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**Indigenous Rights & Protected Areas  
Initiative**

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JAMES E. ROGERS COLLEGE OF LAW  
INDIGENOUS PEOPLES LAW AND POLICY PROGRAM  
(IPLP)**

**INDIGENOUS PEOPLES, PROTECTED AREAS AND  
CONSERVATION:**

**RESEARCH AND POLICY GUIDE COMPILED FROM  
REPORTS, DECISIONS, CONCLUDING OBSERVATIONS,  
COMMUNICATIONS AND OTHER RELEVANT  
DOCUMENTS OF THE UNITED NATIONS TREATY BODIES,  
INDEPENDENT EXPERTS, INTER-AMERICAN AND  
AFRICAN HUMAN RIGHTS BODIES ON THE RIGHTS OF  
INDIGENOUS PEOPLES AFFECTED BY PROTECTED  
AREAS AND CONSERVATION MEASURES  
(2010-2022)**

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## INTRODUCTION

Numbering more than 476 million throughout the world<sup>1</sup>, Indigenous Peoples live in fragile environments and diverse eco-systems that are often rich in natural resources and reservoirs of biodiversity. While Indigenous Peoples account for roughly 6 per cent of the world's population, their traditional territories encompass approximately 22 per cent of the world's land surface that holds 80 per cent of the planet's biodiversity.<sup>2</sup> It has been estimated that 50 per cent of protected areas worldwide have been established on lands traditionally occupied and used by Indigenous Peoples and that this proportion is highest in the Americas, where it may exceed 90 per cent in Central America<sup>3</sup>. Wildlife is abundant on Indigenous lands; not because these lands are left untouched, but precisely because Indigenous Peoples have been living on those lands, stewarding and conserving them for centuries out of respect for the Mother Earth.

In December 2022, United Nations (UN) Member States endorsed the ambitious goal of protecting and conserving 30 per cent of the planet's lands and waters by 2030 in the Kunming-Montreal Global Biodiversity Framework at the COP15 (the acronym for the 15th meeting of the Conference of the Parties to the UN Convention on Biological Diversity). Given that nearly 16 per cent of the world's land is currently covered by what are termed "protected areas"<sup>4</sup>, to reach this 30 per cent goal would require a doubling of protected areas under some form of conservation protection. Given the statistics cited above, it is clear where public and private conservation actors will go looking for those lands and waters to be protected; in the places sacred, sustaining and lived upon—that Indigenous Peoples have called their homelands for centuries. The consequences of such a massive global conservation project on Indigenous Peoples will be dramatic and devastating in effect and impact if their basic human rights to lands and natural resources, free and prior informed consent, cultural survival, integrity and identity are not protected, recognised and implemented in the global pursuit of these ambitious COP 15 30x 30 goals.

This Research and Policy Guide is intended to collect in one, easily retrievable research resource guide, the documented history, decisions, concluding observations, recommendations, communications and other relevant materials generated by the United Nations, Inter-American and African Human Rights systems over roughly the past-decade. This period has seen heightened awareness and engagement of the international human rights system focused and reporting on the widespread and systematic violations of Indigenous Peoples human rights affected by "open spaces" initiatives, protected areas and conservation measures. Given this history as recorded and documented by reputable authorities including treaty bodies, commissions, courts, working groups and other independent experts and mechanisms of the international and regional human rights system, there is justifiable and grave concern that Indigenous Peoples will become involuntarily conscripted as the victims of the "fortress conservation"<sup>5</sup> approach that has been utilized in the past and continue to be utilized in establishing and maintaining "protected areas" supported and financed by major international conservation organizations like the World Wildlife Fund (WWF) and World Conservation Society (WCS) and their funders and donors, like the United States Agency for International Development (USAID) and the German Corporation for International Cooperation (GIZ) particularly in Asia, Africa and Latin America.

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<sup>1</sup> Page 13, *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 Towards an inclusive, sustainable and just future* (2019), International Labour Organisation

<sup>2</sup> Claudia Sobrevila, "The role of indigenous peoples in biodiversity conservation: the natural but often forgotten partners" (Washington, D.C., World Bank, 2008).

<sup>3</sup> Stan Stevens, ed., *Indigenous Peoples, National Parks and Protected Areas: A New Paradigm Linking Conservation, Culture and Rights* (Tucson, Arizona, University of Arizona Press, 2014).

<sup>4</sup> As defined by the Convention on Biological Diversity, a "protected area" is "a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives" (art. 2). The International Union for Conservation of Nature (IUCN) defines a protected area as a "clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values".

<sup>5</sup> Sage encyclopedia of Environment and Society defines "Fortress conservation" as "a conservation model based on the belief that biodiversity protection is best achieved by creating protected areas where ecosystems can function in isolation from human disturbance. Fortress, or protectionist, conservation assumes that local people use natural resources in irrational and destructive ways, and as a result cause biodiversity loss and environmental degradation. Protected areas following the fortress model can be characterized by three principles: local people dependent on the natural resource base are excluded; enforcement is implemented by park rangers patrolling the boundaries, using a "fines and fences" approach to ensure compliance; and only tourism, safari hunting, and scientific research are considered as appropriate uses within protected areas. Because local people are labeled as criminals, poachers, and squatters on lands they have occupied for decades or centuries, they tend to be antagonistic toward fortress-style conservation initiatives and less likely to support the conservation goals".: Robbins, P. (Ed.) (2007). *Encyclopedia of environment and society*. (Vols. 1-5). SAGE Publications, Inc., <https://doi.org/10.4135/9781412953924>

## EXECUTIVE SUMMARY

The excerpts collected in this Guide report consistent, detailed and documented allegations of alarming violations of Indigenous Peoples' human rights and livelihoods associated with the establishment and management of protected areas.

Between 2010 and 2022, Special Procedures mandate holders sent more than 40 communications to express concerns about human rights violations of Indigenous Peoples perpetrated in and around protected areas, national parks and other game reserves to the governments of Uganda<sup>6</sup> (Mt. Elgon National Park), Sweden<sup>7</sup> (World Heritage Site Laponia), United Republic of Tanzania<sup>8</sup> (Ngorongoro Conservation Area including the Serengeti National Park, Loliondo Game Controlled Area), Ecuador<sup>9</sup> (Yasuní National Park), Thailand<sup>10</sup> (Kaeng Krachan Forest Complex, Sai Thong National Park), Nepal<sup>11</sup> (Chitwan National Park, Shey Phoksundo National Park), Honduras<sup>12</sup> (National Park Montaña de Botaderos Carlos Escaleras Mejía), China<sup>13</sup> (Hoh Xil nature reserve), Guatemala<sup>14</sup> (Laguna del Tigre and Sierra del Lacandón National Parks in the Maya Biosphere), India<sup>15</sup> (Panna Tiger Reserve, Amrabad tiger reserve), Chile<sup>16</sup> (Rapa Nui National Park), Kenya<sup>17</sup> (Embobut Forest area, Mau Forest Complex), Bolivia<sup>18</sup> (Isiboro Sécure Indigenous Territory and National Park), Botswana<sup>19</sup> (Kalahari Desert upstream, Okavango Delta, Central Kalahari Game Reserve), Namibia<sup>20</sup> (Kalahari Desert upstream and Okavango Delta), Canada<sup>21</sup> (Kalahari Desert upstream, Okavango Delta in Namibia and Botswana). Communications were also sent to the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNESCO World Heritage Centre<sup>22</sup> (Ngorongoro Conservation Area, Kaeng Krachan Forest Complex, Pimachiowin Aki site), the International Council on Monuments and Sites (ICOMOS)<sup>23</sup> (Ngorongoro Conservation Area), to the International Union for Conservation of Nature<sup>24</sup> (IUCN) (Ngorongoro Conservation Area, the Kaeng Krachan Forest Complex) and to some business actors including EMCO Holding, Empresa Minera Inversiones Los Pinares, National Petroleum Corporation of Namibia, ReconAfrica, undertaking or planning to undertake extractive activities within or around protected areas occupied by Indigenous Peoples.

During the same period, Special Procedures undertook country visits, observed and underlined conservation related human rights violations of Indigenous Peoples perpetrated in Costa Rica<sup>25</sup> (violations of the Bribri and Cabecar peoples in the Talamanca area and in the territories of Maleku and Boruca), Congo<sup>26</sup> (Nouabalé-Ndoki National Park), Ecuador<sup>27</sup> (Tagaeri Taromenane Protected Zone /Yasuní Biosphere), Mexico<sup>28</sup> (Cucapá people in Baja California), Guatemala<sup>29</sup> (Laguna Lachúa National Park, violations of the Q'eqchi' and Poqomchi' by a REDD + project), Honduras<sup>30</sup> (Punta Izopo National Park, Cuero y Salado National Park, La Moskitia, Río Plátano Biosphere Reserve, Tawahka Asangni Biosphere Reserve), Paraguay<sup>31</sup> (San Rafael National Park), Namibia<sup>32</sup> (Etosha National Park, Bwabwata National Park, Nyae Nyae, Nǃa Jaqna conservancy areas), Argentina<sup>33</sup>

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<sup>6</sup> UGA 5/2022,

<sup>7</sup> SWE 2/2022,

<sup>8</sup> TZA 3/2021, TZA 2/2019, TZA 1/2016, TZA 1/2014, TZA 3/2013, TZA 2/2013

<sup>9</sup> [ECU 7/2016](#)

<sup>10</sup> TH 4/2021, THA 2/2019

<sup>11</sup> NPL 3/2020, NPL 1/2014

<sup>12</sup> HND 5/251

<sup>13</sup> CHN 16/2018,

<sup>14</sup> GTM 5/2017

<sup>15</sup> IND 9/2017

<sup>16</sup> CHL 1/2016

<sup>17</sup> KEN 1/2014

<sup>18</sup> BOL 1/2012

<sup>19</sup> BWA1/2013, [BWA 3/2021](#)

<sup>20</sup> NAM 2/2021

<sup>21</sup> CAN 7/2021

<sup>22</sup> OTH 8/2019, OTH 262/2021, JAL 23/2020, OTH 10/2013,

<sup>23</sup> AL OTH 264/2021

<sup>24</sup> OTH 263/2021, OTH 22/2020, OTH 7/2019

<sup>25</sup> A/HRC/51/28/Add.1, A/HRC/25/53/Add.1

<sup>26</sup> A/HRC/45/34/Add.1

<sup>27</sup> A/HRC/42/37/Add.1

<sup>28</sup> A/HRC/39/17/Add.2,

<sup>29</sup> A/HRC/39/17/Add.3,

<sup>30</sup> A/HRC/33/42/Add.2,

<sup>31</sup> A/HRC/30/41/Add.1

<sup>32</sup> A/HRC/24/41/Add.1,

<sup>33</sup> A /HRC/21/47/Add.2,



(Quebrada de Humahuaca), Kenya<sup>34</sup> (Mau Forest Complex), New Zealand<sup>35</sup> (Te Urewera National Park), Russian Federation<sup>36</sup> (Khabarovsk Kra area), Botswana<sup>37</sup> (Central Kalahari Game Reserve, Okavango Delta World Heritage Site, Chobe National Park), Mongolia<sup>38</sup> (Tengis Shishghed Protected Area), Uruguay<sup>39</sup> (Quebrada de los Cuervos Protected Area), Cameroon<sup>40</sup> (Takamanda National Park) and Rwanda<sup>41</sup> (Volcanoes National Park).

In the meantime, the Treaty Bodies including the Human Rights Committee (CCPR), the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Racial Discrimination (CERD) have also expressed concerns at human rights violations of Indigenous Peoples in the Protected Areas of Mongolia<sup>42</sup> (Tenghis-Shishghed National Park), Colombia<sup>43</sup> (Tayrona National Park), Rwanda<sup>44</sup>, Democratic Republic of Congo (DRC)<sup>45</sup>, Bolivia<sup>46</sup> (Isiboro Sécure National Park), Ecuador<sup>47</sup> (Yasuni National Park), Sri Lanka<sup>48</sup> (Maduru Oya Reserve), Tanzania<sup>49</sup>, Botswana<sup>50</sup> (Central Kalahari Game Reserve), Kenya<sup>51</sup> (Mt. Elgon National Park, Chepkitale National Reserve, Kiptugot Forest Reserve, Embobut Forest, Mau Forests complex). Finally, under its Early Warning/Urgent Action and Follow Up Procedures, the CERD considered human rights violations of Indigenous Peoples living in Protected Areas in Sweden<sup>52</sup> (Laponia World Heritage site), Chile<sup>53</sup> (National Park Villarrica), Brazil<sup>54</sup> (Monte Roraima National Park), Kenya<sup>55</sup> (Mt. Elgon National Park, Chepkitale National Reserve, Kiptugot Forest Reserve, Laikipia National Park (formally known as Eland Downs Ranch), Tanzania<sup>56</sup> (Ngorongoro Conservation Area / Loliondo Game Controlled Area) and Thailand<sup>57</sup> (Kaeng Krachan National Park).

Collected materials point out that Indigenous Peoples have been denied their rights to: live in peace and security, own, manage, conserve and access their land and natural resources, practice hunting, fishing, grazing and other traditional means of subsistence, food and adequate housing, participation, consultation and free and prior informed consent, development, self-determination and self-governance and access religious, sacred and cultural sites. When Indigenous Peoples are forcibly evicted from their ancestral lands, their traditional subsistence economies and homes are destroyed. When they try to defend their rights in order to feed and care for their families and communities, Indigenous Peoples are subjected to criminalization, torture and ill treatment, arbitrary arrests and detentions, extra-judicial killings, enforced disappearances, sexual and gender-based violence, death threats and other abusive prosecution perpetrated by eco guards, police and army officials. Of the 1733 environmental and land defenders killed because of their work between 2012 and 2022, about 39% were from Indigenous Peoples<sup>58</sup>. Violations have had particularly negative impacts on women and girls, who are primarily responsible for gathering food, fuel, water and medicine and are therefore exposed to sexual violence perpetrated by militarized security forces, park rangers and other law enforcement officials. The ability of Indigenous Peoples to maintain and transmit their scientific knowledge systems, cultural heritage, language, identity is also impeded by limited access to land, natural resources and sacred sites in protected areas that were once their lands to manage and conserve. Forced evictions also prevent Indigenous children from continuing their education and engage in traditional activities of cultural significance. Indigenous Peoples are often forced to relocate without any resettlement programme or access to essential services, water, food or adequate compensation. The trauma experienced by Indigenous Peoples, in particular children and elders, who are forcibly evicted from their lands

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<sup>34</sup> A/HRC/19/54/Add.2,

<sup>35</sup> A/HRC/15/37/Add.9

<sup>36</sup> A/HRC/15/37/Add.5

<sup>37</sup> A/HRC/15/37/Add.2, A/HRC/31/59/Add.1, A/HRC/40/64/Add.2

<sup>38</sup> A/HRC/37/58/Add.2,

<sup>39</sup> A/HRC/37/58/Add.1,

<sup>40</sup> A/HRC/25/56/Add.1

<sup>41</sup> A/HRC/19/56/Add.1

<sup>42</sup> CERD/C/MNG/CO/19-22, CERD/C/MNG/CO/23-24

<sup>43</sup> CERD/C/COL/CO/17-19

<sup>44</sup> CERD/C/RWA/CO/13-17

<sup>45</sup> E/C.12/COD/CO/6,

<sup>46</sup> E/C.12/BOL/CO/3

<sup>47</sup> E/C.12/ECU/CO/4

<sup>48</sup> E/C.12/LKA/CO/2-4

<sup>49</sup> E/C.12/TZA/CO/1-3

<sup>50</sup> CCPR/C/BWA/CO/2

<sup>51</sup> CCPR/C/KEN/CO/3, CERD/C/KEN/CO/5-7

<sup>52</sup> 29 April 2022

<sup>53</sup> 10 May 2019

<sup>54</sup> 31 May 2010

<sup>55</sup> 30 August 2013

<sup>56</sup> 1 March 2013

<sup>57</sup> 3 October 2016

<sup>58</sup> <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/>

and homes has created a worsening climate for severe transgenerational post-traumatic stress disorder which is jeopardizing both individual and collective psychological wellbeing.

The materials collected in this Guide provide compelling testimony from and submissions by Indigenous representatives from different regions that discuss the harmful impacts of protected areas on Indigenous peoples' rights. According to these testimonies, Indigenous Peoples are not consulted when protected areas are planned on their lands and they do not participate in the management of, or derive benefits from, State conservation projects that are taking place on their lands. Dispossessing Indigenous Peoples from their lands and incorporating such lands into protected areas in this manner takes management and control away from Indigenous Peoples, and allows States to violently define the rules, administration and use of those lands, often under the influence of financially powerful international conservation organizations. Typically, the traditional lands relied upon by Indigenous Peoples for their cultural survival and thriving, identity and integrity are placed under the control of government conservation authorities supported and financed by major Western conservation organizations like WWF and WCS.

The colonial, discriminatory and exclusionary approach or business model to protecting biodiversity known as “fortress conservation” that prevails in the approach, planning and support of these major international conservation organizations has led to violent forced evictions, militarized violence and the dispossession of the lands of Indigenous Peoples, who are the best stewards and hold in-depth conservation knowledge of the ecologies they are connected to. The fortress conservation model is motivated by the perception on the part of large conservation organizations that successful conservation outcomes require “pristine wilderness,” free from human inhabitants. Some of the earliest American advocates of conservation promoting pristine environment and the fortress conservation approach, founders of high-profile conservation NGOs, were also famous proponents of scientific racism, colonial expansion and eugenics. Indigenous Peoples have expressed the concern that Western conceptions of land management are devoid of any meaningful human connections with the land, fauna and flora. They have witnessed in many parts of the world, the negative impacts of the fortress conservation approach on the ecosystems they used to manage for hundreds of years and they view the creation of protected areas as a form of colonization. Indeed, in many countries, national laws on forests, conservation or protected areas have the effect of nullifying the rights of Indigenous Peoples to their lands and territories as well as the recognition, enjoyment or exercise, on an equal footing, of their human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life, as defined under Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

Decades of data and experience with the “fortress conservation” model contradicts the argument that the removal of Indigenous Peoples is necessary to fulfil the “public’s interest” in conserving, restoring, and protecting ecosystems and biodiversity. This model diminishes rather than enhances local livelihoods and biodiversity and increases environmental degradation and biodiversity loss. The fortress conservation business model places the lands, resources and territories of Indigenous Peoples under the control of government authorities that too often allow those areas to be exposed to large-scale and environmentally destructive tourism activities, poaching and trafficking, extractive industries including illegal logging or mining, agribusiness expansion and other forms of degradation in direct conflict with conservation goals.<sup>59</sup> A large number of domestic conservation laws, still based on this model, continue to provide the legal justification for the discrimination, criminalization and restriction of Indigenous Peoples’ customary practices and traditional occupation such as subsistence hunting, grazing, gathering, fishing, in and around these protected areas.

