to take the measures necessary to comply with relevant provisions of the United Nations Declaration on the Rights of Indigenous peoples. Article 33.1 of the Declaration states that “Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions,” and article 33.2 emphasizes that “Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.”

15. France

Case no. FRA 4/2011. Lettre concernant le refus de la France de permettre aux populations autochtones de la République de Vanuatu d'accéder aux îles d'Umaenupne et d'Umaenea, sous souveraineté française

- Allegation letter: AL 29/11/2011
- State reply: 30/01/2012

Observations

52. In his letter of 29 November 2011, the Special Rapporteur brought to the attention of the Government of France information received regarding the alleged denial of France to allow the indigenous peoples of Vanuatu to access the islands of Umaenupne and Umaenea (also known as Matthew and Hunter Islands), which are sites of religious and cultural significance to them, for the purposes of carrying out ceremonies. France controls access to those islands by virtue of its sovereignty over New Caledonia.

53. In its response of 30 January 2012 France affirmed that Matthew and Hunter Islands are under French sovereignty and control. The Government added that access to those islands is dangerous due to rough waters and that the Government is unaware of religious or cultural practices affiliated with the islands. However, the Government said it remains open to hearing more about these practices and to engaging in a dialogue with Vanuatu authorities in this connection. The Government concluded by saying that it supports the Declaration of the Rights of Indigenous Peoples and that it is open to provide the Special Rapporteur with any further information necessary.

54. The Special Rapporteur would like to thank the Government of France for the response provided to his 29 November 2011 communication. The Special Rapporteur has been invited by the Government of Vanuatu to carry out a visit to the country to examine this issue. He is considering this request and, in any case, will continue to monitor the situation with a view towards developing more detailed observations in the future.

16. Guatemala

Case no. GTM 16/2011. Situación de las comunidades indígenas presuntamente afectadas por la propuesta construcción de una planta cementera en San Juan Sacatepéquez

- Llamamiento urgente: UA 14/10/2011
- Respuesta del Estado: 12/01/2012
- Carta de seguimiento al primer llamamiento urgente: 04/06/2012
- Respuesta del Estado: 07/08/2012

Observaciones

55. En su comunicación del 14 de octubre de 2011, el Relator Especial solicitó al Gobierno de Guatemala información actualizada sobre la situación de las comunidades indígenas afectadas por el proyecto de construcción de una planta cementera en el municipio de San Juan Sacatepéquez. La carta daba seguimiento al intercambio entre el Gobierno y el Relator Especial iniciado durante su visita a Guatemala en junio de 2010 en el que recibió información sobre una situación de gran conflictividad social a raíz del permiso otorgado a la empresa Cementos Progreso en 2007 para instalar una fábrica de

cemento en la municipalidad de San Juan Sacatepéquez. Representantes de las comunidades indígenas de ese municipio habían alegado la falta de consulta previa con respecto a la aprobación de este proyecto y asimismo exigían el reconocimiento de una consulta comunitaria realizada en el municipio en que la mayoría de la población participante votó en contra del proyecto.

56. El Relator Especial agradece al Gobierno de Guatemala por su respuesta del 12 de enero de 2012, en que se señaló el hecho de que no se había iniciado la construcción de la planta de cemento ni de cualquier infraestructura relacionada. Asimismo, el Gobierno informó sobre los varios esfuerzos a lo largo de cuatro años para sostener un diálogo con representantes de las comunidades indígenas afectadas. El Relator Especial también agradece a la empresa Cementos Progreso por la información detallada proporcionada a solicitud del Relator Especial.

57. En su comunicación al Gobierno del 4 de junio de 2012, el Relator elaboró una serie de observaciones y recomendaciones extensas en relación con la situación en San Juan Sacatepéquez, particularmente en relación con la necesidad de investigar casos de supuesta detención y enjuiciamiento arbitrario de individuos indígenas que se oponían al proyecto, así como en la forma que el Gobierno debe proceder con el cumplimiento de su deber de consultar a los pueblos indígenas afectados en vista de los resultados de la consulta popular auto convocada por tales pueblos y su negativa de dialogar con el Gobierno y la empresa. En este sentido, el Relator Especial consideró que tal deber de consulta había sido agotado y por tanto el Gobierno debía tomar una decisión con respecto al proyecto, fundamentada y enmarcada en los estándares internacionales de derechos humanos de los pueblos indígenas, y considerando la legitimidad o “licencia social” con la que cuente o no el proyecto entre una parte significativa de la población de las comunidades indígenas en ese municipio.