Mounting studies<sup>60</sup> have shown that Indigenous Peoples are the best conservationists of the lands they have owned and occupied for centuries; oftentimes thousands of years: they possess the knowledge, skills and ability necessary to successfully conserve and manage biodiverse ecosystems more effectively than governments or conservation

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<sup>59</sup> Tauli-Corpuz, V. (2016) Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, [Conservation and indigenous peoples’ rights](#). (A/71/229). New York, Para 17. ; Cali Tzay, JF (2022) Report of the Special Rapporteur on the rights of indigenous peoples, Protected areas and indigenous peoples’ rights: the obligations of States and international organizations, David R. Boyd and Stephanie Keene (2021) Special Rapporteur on human rights and the environment [Policy Brief No. 1 Human rights-based approaches to conserving biodiversity: equitable, effective and imperative](#) John H. Knox (2017) Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, [on the human rights obligations relating to the conservation and sustainable use of biological diversity](#).

<sup>60</sup> See for example Dawson, N. M., B. Coolsaet, E. J. Sterling, R. Loveridge, N. D. Gross-Camp, S. Wongbusarakum, K. K. Sangha, L. M. Scherl, H. Phuong Phan, N. Zafra-Calvo, W. G. Lavey, P. Byakagaba, C. J. Idrobo, A. Chenet, N. J. Bennett, S. Mansourian, and F. J. Rosado-May. 2021. [The role of Indigenous peoples and local communities in effective and equitable conservation](#). *Ecology and Society* 26(3):19.; (//3AEE11FD-1A55-44AC-9A45-4EA104A975B0#\_ednref12) S. Stevens, Indigenous Peoples, National Parks, and Protected Areas: A New Paradigm (U. Arizona Press, 2014) ; FAO and FILAC. 2021. [Forest governance by indigenous and tribal peoples. An opportunity for climate action in Latin America and the Caribbean](#). Santiago. FAO. <https://doi.org/10.4060/cb2953en>

organizations, and at a fraction of the cost, particularly where their legal rights to their traditional lands, resources, waters and territories are recognized, respected and supported. Indigenous conservation knowledge and practices are threatening the multi-billionaire conservation business. The annual global cost of partnering with Indigenous Peoples and local communities to effectively protect 30 per cent of all lands and waters by 2030, is estimated at US\$ 100 - US\$ 140 billion, while the projected global net benefit of protecting mangroves alone will be US\$ 1 trillion by 2030.<sup>61</sup> Human rights-based conservation is the most effective, efficient, and equitable path forward to safeguarding the planet at the scale required to end the current global crisis. The protection of the ecological integrity of critical ecosystems and positive conservation outcomes are strongly correlated with Indigenous community-based management and recognize their human rights including their rights to: self-determination, consultation and free and prior informed consent, remedy, redress and reparation for historical violence, ownership and restitution of their ancestral lands, waters, territories and other natural resources as the most essential component of decolonial climate justice.

## **RECOMMENDATIONS ADDRESSED TO STATES AND CONSERVATION STAKEHOLDERS BY UN MECHANISMS**

### **Special Procedures of the Human Rights Council**

A number of general recommendations to protect the rights of Indigenous Peoples affected by conservation measures were addressed to conservation and protected areas stakeholders by the current and former Special Rapporteurs on the Rights of Indigenous Peoples: José Francisco Calí Tzay and Victoria Tauli Corpuz, also supported by the current and former Special Rapporteurs on the environment: John H. Knox and David R. Boyd.<sup>62</sup>

All four Special Rapporteurs notably call upon states to: adopt policy, legal and administrative measures to prioritize and accelerate the full recognition of the land, forest, resources, freshwater, and other tenure rights held by Indigenous Peoples, review and harmonize the environmental, legal and institutional framework with their obligations regarding the rights of Indigenous Peoples, reform conservation and protected area legislation as necessary to ensure these protections for all Indigenous Peoples whose livelihoods and cultures depend on areas designated for conservation protection, comply with judgments and decisions of international and regional human rights monitoring mechanisms regarding Indigenous Peoples' rights. They also called upon states to ensure that a rights-based approach is applied to the creation or expansion of protected areas, guarantee their substantive participation in decision-making processes, comply with the duty to consult and obtain the free, prior and informed consent of Indigenous Peoples before the development of conservation initiatives which may affect their rights and, ensure Indigenous Peoples' access to and use of land, water, wildlife, plants, and sacred sites for survival, subsistence and small-scale commercial livelihoods, medicinal, cultural, and spiritual purposes, provide swift, just, fair, and equitable investigation and redress for past conservation-driven violations of the rights of Indigenous Peoples related to the creation and/or management of protected areas, including through restitution of rural rights holders' lands, territories, and associated resource rights, provide redress for historical and contemporary wrongs, establish accountability and reparation mechanisms for infringements on indigenous rights in the context of conservation and halt the criminalization of Indigenous Peoples carrying out sustainable activities linked to their ways of life.

The Special Rapporteurs also urge States to pass and enforce laws requiring large conservation organizations to: take actions to prevent, identify and adequately respond to human rights abuses, conduct due diligence on the potential human rights risks associated with their contemplated operations; withdraw from any contemplated operations that do not satisfy human rights standards; take actions to appropriately respond to any potential human rights violations that occur in relation to their conservation initiatives; develop and implement gender-sensitive policies specific to respecting the rights of Indigenous Peoples, respect Indigenous Peoples' Free and Prior Informed Consent (FPIC) rights, and guarantee their substantive participation in decision-making processes for projects that could affect their rights; provide Indigenous peoples and other rural rights holders with an equitable share of project benefits; develop and implement specific policies concerning the hiring, training, support, and

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<sup>61</sup> Rights and Resources Initiative (2018), *Cornered by Protected Areas: Replacing 'Fortress' Conservation with Rights-Based Approaches Helps Bring Justice for Indigenous Peoples and Local Communities, Reduces Conflict, and Enables Cost-Effective Conservation and Climate Action*. Rights and Resources Initiative, Washington, DC

<sup>62</sup> See Tauli-Corpuz, V. (2016) Report of the Special Rapporteur of the Human Rights Council on the rights of Indigenous peoples, Conservation and indigenous peoples' rights. (A/71/229). New York, Para 17. ; Calí Tzay, JF (2022) Report of the Special Rapporteur on the rights of indigenous peoples, Protected areas and indigenous peoples' rights: the obligations of States and international organizations, John H. Knox (2017) Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, on the human rights obligations relating to the conservation and sustainable use of biological diversity.

required conduct of eco-guards and others responsible for securing protected areas or other areas designated for conservation; establish accessible grievance mechanisms and access to remedy for affected persons, and transparently share compliance actions, failures, and lessons learned with the public. Special Rapporteurs finally call upon states to empower and acknowledge Indigenous Peoples as key partners in protecting and restoring nature and recognize their conservation contributions, place Indigenous Peoples, along with their traditional knowledge and sustainable nature governance practices—at the forefront of efforts to identify, designate, and manage new and existing areas important for cultural and biological diversity, including Indigenous protected and conserved areas, support Indigenous and local efforts to protect biodiversity, including through Indigenous and Community Conserved Areas (ICCAs), support partnerships and collaboration between government authorities and Indigenous Peoples to favor of shared goals of sustainable conservation.

Conservation organizations are urged to comply with the UN Guiding Principles on Business and Human Rights in all actions that may affect biodiversity and ecosystems, including: compliance with Indigenous Peoples' rights in regular project assessments, the need to conduct human rights impact assessments, advocate for the recognition of the collective rights of Indigenous Peoples; follow the Akwé: Kon Voluntary guidelines for the conduct of cultural, environmental and social impact assessments, adopt human rights-based policies and in particular a culturally appropriate human rights-based approach when planning and implementing conservation projects and at each stage of the design, implementation and assessment of conservation measures taking into consideration Indigenous Peoples' distinct and special relationship to land, waters, territories and resources, ensure that information obtained through monitoring and reporting is transparent and accessible, share good practices and ensure effective dissemination of human rights-based policies and trainings for conservation staff. They are also recommended to develop mechanisms for solid partnerships for regular and continuous engagement with Indigenous Peoples, ensure the full and effective participation of Indigenous Peoples in designing, implementing and monitoring conservation initiatives; ensure that culturally appropriate complaints or effective grievance mechanisms are established independent, accessible and culturally appropriate for Indigenous Peoples to voice their concerns over conservation initiatives, support initiatives for Indigenous Peoples' right to remedy in cases when conservation activities have negatively impacted their rights, support Indigenous Peoples to develop and sustain their own conservation initiatives and exchange conservation management experiences with them, learn from Indigenous knowledge systems to determine, together with Indigenous Peoples, conservation protocols related to sacred areas or spaces and important species; institute and apply indigenous hiring preferences when recruiting staff members and officials; ensure transparent and equitable benefit-sharing for their contributions to biodiversity protection on their lands and territories, and ensure that funding directed towards Indigenous Peoples is managed by them.

Donors including States are strongly encouraged to redirect financial flows to support Indigenous Peoples to develop and sustain their own conservation initiatives, encourage the full participation of Indigenous Peoples in the management of protected areas and the inclusion of Indigenous knowledge systems in conservation, require that conservation organizations adopt human rights policies and a rights-based approach at each stage of the design, implementation and assessment of conservation measures and when planning and implementing conservation projects taking into consideration Indigenous Peoples' distinct and special relationship to land, waters, territories and resources and that conservation organizations monitor the application of human rights-based conservation programmes in relation to Indigenous Peoples' rights. Donors are also requested to fund conservation initiatives that: (a) respect and protect the title, tenure, access, and nature governance rights of Indigenous Peoples to their lands and territories, including the right of free, prior, and informed consent to any actions that affect them; (b) when directed at law enforcement, require and ensure that eco-guards and rangers are trained to international human rights standards and subject to effective oversight and accountability; (c) provide access to independent grievance and redress mechanisms that can receive complaints of, and provide remedies for, human rights violations; and (d) require regular transparent reporting by funding recipients on how they are meeting human rights norms.

Special Rapporteurs also recommend the United Nations Educational, Scientific and Cultural Organization (UNESCO) to provide direct funding to better support Indigenous Peoples' initiatives for conservation, reform the Operational Guidelines through which the World Heritage Convention to align them with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); adopt procedures to ensure Indigenous Peoples' FPIC and apply a strong human rights-based approach to the inclusion of sites in the World Heritage List (which should include Human rights impact assessments carried out together with Indigenous Peoples before the nomination process begins); revise the World Heritage Committee's rules of procedure to ensure the effective participation of Indigenous in decision-making before the Committee makes its final decision; periodic reporting on, and reviews of, the human rights situation at World Heritage sites and measures to reconsider World Heritage

status if requirements are not met and the establishment of an independent grievance mechanism for violations at World Heritage sites.

### **Permanent Forum on Indigenous Issues**

The Permanent Forum on Indigenous Issues (PFII) has also issued a number of conservation related recommendations<sup>63</sup>. The PFII notably recommends that States: immediately begin the process of demarcation of Indigenous Peoples' lands and territories in accordance with customary laws and the norms reflected in the UNDRIP This is to enable the self-determining protection of Indigenous Peoples from expropriation and designation of conservation areas or national parks without the free, prior and informed consent of Indigenous Peoples and enter into discussions with Indigenous Peoples whose traditional lands are now incorporated in protected areas, with an intention to reach binding agreements that will not only acknowledge the legitimate interests of wildlife conservation but also recognize and guarantee the rights of those communities. The PFII also encourages the promotion of conservation models that recognize and respect the rights of Indigenous Peoples and call on international donors including the Global Environment Facility to prioritize support for conservation approaches that are led or co-managed by Indigenous People, developing an approach to conservation based on recognition of and respect for the rights of Indigenous Peoples. Finally, the PFII urges the member organizations<sup>64</sup> of the Conservation Initiative on Human Rights to commission independent evaluations of the impact of their organizations' work on Indigenous Peoples, the IUCN to establish a task force on conservation and human rights to work with Indigenous Peoples' communities and organizations to clearly articulate the rights of Indigenous Peoples in the context of conservation initiatives and to continue to promote grievance mechanisms and avenues for redress in the context of conservation action, including the Whakatāne Mechanism. UNESCO and the World Heritage Committee were recommended to implement the World Heritage Convention in accordance with the rights enshrined in the UNDRIP, taking an approach based on human rights.

We hope this compilation will generate increased awareness and understanding of the serious human rights violations and abuses faced by Indigenous Peoples in protected areas and help inspire conservation actors, policy makers, judges, prosecutors, lawyers and others to encourage the implementation of the human rights of Indigenous Peoples in law and practice. While we did try to locate and include all data for the period 2010-2022, this compilation may not be comprehensive and this is a working document. Please do not hesitate to send us relevant data by sending a message to our support team<sup>65</sup>. Collected data will soon be integrated in ILPL database with search functions.

### **ILPL INITIATIVE ON INDIGENOUS PEOPLES AFFECTED BY PROTECTED AREAS AND OTHER CONSERVATION MEASURES**

The University of Arizona College of Law Indigenous Peoples Law and Policy Program is currently hosting the mandate of the United Nations Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Calí Tzay, through the end of his second term in May 2026. On 19 July 2022, the Special Rapporteur issued his report to the General Assembly entitled [Protected Areas and Indigenous Peoples' Rights: The Obligations of States and International Organizations](#) (A/77/238) to the United Nations General Assembly (77<sup>th</sup> session). In his report, the Rapporteur revisited the issue of protected areas and the rights of Indigenous Peoples, assessed recent developments with a focus on the obligations of States and international organizations to respect, protect and promote Indigenous Peoples' rights and formulated a series of recommendations to Member States, United Nations agencies, conservation organisations, donors and other stakeholders involved in conservation. On 29 July 2016, the former Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz, submitted a first thematic report to the General Assembly on [Conservation and Indigenous Peoples' rights](#) (A/71/229) in which she charted legal developments and commitments and measures taken made to advance a human rights-based paradigm in conservation, while also identifying key remaining challenges. She concluded with recommendations

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<sup>63</sup> See Permanent Forum on Indigenous Issues Report on the twenty-first session (25 April–6 May 2022) E/2022/43-E/C.19/2022/11; Permanent Forum on Indigenous Issues Report on the eighteenth session (22 April–3 May 2019) E/2019/43-E/C.19/2019/10; Permanent Forum on Indigenous Issues Report on the seventeenth session (16–27 April 2018) E/2018/43\*-E/C.19/2018/11; Permanent Forum on Indigenous Issues Report on the sixteenth session (24 April-5 May 2017) E/2017/43; Permanent Forum on Indigenous Issues Report on the thirteenth session (12-23 May 2014) (E/C.19/2014/11) and Permanent Forum on Indigenous Issues Report on the twelfth session (20-31 May 2013) E/2013/43-E/C.19/2013/25

<sup>64</sup> See the website of the Conservation Initiative on Human Rights for information about its members: <http://www.thecihr.org/members>

<sup>65</sup> [https://indigenous.arizona.edu/about/support-team?\\_gl=1\\*28dm47\\*\\_ga\\*MTE1MDM0NjA3Ni4xNjk1OTk3ODA3\\*\\_ga\\_7PV3540XS3\\*MTcwNTI1Nj15MS41NC4wLjE3MDUyNTYyOTUuNTYuMC4w](https://indigenous.arizona.edu/about/support-team?_gl=1*28dm47*_ga*MTE1MDM0NjA3Ni4xNjk1OTk3ODA3*_ga_7PV3540XS3*MTcwNTI1Nj15MS41NC4wLjE3MDUyNTYyOTUuNTYuMC4w)

on how conservation, in policy and practice, can be developed in a manner which respects Indigenous Peoples' rights and enhances sustainable conservation.

To follow up on the implementation of the recommendations formulated by both mandate holders, the Indigenous Peoples Law and Policy (IPLP) Program at the James E. Rogers College of Law at the University of Arizona, with the financial support of the Bay and Paul Foundations, launched the [IPLP Initiative on Indigenous Peoples Affected by Protected Areas and Other Conservation Measures](#). As a major component of this project, the IPLP Research Team<sup>66</sup> has collected and continues to collect information, reports, data and mapping resources on protected areas with the highest incidence of reported human rights violations and abuses of Indigenous Peoples. The Research Team has focused particularly on the conservation organizations and NGOs implementing such programmes<sup>67</sup>.

The other aims of the [IPLP Initiative on Indigenous Peoples Affected by Protected Areas and Other Conservation Measures](#) are to: establish an online resource centre which will include two databases (international recommendations and violations in protected areas), legal and policy development resources and other useful tools for Indigenous Peoples affected by conservation measures and support NGOs, provide technical assistance and legal guidance to Indigenous Peoples and support NGOs affected by protected and conservation areas via a dedicated legal clinic, provide technical assistance and legal guidance to conservation organizations, donors, UN entities and other major stakeholders, denounce cases of serious and systematic violations of Indigenous Peoples due to the imposition and existence of Protected Areas and monitor the implementation of the Kunming-Montreal Framework Convention on Biodiversity post-2020, specifically target 3 known as 30x30, as well as other targets related to Indigenous Peoples' Rights.

## ABOUT THIS GUIDE

The IPLP Initiative on Indigenous Peoples Affected by Protected Areas and Other Conservation Measures Research Team has prepared this comprehensive Guide compiling the past decade's efforts and developments by the UN human rights system, other UN organs, and international conservation organizations focused on the issue of protected areas and the rights of Indigenous Peoples. The purpose of this guide is to assist Indigenous Peoples, NGOs and support groups, lawyers, researchers and others involved and engaged in the international human rights systems of the world to have ready, retrievable and searchable access to a large number of relevant documents and materials concerning the impact of protected areas, national parks and other conservation measures on Indigenous communities. Materials were collected from a wide range of sources, including concluding observations, thematic studies, mission reports and communications issued by international and regional human rights systems that identify specific allegations and reports of human rights abuses and violations in specific countries and formulate recommendations and decisions for enhanced protection and promotion of the human rights of Indigenous Peoples in protected areas.

This Guide is divided into four main sections which cover the work of the Treaty Bodies, Human Rights Council Mechanisms and Working Groups, Special Procedures and Universal Periodic Review, Permanent Forum on Indigenous Issues and Regional Mechanisms, outlined in the Table of Contents below. Please be aware that the jurisprudence and other materials contained in this publication are excerpted from larger treatments of country situations or thematic reports, so only those sections that either directly refer to indigenous peoples or are otherwise known to be about indigenous peoples are included. The contents of this study reflect the status of international law jurisprudence as of January 2023. While the purpose of this Guide is to provide a more comprehensible access to all existing jurisprudence, communications, recommendations, observations and decisions related to the protection and promotion of the rights of indigenous peoples confronted to conservation, this publication does not necessarily reflect the official views of the University of Arizona, the University of Arizona College of Law, or the University of Arizona Indigenous Peoples Law and Policy Program, nor is there any guarantee or endorsement of any information or views expressed therein.

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<sup>66</sup> As of 21 September 2023, IPLP Research Team is composed by Robert A. Williams, Jr., Faculty Co-Chair, Indigenous Peoples Law and Policy Program; Washington Barasa Kiptoo, Fellow Researcher, Melanie Clerc, Professor of Practice and Senior Researcher, Vishal Gaikwad, Marketing & Communications Director, Gabriella Brayne Researcher and Bay and Paul Foundations Fellow, Maryann Panoho, Researcher and Jordan Panarella Researcher.

<sup>67</sup> IPLP's preliminary research has revealed the existence of at least 16 protected areas connected to programs or activities that appear to be or have been supported by the World Wide Fund for Nature (WWF) offices or programs where the human rights of Indigenous Peoples were reportedly being violated or threatened; at least 14 protected areas connected to Wildlife Conservation Society (WCS) programs or activities that appear to be or have been supported by offices or programs; at least 18 protected areas connected to programs or activities that appear to be or have been supported by U.S. Agency for International Development (USAID); at least 14 protected areas connected to programs or activities that appear to be or have been supported by the Global Environment Fund (GEF).



## I. TREATY BODIES

### A. Committee on the Elimination of Racial Discrimination

#### 1. Concluding Observations

##### 1.1 Colombia, CERD/C/COL/CO/17-19, 22 January 2020

20. .... The Committee is also concerned about the situation currently experienced by some indigenous peoples living in protected areas, including Tayrona National Park, who face restrictions on their right to dispose freely of their lands and natural resources (arts. 2 and 5).

21. The Committee recommends that the State party:

....(d) Take the steps necessary to ensure that indigenous peoples living in protected areas, in particular Tayrona National Park, are able to dispose freely of their lands and natural resources and that they are consulted in all processes and decisions that affect them. Indigenous peoples facing extinction, living in isolation or at the initial-contact stage.

##### 1.2 Mongolia, CERD/C/MNG/CO/23-24, 17 September 2019

Situation of the Tsaatan (Dukha) people

23. The Committee is concerned that the restrictions on fishing and hunting in the Tengis Shishged protected area may negatively affect and endanger the traditional livelihoods and the cultural rights of the Tsaatan people. The Committee is also concerned at reports about: (a) Restrictions related to access to grazing pasturelands traditionally used for reindeer herding; (b) The strict application of anti-poaching laws affecting the livelihoods of Tsaatans, with allegedly prison sentences and fines being imposed; (c) Difficulties for Tsaatans to visit their relatives in the region of Tyva in the Russian Federation and, in general, to cross the border, including alleged arrests and detentions; (d) Obstacles faced by the Tsaatans, in particular, the elderly, sick and persons with disabilities, in accessing medical facilities (art. 5).

24. In line with general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party: (a) Ensure that the Tsaatans are fully and effectively consulted with a view to obtaining their free, prior and informed consent in relation to all decisions affecting their rights and lands; (b) Set minimal hunting and fishing quotas in consultation with the Tsaatans to enable them to continuously enjoy their cultural rights and practices; (c) Ensure the rights of Tsaatans to access grazing pasturelands traditionally used for reindeer herding and to include the Tsaatans in the management of the Tengis Shishged protected area; (d) Ensure the right of Tsaatans to maintain and develop contacts, relations and cooperation with members of their communities, as well as other peoples living over the border; (e) Explore the possibility, in consultation with the Tsaatans, of providing health-care support through mobile health clinics.

##### 1.3 Kenya, CERD/C/KEN/CO/5-7, 8 June 2017

Situation of indigenous peoples

19. The Committee is alarmed by reports that the Sengwer people are being forcibly evicted from their traditional forest lands in the Embobut Forest, in violation of a High Court injunction. While noting the State party's position that no forced evictions have recently been carried out, the Committee notes allegations that agents of the Kenya Forest Service have burned dozens of Sengwer homes. Similarly, the Committee is worried about reports that the Endorois indigenous community has been subjected to attacks and forced evictions by armed raiders. The Committee is further concerned at reports that in spite of the 2014 High Court decision in *Joseph Letuya and others v. The Attorney General*, the forced eviction of the Ogiek people from the Mau Forest continues today. The Committee is also concerned at reports that activities affecting the ancestral land occupied by indigenous peoples have been undertaken without their free, prior and informed consent (arts. 2, 5 and 6).

20. In line with its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urgently calls upon the State party to: (a) Prevent, investigate, prosecute and sanction acts threatening the physical security and property of the Sengwer, the Endorois, the Ogiek and other indigenous peoples; (b) Ensure legal acknowledgement of the collective rights of the Sengwer, the Endorois, the Ogiek and other indigenous peoples to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the exploitation, management and conservation of the associated natural resources; (c) Carry out effective consultations between relevant actors and communities likely to be affected by projects to develop, conserve or exploit indigenous ancestral land or its natural resources and obtain the free, prior and informed consent of indigenous communities before implementing such projects.

#### **1.4 Ecuador, CERD/C/ECU/CO/23-24, 15 September 2017**

Impact of projects involving natural resource exploitation

16. The Committee notes with concern the reports regarding the negative impact of projects involving the exploitation of natural resources, including illegal mining and logging, on the territories of indigenous and Afro-Ecuadorian peoples, which cause irreparable damage to the environment and affect their traditional forms of subsistence and exploitation of land and resources, such as hunting, fishing, farming and small-scale mining. The Committee is also concerned at the tensions between outsiders and the indigenous and Afro-Ecuadorian peoples living in these territories. The Committee is particularly concerned at the situation facing Afro-Ecuadorians in the Province of Esmeraldas and the Amazonian indigenous peoples living on the west and south-east borders of Yasuni National Park.

17. In view of the fact that the protection of human rights and the elimination of racial discrimination are essential for sustainable economic development, and recalling the role of both the public and private sectors in this regard, the Committee urges the State party to:

(a) Guarantee the full and effective enjoyment by indigenous and Afro-Ecuadorian peoples of their rights over the lands, territories and natural resources that they occupy or use, in the face of incursions by outsiders who exploit natural resources, both legally and illegally; (b) Ensure the effective implementation of protection measures and safeguards against negative environmental impacts and in support of the traditional ways of life of indigenous and Afro-Ecuadorian peoples; (c) Adopt the necessary measures to ensure that the use of water by the mining industry does not impair access to water for the indigenous and Afro-Ecuadorian peoples living in these territories; (d) Guarantee that indigenous and Afro-Ecuadorian peoples affected by natural resource activities in their territories receive compensation for any damage or loss suffered and participate in the benefits arising out of such activities.

#### **1.5 Mongolia CERD/C/MNG/CO/19-22, 5 January 2016**

Indigenous peoples

26. The Committee welcomes the information provided by the State party on improving the situation of Tsaatan (Dukha) reindeer herders, including in respect of: (a) the provision of social insurance contributions and monthly subsidies; (b) the employment of herders as rangers of the Tenghis-Shishghed national park; and (c) the adoption of a new law on mineral resources that reportedly requires the consent and approval of the local community prior to the issuance of mining licences. Nevertheless, the Committee remains concerned at reports regarding: (a) The adverse impact of mining projects on the livelihood, lifestyle and culture of the Tsaatan (Dukha) people; (b) The fact that, in practice, the free, prior and informed consent of the Tsaatan (Dukha) people is not obtained when licences for mining in their traditional territory are granted; (c) Poverty among herders living in remote areas.

27. In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples and the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party ensure that the Tsaatan (Dukha) people are fully and effectively consulted on all decisions affecting them, including with regard to the issuing of mining licences, any restrictions on hunting practices and government policies and programmes intended to improve their standard of living. The Committee also recommends that the State party ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization.

#### **1.6 Rwanda CERD/C/RWA/CO/18-20, 10 June 2016**

Land issues

18. The Committee takes note of the information provided by the State party concerning the eviction of the Batwa from the forest lands in which they lived and the explanations seeking to justify why they have not been compensated. The Committee also takes note of the information on the free housing programmes set up for the Batwa and the efforts made to integrate them into the rest of the population. However, the Committee remains concerned at the fact that the forced eviction of the Batwa from their traditional lands in order to create and develop national parks, which may have contributed to the decline in their population, has seriously disrupted their traditional way of life, since it prevents them from engaging in income-generating activities and has increased their poverty. Moreover, the Committee notes with concern the absence of appropriate measures to ensure the full integration of the Batwa, such as the allocation of land to compensate them for the lands that they have lost (art. 5).



19. The Committee reiterates its recommendation that the State party consider putting in place specific measures, in consultation and agreement with the Batwa, whereby those who so wish are provided with plots of land, so that they can engage in income-generating activities. The Committee emphasizes that such measures are necessary to end the decline in the Batwa population, to promote their integration into the rest of society and to reduce their poverty.

### **1.7 United Kingdom of Great Britain and Northern Ireland, CERD/C/GBR/CO/21-23, 3 October 2016**

Forcible eviction of Chagossians from Diego Garcia

40. The Committee regrets that no progress has been made in implementing the Committee's previous recommendation to withdraw all discriminatory restrictions on Chagossians (Îlois) from entering Diego Garcia or other islands in the Chagos Archipelago (see CERD/C/GBR/CO/18-20, para. 12), that the State party continues to maintain its position that the Convention does not apply to the British Indian Ocean Territory on the grounds that it has no permanent population and that the State party has not yet extended the application of the Convention to the Territory (arts. 2, 5 and 6)

41. Taking note of the decision, adopted on 18 March 2015, of the arbitral tribunal constituted under annex VII of the United Nations Convention on the Law of the Sea in the matter of the Chagos Marine Protected Area Arbitration, the Committee reiterates its previous recommendation (see CERD/C/GBR/CO/18-20, para. 12) that the State party has an obligation to ensure that the Convention is applicable in all territories under its control, including the British Indian Ocean Territory, and urges the State party to hold full and meaningful consultations with the Chagossians (Îlois) to facilitate their return to their islands and to provide them with an effective remedy, including compensation.

### **1.8 Suriname, CERD/C/SUR/CO/13-15, 25 September 2015**

Situation of indigenous and tribal peoples

24. The Committee reiterates its previous recommendation (see CERD/C/SUR/CO/12, para. 12) urging the State party to ensure legal acknowledgement of the collective rights of indigenous and tribal peoples to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the exploitation, management and conservation of the associated natural resource.

#### **1.1 United States of America, CERD/C/USA/CO/7-9, 25 September 2014**

Rights of indigenous peoples<sup>24</sup>. While acknowledging the steps taken by the State party to recognize the culture and traditions of indigenous peoples, including the support for the United Nations Declaration on the Rights of Indigenous Peoples announced by President Obama on 16 December 2010, the issuance of Executive Orders 13007 and 13175 and the high-level conferences organized by President Obama with tribal leaders, the Committee remains concerned at:

(a) Lack of concrete progress to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them; (b) The ongoing obstacles to the recognition of tribes, including high costs and lengthy and burdensome procedural requirements; (c) Insufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities, resulting from, inter alia, resource extraction, industrial development, construction of border fences and walls, tourism and urbanization; (d) The ongoing removal of indigenous children from their families and communities through the United States child welfare system; (e) The lack of sufficient and adequate information from the State party on the measures taken to implement the recommendations of the Committee in its Decision 1(68) regarding the Western Shoshone peoples (CERD/C/USA/DEC/1), adopted under the Early Warning and Urgent Action procedure in 2006, as well as the ongoing infringement of the rights of the Western Shoshone peoples (arts. 5 and 6).

Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to: (a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them, based on their free, prior and informed consent; (b) Take effective measures to eliminate undue obstacles to the recognition of tribes; (c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples in the context of the State party's development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable; (d) Effectively implement and enforce the Indian Child Welfare Act of 1978 to halt the removal of indigenous children from their families and communities; (e) Take immediate action to implement the

recommendations contained in Decision 1(68) on the Western Shoshone peoples and provide comprehensive information to the Committee on concrete measures taken in that regard.

### **1.9 Rwanda, CERD/C/RWA/CO/13-17, 19 April 2011**

17. The Committee takes note with concern of reports brought to its attention that no land was offered to the Batwa after their land was expropriated without prior consultation with them about the construction of parks. According to the same sources, the Batwa have not benefited from the land distribution plan established by the State party, which would have allowed them to retain their traditional lifestyle (art. 5).

The Committee recommends that the State party take all necessary steps, in consultation with and with the agreement of the Batwa, to offer them adequate land, inter alia under the land distribution plan established by the State party, so that they can retain their traditional lifestyle and engage in income-generating activities.

### **1.10 Cameroon, CERD/C/CMR/CO/15-18, 30 March 2010**

18. While taking note of the steps taken by the State party on behalf of indigenous forest-dwelling groups, the Committee is concerned by the attacks on indigenous people's land rights. It regrets that the land ownership legislation in force does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life. The Committee is particularly concerned by the abuse and assaults suffered by indigenous people at the hands of civil servants and employees of the national parks and protected areas. Furthermore, the Committee notes with concern that the course of the Chad-Cameroon pipeline has made indigenous populations more vulnerable and that only a small fraction of the Bagyeli indigenous population has benefited from the compensation plan (art. 5 (b) and (d)).

19. The Committee recommends that the State party take urgent and adequate measures to protect and strengthen the rights of indigenous peoples to land. In particular, bearing in mind general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:

- (a) Establish in domestic legislation the right of indigenous peoples to own, use, develop and control their lands, territories and resources;
- (b) Consult the indigenous people concerned and cooperate with them through their own representative institutions, in order to obtain their free and informed consent, before approving any project that affects their lands, territories or other resources, in particular with regard to the development, use or exploitation of mineral, water or other resources;
- (c) Guarantee indigenous people just and fair compensation for lands, territories and resources that they traditionally own or otherwise occupy and use, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;
- (d) Ensure that the legal land registry procedure in force duly respects the customs, traditions and land tenure systems of the indigenous peoples concerned, without discrimination;
- (e) Protect indigenous people against any attacks on their physical and mental integrity and prosecute the perpetrators of acts of violence and assaults against them.

### **Early Warning/Urgent Action and Follow Up Procedures**

#### **1.11 Sweden, 29 April 2022 (EW/UA)**

I write to inform you that in the course of its 106 th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the situation of the Sami indigenous peoples in Jokkmokk, Sweden.

According to the information before the Committee, on 22 March 2022, the Swedish Government decided to grant a mining exploitation concession to the British company Beowulf Mining and their fully-owned Swedish subsidiary Jokkmokk Iron Mines AB, at Kallak/Gállak, in the Municipality of Jokkmokk, county of Norrbotten, to the south of the Laponia World Heritage site. The information received alleges that the Swedish Government took the decision on this mining concession without consulting or seeking the free, prior and informed consent of the Sami communities which could be significantly affected by the project. It is reported that the County Administration Board, the National Heritage Board as well as the Swedish Environmental Agency and the Sami Parliament expressed strong concerns regarding the irreparable environmental damage and cultural impact this project would cause, if realised.

The information further indicates that the proposed mine site is located in an area where it will cut off the traditional migratory routes used by the reindeer, thus endangering the traditional way of life and culture of the Sami communities that inhabit the area, as they depend on reindeer husbandry for their survival. It is also reported that the UNESCO World Heritage Site Committee concluded that the impact on site is considered to be large/very large.

The Committee is aware that on February 2022, the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on the enjoyment of a safe, clean, healthy and sustainable environment urged the Swedish government not to issue the licence for the mine as it will generate vast amounts of pollution and toxic waste, and endanger the protected ecosystem, including reindeer migration, to the detriment of local Sami communities. Similarly, in their communication to the Swedish Government, the Special Rapporteurs recalled the State party's international obligations concerning the protection of the rights of indigenous peoples, including those under the Convention on the Elimination of All Forms of Racial Discrimination. The Committee notes the Swedish Government's reply of 4 April 2022 to the communication sent by the Special Rapporteurs. However, according to the allegations received, before the decision on the concession was adopted, the Swedish Government announced pursuing the consideration of the project despite the Special Rapporteurs' communication. Furthermore, it is reported that in the assessment of the matter, the Government did not take into account the concerns expressed by the Special Rapporteurs, including on the lack of consultation with Sami communities. Paragraph 32 of the Swedish Government's reply to the communication by the Special Rapporteurs seems to confirm this allegation.

With regard to the decision to grant the concession, the information received notes that, in balancing the interest of mining and the interest of reindeer herding, the Swedish Government concluded that the socioeconomic benefits of the mine outweigh the disadvantages of environmental harm and for reindeer herding. It is alleged that in this assessment process, the Swedish Government did not take into account the rights of Sami indigenous peoples, in particular their land rights and the right to free, prior and informed consent, as constitutionally protected rights. Paragraphs 13 and 14 of the Swedish Government's reply to the communication by the Special Rapporteurs seems to confirm this claim.

The Swedish Government formulated twelve conditions for the approval of the concession, among others: ensure that the operation use as little land as possible; the conduct of mining activities during periods with least impact on reindeer herding; the compensation for reindeer communities; the building of fences and bulwark to protect the reindeer; the restoration of the area after any mining operations. The Government has reportedly not consulted with the relevant Sami communities on these conditions.

The Committee is seriously concerned about the allegations received, in particular about the lack of consultation with Sami communities that could be affected by the mine concession and the absence of consideration of international human rights obligations and standards in this regard. While noting the positive development of the adoption of the Act on consultation in matters of special importance to the Sami people, which entered into force on 1 March 2022, the Committee profoundly regrets that this Act would only be applicable in new cases concerning exploitation concessions, and did not and will not lead to a constructive dialogue with Sami indigenous peoples in the case of the Kallak/Gállok project.

The abovementioned allegations, if verified, could amount to a breach of the State party's duty to respect and protect the rights of the Sami indigenous peoples, in particular the right to be consulted and to free, prior and informed consent. In this regard, the Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples, in which it calls upon States parties to ensure that no decision directly relating to the rights or interests of indigenous peoples is taken without their informed consent.

The Committee would also like to remind the State party of the Committee's recommendations on the rights of Sami indigenous people made in paragraph 17 of its concluding observations of June 2018 (CERD/C/SWE/CO/22-23). Furthermore, the Committee recalls its Opinion of 18 November 2020 (CERD/C/102/D/54/2013) regarding a similar case concerning the Rönnebäcken mines in Sweden, in which it considered that the State party did not comply with its international obligations to protect the concerned Sami reindeer herding community against racial discrimination by adequately or effectively consulting the community in the process of granting the concessions.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would like to receive a response to the above allegations before 15 July 2022. In particular, the Committee requests the State party to provide information on: (a) The measures adopted to consider suspending or revoking the mining concession that affects the Sami communities in Slope/Gállok until free, prior and informed consent is granted by these indigenous peoples following the full and adequate discharge of the duty to consult; (b) The efforts undertaken to engage in consultations with the Sami communities that could be affected by the exploitation concession at Slope/Gállok; (c) The measures taken to ensure that the conditions that apply to the approval of the concession protect the interests of the indigenous peoples effectively, in particular through consultation with representatives of the affected indigenous peoples during the process of developing and determining these conditions;

(d) The process of consultation that is required under these conditions, and on how far this process allows the affected indigenous peoples to effectively influence the mining activities;

(e) Whether the affected indigenous communities are consulted in the environmental examination process under the Swedish Environmental Code or any other administrative procedures, required for the approval of the mining activities;

(f) The steps taken to refrain from approving projects and granting mining permits or concessions without obtaining the free, prior and informed consent of the affected indigenous peoples;

(g) The measures adopted to consider providing for the applicability of the Act on consultation in matters of special importance to the Sami people with regard to the further steps of the procedure that could lead to the approval of the mining operations.

In this regard, the Committee encourages the State party to consider seeking assistance from the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) that is mandated by the Human Rights Council (resolution 33/25, paragraph 2), to provide States with technical advice on the rights of indigenous peoples and facilitate dialogue between States, indigenous peoples and/or the private sector.