58. En su respuesta del 7 de agosto de 2012, el Gobierno de Guatemala manifestó que no consideraba como agotado el proceso de diálogo y consulta que ha promovido con representantes indígenas de San Juan Sacatepéquez por varios años, y que por tanto continuaría con este proceso conforme a la normativa nacional e internacional. También afirmó el Gobierno que no podría darse la suspensión, modificación o revocación de las licencias relacionadas con el proyecto cementero sin las garantías de debido proceso. El Relator Especial toma nota de las investigaciones de los asesinatos y otros hechos de violencia ocurridos en el municipio, y la afirmación del Gobierno que éstos en su mayoría no derivan del proyecto cementero sino de los altos índices de delincuencia en el municipio. También toma nota de lo afirmado por el Gobierno de que los estudios de impacto ambiental relacionados con el proyecto se han ajustado a los requerimientos legales nacionales y que no se han constatado impactos ambientales a causa de los trabajos iniciales de preparación del terreno en el sitio del proyecto.

59. El Relator Especial quisiera agradecer al Gobierno de Guatemala por su última respuesta, la cual tomará en consideración a fin de presentar algunas observaciones y recomendaciones adicionales. Por tanto, el Relator Especial continuará monitoreando la situación de San Juan Sacatepéquez.

17. Indonesia

Case no. IDN 7/2011. The situation of indigenous communities allegedly affected by the Meruake Integrated Food and Energy Estate project

- Joint allegation letter: JAL 01/02/2012
- Joint public statement: 23 May 2012
- State reply: None to date

Observations

60. In this joint communication, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the right to food brought to the attention of the Government of Indonesia allegations regarding the impact that the “Meruake Integrated Food and Energy and Estate project” is having, and may continue to have, on the human rights of local indigenous communities. This project involves land concessions for the production of food crops, palm oil, timber products and agro-fuels, primarily for export. In particular, it has been alleged that this project has led to the loss of vast amounts of land used and inhabited by indigenous peoples for their subsistence and that further concessions threaten to worsen this situation.

61. The Special Rapporteur regrets to have no response from the Government of Indonesia to the joint communication of 1 February 2012. He encourages the Government to provide a response and looks forward to initiating a constructive dialogue about issues concerning indigenous peoples in Indonesia. At the same time, he would like to reiterate the comments made jointly with the Special Rapporteur on the right to food in their public statement of 23 May 2012 regarding agricultural development projects in Southeast Asia that potentially threaten the land rights and food security of local indigenous communities, of which the case of the Meruake Integrated Food and Energy and Estate project is an example. The public statement noted the need for Governments in the Southeast Asian region, including Indonesia, to ensure that their policies on agro-fuel development do not result in violation of the rights of indigenous peoples to their lands and natural resources and that indigenous peoples be adequately be consulted about agro-fuel projects on their traditional lands.

18. Panama**Case no. PAN 1/2011 y PAN2/2012. Supuesta protesta por parte de pueblos indígenas Ngäbe-Bugle en contra de explotación minera**

- Llamamiento urgente: UA 15/02/2011
- Declaración a los medios: 15 February 2011
- Respuesta del Estado: 12/04/2011
- Carta de seguimiento al llamamiento urgente: UA 06/02/2012
- Declaración a los medios: 7 February 2012

Observaciones

62. La comunicación enviada por el Relator Especial el 6 de febrero de 2012 llamó la atención del Gobierno de Panamá sobre las protestas de indígenas Ngäbe-Buglé debido, principalmente, al supuesto incumplimiento por el Gobierno de su compromiso de incluir un artículo en la ley de reforma el Código de Recursos Minerales que no hubiera permitido concesiones mineras e hidroeléctricas en la Comarca Ngäbe-Buglé. El 7 de febrero de 2012, el Relator Especial emitió un comunicado de prensa llamando al diálogo entre el Gobierno y los pueblos indígenas referidos. Estas comunicaciones dieron seguimiento al intercambio de información previo entre el Gobierno de Panamá y el Relator Especial en relación con la situación de protestas durante el mes de febrero de 2011 por pueblos indígenas en el contexto de reformas al Código de Recursos Minerales.