### **1.12 Australia, 3 December 2021 (EW/UA)**

I write to inform you that in the course of its 105th session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedure, related to the Western Australian Government's draft Aboriginal Cultural Heritage Bill 2020 (Draft Bill), and its impact on Aboriginal peoples.

According to the information before the Committee, Western Australian legislation, including the Aboriginal Heritage Act of 1972, did not prevent the damage and destruction of sacred sites and other cultural heritage of Aboriginal peoples, such as the Juukan Gorge rock shelters. The information received indicates that the Draft Bill will supersede the Act of 1972 and that it could constitute an opportunity to overcome the multiple failures of the current legislation. However, the Draft Bill allegedly fails to respect, protect and fulfil the right to culture of Aboriginal peoples who strongly oppose it, due to the serious risk it poses to their cultural heritage.

The Committee is concerned about the allegations that the consultation process on the Draft Bill was not adequate, notably by not assigning enough time to evaluate particularly important topics for Aboriginal peoples, such as whether the draft appropriately incorporates the right to free, prior and informed consent of concerned communities. Similarly, it is repolited that Aboriginal peoples have not been informed if consultations will continue or if there is a new version of the Draft Bill.

Moreover, according to the information received, the Draft Bill:

- i. Provides the final decision maker, the Minister for Aboriginal Affairs, with overly wide discretion to approve activities that could have an impact on Aboriginal cultural heritage, based on an "interests of the State" test and without establishing a clear requirement to protect such heritage from degradation or destruction;
- ii. Initially included the possibility for Aboriginal peoples to request the review of the Minister's decision in the State Administrative Tribunal of Western Australia, but that such review opportunity has been removed from the Draft Bill;
- iii. Does not require free, prior and informed consent of Aboriginal Traditional Owners with respect to decisions that could impact the Aboriginal heritage;
- iv. Includes a mechanism for the creation of "protected areas", which would only protect Aboriginal heritage of "outstanding significance", that is to be decided by the Minister for Aboriginal Affairs, without a possibility to review its decision.

According to the information received, the discretionary power attributed to the Minister of Aboriginal Affairs and the absence of effective remedies and legal redress for Aboriginal peoples to challenge his decisions will maintain the structural racism of the cultural heritage legal and policy scheme, which has already led to the destruction of Aboriginal cultural heritage in Western Australia.

The Committee recalls its general recommendation No. 23 (1997) on the rights of indigenous peoples. It further recalls its concluding observations of 2017 (CERD/C/AUS/CO/18-20, para. 22), in which the Committee recommended the State party to ensure that the principle of free, prior and informed consent is incorporated into pertinent legislation and fully implemented in practice. The Committee further recommended the State Party to respect and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

Accordingly, the Committee requests the State party to provide information on:

- (a) The allegations mentioned above regarding the Draft Bill;
  - (b) The current status of the Draft Bill, including information on any recent modifications that addresses the concerns raised by Aboriginal peoples;
  - (c) The measures adopted to fully and adequately guarantee the right to consultation of Aboriginal peoples in Western Australia regarding the drafting and discussion of this Draft Bill, as well as on any steps taken to consider suspending its adoption or withdrawing it until such consultations take place and consent is obtained.
- In this regard, the Committee encourages the State party to consider engaging with the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) that is mandated by the Human Rights Council (resolution 33/25, paragraph 2), to provide States with technical advice regarding the development of domestic

legislation and policies relating to the rights of indigenous peoples and to facilitate dialogue between States and indigenous peoples.

### **1.13 Thailand, 24 November 2020 (EW/UA)**

Excellency, I would like to refer to your communication received on 22 November 2019 containing information in response to the Committee's letter of 29 August 2019 adopted under its early warning and urgent action procedure regarding the situation of indigenous peoples in the Kaeng Krachan National Park ("KKNP") in Thailand.

The Committee's letter follows previous letters of 17 May 2017, 3 October 2016 and of 9 March 2012, and the State party replies of 24 April 2019 and 9 January 2017. In 2012, the Committee expressed concerns about allegations of forced evictions and harassment and reported continuous and escalating violence against indigenous peoples in the KKNP.

In 2016, the Committee requested the State party to urgently halt the eviction of the Karen indigenous peoples from the KKNP and to take steps to prevent any irreparable harm to the livelihood of Karen as well as to ensure that they enjoy their rights, including by effectively implementing the relevant provisions of the Constitution. In 2017, the Committee reiterated its previous concerns regarding forced evictions of Karen indigenous peoples, continuing harassment against them and the failure to ensure adequate consultation with the aim to obtain free, prior and informed consent and to implement the Cabinet Resolution of 3 August 2010 on the restoration of the livelihoods of the Karen.

In 2019, the Committee reiterated its concerns about allegations of attacks and continuing harassment against Karen indigenous peoples, the failure to ensure accountability for these violations, and the reactivation of the nomination of the KKNP to be designated as UNESCO World Heritage site in 2019, without adequate consultation with the affected indigenous peoples and the lack of measures to seek their free, prior and informed consent.

The Committee would like to thank your Government for its reply of 22 November 2019 to the Committee's letter of 29 August 2019. It takes note of the additional information provided by your Government in relation to the situation of indigenous peoples in the KKNP, in particular regarding a) the establishment of the Sub-Committee on the Nomination of the KKNP as a World Heritage Site; b) the survey to be conducted by the Sub-Committee; c) on the opinions of local communities regarding the nomination of the KKNP as a world heritage site; c) the report of the survey on land tenure in the conserved forest areas and agreements on land use in accordance with the National Parks Act B.E. 2562 (2019) and the Wildlife Conservation and Protection (2019) Act B.E. 2562; d) the measures and guidelines identified to resolve the encroachment of protected forest areas and land tenure through a participatory process; e) the investigations on the enforced disappearance of Mr. Pholachi Rakchongcharoen; and f) the Supreme Administrative Court's decision of 12 June 2019 allowing monetary penalties in favour of six Karen plaintiffs.

However, the Committee notes that the State party's replies do not address all the issues outlined in its previous letters of 29 August 2019 and 17 May 2017.

In spite of the information received, the Committee reiterates its previous concerns and, accordingly, requests the State party to provide further and detailed information on the following issues:

1. The implementation of the Community Forest Act adopted on 15 February 2019, as referred to in the State party's letter of 24 April 2019;
2. The measures taken to investigate the attacks suffered by the Karen indigenous peoples in the KKNP; the ongoing and/or completed investigations; the results of such investigative procedures;
3. the sanctions against those found responsible; and the reparation provided to the victims;
4. The measures taken to protect indigenous people's human rights defenders, including information on the witness protection programmes and their implementation;
5. The results of the survey on the opinion of the local communities with regard to the nomination of the KKNP as World Heritage site; the conclusions and recommendations following the survey on land tenure in the conserved forest areas and the concrete measures taken to enter into agreements on land use as well as examples of the agreements concluded and how local communities have been involved in the process;
6. The concrete measures adopted and results obtained to promote the traditional way of life of the Karen communities and results;
7. The specific measures and guidelines identified to resolve the encroachment of protected forest lands and land tenure and the results of the participatory process designed to this end.

### **1.14 Thailand, 29 August 2019 (EW/UA)**

I would like to refer to your communication received on 24 April 2019 containing information in response to the Committee's letter of 17 May 2017 adopted under its early warning and urgent action

procedure in accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, and regarding the situation of indigenous peoples in the Kaeng Krachan National Park (“KKNP”), in Thailand. The Committee’s letter follows previous letters of 3 October 2016 and of 9 March 2012, and the State party reply of 9 January 2017. In 2012, the Committee expressed concerns about allegations of forced evictions and harassment and reported continuous and escalating violence against indigenous peoples in the Kaeng Krachan National Park.

In 2016, the Committee requested the State party to urgently halt the eviction of the Karen indigenous peoples from the Kaeng Krachan National Park and to take steps to prevent any irreparable harm to the livelihood of Karen as well as to ensure that they enjoy their rights, including by effectively implementing the relevant provisions of the Constitution.

In 2017, the Committee reiterated its previous concerns regarding forced evictions of Karen indigenous peoples, continuing harassment against them and the failure to ensure adequate consultation with the aim to obtain free, prior and informed consent and to implement the Cabinet Resolution of 3 August 2010 on the restoration of the livelihoods of the Karen.

The Committee would like to thank your Government for its reply of 24 April 2019, submitted along with its fourth to seventh combined periodic reports, under article 9 of the Convention. The Committee takes note of the additional information provided by your Government in relation to the situation of indigenous peoples in the Kaeng Krachan National Park, in particular regarding a) the Community Forest Act adopted on 15 February 2019 by the National Legislative Assembly, b) measures taken to investigate cases of attacks against the Karen Communities; c) information on the witness protection programmes; d) measures to ensure the protection of indigenous human rights defenders and e) measures taken to comply with the decision 39 COM 8B.5 of the World Heritage Committee, including on the right to consultation and free, prior and informed consent.

The Committee notes that the State party’s reply is also the response the State party provided to the Communication of special procedures of 21 February 2019 (AL THA 2/2019). The Communication refers to allegations of attacks and renewed harassment of the indigenous Karen peoples in the Kaeng Krachan Forest Complex by officials of the National Park, Wildlife and Plant Conservation Department and over the failure to ensure accountability for these violations. The Communication also refers to allegations regarding the Thai Government’s reactivation of its nomination of the Kaeng Krachan Forest Complex to be designate as a UNESCO World Heritage site in 2019 without consultation with affected indigenous peoples and the failure to seek their free, prior and informed consent.

In spite of the information received, the Committee reiterates its previous concerns and, accordingly, requests the State party to provide further and detailed information in response to its letter of 17 May 2017. Besides, the Committee requests information on the interim measures taken by the State party as requested by the above-mentioned Communication.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedures, the Committee would be grateful to urgently receive information on all issues and concerns as outlined above, before 18 November 2019. The Committee will consider such replies during the dialogue with the State party in the context of its periodic review.

#### **1.15 Chile 10 May 2019 (EW/UA)**

... [I]n the course of its 98th Session, the Committee on the Elimination of Racial Discrimination considered information received under its early warning and urgent action procedures that relates to the desecration and destruction of sacred sites of indigenous peoples in Chile.

The information received indicates that the sacred site of Chinay located in the National Park Villarrica has been desecrated in December 2018, including the destruction of the sacred statute, the rewe, both a symbol and a sacred location. With regard to this case, the Committee notes that affected indigenous communities have made a public statement on 29 December 2018 and lodged a protection appeal to the Appeal Court of Temuco (IX Region) in February 2019. The Committee also notes that similar acts of desecration and destruction of indigenous sacred sites have been reported to occur in the State party since 2017.

Accordingly, the Committee is concerned about, if the allegations abovementioned are corroborated, the lack of protection of indigenous peoples’ sacred sites. The situation would amount to the failure of ensuring that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs as well as a breach of the State party duty to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources.

With regard to the information received, the Committee would like to recall the State party of the Committee’s General Recommendations No. 23 on the rights of indigenous peoples (1997) and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee would like also to recall its recommendations made in paragraphs 11 and 13 of its concluding

observations of September 2013, on equality before the courts and access to justice and ancestral lands respectively (CERD/C/CHL/CO/19-21).

Accordingly, the Committee would like to inform the State party that the abovementioned information will be discussed in the context of the review of the twenty-second and twenty-third periodic reports of the State party.

### **1.16 Thailand, UA/EW, 3 October 2016 (EW/UA)**

I write to inform you that in the course of its 90th session, the Committee on the Elimination of Racial Discrimination has further considered, under its early warning and urgent action procedure, the situation of the Karen indigenous people in the Kaeng Krachan National Park (“KKNP”), Thailand, brought to the Committee’s attention by a non-governmental organisation. The Committee would like to remind the State party that in its previous 80th session, it had addressed allegations of forced evictions of the Karen indigenous people from the same area in its letter of 9 March 2012. The Committee regrets that the State party has not replied, so far.

The Committee is informed about allegations of continuing and escalating violence against the Karen indigenous people living in the Kaeng Krachan National Park. It is alleged that for more than a decade, the Government of Thailand has been engaged in a policy aimed at forcibly evicting the Karen indigenous people from the KKNP, while threatening irreparable harm to their livelihood and cultural identity as well as enjoyment of their human rights.

Reportedly, in 2010, Karen indigenous people from settlements near Bang Kloi Bon and Pu Ra Kam were evicted from their lands while their houses, rice granaries and other possessions were destroyed. Such acts were allegedly repeated in May, June and July 2011 during which houses and rice stores were burnt as well as agricultural tools and other possessions. In addition, a number of Karen indigenous people were allegedly arrested and charged, and some others fled to seek refuge with their relatives outside the KKNP. However, Karen affected families reportedly chose to return to their area months later.

Such evictions were reportedly carried out in follow-up to the State party’s position that indigenous peoples’ traditional farming methods were incompatible with natural conservation objectives and that those evicted were irregular migrants. The submission claims that the State party has also argued that evictions were done pursuant to the Forestry Law which prohibits the occupation of forest lands, including by indigenous peoples, irrespective of whether the lands were traditionally occupied and used by them. These arguments are contradicted by the submitting organization which claims that those evicted are of Thai origin by birth and descent.

The urgency of the Committee’s letter relates also to allegations that the State party has incorporated ancestral lands of the Karen indigenous people in a site known as the Karen Krachan Forest Complex (“KKFC”) for nomination as a natural World Heritage Site under the World Heritage Convention of UNESCO. The Committee was informed that in view of the inscription of this site on the UNESCO’s list, Thailand has committed to make efforts to remove the Karen indigenous communities from the site. The list has reportedly been formally nominated for inscription and will be considered by the World Heritage Committee, in October 2016.

It is reported that the State party has ignored the 2007 Royal Thai Constitution which protects the right for persons to remain in national parks and forest areas they have occupied prior to demarcation or establishment as well as a Thai Cabinet resolution of 3 August 2010 on the restoration of the livelihoods of the Karen, which allows them to remain in their ancestral lands and to continue their traditional farming. It is claimed that despite the protection by the Cabinet resolution and the Constitution, the State party has failed to provide redress to the Karen indigenous people for forced evictions as well as for other alleged human rights violations.

According to information received, in February 2016, the Central Administrative Court considered a legal challenge relating to forced evictions that took place in 2011. In its judgement, the Court found that the Department of National Parks, Wildlife and Plant Conservation has the right to burn Karen properties. It is claimed that such a decision would negatively impact the livelihoods and the protection of the rights of the Karen indigenous people in KKNP. It is also claimed that the nomination of the KKFC site was done without any significant consultation and the free, prior and informed consent of the Karen communities is given. It is reported that only very little information was provided to the villagers about the project.

The Committee is concerned that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. The Committee recalls the concerns expressed in its letter of 9 March 2012 as well as recommendations made in paragraph 16 of its concluding observations (CERD/C/THA/CO/1-3, para. 16) of August 2012, that requested “the State party to review the relevant forestry laws in order to ensure respect for ethnic groups’s way of life, livelihood and culture, and their right to free, prior and informed consent in decisions affecting them, while protecting the environment”.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the

Committee requests that the State party submit information on all of the issues and concerns as outlined above by 14 November 2016, as well as on any action already taken to address these concerns. In particular, it requests that the Government of Thailand provide information on:

- (a) Allegations described above;
- (b) Steps taken to cease threats, intimidations, harassment against the Karen indigenous, investigate allegations of excessive use of force and provide reparation to Karen for any loss;
- (c) Measures taken to ensure the free, prior and informed consent of the Karen indigenous people or genuine consultation in decisions affecting them;
- (d) Steps taken to reconsider the nomination of the KKFC site from the World Heritage's list until an agreement is found with the Karen people. In addition, the Committee requests that the State party urgently halt the eviction of the Karen indigenous people from the KKNP and take steps to prevent any irreparable harm to the livelihood of Karen as well as to ensure that they enjoy their rights including by effectively implementing the relevant provisions of the Constitution.

#### **1.17 Tanzania, 1 March 2013 (EW/UA)**

I write to inform you that in the course of its 82nd session, the Committee further considered the situation of alleged evictions of the pastoralist Maasai community of Soitsambu village in Ngorongoro, District of Arusha Region following updated information received from a non-governmental organization. The Committee would like to remind the State party that it has not yet replied to the Committee's letter of 11 March 2011 on the same situation.

According to information received, your Government has failed to comply with the recommendations previously made by the Committee. Therefore, the Committee is concerned that steps have not been taken to grant unrestricted access to Sukenya and Mondorosi villagers to the Sukenya Farm, preventing them from grazing their cattle, thus potentially violating their rights to use their traditional lands.

The Committee is also concerned at the report that the Tourism Company, Thomson Safaris, continues to develop a safari camp in the disputed land with approval of the authorities but reportedly without consent from members of the Maasai community, potentially violating their right to prior and informed consent for projects carried out in their lands.

The Committee is deeply concerned at information that the situation of the Maasai communities affected by the evictions has worsened, and that they have allegedly suffered intimidation, arrests, physical ill-treatment and arbitrary detentions. The Committee would like to draw the attention of your Government to the fact that such a situation may amount to the violation of article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

The Committee would like to recall recommendations made in paragraphs 14 and 15 of its previous concluding observations (CERD/C/TZA/C0/16) adopted in 2005 regarding the expropriation of ancestral lands belonging to certain ethnic groups.

The Committee would like to reiterate its requests made in its previous letter to provide information on: a) measures taken to ensure the effective participation of the Maasai community in decision affecting them, in particular on the case of Sukenya Farm; b) measures taken to thoroughly investigate allegations of excessive use of force by the security guards of the company occupying the Farm.

The Committee requests that the State party take immediate measures to effectively protect the Maasai community against reported acts of intimidation, harassment, arrests and detentions and requests the State party to take concrete steps to find a peaceful solution to the dispute. Moreover, the State party should take concrete measures to ensure access of Maasai people to their traditional lands and provide adequate compensation, as appropriate, to the villagers of the Mondorosi and Sukenya for the alleged losses suffered. In accordance with article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party submit information on the above-mentioned issues by 31 July 2013. The Committee also requests the State party to submit as soon as possible its seventeenth to eighteenth periodic reports overdue since 26 November 2007.

#### **1.18 Kenya, 30 August 2013 (EW/UA)**

I write to inform you that in the course of its 83rd session, the Committee on the Elimination of Racial Discrimination, under its early warning and urgent action procedure, considered, on a preliminary basis, the information submitted by non-governmental organisations alleging the forced eviction by the Kenya Forest Services (KFS) of the Sengwer and Ogiek indigenous peoples from their traditional homeland. The Committee also considered, on a preliminary basis, claims that a draft Wildlife Conservation and Management Bill (WCMB, or 'the Wildlife Bill') and its associated National Conservation and Management Policy (NCMP, or 'the Conservation Policy') were discriminatory.



It is alleged that since the 1970s and throughout the past decade and to date, the KFS have repeatedly made attempts to evict the Sengwer people using force, including by burning their houses, possessions and food. These actions have negatively affected the health, livelihood and culture of the Sengwer people as well as their children's education. It is also alleged that Sengwer peoples in Embobut Forest have been significantly affected as a result of their displacement from lands following the burning of their homes by the KFS in May 2013. The alleged actions of the KFS have reportedly also affected the Ogiek peoples in and around Mt. Elgon National Park, Chepkitale National Reserve and Kiptugot Forest Reserve.

In addition, it is alleged that the Forest Act of 2005 has criminalized certain activities traditionally carried out by the Sengwer people such as occupying forest reserves, cultivating, grazing, cutting or taking wood and hunting. According to information received, solutions for resettlement in light of the legislation have been sought without meaningful consultation and consent of the Sengwer people of Embobut Forest. The Committee also received allegations that certain provisions of the draft Wildlife Bill (WCMB) and the Conservation Policy (NCMP) were discriminatory due to their failure adequately to take into account the rights of indigenous peoples to their lands, territories and natural resources as well as their rights to be adequately consulted on issues related to wildlife conservation and management structures.

The Committee is concerned about these allegations which, if verified, could hinder the full enjoyment of rights under the Convention. In this regard, the Committee refers to its General Recommendation 23 on the rights of indigenous peoples in which the Committee calls upon the State parties "to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and natural resources and, where they have been deprived of their lands and territories traditionally occupied otherwise inhabited or used without their prior, free and informed consent, to take steps to return those lands and territories".

The Committee also recalls the recommendation made in paragraph 17 of the Committee's concluding observations of 2011 relating to the State party (See CERD/C/KEN/C0/1-4, para. 17) where the Committee requested the State party to respond to the decisions of the African Commission of Human and People's Rights regarding the forced evictions of the Ogiek and Endoris indigenous peoples and ensure that marginalised peoples receive appropriate redress. In accordance with Article 9 (I) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive urgently information on the situation of the Sengwer and Ogiek indigenous peoples, in particular, on those from the Embobut Forest, as well as on measures taken to avoid that the Wildlife Bill and its Conservation Policy, if adopted, negatively affects the rights of indigenous peoples in Kenya. The Committee would be grateful to receive information on all of the issues and concerns as outlined above, before 31 January 2014.

#### **1.19 Thailand, 09 March 2012 (UA/EW)**

I write to inform you that in the course of its 80th session, the Committee considered, on a preliminary basis, information submitted by a non-governmental organisation regarding the forceful eviction and harassment of the Karen indigenous people from the Kaeng Krachan National Park (KKNP), under its early warning and urgent action procedure. The Committee expresses its concern about the information according to which an increasing level of violence has been committed against the Karen people by the Thai National Park and Forestry Authorities. It has been brought to the attention of the Committee that the alleged violent eviction and harassment have been carried out against the Karen people despite existing laws protecting the rights of the Karen people to live in national parks and other forest areas. Such laws include the Thai Cabinet Resolution of 3 August 2010 on policies regarding the restoration of the traditional practices and livelihoods of the Karen people, which categorically provides the Karen people with the right to stay in their ancestral land and to continue their traditional farm rotation system. The Committee is further concerned that the reported continuous and escalating violence may have been linked to the tragic murder of a Karen human rights defender, Mr Tatkamol Ob-om, who filed a petition on the Thai National Human Rights Commission on behalf of the Karen people. The Committee requests the State party to provide information on the situation of indigenous peoples in the Kaeng Krachan National Park. Furthermore, the Committee would like to receive information regarding the measures taken to improve the situation of the Karen people in the KKNP. In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedures, the Committee would be grateful to urgently receive information on all issues and concerns as outlined above, before 31 July 2012. The Committee will consider such replies during the dialogue with the State party in the course of the 81st session.

#### **1.20 United States of America, 09/03/2012 (UA/EW)**

I write to inform you that in the course of its 80th session, the Committee considered, on a preliminary basis, under its early warning urgent action procedure, information submitted by non-governmental organisation concerning the Ski Resort project in San Francisco Peaks. The Committee has also considered the situation of

Western Shoshone and particularly the implementation of its 2006 Decision 1 (68) taken under the same procedure.

The Committee recalls its recommendation to the State party (CERD/C/USA/CO/6 of March 2008), particularly paragraph 29 which the State party to take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in and their representatives chosen in accordance with their own procedure, to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention. The Committee has further recommended that the State party recognise the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. 49

In light of the information at its disposal, the Committee remains concerned at the potential impact of the Ski Resort Project on indigenous peoples spiritual and cultural beliefs. The Committee requests information about the process by the State party to obtain the free, prior and informed consent of indigenous peoples with regard to the project.

The Committee requests information on concrete measures taken to endure that the sacred character of the site for indigenous peoples is respected, including the possibility of suspending the permit granted to the Arizona Snowbowl in order to further consult with indigenous peoples and take into account their concerns and religious traditions.

Regarding traditional rights to land of Western Shoshone, the Committee requests updated information on the implementation of its 2006 Decision 1 (68) and its request to State party to send high-level representatives to meet with Shoshone peoples.

The Committee urges the State party to take urgent to find a solution acceptable to all in accordance with its obligations under the convention. It recalls its general recommendation No.23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, and use their communal land territories and resources as well as the duty of the State party to ensure that indigenous communities can exercise their rights to practice and revitalise their cultural traditions and customs.

In accordance with Article 9(1) of the Convention and article 65 of its Rule of Procedure, the Committee would be grateful to urgently receive information on the issues and concerns as outlined above before 31 July 2012 or in its next periodic report overdue since November 2012 in case the report is finalised before that date.

#### **1.21 Kenya, 09/03/2012 (UA/EW)**

I write to inform you that in the course of its 80th Session, the Committee considered on a preliminary basis, information submitted by a non-government organisation on allegations to the alleged forced evictions of the Samburu people from their traditional homeland by the police forces, on a preliminary basis, under its early warning and urgent action procedure.

The Committee is concerned about information according to which some 3000 Samburu were forcefully evicted from Eland Downs between 2008 and 2010. Eland Downs has been the seasonal home of Sambaru since the 1980s.

The Committee is particularly concerned about information according to which, reportedly took place on 23 November 2012, homes and possessions of Samburu were allegedly destroyed and their livestock confiscated, and that despite a Court Order to refrain attempts at eviction or harassment of Samburu, the police harassment continued and resulted in the death of three Samburu individuals. The Committee notes that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has raised similar issues in his report on his mission to Kenya in 2006.

The Committee also requests the State party to provide information on the situation of Samburu people of Eland Downs, and on measures taken to promote and protect their rights, in particular the promotion of consultation with the Samburu community and their participation in decision-making processes on issues that affect them as well as the granting of adequate compensation for the alleged forced eviction of Samburu where relevant.

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to urgently receive information on all of the issues and concerns as outlines above, before 31 July 2012.

#### **1.22 Tanzania, 11 March 2011 (UA/EW)**

I wish to refer to the Committee's letter of 13 March 2009 (copy attached for ease of reference) requesting information, under its Early Warning Urgent Action Procedure on the situation of the Maasai community in Soitsambu village, Sukenya Farm.

You will recall that, in its latest concluding observations on Tanzania (CERD/C/TZA/CO/16, 2007), the Committee noted with concern the lack of information from the State party regarding the expropriation of the ancestral territories of certain ethnic groups, and their forced displacement and resettlement. It recommended the

State party to provide detailed information on the expropriation of the land of certain ethnic groups, on compensation granted on their situation following their displacement (CERD/C/TZA/CO/16, paragraph 14). Following updated yet contradictory information on the situation of Maasai community in the Soitsambu village from non-governmental organisations and the Company which purchased the Farm, the Committee would be grateful for clarification regarding the status of your Government's response and would appreciate receiving the following information:

- Measures the State party has taken to ensure the effective participation of Maasai community in decisions affecting them including measures taken on allegations of expropriation of land in Soitsambu village;
- outcomes of legal proceedings and administrative investigations on the case;
- Measures the State party has taken to investigate thoroughly all allegations of excessive use of force and crimes by the police and the security guards of the company occupying the Farm.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit its response at its earliest convenience but preferably no later than 31 July 2011.

The Committee takes this opportunity to invite the State party to submit its seventeenth and eighteenth periodic reports overdue since November 2007.

### **1.23 Brazil, 31 May 2010 (UA/EW)**

I would like to refer to the Committee's letters of 7 March 2008, 15 August 2008 and 28 September 2009, and note with regret that the Committee has received no reply, as of to date, addressing the issues raised in the letters. I write to inform you that in the course of its 76th session, the Committee considered further the situation of the indigenous peoples of Raposa Serra do Sol (RSS) in the state of Roraima, in light of information submitted by non-governmental organizations.

In view of the information at its disposal, the Committee remains preoccupied by the situation in the RSS. It wishes to urgently receive up-to-date information from the State party as to whether all non-indigenous occupants have been removed from the area, in line with the Governmental acts on the demarcation of the Raposa lands and on the removal of non-indigenous occupants from the area (Presidential Decree of 15 April 2005, ratifying Administrative Ruling 534/05), the constitutionality of which has been recognized and confirmed by the Federal Supreme Court's decision of 19

March 2009. The Committee also request information as to whether fines levied as a result of environmental impacts have been paid, and whether concrete measures have been adopted to prevent illegal re-occupation in the RSS.

The Committee also urges immediate action to stop and prevent violence against the indigenous peoples in RSS and other indigenous areas, such as Lago da Praia. It reminds the State party of the Committee's earlier calls for independent investigations into the threats and incidents of violence against the indigenous peoples of Raposa. The Committee stresses the importance that such investigations are urgently carried out, that all perpetrators are brought to justice and that victims receive adequate redress and compensation.

The Committee wishes to further remind the State party of the importance of obtaining free, prior and informed consent of the indigenous peoples in the RSS with regard to any measure or project that might affect their livelihood. In this light, it requests information from the State party as to whether their consent has been sought regarding plans to build new dams along the Cotingo River (based on legislative decree No. 2540/2006), plans to build the Paredao hydroelectric facility on the Mucajai River in Roraima, and the establishment of Monte Roraima National Park. In accordance with article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit the information requested before 31 July 2010. Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Brazil, with a view to providing it with assistance in the effective implementation of the Convention.

## **B. Committee on Economic, Social and Cultural Rights**

### **1. Concluding Observations**

#### **1.1 Democratic Republic of Congo , E/C.12/COD/CO/6, 28 March 2022**

Use of natural resources

16. .... The Committee is also concerned about acts of violence and intimidation committed against the communities concerned, including against the "eco-guards" working in natural parks (arts. 1 and 11).

17. The Committee recommends that the State party:

.... (c) Prevent acts of violence and intimidation against the communities concerned and the eco-guards working in natural parks, and guarantee effective protection for them, including through the intermediary of the Congolese Institute for Nature Conservation.

### **1.2 Bolivia, E/C.12/BOL/CO/3, 15 October 2021**

Indigenous Peoples and territories

14. .... The Committee is concerned that the right of indigenous peoples to prior consultation in decisions that may affect them, including in connection with mining, hydrocarbon and infrastructure projects, is not widely respected. In particular, it regrets the irregularities surrounding the road-building project in Isiboro Sécure National Park and Indigenous Territory (art. 1 (2)).

15. The Committee recommends that the State party:

..... (b) Ensure adequate consultation with, and the free, prior and informed consent of, indigenous peoples regarding all legislative or administrative measures liable to affect them directly;

(c) Adopt measures to guarantee the integrity of the Isiboro Sécure National Park and Indigenous Territory.

### **1.3 Ecuador, E/C.12/ECU/CO/4, 14 November 2019**

Mining and indigenous peoples

15. The Committee notes with concern the increase in mining concessions awarded in indigenous territories and the lack of protection of the lands and territories of indigenous peoples. It is also concerned about the relaxation of the rules governing extractive activities in the buffer zone of the Yasuní National Park protected area, which is home to the Tagaeri and Taromenane indigenous peoples, who live in voluntary isolation (art. 1(2)).

16. The Committee recommends that the State party:

(a) Take measures to ensure indigenous peoples' legal security with regard to the land, territories and natural resources they have traditionally occupied and used, especially in Mirador, San Carlos Panantza, Río Blanco and blocks 79 and 83; (b) Ensure adequate consultation and the free, prior and informed consent of indigenous peoples on the establishment and management of protected areas and other protection measures in respect of their lands and territories; (c) Take steps to ensure the integrity of the territories of the Tagaeri and Taromenane peoples; (d) Prevent hydrocarbon activities in the Yasuní National Park protected area and its buffer zone

### **1.4 Sri Lanka, E/C.12/LKA/CO/5, 4 August 2017**

Cultural Rights

[...]

69. The Committee is concerned at the socioeconomic marginalization of the Veddah people. It is also concerned that the State regulation of land, forest and agriculture, in particular the designation of large tracts of land as national parks and sanctuaries, has had a detrimental impact on the livelihoods and traditional ways of living of the Veddah people and has led to repeated displacement. The Committee is alarmed by the fact that only around 20 per cent of Veddah children attend school, which is a consequence of early marriages (arts. 2 and 15).

70. The Committee recommends that the State party conduct a comprehensive census that includes the element of the right to free self-identification of the Veddah people and that it addresses the root causes of their socioeconomic marginalization. It also recommends that the State party ensure that the declaration of land as national parks and sanctuaries is always done in close consultation with those affected, especially the Veddah people. The Committee also urges the State party to ensure that all Veddah children attend school until the end of compulsory school age. The Committee also recommends that the State party ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

### **1.5 Thailand, E/C.12/THA/CO/1-2, 19 June 2015**

Land and natural resources

10. The Committee is concerned at:

(a) The denial of the traditional rights of ethnic minorities to their ancestral lands and natural resources and the concentration of land ownership in the hands of a very small proportion of the population;

(b) Information received that the implementation of its forest conservation policy, in particular NCPO Orders No. 64/2557 and 66/2557 of 2014, has resulted in the destruction of crops and forced evictions; and

(c) The adverse effects of economic activities connected with the exploitation of natural resources, including large-scale projects such as the Map Ta Phut Industrial Estate, on the enjoyment of economic, social and cultural rights by people living in the areas concerned and the lack of participatory mechanisms and consultations, as well as limited access to information for affected individuals and communities (arts. 1.2, 2, 11, 12 and 15).

The Committee recommends that the State party take all necessary steps, including revising its legal and policy framework, to:

(a) Effectively remove all obstacles to enjoyment of traditional individual and communal rights by ethnic minorities in their ancestral lands and take effective measures to guarantee land tenure rights without discrimination so as to ensure access to land and adequate housing for all;

(b) Ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation, bearing in mind the Committee's general comments no. 4 (1991) on the right to adequate housing and no. 7 (1997) on forced evictions; and (c) Adopt a human-rights based approach in its development projects, as well as establish participatory mechanisms in order to ensure that no decision is made that may affect access to resources without consulting the individuals and communities concerned, with a view to seeking their free, prior and informed consent.

### **1.6 Tanzania, E/C.12/TZA/CO/1-3, 13 December 2012**

2. The Committee is concerned that the State party has not yet adopted a comprehensive antidiscrimination bill. ... (art.2) The Committee recommends that the State party adopt a comprehensive anti-discrimination bill. The Committee recommends that the State party take steps to combat and prevent discrimination and societal stigma ... against ... belonging to disadvantaged and marginalized groups, and ensure their enjoyment of the rights enshrined in the Covenant, in particular access to employment, social services, health care, and education. The Committee draws the attention of the State party to its General Comment No. 20 (2009) on Non-Discrimination in Economic, Social and Cultural Rights. 22. The Committee is concerned that several vulnerable communities, including pastoralist and hunter-gatherer communities, have been forcibly evicted from their traditional lands for the purposes of large scale farming, creation of game reserves and expansion of national parks, mining, construction of military barracks, tourism and commercial game hunting. The Committee is concerned that these practices have resulted in a critical reduction in their access to land and natural resources, particularly threatening their livelihoods and their right to food. (art.11) The Committee recommends that the establishment of game reserves, the granting of licences for hunting, or other projects on ancestral lands is preceded by free, prior and informed consent of the people affected. It recommends that the State party ensure that vulnerable communities, including pastoralist and hunter-gatherer communities, are effectively protected from forced evictions from traditional lands. It also recommends that past forced evictions and violations that have taken place during those evictions are properly investigated, that perpetrators are brought to justice, that the findings are made public, and that those evicted are offered adequate compensation. The Committee draws the attention of the State party to its General Comment No.7 (1997) on forced evictions. 29. The Committee is concerned that restrictions to land and resources, threats to livelihoods and the reduced access to decision-making processes by vulnerable communities, such as pastoralist and hunter-gatherer communities, pose a threat to the realization of their right to culture life. (art.15) The Committee recommends that the State party take legislative and other measures to protect, preserve and promote the cultural heritage and traditional ways of life of vulnerable communities, such as hunter-gatherer and pastoralist communities. It recommends that it ensure their meaningful participation in the debates related to nature conservation, commercial hunting, tourism and other uses of the land, based on free, prior and informed consent 9 December 2010

### **1.7 Sri Lanka, E/C.12/LKA/CO/2-4, 9 December 2010**

11. The Committee is concerned that the conversion of the Veddahs's traditional land into a national park has led to their socio-economic marginalization and impoverishment, Veddahs having been prohibited access to their traditional hunting grounds and honey sites. The Committee is also concerned that Veddahs are highly stigmatized in the State party, in particular Veddah children who are the victim of ostracism in the school system and often employed in hazardous occupations. (art. 1, para. 2)

12. The Committee urges the State party to ensure that the Veddahs can return to and remain undisturbed on the lands from which they were evicted, in particular in the Maduru Oya reserve, to establish a state authority for the representation of Veddahs which should be consulted and should give consent prior to the implementation of any project or public policy affecting their lives. The Committee also recommends that the State party consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

**2. General Comment No. 26 land and economic, social and cultural rights, E/C.12/GC/26, (first published on 22 December 2022)**

**3. Obligation to fulfil**

38. States parties should engage in long-term regional planning to maintain the environmental functions of land. They should prioritize and support land uses with a human rights-based approach to conservation, biodiversity and the sustainable use of land and other natural resources. They should also, inter alia, facilitate the sustainable use of natural resources by recognizing, protecting and promoting traditional uses of land, adopting policies and measures to strengthen people's livelihoods based on natural resources and the long-term conservation of land. That includes specific measures to support communities and people to prevent, mitigate and adapt to the consequences of global warming. States should create the conditions for regeneration of biological and other natural capacities and cycles and cooperate with local communities, investors and others to ensure that land use for agricultural and other purposes respects the environment and does not accelerate soil depletion and the exhaustion of water reserves.

**C. Human Rights Committee**

**1.1 Botswana, CCPR/C/BWA/CO/2, 24 November 2021**

**Rights of minorities and indigenous communities**

37. The Committee is concerned about the difficulties faced by minorities and indigenous communities in accessing public services, including healthcare and education, in enjoying their rights to their traditional lands and natural resources and in exercising their linguistic rights. In particular, it is concerned that: (a) former residents of the Central Kalahari Game Reserve, in particular the Basarwa and Bakgalagadi, who were not applicants in the case *Roy Sesana and Others v. the Attorney General*, are required to obtain entry permits to enter the reserve; (b) children belonging to minority groups in remote areas, particularly Basarwa children, are institutionalized in hostels that are located very far from their families, that are reportedly unsafe and that sometimes lack access to water or electricity, in order to receive primary education; (c) languages other than English and Setswana are prohibited in broadcasting, private printed media and private radio stations; (d) there are no provisions in the Communications Regulatory Authority Act (2012) for local community-based broadcasting and that broadcasting licences for locally based community radio stations have reportedly been rejected; and (e) under the Constitution, members of minorities who do not speak English are not eligible to be elected to the National Assembly (arts. 2, 19 and 25–27).