63. El Relator Especial no recibió una respuesta del Gobierno a su comunicación del 6 de febrero de 2012. No obstante, ha continuado recibiendo información sobre las negociaciones posteriores entre el Gobierno y representantes del pueblo Ngäbe-Buglé con

respecto al tema de las concesiones mineras e hidroeléctricas en el territorio de ese pueblo indígena. Según esta información, el 7 de febrero de 2012, representantes del Gobierno y del pueblo Ngäbe-Buglé firmaron el acuerdo de San Lorenzo, que puso fin a las protestas y en el cual las partes acordaron empezar un proceso de diálogo sobre el tema de las concesiones mineras e hidroeléctricas. Posteriormente, en marzo de 2012, las partes lograron llegar a un acuerdo en relación con la cancelación de concesiones mineras de la Comarca Ngäbe Buglé, las condiciones que deberán cumplirse en el caso de futuras solicitudes para concesiones hidroeléctricas dentro de la comarca, y los beneficios que serían otorgados al pueblo Ngäbe-Buglé en el caso de futuros proyectos hidroeléctricos. No obstante, han continuado existiendo desacuerdos entre el Gobierno y el pueblo Ngäbe-Buglé en relación con la cancelación de concesiones hidroeléctricas existentes en las áreas contiguas a la comarca.

64. El Relator Especial continuará monitoreando esta situación. En este sentido, el Relator Especial ha recibido una invitación del Gobierno de Panamá para visitar el país y ha aceptado dicha invitación. El Relator Especial se encuentra actualmente en el proceso de acordar con el Gobierno las fechas para la visita, que probablemente se llevará a cabo en el primer trimestre de 2013.

19. Peru

Caso no. PER 2/2011: La situación relativa a hechos de violencia durante protestas en la ciudad de Juliaca, región de Puno

- Llamamiento urgente: AL 04/07/2011
- Comunicado de prensa: 06/07/2011
- Repuesta del Estado: 21/07/2011, 03/08/2011

Observaciones

65. En su comunicación del 4 de julio de 2011, el Relator Especial llamó la atención del Gobierno de Perú sobre la información recibida en relación con los hechos de violencia que ocurrieron el 24 de junio de 2011 durante protestas en las cuales miembros del pueblo Aymara exigían el cese de actividades mineras y petroleras en la región de Puno. El 6 de julio de 2011, el Relator Especial emitió un comunicado de prensa en el que llamó al Gobierno y los pueblos indígenas a dialogar para resolver los temas relacionados con las concesiones mineras y petroleras en la región del Puno. También instó al Gobierno a que investigue y sancione a las personas responsables de las muertes de los cinco manifestantes durante los sucesos del 24 de junio de 2011.

66. El Relator Especial quisiera agradecer al Gobierno del Perú por sus respuestas detalladas que envió el 27 de julio de 2011 y el 3 de agosto de 2011. Toma nota de los esfuerzos que ha hecho el Gobierno en negociar y concertar con los representantes indígenas de la región del Puno sobre los temas planteados en sus manifestaciones y, en particular, los acuerdos emitidos por el Gobierno en respuesta a las demandas de los pueblos indígenas por la derogación de ciertas concesiones mineras y por la realización de consultas sobre proyectos extractivos en la región. El Relator Especial también toma nota de la información proporcionada por el Gobierno en cuanto a las investigaciones por el Ministerio Público para esclarecer los hechos e identificar los responsables de los daños a la propiedad, lesiones y muertes que se dieron durante las protestas del 24 de junio de 2011.