Concerned persons/groups

Rights of minorities and indigenous communities

38. In light of and bearing in mind the Committee's previous recommendation, the State party should:

(a) Ensure that the rights of minorities and indigenous communities, particularly in relation to their traditional lands, natural resources and linguistic rights, are promoted, protected and recognized in law and in practice, including through the development and enactment of dedicated legislation with a view to guaranteeing their enjoyment of Covenant rights without discrimination; (b) Ensure the consistent and effective application of the principle of free, prior and informed consent before any developmental or other activities take place on lands traditionally used, occupied or owned by minorities and indigenous communities; (c) Ensure that no restrictions are imposed on current and former residents of the Central Kalahari Game Reserve, including those who were not applicants in *Roy Sesana and Others v. the Attorney General*, to their return to and stay in the reserve; (d) Review the practice of institutionalizing in hostels children belonging to minority groups in remote areas for the purpose of receiving education and find suitable alternatives; (e) Ensure that indigenous communities are able to express themselves in their own languages and promote their cultures, including in broadcasting, private printed media and private radio stations.

**1.2 United States of America, CCPR/C/USA/CO/4, 23 April 2014**

25. The Committee is concerned about the insufficient measures taken to protect the sacred areas of indigenous peoples against desecration, contamination and destruction as a result of urbanization, extractive industries,

industrial development, tourism and toxic contamination. It is also concerned about the restriction of access of indigenous peoples to sacred areas that are essential for the preservation of their religious, cultural and spiritual practices, and the insufficiency of consultation with indigenous peoples on matters of interest to their communities (art. 27).

The State party should adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the indigenous communities that might be adversely affected by the State party's development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for proposed project activities.

### **1.3 Bolivia, CCPR/C/BOL/CO/3, 6 December 2013**

25. The Committee welcomes the preliminary framework bill on consultation mentioned in the State party's replies, but is concerned by information to the effect that, where extractive projects are concerned, the preliminary bill as yet provides only for consultation with the peoples affected, but not their free, prior and informed consent. The Committee is also concerned at reports of tensions in the Isiboro Securé National Park and Indigenous Territory caused by a road-building project that does not have the support of all the communities concerned (art. 27).

The State party should ensure that the preliminary framework bill on consultation complies with the principles set forth in article 27 of the Covenant and provides guarantees that indigenous communities' free, prior and informed consent will be sought when decisions are to be taken concerning projects that have a bearing on their rights and that, in particular, all the indigenous communities concerned will take part in the consultation process and that their views will be duly taken into account. The State party should also ensure that indigenous communities' free, prior and informed consent is obtained through representative institutions before any measures are adopted that would substantially jeopardize or interfere with culturally significant economic activities of those communities.

### **1.4 Kenya, CCPR/C/KEN/CO/3, 31 August 2012**

24. The Committee is concerned at reports of forced evictions, interference and dispossession of ancestral land by the Government from minority communities such as the Ogiek and Endorois communities who depend on it for economic livelihood and to practice their cultures. The Committee is further concerned at reports that the Ogiek community is subjected to continued eviction orders from the Mau forests complex. The Committee notes that the State party has not implemented the decision of the African Commission on Human and Peoples' Rights in the case *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council in Kenya*. (arts. 12, 17, 26 and 27).

25. The Committee recommends that, in planning its development and natural resource conservation projects, the State party respect the rights of minority and indigenous groups to their ancestral land and ensure that their traditional livelihood that is inextricably linked to their land is fully respected. In this regard, the State party should ensure that the inventory being undertaken by the Interim Coordinating Agency with a view to obtaining a clear assessment of the status and land rights of the Ogiek community be participatory and that decisions be based on free and informed consent by this community.

## **D. Committee on the Rights of the Child**

### **1. Concluding Observations**

#### **1.1 Costa Rica, CRC/C/CRI/CO/5-6, 4 March 2020**

Children belonging to indigenous and Afrodescendent peoples

44. With reference to its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party:

d) Expedite measures to implement Presidential Decree No. 40932-MP-MJP of March 2018, and ensure that indigenous and Afrodescendent children are included in processes to seek free, prior and informed consent of indigenous and Afrodescendent peoples, in connection with measures affecting their lives, and ensure that development projects, hydroelectric projects, business activities, and the implementation of legislative or

administrative measures, such as the establishment of protected areas, are subject to consultations and adhere to the United Nations Declaration on the Rights of Indigenous Peoples.

## **1.2 Kenya, CRC/C/KEN/CO/3-5, 21 March 2016**

### Standard of living

55. The Committee welcomes the explicit recognition of the rights to housing, sanitation, food, water and social security in the Constitution (2010), the decrease in the proportion of malnourished children, and the significant increase in the number of children covered by the Cash Transfer Programme for Orphans and Vulnerable Children.

Nevertheless, the Committee is concerned that:

(a) Many of the laws, policies and strategies to operationalize constitutional rights to housing, sanitation, food, water and social security have not been adopted and implemented;

(b) Major geographical disparity exists in the enjoyment of the rights to housing, sanitation, food, water and social security, with worse conditions particularly in arid and semi-arid lands and in informal settlements in peri-urban and urban areas; (c) Forced evictions and displacements of people, including children, have taken place due to development projects and environmental conservation; d) Lack of access to sanitation and safe drinking water, as well as persistent child malnutrition, including micronutrient deficiencies, pose a serious public health concern in respect of children, and contribute to recurring outbreaks of diseases such as cholera and to high child mortality; (e) The negative impact of climate change, combined with population growth and unsustainable development projects, is adding further pressure on children's access to water and sanitation and on their food and nutrition security in arid and semi-arid lands; (f) The Cash Transfer Programme for Orphans and Vulnerable Children does not cover the cost of health care except in respect of children under 5 years of age, and allocates benefits by household regardless of the number of children in each household. Its coverage has not been extended to children with disabilities, children in street situations, children in care institutions and refugee children. Information on the programme is not well disseminated among beneficiaries

56. The Committee recommends that the State party:

(a) Enact legislation to operationalize constitutional rights to housing, sanitation, food, water and social security, including the Water Bill (2012) and the Social Protection Bill (2014); (b) Strengthen focus on the above-mentioned rights in national development plans, in particular the rights to sanitation and water, and adopt and implement national policies and strategies to implement these rights, with an emphasis on eliminating geographic inequalities; (c) Ensure that the policies, projects and practices on development and the governance of land, including those which may entail relocation, are in line with relevant international standards, including the basic principles and guidelines on development-based evictions and displacement (see A/HRC/4/18, annex 1) and with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, adopted by the Committee on World Food Security of the Food and Agriculture Organization of the United Nations in 2012; (d) Build capacity of county governments and allocate sufficient human, technical and financial resources to strengthen the response and accountability of county governments to facilitate access to water and sanitation at the community level; (e) Adopt policies and institutional arrangements to enhance a comprehensive, multisectoral and participatory approach to food and nutrition security addressing root causes of malnutrition, and reduce overreliance on external funding for food and nutrition security programmes at the national and county levels in order to strengthen their sustainability; (f) In developing policies or programmes to address the issues of climate change and disaster risk management, including the National Adaptation Plan, integrate measures to protect children's rights to housing, sanitation, food, water and health and ensure the full and meaningful participation of communities at risk, including children, at both the national and the county levels;

Children belonging to indigenous groups.

67. The Committee is concerned about evictions of indigenous peoples from their lands under the pretext of national development and resource conservation, which have resulted in serious violations of the rights of indigenous children, aggravated by poverty, insecurity and conflict among indigenous communities.



68. With reference to the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to: (a) Enact law to operationalize article 63 of the Constitution (2010) which recognizes community land, including ancestral lands and lands traditionally occupied by hunter-gatherer communities; (b) Prevent evictions and displacement of indigenous peoples, including pastoralists, hunter-gatherers and forest people, and provide redress to those evicted or displaced from their lands; (c) Put in place measures for early detection and timely interventions in cases of conflict in areas occupied by indigenous peoples, through peaceful dispute resolution measures and addressing the root causes of these conflicts; (d) Consult and cooperate in good faith with the indigenous peoples concerned, including indigenous children, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them, and provide effective remedies in cases of violation of their rights; (e) Consider ratifying the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and formally endorse the United Nations Declaration on the Rights of Indigenous Peoples

### **1.3 Gabon, CRC/C/GAB/CO/2, 8 July 2016**

Children's rights and the environment

51. The Committee welcomes the positive steps taken to address deforestation, but remains concerned about the State party's policy to increase mono-cropping and that the land laws do not reflect the nomadic lifestyle of pygmy communities, including children, who rely on the forests for their livelihood.

52. The Committee recommends that the State party:

(a) Review its existing policies regarding mono-cropping, with the full and effective participation of pygmy communities, including children; (b) Ensure a transparent and human rights due diligence process, with the full participation of pygmy communities, including children, before demarcating lands for commercial purposes or turning them into national parks

## **E. Committee on the Elimination of Discrimination Against Women**

### **1. Concluding Observations**

#### **1.1 Honduras, CEDAW/C/HND/CO/9, 1 November 2022**

Rural and Indigenous women

42. The Committee is concerned about the limited access of rural and Indigenous women to education, employment and health care. It also notes with concern that rural and Indigenous women are underrepresented in decision-making and leadership positions and:

(a) The lack of consultations with Indigenous women on large-scale projects, such as tourism, agro-industrial and hydroelectric projects undertaken by foreign investors and private enterprises on Indigenous lands and using their natural resources, as well as the adverse impact of climate change on rural and Indigenous women, including intense drought, loss of crops and food and water insecurity;

(b) The forced eviction and displacement of Indigenous women and girls, labour exploitation, serious health consequences, and sexual violence and trafficking related to business and development projects on Indigenous lands;

(c) The intimidation, harassment and threats against rural and Indigenous women environmental activists participating in peaceful protests to protect their lands and the criminalization of their activities.

43. Recalling its general recommendations No. 34 (2016) on the rights of rural women, No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change and No. 39 (2022) on the rights of Indigenous women and girls, the Committee reiterates its previous concluding observations (CEDAW/C/HND/CO/7-8, para. 43) and recommends that the State party:

(a) Ensure that economic activities, including logging, development, investment, tourism, extractive, mining and climate mitigation and adaptation programmes, and conservation projects, are implemented only in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the undertaking of adequate consultation processes;

#### **1.2 Kenya, CEDAW/C/KEN/CO/8, 22 November 2017**

Indigenous women

44. The Committee notes with concern that indigenous women in the State party, including Endorois women, have limited access to traditional lands owing to the failure to implement the ruling of 2010 by the African Commission on Human and Peoples' Rights, which recognized their rights to ancestral land in the Rift Valley,

and the lack of consultation with them. It is also concerned about reports of violence, including killings against indigenous women and girls in Baringo County during cattle raids.

45. The Committee recommends that the State party: (a) Take immediate steps to implement the ruling of the African Commission on Human and Peoples' Rights regarding the rights of the Endorois people to their ancestral land, and ensure consultation with Endorois women during this process; (b) Take all measures necessary to protect indigenous women and girls, including those in Baringo County, from violence and theft, and ensure that the perpetrators are prosecuted and adequately punished.

### **1.3 Thailand, CEDAW/C/THA/CO/6-7, 24 July 2017**

Rural women

42. The Committee remains concerned that rural women, including indigenous women and women from ethnic and religious minority groups, continue to be disproportionately affected by poverty and limited economic opportunities, which increase their vulnerability to trafficking and exploitation. It also expresses concern that rural women:

(c) Face restrictions to their right to land and natural resources, owing to land acquisition for development projects, use by the mining and other extractive industries and the zoning of national parks

43. With reference to its general recommendation No. 34 (2016) on the rights of rural women, the Committee recommends that the State party: (...) c) Ensure effective consultations with women from affected communities with regard to the zoning of national parks and the economic exploitation of lands and territories traditionally occupied or used by them and that it secures the free, prior and informed consent of the women affected and provide adequate compensation as necessary;

### **1.4 Costa Rica, CEDAW/C/CRI/CO/7, 24 July 2017**

Indigenous women and women of African descent

36. The Committee is concerned about the lack of implementation of the principle of free, prior and informed consent and the lack of consultations with indigenous women and women of African descent in connection with development projects affecting their collective rights to land ownership. It is also concerned about the consequences of forced evictions of indigenous women and women of African descent from lands traditionally occupied or used by them and the dispossession of such lands by private non-State actors.

37. The Committee recommends that the State party: (a) Take resolute action against land dispossession and forced evictions of indigenous women and women of African descent from lands traditionally occupied or used by them, strengthen legal and procedural safeguards to protect them and ensure their meaningful participation in decision-making processes regarding the use of traditional indigenous lands; (b) Set up and implement effective consultation mechanisms to secure the free, prior and informed consent of indigenous women and benefit-sharing in relation to development projects and other uses of their natural resources and lands, and assess and mitigate the impact of the establishment of protected areas and the adoption of environmental public policies on the rights of indigenous women and women of African descent

## **2. General Recommendation No. 39 on Indigenous Women and Girls, 31 October 2022**

(...)

### **II Objectives and Scope**

11. One of the root causes of discrimination against Indigenous women and girls is the lack of effective implementation of their rights to self-determination and autonomy and related guarantees, as manifested, inter alia, in their continued dispossession of their lands, territories and natural resources. The Committee acknowledges that the vital link between Indigenous women and their lands often forms the basis of their culture, identity, spirituality, ancestral knowledge and survival. Indigenous women face a lack of legal recognition of their rights to land and territories and wide gaps in the implementation of existing laws to protect their collective rights. Governments and third-party actors frequently carry out activities related to investment, infrastructure, development, conservation, climate change adaptation and mitigation initiatives, tourism, mining, logging and extraction without securing the effective participation and obtaining the consent of the Indigenous Peoples affected. The Committee has a broad understanding of the right of Indigenous women and girls to self-determination, including their ability to make autonomous, free and informed decisions concerning their life plans and health.

## **B. Right to effective participation in political and public life (arts. 7, 8 and 14)**

43. Indigenous women and girls tend to be excluded from decision-making in local, national and international processes, as well as in their own communities and Indigenous systems. Under article 7 of the Convention, they have the right to effective participation at all levels in political, public and community life. This right includes participation in decision-making within their communities, as well as with ancestral and other authorities; consent and consultation processes over economic activities carried out by State and private actors in Indigenous territories; public service and decision-making positions at the local, national regional and international levels; and their work as human rights defenders.

44. Indigenous women and girls face multiple and intersecting barriers to effective, meaningful and real participation. Such barriers include political violence; lack of or unequal educational opportunities; illiteracy; racism; sexism; discrimination based on class and economic status; language constraints; the need to travel long distances to gain access to any form of participation; the denial of access to health-care services, including sexual and reproductive health care and rights; and the lack of access to, economic support for and information on legal, political, institutional, community and civil society processes to vote, run for political office, organize campaigns and secure funding. The barriers to participation can be particularly high in armed conflict contexts, including in transitional justice processes, in which Indigenous women and girls and their organizations are often excluded from peace negotiations or attacked and threatened when they do try to participate. States parties should act promptly to ensure that all Indigenous women and girls have access to computers, the Internet and other forms of technology to facilitate their full inclusion in the digital world.

45. The Committee acknowledges the threats faced by Indigenous women human rights defenders, whose work is protected by the right to participate in political and public life. At particular risk are Indigenous women and girls who are environmental human rights defenders in the course of advancing their land and territorial rights, and those opposing the implementation of development projects without the free, prior and informed consent of the Indigenous Peoples concerned. In many cases, Indigenous women and girl human rights defenders face killings; threats and harassment; arbitrary detentions; forms of torture; and the criminalization, stigmatization and discrediting of their work. Many Indigenous women and girls' organizations face obstacles to their recognition as legal entities at the national level, the lack of which challenges their access to funding and their ability to work freely and independently. The Committee considers that States parties should adopt immediate gender-responsive measures to publicly recognize, support and protect the life, liberty, security and self-determination of Indigenous women and girl human rights defenders, and to ensure safe conditions and an enabling environment for their advocacy work, free from discrimination, racism, killings, harassment and violence.

46. The Committee recommends that States parties:

...

(f) Ensure that economic activities, including those related to logging, development, investment, tourism, extraction, mining, climate mitigation and adaptation programmes, and conservation projects are only implemented in Indigenous territories and protected areas with the effective participation of Indigenous women, including full respect for their right to free, prior and informed consent and the adequate consultation processes. It is key that these economic activities do not adversely impact human rights, including those of Indigenous women and girls;

## **I. Right to a clean, healthy and sustainable environment (arts. 12 and 14)**

60. .. Moreover, States should take steps to recognize the contribution of Indigenous women through their technical knowledge of biodiversity conservation and restoration, including them in decision-making, negotiations and discussions concerning climate action and mitigation and adaptation measures. States should also act promptly to support the work of Indigenous women and girls who are environmental human rights defenders and ensure their protection and security.

61. The Committee recommends that States parties:

(d) Ensure the free, prior and informed consent of Indigenous women and girls in matters affecting their environment, lands, cultural heritage and natural resources, including any proposal to designate their lands as a protected area for conservation or climate change mitigation purposes or carbon sequestration and trading or to implement a green energy project on their lands, and any other matter having a significant impact on their human rights.

## **II. HUMAN RIGHT COUNCIL**

## A. Expert Mechanism on the Rights of Indigenous Peoples

### 1. Advice No. 12 on the causes and consequences of migration and displacement of indigenous peoples within the context of States' human rights obligations, A/HRC/EMRIP/2019/2/Rev.1, 18 September 2019

8. States should ensure that the rights of indigenous peoples are respected when carrying out commercial, development, climate change mitigation and conservation projects, including their right to consultation and free, prior and informed consent, and should adopt the recommendations as advised in the study on that theme (A/HRC/39/62), and the provision of restitution and compensation as contained in the Declaration. They should involve indigenous peoples in their strategies on climate change in order to take advantage of their traditional knowledge, valuable for ecosystem conservation.

### 2. Report of the Expert Mechanism on the Rights of Indigenous Peoples on its fifth session (Geneva, 9-13 July, 2012). A/HRC/21/52.

“... UNESCO must enable and ensure effective representation and participation of indigenous peoples in decision-making related to the World Heritage Convention... [R]obust procedures and mechanisms should be established to ensure that indigenous peoples are adequately consulted and involved in the management and protection of World Heritage sites, and that their free, prior and informed consent is obtained when their territories are being nominated and inscribed as World Heritage sites.

## B. Working Group on the issue of human rights and transnational corporations and other business enterprises

### 1. Visit to Thailand, A/HRC/41/43/Add.1, 21 May 2019

Ethnic minorities

73. The Government informed the Working Group of its efforts to review systematically laws, policies and measures aimed at humans living harmoniously in the forests, including the approval of the Community Forest Act and the National Parks Act by the National Legislative Assembly on 15 February 2019 and 7 March 2019, respectively, and the establishment of the National Land Policy Committee.