67. La conflictividad social generada por la presencia de industrias extractivas en territorios indígenas en la región del Puno y otras regiones del Perú es un tema que ha sido abordado por el Relator Especial en ocasiones anteriores y que seguirá siendo de interés

para él en la realización de su mandato (Véase A/12/34/Add.8). El Relator Especial ha hecho hincapié en la necesidad de la elaboración de un marco normativo legal para la protección efectiva de los derechos de los pueblos indígenas sobre sus territorios, junto con un procedimiento adecuado de consulta para ser aplicado antes del otorgamiento de licencias o concesiones para la explotación de recursos naturales dentro o cerca de territorios indígenas.

68. Al respecto, el Relator Especial toma nota de la aprobación de la “Ley de derecho a la consulta previa a los pueblos indígenas u originarios reconocido en el Convenio 169 de la Organización Internacional del Trabajo” en 2011 y de la reglamentación de dicha ley en 2012. El Relator reitera la necesidad de que la ley de consulta y su reglamento sean aplicadas de conformidad con el conjunto de normas internacionales pertinentes, inclusive aquellas sentadas, no solo en el Convenio 169, sino también en la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas y la jurisprudencia de la Corte Interamericana de Derechos Humanos, entre otras fuentes.

20. Philippines

Case no. PHL 1/2012. The situation of agro-fuel production in the Isabela province and its effects on the rights of indigenous peoples

- Joint allegation letter: JAL 29/02/2012
- Press release: 23/05/2012
- State reply: None to date

Observations

69. In a joint communication, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the right to food brought to the attention of the Government of the Philippines allegations of the impact of several large-scale land acquisitions for agro-fuel production on the Agta indigenous people in the province of Isabela. It was alleged that large-scale land acquisitions for the development of the Isabela Bio-Ethanol and Cogeneration Project have resulted in the displacement of peasant and indigenous farmers without adequate compensation and consequent loss of lands used by these farmers for their subsistence. Allegedly, the project would operate on lands claimed by Agta and other indigenous peoples as ancestral lands but for which they do not have secure legal protection. Concerns were raised about the environmental impacts that the project would bring on surface and ground water resources and impacts due to the increased use of synthetic fertilizers.

70. The Special Rapporteur regrets not having received a response from the Government of the Philippines to the joint communication. He encourages the Government to submit its response as soon as possible. At the same time he would like to reiterate comments he jointly made with the Special Rapporteur on the right to food in their public statement of 23 May 2012 regarding agricultural development projects in Southeast Asia that potentially threaten the land rights and food security of local indigenous communities, of which the case of agro-fuel production in the Isabela region was cited as an example. The public statement noted the need for Governments in the Southeast Asian region, including the Philippines, to ensure that their policies on agro-fuel development do not result in violations of the rights of indigenous peoples to their lands and natural resources and that indigenous peoples be consulted regarding agro-fuel projects in their traditional lands.

21. United States of America

Case no. USA 2/2011. The health situation of Leonard Peltier, an indigenous activist serving consecutive life sentence in prison

- Urgent appeal: UA 07/02/2011
- State reply: 17/11/2011

Observations

71. In this urgent appeal, the Special Rapporteur drew the attention of the United States Government to allegations concerning the poor health and prison living conditions of Leonard Peltier, an indigenous Anishinabe/Lakota activist, who was convicted in 1977 for the murder of two federal law enforcement agents that occurred in the Pine Ridge Indian Reservation. Mr. Peltier's case has generated national and international attention due to alleged irregularities in his arrest, trial and conviction. The Special Rapporteur's urgent appeal letter focused on the allegations that federal prison officials have over the years not provided adequate medical attention to Mr. Peltier, who, now in his late sixties, has suffered from severe health problems. It was also alleged that he lived in substandard conditions in a small cell in the Lewisburg penitentiary in Pennsylvania, with no ventilation and with a deteriorated toilet system. The letter also noted Mr. Peltier's unsuccessful attempts to be transferred to prison facilities closer to his family in North Dakota, which would be consistent with federal prison guidelines that promote the maintenance of family ties by inmates.

72. The Special Rapporteur would like to thank the Government of the United States for its response of 11 November 2011. He takes note of the Government's position that Mr. Peltier was receiving adequate medical care to address his medical conditions and that he was regularly seen by clinicians at the Lewisburg federal penitentiary. The Government also stated that due his high security level status, Mr Peltier was not eligible to be transferred to the prison facilities closer to his family. In addition, the Government's response also stated that Mr. Peltier's classification is reviewed regularly to ensure he is placed in the lowest security level facility for which he qualifies.

73. Subsequent to the Government's response, the Special Rapporteur was informed that Mr. Peltier was transferred to a federal penitentiary in Coleman, Florida. However, concerns have still been expressed regarding his deteriorating health condition as well as his living conditions. In addition, the Special Rapporteur has been aware of ongoing calls for his being transferred to home confinement, as well to be granted executive clemency, particularly in light of his health which has deteriorated in the more than 36 years he has been in prison.

74. The Special Rapporteur would like to urge the Government, through the relevant authorities, to ensure that Leonard Peltier be provided adequate medical attention to attend the health conditions described in his communication of 7 February 2011 and to consider Mr. Peltier's request to be transferred to prison facilities closer to his family in light of his age and health conditions. In addition, the Special Rapporteur reiterates the recommendation stated in his report on the situation of indigenous peoples of the United States that new or renewed consideration be given to clemency to Mr. Peltier, in light of the totality of the circumstances (A/HRC/21/47/Add.1, para. 92).

22. United States of America

Case no. USA 1/2011. The situation of Native Americans in relation to artificial snowmaking from recycled wastewater in the San Francisco Peaks

- Allegation letter: AL 10/01/2011
- Follow-up letter with observations: AL 06/07/2011
- State reply: 17/11/2011

Observations

75. In his communications of 10 January 2011 and 6 July 2011, the Special Rapporteur brought to the attention of the Government of the United States the allegations concerning the proposed use of reclaimed wastewater for commercial ski operations in the San Francisco Peaks in Arizona, a site considered sacred by local indigenous peoples. The approval by the U.S. Forest Service of the use of reclaimed wastewater for snowmaking in this site has been vigorously opposed by several Native American nations and tribes whose members consider that the sacredness of the San Francisco Peaks depends on the purity of the water and plant life in the area which allegedly would be contaminated if wastewater is introduced into the Peaks. The concerned indigenous peoples have sought to challenge the Forest Service's decision through administrative and judicial means, with no success. A decision by the Ninth Circuit Court of Appeals held that the approval of the use of wastewater did not violate the Religious Freedom Restoration Act because the approval action did not constitute a coercive measure intended to make the indigenous claimants act contrary to their religious beliefs.

76. In his follow-up communication of 6 July 2011 (incorporated into A/HRC/18/35/Add.1, Annex X), the Special Rapporteur presented an analysis of the situation on the basis of the relevant international standards. The Special Rapporteur recommended that the Government engage in a comprehensive review of its relevant policies and actions in relation to the San Francisco Peaks and other Native American sacred sites to ensure that, even if they are permitted under domestic law, they are in compliance with international standards, and that it take certain remedial measures.

77. The Special Rapporteur would like to thank the Government of the United States for its response of 17 November 2011. He takes note of the Government's position that, despite the fact that no agreement was reached with the concerned indigenous peoples over the use of reclaimed wastewater on San Francisco Peaks, the Forest Service conducted consultations with them that were adequate and took into account their views. At the same time, the Special Rapporteur takes note of and encourages the ongoing review of United States law, policy and practice on indigenous issues, including the Forest Service's current efforts to revise and improve upon its policy on the protection of Native American sacred sites on federally-owned or controlled lands.

78. In its response, moreover, the Government asserts that its handling of this matter was not inconsistent with the United States international human rights obligations. The Special Rapporteur notes, however, that this position is stated in a summary fashion, without specifically addressing the questions raised by the Special Rapporteur in connection with the United States' obligations under relevant sources of international law, in particular the religious freedom provisions of the International Covenant on Civil and Political Rights. The Government asserts that the Declaration on the Rights of Indigenous Peoples should not be used to interpret international treaties to which it is party because of the Declaration's status as a non-binding instrument adopted subsequent to those treaties. But whether or not the Declaration should be accorded interpretive weight (and the Special Rapporteur maintains that it should), treaties to which the United States is a party obligate

the United States to protect the religious freedom of indigenous peoples, independently of the Declaration. The United States is yet to show how it meets that treaty obligation.