74. Since the life, livelihood and culture of ethnic communities is intrinsically linked to land and natural resources, the Government's land management and forest conservation policies should be rooted in meaningful consultation and the participation of those communities in decision-making processes, as set out in the United Nations Declaration on the Rights of Indigenous Peoples.

### 2. Report of the Working Group, A/74/198, 19 July 2019

Protection of individuals and groups at heightened risk of abuse

37. Other business-related areas in which many governments need to strengthen policy coherence include developing holistic policies on environmental impact assessments, large-scale development projects, land management and forest conservation and the need to meet the requirement for free, prior and informed consent when the lives, livelihoods and cultures of indigenous peoples are at stake. Similarly, the absence of a comprehensive normative and policy framework on eviction, resettlement and compensation calculations in the context of economic development projects has triggered repeated human rights conflicts. These gaps are exacerbated when governments and/or businesses do not respect the right of affected communities and individuals to participate in decisions that affect them

## C. Special Procedures country visits and thematic reports

### 1. Special Rapporteur on the Rights of Indigenous Peoples

#### 1.1 Visit to Costa Rica, A/HRC/51/28/Add.1, 13 July 2022

### **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.

#### Indigenous women and participation

101. The Special Rapporteur recommends that the State:

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

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:...

(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.

## **1.2 The situation of indigenous peoples in Asia, A/HRC/45/34/Add.3, 4 September 2020**

### III. Conclusions and recommendations

#### Recognition of indigenous peoples' rights

70. The promotion of the rights of indigenous peoples and their traditional practices, are key to sustainable conservation, biodiversity and climate change adaptation and mitigation measures. For States to put into action their development pledge of leaving no one behind, the obligations towards indigenous peoples must be at the forefront and must be reflected in effective policy measures and in the effective allocation of resources.

#### C. Conservation

77. There needs to be better understanding of indigenous traditional practices, such as rotational crop cultivation and forest management, and the contribution of indigenous peoples to the conservation, protection and sustainable use of biodiversity. Indigenous peoples should be consulted and participate in designing, implementing, managing and monitoring conservation initiatives and have effective access to complaints mechanisms to seek remedies for violations of their rights. National laws that make illegal the traditional livelihood practices of indigenous peoples, such as shifting cultivation, should be repealed.

78. Tourism cannot be prioritized over the rights of indigenous communities. Protected areas should not be declared, nor should UNESCO World Heritage status applications be submitted, without consultation and without obtaining the free, prior and informed consent of the indigenous peoples affected.

## **1.3 Visit to Congo, A/HRC/45/34/Add.1, 10 July 2020**

### Conclusions and recommendations

#### B. Recommendations

108. The Special Rapporteur makes the following additional recommendations: (f) Conservationists and international donors concerned with the environment and the preservation of biodiversity should promote and fund indigenous-led conservation initiatives while focusing restrictive measures on threats to ecosystems coming from non-indigenous sources, including criminal poaching networks, corruption and unsustainable forest exploitation; (g) In this respect, the Special Rapporteur invites the Government, its United Nations supporting partners and conservation organizations in the Congo to consider the recommendations included in her report on conservation. She recommends that conservation organizations adopt human rights policies and monitor the application of human rights-based conservation programmes, and that culturally appropriate and independent complaints mechanisms be made available for indigenous peoples to voice their concerns over conservation initiatives and support initiatives for indigenous peoples' right to remedy in cases when conservation activities have negatively affected their rights (...);

#### **1.4 Visit to Timor-Leste, A/HRC/42/37/Add.2, 2 August 2019**

Conclusions and recommendations

Conservation and climate change

90. The Special Rapporteur commends the Government for its positive recognition of customary practices for natural resource management. She encourages the Government and international donors, at the request of and in consultation with local communities, to support traditional authorities and communities to further strengthen the use of customary practices for conservation and climate change adaptation.

Free, prior and informed consent

91. The Government should further strengthen its awareness of and revise the legal framework to incorporate provisions on free, prior and informed consent, guided by international legal documents elaborating on this principle, and ensure that this principle is respected in all matters. The Environmental Licensing Law, for example, should be revised to explicitly incorporate the principle of free, prior and informed consent.

#### **1.5 Visit to Ecuador, A/HRC/42/37/Add.1, 4 July 2019**

Rights of indigenous peoples over their lands, territories and natural resources

81. The State should ensure that indigenous peoples have legal certainty with respect to their lands, territories and natural resources. To that end, as a matter of urgency, it should adopt an accessible and effective system for awarding land that allows for the full enjoyment of their territorial rights in accordance with international human rights standards. Requirements for the establishment of indigenous territorial districts should be harmonized with those standards to ensure that indigenous peoples who wish to do so can use this option for exercising their right of self-determination.

82. The establishment and management of protected areas and other systems for protecting indigenous peoples' lands and territories should be the subject of proper consultations and to free, prior and informed consent.

#### **1.6 Visit to Mexico, A/HRC/39/17/Add.2, 28 June 2018**

101. The Special Rapporteur reiterates her predecessor's recommendations on the need to respect the rights of indigenous peoples as regards protected areas in their territories, including their rights to prior consultation and participation in the management, administration and control of those areas. She also reiterates that indigenous peoples' rights include access to natural resources for the purpose of subsistence and protection of their cultural and natural heritage.

#### **1.7 Visit to Guatemala, A/HRC/39/17/Add.3, 10 August 2018**

Lands, territories and natural resources

(a) All branches of the Government should take coordinated action to confront the disturbing situation of violations of indigenous peoples' rights over their lands, territories and natural resources; (b) It is essential to develop a legal framework and an effective system for the recognition and protection of indigenous peoples' ancestral rights of ownership, use, development and control, in accordance with the country's international obligations in this regard. Measures should be adopted to monitor and punish fraudulent transactions and to curb land grabbing; (c) The State should respect the right of indigenous peoples to their own development priorities and strategies and appreciate their contribution to the country's economy. Licences should not be issued for activities that affect the rights of indigenous peoples without proper consultation or consent. Redress should be provided for damage caused by projects inflicted on their ancestral lands and territories; (d) There should be an immediate suspension of forced evictions. The authorities should resolve the underlying causes of such displacements by engaging in a due process of investigation, punishment, redress and justice. The situation of displaced indigenous people requires immediate attention, with a comprehensive and coordinated response in line with the applicable international standards, including the Guiding Principles on Internal Displacement; (e) The Government should, jointly with the indigenous peoples, draw up and implement environmental legislation that will respect the rights of indigenous peoples over their lands, territories and resources, including legislation governing protected areas and activities relating to action against climate change;

#### **1.8 Visit to Australia, A/HRC/36/46/Add.2, 8 August 2017**

106. The Special Rapporteur observed effective indigenous community-led initiatives in a range of areas, including public health, housing, education, child protection, conservation and administration of justice, which all have the potential of making immediate positive changes in the lives of Aboriginal and Torres Strait Islanders. The Government could achieve significant progress in realizing the rights of indigenous peoples if it consulted, financially supported and worked hand-in-hand with those organizations.

118. Concerning land rights and native title, the Special Rapporteur recommends that the Government:

- (a) Review the system with multiple and overlapping legal regimes applicable to native title claims at the federal, state and territory levels, with a view to aligning them with the United Nations Declaration on the Rights of Indigenous Peoples, which does not contain norms requiring proof of continuous occupation of land;
- (b) Subject any native title law reform to adequate consultations with all concerned stakeholders;
- (c) Train more indigenous legal professionals with expertise on native title in order to allow Aboriginal and Torres Strait Islander communities to engage in land rights claims in an informed manner;
- (d) Extend protected areas when requested by Aboriginal and Torres Strait Islander Peoples;
- (e) Continue to support the joint management of protected areas and the indigenous rangers programme as these are laudable examples of best practices.

### **1.9 Visit to Honduras, A/HRC/33/42/Add.2, 21 July 2016**

85. Honduras must examine the compatibility of current legislation and policies in the areas of property, natural resources, mining, hydrocarbons, energy projects, model cities, tourism, protected areas, forest issues and agro-industry with the country's international obligations on indigenous peoples, taking into account the constitutional status of international human rights instruments. The implementation of the law should not be to the detriment of the rights contained in the international instruments on indigenous peoples. Reforms or amendments to the law should be made in consultation with the indigenous peoples, in accordance with international standards.

#### **Protected areas**

100. The creation of protected areas also requires prior consultation, the consent of the indigenous peoples directly or indirectly affected and due regard for their rights under national and international law. The management of existing or proposed protected areas should be conducted with the full and effective participation of the indigenous peoples affected, respecting their own forms of use and management of natural resources in their ancestral territories. The Special Rapporteur urges that the necessary measures be taken to facilitate access to and use of their lands and natural resources by the indigenous peoples in areas that are currently protected, free of charge and without penalty.

### **1.10 Situation of indigenous peoples in Paraguay, A/HRC/30/41/Add.1, 13 August 2015**

#### **V. Conclusions and recommendations**

Socioeconomic situation<sup>83</sup>. The Special Rapporteur recommends:

- (e) The design and effective implementation of a REDD+ programme and the application of the associated social and environmental safeguards, which include respect for indigenous peoples' rights and knowledge, guarantees for their full and effective participation and the prevention of deforestation, among other measures;
- (f) Full recognition of and respect for the rights of indigenous peoples as they apply to the activities involved in the conservation and sustainable use of biodiversity, especially in terms of the establishment and management of protected areas that affect their lands, territories or natural resources. The indigenous peoples concerned should be consulted with a view to obtaining their consent prior to the establishment of such areas and should participate in their management

### **1.11 The situation of indigenous peoples in Namibia\*, A/HRC/24/41/Add.1, 25 June 2013**

#### **V. Conclusions and recommendations**

81. The Government should give high priority to purchasing adequate resettlement lands for the Hai//om people living in Oshivelo and other similarly situated San groups who were removed from the Etosha National Park in the 1950s. When selecting lands, the Government should make all efforts to accommodate the Oshivelo community's desire to have access to lands in Etosha National Park for tourism purposes and also receive lands adjacent to the park suitable for agricultural and other economic activities.

82. Namibia should take measures to reform protected - area laws and policies that now prohibit San people, especially the Khwe in Bwabwata National Park and the Hai//om in Etosha National Park, from securing rights to lands and resources that they have traditionally occupied and used within those parks. The Government should guarantee that San people currently living within the boundaries of national parks are allowed to stay, with secure rights over the lands they occupy.

83. In addition, the Government should take steps to increase the participation of San people in the management of park lands, through concessions or other constructive arrangements, and should minimize any restrictions that prohibit San from carrying out traditional subsistence and cultural activities within these parks.

84. The Government should review its decision not to allow the Hai//om San people to operate a tourism lodge within the boundaries of Etosha National Park under their current tourism concession. Further, management of concessions should not be limited to only those Hai//om groups that opt to move to the resettlement farms.

85. The Government should enforce the provisions of the Communal Land Reform Act that prohibit the erection of fences in communal lands. It should also investigate allegations of illegal fencing in the Nyae Nyae and Ntja Jaqna conservancy areas and in communal areas occupied by Himba people. Furthermore, efforts should be made to harmonize any inconsistent laws and policies regarding conservancy areas and communal lands or other actions that promote competing interests on those lands.

#### **1.12 The situation of indigenous peoples in Argentina\*, \*A /HRC/21/47/Add.2, 4 July 2012**

##### **V. Conclusions and recommendations**

National parks and protected areas<sup>95</sup>. The Government should review its policy on establishing national parks and protected areas in order to ensure that they do not infringe the rights of indigenous peoples to their lands and natural resources within these areas. It should also remedy the situations in which the establishment of national parks or protected areas has hindered the enjoyment of these rights.

96. In addition, the Government should guarantee suitable processes for consultation with indigenous peoples when a proposal is made to establish a national park or protected area that might adversely affect them. It should also encourage and take measures to ensure that the indigenous peoples who live in or around these areas share in any tourism or other benefits generated by these sites if they so wish.

97. With regard to Quebrada de Humahuaca, listed by UNESCO as a world heritage site, the Federal Government, the provincial government of Jujuy and representatives of UNESCO should increase the participation of indigenous peoples from the surrounding areas in the management of the site, while ensuring that these peoples can continue to carry out their traditional and subsistence activities within Quebrada de Humahuaca.

#### **1.13 The situation of indigenous peoples in Asia, A/HRC/24/41/Add.3, 31 July 2013**

##### **IV. Conclusions and recommendations**

Securing rights to land, territories and resources, with a focus on extractive industries

45. Where they have not done so already, States should enact and effectively implement legislation recognizing indigenous peoples' customary tenure rights over lands and resources. This legislation should provide for demarcation of indigenous peoples' territories in a manner that is efficient and not burdensome on the groups concerned, and ensure that respect for indigenous peoples' authorities and customary laws and practices is a paramount consideration. These mechanisms should also provide for restitution and compensation for lands taken from indigenous peoples without their free, prior and informed consent, including lands taken as a result of concessions issued for extractive or other projects or the establishment of conservation areas such as natural parks

49. States in the region should take steps to increase the participation of indigenous peoples in the management of natural parks and other conservation areas, and should minimize any restrictions that prohibit these peoples from carrying out traditional subsistence and cultural activities within these areas

18 August 2011

#### **1.14 Measures needed to secure indigenous and tribal peoples' land and related rights in Suriname, A/HRC/18/35/Add.7, 18 August 2011**



39. Finally, it will be necessary for the Government to review existing laws and the Constitution to ensure their consistency with the protections for indigenous and tribal peoples to be enacted. This was required by the Inter-American Court in the Saramaka decision, which ordered that Suriname to “remove or amend the legal provisions that impede protection of the right to property of the members of the Saramaka people”. Proposed amendments to the Constitution are included in the appended 2005 proposal. In addition to possible amendments to the Constitution, the process of harmonizing existing legal provisions with indigenous and tribal rights may include revisions of the Mining Decree of 1986 (and the draft revised Mining Act of 2004), the Forest Management Act of 1992, and legislation concerning national parks and protected areas, among other laws to be identified. The Special Rapporteur recommends that the joint commission or other appropriate platform established for consultations with indigenous and tribal peoples be tasked with identifying the laws and policies that will need to be amended, as well as with developing amendments to propose to the relevant government authorities. Indigenous and tribal people should be consulted in this process to ensure that appropriate and satisfactory arrangements are made.

#### **1.15 Preliminary note on the mission to New Zealand, A/HRC/15/37/Add.9 , 18 to 24 July 2010**

76. The Special Rapporteur notes with concern the Government’s position not to return to Ngati Tuhoe their traditional lands within the Te Urewera National Park . He urges the Government to reconsider this position in the light of the merits of the Tuhoe claim and considerations of restorative justice, and to not rule out the possibility of return of these lands to Tuhoe in the future even if it is not included in a near-term settlement.

#### **1.16 Situation of indigenous peoples in the Russian Federation, A/HRC/15/37/Add.5 23 June 2010**

##### *2. Lands and natural resources*

83. It is essential that the State urgently bring coherence, consistency and certainty to the various laws that concern the rights of indigenous peoples and particularly their access to land and resources. In accordance with international standards, guarantees for indigenous land and resource rights should be legally certain; implemented fully and fairly for all indigenous communities; consistent between federal and regional frameworks; and consistent throughout various legislation dealing with property rights, land leases and auctions, fisheries and forestry administration, national parks and environmental conservation, oil development and regulation of commercial enterprises.

84. Legislated land and resource use guarantees for indigenous people should be able to withstand any future land reform, hunting or fishing law amendments, and any other new laws that affect indigenous communities. Urgent attention should be paid to ensuring proper modifications or revisions to the land code, the federal law on hunting, and other legal provisions that currently contradict or hinder indigenous land and resource rights.

#### **1.17 The situation of indigenous peoples in Botswana, A/HRC/15/37/Add.2, 2 June 2010**

##### **VI. Conclusions and recommendations**

##### **A. Respect for cultural diversity**

89. Legislation and policy related to natural resource use and management, particularly that related to hunting and gathering rights and access to conservation areas, should be reviewed and reformed, in accordance with international human rights norms, to accommodate the traditional cultural patterns of non-dominant indigenous peoples, many of whom were displaced during the creation of conservation areas and continue to face exclusion from those areas.

##### **C. Historical grievances**

96. The Government should reorient its policies and laws regarding land use, conservation and wildlife management to accommodate the subsistence needs and cultural practices of communities that have been dispossessed of access to lands or resources by policies and measures such as the Tribal Grazing Land Policy and the creation of conservation and wildlife management areas.

##### **D. Central Kalahari Game Reserve**

97. The decision by the High Court of Botswana in the case of Roy Sesana and Others v. The Attorney General, concerning the removal of Basarwa and Bakgalagadi communities from the Central Kalahari Game Reserve, highlights the failure of the Government to adequately consult with indigenous peoples in significant decisions affecting them and to respect their rights to traditional lands and resources. The Government should fully and faithfully implement the Sesana judgement and take additional remedial action in accordance with international standards relating to the removal of indigenous peoples from their traditional lands. Such remedial action should include, at a minimum, facilitating the return of all those removed from the reserve who wish to do so, allowing them to engage in subsistence hunting and gathering in accordance with traditional practices, and providing them the same government services available to people of Botswana elsewhere, including, most immediately, access to water.

98. Indigenous people who have remained or returned to the reserve face harsh and dangerous conditions due to a lack of access to water, a situation that could be easily remedied by reactivating the boreholes in the reserve. The Government should reactivate the boreholes or otherwise secure access to water for inhabitants of the reserve as a matter of urgent priority.

99. The Government has taken steps to negotiate with relevant stakeholders to resolve the situation of the people removed from or still living in the Central Kalahari Game Reserve. However, further efforts in this regard are required. The Government should work to ensure the effective, direct participation in the negotiations of all affected indigenous communities and allow them to be assisted in the negotiations by legal counsel or to receive other technical support available to them if they so choose. Additionally, the Government should provide adequate financial and logistical support to ensure the effective participation of the stakeholder indigenous communities.

#### **2.1 Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge, A/HRC/51/28, 09 August 2022<sup>68</sup>**

### **IX. Conclusions and recommendations**

102. Indigenous women face exceptional impediments to the development, preservation, use and transmission of their scientific knowledge. Because of their relationship with the land and natural environment and the marginalization they face for being women and indigenous, they are disproportionately affected by the loss of lands, territories and resources owing to climate change, the development of megaprojects and the creation of protected areas.

107. The Special Rapporteur recommends that States:

(a) ...  
(b) Incorporate indigenous knowledge into decision-making with respect to environmental programmes and the management of protected areas, including in conducting environmental and social impact evaluations for land use. Recognize the role of indigenous women in environmental conservation through specific funds and the promotion of women's full and equal participation and leadership in all governance and decision-making in the pursuit of climate justice, conservation and sustainable environmental solutions;

(k) Combat all forms of violence, intimidation and threats against indigenous women defending their lands, territories and resources and halt the criminalization of indigenous conservation and agricultural practices;

#### **2.2 Protected areas and indigenous peoples' rights: the obligations of States and international organizations, A/77/238<sup>69</sup>, 19 July 2022**

### **VIII. Conclusions and recommendations**

66. Deforestation and worsening climate change are understandable impetuses to increase the number of protected areas. However, increasing the number protected areas cannot effectively address the causes or consequences of climate change; major changes in cultures of consumption and huge reductions in emissions are ultimately required. In the meantime, indigenous peoples should not be made to pay the costs of inaction on consumption and emissions by non-indigenous societies. There can be no shortcuts to sustainable and effective conservation; it needs to be done together with those who have protected these areas of rare biodiversity for

<sup>68</sup> <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F28&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>69</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/431/62/PDF/N2243162.pdf?OpenElement>

thousands of years. Indigenous peoples must be recognized not only as stakeholders, but as rights holders in conservation efforts undertaken in their lands and territories. Their way of life and knowledge need to be preserved and protected, together with the lands that they inhabit. Respect for the rights of indigenous peoples, and not their exclusion from their territories in the name of conservation, will ultimately benefit the planet and its peoples as a whole.