79. On the other hand, while the United States' treaty obligations are not dependent on the Declaration, the Declaration is a complement to those obligations, having been endorsed by the United States. It cannot soundly be disputed that the Declaration is an extension of standards found in various human rights treaties, including treaties that have been ratified and are legally binding on the United States. Such treaties affirm, *inter alia*, principles of non-discrimination, religious freedom and self-determination, principles that also are incorporated in the Declaration and upon which the Declaration elaborates with specific reference to indigenous peoples. Although the Declaration is not necessarily dispositive when interpreting a treaty whose provisions intersect with those of the Declaration, it provides important guidance of significant weight.

80. Without prejudice to the status of the United States' treaty obligations apart from the Declaration, the Special Rapporteur urges the United States to abandon its position that the Declaration should not be used to interpret treaties to which it is a party. The Special Rapporteur considers this position to be at odds with the United States' endorsement of the Declaration as well as jurisprudentially unsound. Inasmuch as the United States embraces the principles of indigenous rights embodied in Declaration, it is hard to see how the Declaration could not be regarded as highly instructive in applying a treaty that is relevant to indigenous peoples. Furthermore, the U.S. position goes against trends in international law and practice by which human rights treaties are interpreted in a dynamic fashion, in light of new understandings and in accordance with the *pro homine* principle, which requires the application of human rights treaties in a way that most favours the protection of human rights.

81. The Special Rapporteur therefore reiterates the recommendations made in his communication of 6 July 2011, including the recommendation that the United States ensure that the decisions and actions of Government agencies are in accordance with, not just domestic law, but also international standards – including those expressed in treaties to which it is a party and the Declaration on Rights of Indigenous Peoples – that protect the right of indigenous peoples to practice and maintain their religious traditions. The Special Rapporteur makes additional observations related to the issue of Native American sacred sites in his report on the situation of indigenous peoples in the United States (A/HRC/21/47/Add.1), which followed his official country visit from 23 April to 4 May 2012.

23. United States of America

Case no. 5/2011: Alleged imminent desecration and destruction of ceremonial and burial site of Sogorea Te, Glen Cove in the city of Vallejo, California

- Joint urgent appeal: UA 10/05/2011
- Follow-up letter with observations: AL 19/09/2011
- State reply: 22/11/2011

Observations

82. In this communication of 10 May 2011, the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on freedom of religion or belief, and the Independent Expert in the field of cultural rights brought to the attention of the Government of the United States the allegations that the plans by the City of Vallejo, California to build a parking lot and public restrooms would destroy the site of Sogorea Te, which has been

continuously used by indigenous peoples in the area to conduct ceremonies integral to their cultural survival. According to the information, members of local indigenous peoples occupied the construction site in protest of the City of Vallejo's plans to bulldoze their sacred site. It was alleged that the City of Vallejo harassed the occupiers and avoided setting a date for any dialogue.

83. In his follow up letter of 19 September 2011, the Special Rapporteur expressed satisfaction over the information he subsequently received regarding a cultural easement and settlement agreement negotiated between the City of Vallejo and the indigenous peoples concerned which would give them legal oversight of all activities in the sacred burial grounds of Sogorea Te/Glen Cove and in which the proposed construction of the parking lot and bathrooms was discarded. In his letter, the Special Rapporteur considered that this agreement represented an important step in the protection of Native American sacred sites and expressed his anticipation that the negotiated easement and agreement will be duly adhered to by the competent authorities.

84. The Special Rapporteur would like to thank the Government of the United States for its subsequent response of 22 November 2011, in which it confirmed the agreement reached between the City of Vallejo and the concerned indigenous peoples.

85. The Special Rapporteur will continue to monitor this situation. He has made additional observations related to the issue of Native American sacred sites in his report on the situation of indigenous peoples in the United States (A/HRC/21/47/Add.1), which followed his official country visit from 23 April to 4 May 2012.