67. Tangible progress in the recognition of indigenous peoples' rights has been made since the report of the previous mandate holder on this topic in 2016, giving hope for the universal acceptance of new conservation approaches that assert the rights of indigenous peoples. However, better recognition of indigenous peoples' rights urgently needs to be translated into action. States and all other conservation actors, as well as financial institutions, must apply new conservation models, while immediately addressing historical and contemporary wrongs caused to indigenous peoples by conservation projects.

68. It is imperative that, in the post-2020 global biodiversity framework, genuine commitment to a human rights-based approach to conservation be demonstrated by including express recognition thereof in the final text to be adopted at the fifteenth session of the Conference of the Parties to the Convention on Biological Diversity.

69. The Special Rapporteur recognizes the efforts of UNESCO, notably the adoption of the policy on engaging with indigenous people and revisions to the Operational Guidelines for the Implementation of the World Heritage Convention. These are concrete steps in the right direction, but further steps must be taken to implement these policies within the World Heritage Committee and on the ground at World Heritage sites. As the previous mandate holder noted (see A/71/229), it is possible for the nomination of sites for, and their inclusion in, the World Heritage List to be carried out constructively and with the consent of the indigenous peoples affected, ensuring that such procedures would in practice provide an effective contribution to conservation and the protection of human rights. Indigenous peoples should be the ones to nominate and manage their own sites and should fully and effectively participate in processes related to World Heritage sites to ensure respect for their rights, livelihoods and self-determined development.

70. The Special Rapporteur wishes to make the following recommendations. States should:

- (a) Recognize indigenous peoples' special and unique legal status;
- (b) Provide indigenous peoples with legal recognition of their lands, territories and resources; such recognition should be given with due respect for the legal systems, traditions and land tenure systems of the indigenous peoples concerned;
- (c) Apply a strict rights-based approach to the creation or expansion of existing protected areas;
- (d) Only extend protected areas to overlap with indigenous territories when indigenous peoples have given their free, prior and informed consent;
- (e) Ensure that indigenous peoples have the right of access to their lands and resources and undertake their activities in accordance with their world view, which has ensured the sustainable conservation of the environment for generations, and halt the criminalization of indigenous peoples carrying out sustainable activities linked to their way of life, activities that may be forbidden to non-indigenous peoples;
- (f) Protect indigenous peoples from encroachment on their ancestral lands and strictly forbid logging and extractive activities in protected areas;
- (g) Accept official country visits by special procedures to investigate alleged human rights violations at World Heritage sites and in other protected areas.

71. Member States, United Nations agencies, donors and all actors involved in conservation should:

- (a) Allocate funding to support indigenous-led conservancies, and create intercultural channels of communication to encourage the full participation of indigenous peoples in the management of protected areas and the inclusion of indigenous knowledge systems in conservation;
- (b) Implement efforts to ensure that indigenous peoples, including indigenous women, are well represented in decision-making processes, and adopt a rights-based approach at each stage of the design, implementation and assessment of conservation measures;
- (c) Learn from indigenous knowledge systems to determine, together with indigenous peoples, conservation protocols related to sacred areas or spaces and important species;
- (d) Protect and promote the role of indigenous women in preserving, transmitting, applying and developing indigenous scientific knowledge related to conservation and the protection of biodiversity;
- (e) Include, in collaboration with indigenous peoples, the knowledge and rights of indigenous peoples in conservation-related education curricula;

- (f) Institute and apply indigenous hiring preferences when recruiting officials for the management of protected areas and environmental protection;
  - (g) In consultation with indigenous peoples, ensure transparent and equitable benefit-sharing for their contributions to biodiversity protection on their lands and territories, and ensure that funding directed towards indigenous peoples is managed by them;
  - (h) Support the development of the capacity of indigenous peoples to participate in and influence international conservation processes, including the post-2020 global biodiversity framework, the nomination and management of World Heritage sites, and the planning and monitoring of, and reporting on, REDD-plus and other conservation and climate change mitigation projects;
  - (i) Adopt a culturally appropriate human-rights based approach when planning and implementing conservation projects, including REDD-plus initiatives, taking into consideration indigenous peoples' distinct and special relationship to land, waters, territories and resources, and ensure that indigenous peoples receive culturally appropriate funding for climate finance opportunities;
  - (j) Establish or strengthen grievance mechanisms that are independent, accessible and culturally appropriate for indigenous peoples;
  - (k) Protect indigenous peoples living in voluntary isolation and initial contact by taking into account their nomadic lifestyle and voluntary isolation as a right of indigenous peoples.
72. UNESCO should apply a strong human rights-based approach to the inclusion of sites in the World Heritage List. Such an approach should include:
- (a) Human rights impact assessments carried out together with indigenous peoples before the nomination process begins;
  - (b) The revision of the World Heritage Committee's rules of procedure to ensure the effective participation of indigenous peoples and United Nations human rights experts in decision-making processes affecting indigenous peoples before the Committee makes its final decision;
  - (c) Periodic reporting on, and reviews of, the human rights situation at World Heritage sites and measures to reconsider World Heritage status if requirements are not met;
  - (d) The establishment of an independent grievance mechanism for violations at World Heritage sites.

### 2.3 Indigenous peoples and coronavirus disease (COVID-19) recovery, A/HRC/48/54, 06 August 2021<sup>70</sup>

#### VI. Conclusions and recommendations

83. In order to effectively recuperate from the current pandemic and better prepare for future health crises, States should adopt the measures set out below.

84. In the short-term, States should:

- (m) Adopt effective national responses that include measures to secure land rights and implement conservation approaches that recognize the close relationship of indigenous peoples with nature and engage them as stewards of the environment and natural resources;

### 2.4 The impact of COVID-19 on the rights of indigenous peoples, A/75/185, 20 July 2020

#### Economic and social recovery

111. In designing and implementing economic and social recovery plans, States must respect, protect and promote indigenous peoples' right to self-determination, including autonomy and self-governance, particularly their rights to control the use of and access to their lands and resources, and to operate their own health and educational systems. Relevant processes and plans must be driven by indigenous peoples themselves with the financial and material support of States, with a leadership role for indigenous women. Given pre-existing marginalization exacerbated by the pandemic, housing, access to food, health care and education for indigenous peoples, in both rural and urban contexts, should be a priority.

112. States should reinforce their commitments and actions aimed at curbing emissions and mitigating the impacts of climate change, taking into consideration the specific dependence of indigenous peoples on their lands and natural resources, including by supporting environmental conservation projects and initiatives led by indigenous peoples.

#### IV. Conclusions and recommendations

##### A. Conclusions

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<https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F54&Language=E&DeviceType=Desktop&LangRequested=False>.

106. Indigenous peoples remain in a position of stark disempowerment that can only be reversed through financial and political commitments to fully implement Law No. 5- 2011 and its implementing decrees. Additional policies need to be adopted and implemented. The development of a national framework to define and accelerate the demarcation of collective traditional lands of indigenous peoples and protect them from further encroachment by logging, the extractive industries and conservation projects would be a good starting point to restore some sense of pride and leadership to disempowered indigenous communities.

## B. Recommendations

107. The Special Rapporteur recalls and reiterates all the recommendations in her predecessor's report on his 2010 visit, including those related to the elaboration of a national campaign against discrimination, economic development that has due regard for indigenous culture, identity, rights over land and resources, and enhanced participation in decision-making and international cooperation. She urges the Government, international donors, the United Nations country team, civil society organizations and indigenous communities to work together towards their full, effective and urgent implementation.

108. The Special Rapporteur makes the following additional recommendations:

... (f) Conservationists and international donors concerned with the environment and the preservation of biodiversity should promote and fund indigenous-led conservation initiatives while focusing restrictive measures on threats to ecosystems coming from non-indigenous sources, including criminal poaching networks, corruption and unsustainable forest exploitation;

(g) In this respect, the Special Rapporteur invites the Government, its United Nations supporting partners and conservation organizations in the Congo to consider the recommendations included in her report on conservation. She recommends that conservation organizations adopt human rights policies and monitor the application of human rights-based conservation programmes, and that culturally appropriate and independent complaints mechanisms be made available for indigenous peoples to voice their concerns over conservation initiatives and support initiatives for indigenous peoples' right to remedy in cases when conservation activities have negatively affected their rights;

### **2.5 Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples (Conservation and Indigenous Peoples' Rights), A/71/229, 29 July 2016**

## **Conclusions**

68. While the high rate of biodiversity in indigenous ancestral lands is well established, the contribution of indigenous peoples to conservation has yet to be fully acknowledged. Although a new rights-based paradigm to conservation has been advancing during the last decades, it remains in its initial stages of being applied. Rights-based conservation measures continue to be hampered by the legacy of past violations and by the lack of legal recognition by States of indigenous peoples' rights. Conservation organizations and indigenous organizations could be powerful allies in their mutually shared goals to safeguard biodiversity and protect nature from external threats such as unsustainable resource exploitation. Protected areas continue to expand, yet threats against them from extractive industry, energy and infrastructure projects are also increasing, and thus the urgency to address effective, collaborative and long-term conservation is of paramount importance. The escalating incidence of killings of indigenous environmentalists highlights the importance of conservationists and indigenous peoples joining forces. Insecure collective land tenure continues to undermine the ability of indigenous peoples to effectively protect their traditional lands, territories and natural resources. Conservation organizations should make much more use of their leverage vis-a-vis States to advocate for the legal recognition of indigenous peoples' rights at the national level.

69. Full recognition of indigenous land rights and participation are key enabling conditions for conservation to be sustained. The Durban Action Plan which states that all existing and future protected areas shall be managed and established in full compliance with the rights of indigenous peoples and the Sydney Vision which promised that there should be redress and remedy for past and continuing injustices in accord with international agreements are powerful commitments of the conservation community. The Special Rapporteur believes that the effective implementation of these commitments can operationalize the human rights-based conservation paradigm.

#### Recommendations To States:

70. Undertake all necessary measures for the effective implementation of the United Nations Declaration on the Rights of Indigenous Peoples and ratify the ILO Indigenous and Tribal Peoples Convention No. 169.

71. Adopt all necessary policy, legal and administrative measures for the full recognition of the rights of indigenous peoples over their lands, territories and resources as enshrined in international human rights law.
72. Review and harmonize the environmental, legal and institutional framework with their obligations regarding the rights of indigenous peoples and ensure that a rights-based approach is applied to the creation or expansion of existing protected areas.
73. Comply with the duty to consult and obtain the free, prior and informed consent of indigenous peoples before the development of conservation initiatives which may affect their rights.
74. Support partnerships between government authorities and indigenous peoples to encourage intercultural engagement in order to build trust and collaboration to favour of shared goals of sustainable conservation.
75. Comply with judgments and decisions of international and regional human rights monitoring mechanisms regarding indigenous peoples' rights.
76. Establish accountability and reparation mechanisms for infringements on indigenous rights in the context of conservation and provide redress for historical and contemporary wrongs.
- To conservation organizations:
77. Respect and support the rights of indigenous peoples as recognized in international human rights law and enhance their ability to engage in conservation by advocating for recognition of their collective rights.
18478. Shift the new paradigm from paper to practice; adopt human rights-based policies, including on the rights of indigenous peoples, and ensure effective dissemination of these and trainings for conservation staff, especially for those involved in implementation at the national and local level.
79. As part of due diligence, improve monitoring and include compliance with indigenous peoples' rights in regular project assessments. Ensure that information obtained through monitoring and reporting is transparent and accessible.
80. Develop mechanisms for solid partnerships for regular and continuous engagement with indigenous peoples, including ensuring their full and effective participation in designing, implementing and monitoring conservation initiatives.
81. Support indigenous peoples to develop and sustain their own conservation initiatives and exchange conservation management experiences with them. This will allow learning from indigenous traditional conservation measures and transfer of technical skills to engage indigenous peoples in protected areas management.
82. Ensure that culturally appropriate complaints mechanisms are available for indigenous peoples to voice their concerns over conservation initiatives and support initiatives for indigenous peoples' right to remedy in cases when conservation activities have negatively impacted their rights.
- To donors:
83. Require that conservation organizations adopt human rights policies and monitor the application of human rights-based conservation programmes, notably in relation to indigenous peoples' rights.
84. Provide direct funding to better support indigenous peoples' own initiatives for conservation.
- To UNESCO:
85. Reform the Operational Guidelines through which the World Heritage Convention is implemented to align them with the United Nations Declaration on the Rights of Indigenous Peoples and adopt procedures to ensure indigenous peoples' free, prior and informed consent.
- To human rights monitoring mechanisms and relevant United Nations bodies and agencies:
86. Devote further attention to monitoring the impact conservation measures have on indigenous peoples, in order to promote a rights-based approach to protected areas management by government authorities and conservation organizations.

## 2. [Special Rapporteur in the Field of Cultural Rights](#)

### 2.1 **Visit to Malaysia, A/HRC/40/53/Add.1, 10 January 2019**

#### Sabah and Sarawak

51. The Constitution of Malaysia recognizes the status of indigenous peoples in Sabah and Sarawak and has from the beginning granted them a certain degree of protection and autonomy. The active involvement of indigenous peoples in the management of parks and reserves as well as the representation and integration of arts, crafts, traditional costumes and performances in museums, tourism-related products and the national arts academy's curriculum are positive features. However, more must be done to preserve diverse mother tongues, to include indigenous peoples' histories in school curricula and to increase the representation of indigenous peoples in the bodies focused on their issues and rights in all parts of Malaysia.

**Tourism, world heritage sites, wild life protection and cultural rights**

IV. Conclusions and recommendations

87. Botswana must be commended for its approach to conservation and development that recognizes the rights of local people to manage and benefit from the management and use of natural resources through community-based natural resource management. The Special Rapporteur encourages the Government to increase efforts in that regard, empower the communities concerned and build their capacity, in particular in the tourism industry.

88. The Special Rapporteur understands the concerns expressed by the Government regarding the need to protect its rich biodiversity and its policy to ensure the economic transition of local communities through their participation in tourism activities. She recommends, however, that the Government fully abide by its obligation to respect and protect cultural rights when tailoring these policies. In particular, the strong cultural dimension of hunting and harvesting practices needs to be acknowledged and thorough consultations and discussions with the communities concerned must be undertaken on these issues. In accordance with article 29 of the Universal Declaration on Human Rights, limitations to cultural rights shall be determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society. Any limitations must be proportionate, that is, the least restrictive measures must be taken when several types of limitations may be imposed.

89. The Government should conduct mass information campaigns, including through proactively engaging with communities, to explain to the peoples of Botswana the legal framework in place regarding land allocation, their rights, procedures to be followed and available options, including when communities have settled on self-allocated land for years.

90. Botswana must be congratulated for the steps taken to consult relevant communities in the process leading to the listing of the Okavango Delta as a UNESCO World Heritage Site. The Special Rapporteur notes with satisfaction that the nomination dossier presented by the Government included important information regarding the cultural heritage and user access rights of the San people. She was also happy to receive the Government's assurances that the area would not be fenced off, nor would there be any eviction of local communities, nor disruption of their rights of access to natural resources.

91. The Special Rapporteur encourages the Government to continue implementing the UNESCO recommendations for the Okavango Delta, in particular, to reinforce the recognition of the cultural heritage of the local inhabitants, to effectively and clearly communicate all matters concerning the implications of the listing to the affected peoples, to respect and integrate their views into the management, planning and implementation of decisions and to ensure that they have access to benefits derived from tourism. She recommends in particular that:

- (a) Measures be adopted to ensure that conservation of the site will not have a negative impact on local communities and local livelihood opportunities should be developed in line with conservation goals;
- (b) Management plans be elaborated and implemented in cooperation with indigenous peoples and local communities and be based on traditional knowledge and skills in site conservation;
- (c) The knowledge, innovations and practices of indigenous and local communities in the Okavango Delta be respected, preserved and maintained in accordance with articles 8 (j) and 10 (c) of the Convention on Biological Diversity;
- (d) Detailed information be communicated in timely manner to the communities concerned in a language that they clearly understand, including on schedules, persons in charge and long-term goals;
- (e) The United Nations Declaration on the Rights of Indigenous Peoples be fully taken into consideration and respected in this process.

92. The Special Rapporteur recommends that the Government engage with the San of the Central Kalahari Game Reserve, in particular on community-based natural resource management and tourism in the reserve and agreements should fully include respect for the cultural rights of the San people. The Special Rapporteur also recommends that the Government:

- (a) Adopt a less restrictive interpretation of the High Court decision in the Sesana case and facilitate the return of all those who were removed from the Central Kalahari Game Reserve who wish to return;
- (b) Recognize and implement the right of offspring to remain on the reserve upon attaining majority at 18 years of age.

93. There is a need for confidence-building measures to improve relationships between communities and the government departments responsible for protecting wildlife and the environment.

94. More widely, the Special Rapporteur recommends that the Government take into consideration the strong imbalances in power between the various tribes and communities in the country as well as between communities and business enterprises when engaging in consultations with communities on projects and development

programmes. Women should also be fully included in the consultation processes.

### 2.3 Development and cultural rights: the principles, A/77/290, 15 August 2022<sup>71</sup>

#### **B. Tensions between cultural rights and nature conservation**

70. One area where sustainable development commonly threatens cultural rights is nature conservation, in particular the creation and management of protected areas. Protected areas are seen as essential tools in achieving many of the targets of the Sustainable Development Goals concerning conservation, biodiversity loss and forest management. They are largely viewed as public goods and sustainable solutions to the biodiversity crisis, as well as key climate change mitigators. However, according to a report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, they have often been created in the territories of indigenous peoples or other land-dependent communities without any consultation, compensation or consent (A/71/229). This has had deleterious effects on the cultural rights of these groups, who are removed from their lands and often violently prevented from returning.

71. This mode of nature conservation – commonly called “fortress conservation” – necessarily entails significant religious and cultural loss for land-dependent communities, whose cultural and spiritual identities are often inextricably intertwined with their lands, territories and resources. 90 Indigenous resistance to the establishment of protected areas is often rooted in the desire to safeguard both their lands and their cultural identity, two aspects that are essential to their survival as peoples.

72. Protected areas are key sources of tourism revenue, one of the target areas associated with Sustainable Development Goal 8 on promoting sustainable economic growth, employment and decent work for all. For many countries, protected areas are a vital part of the economy. As an example, 237 million people visited national parks in the United States in 2020, with a resulting contribution of \$28.6 billion to the domestic economy.

73. Examples of violations of cultural rights and the right to development through conservation efforts are numerous. Conservation efforts by the Government of Kenya in the Mau Forest required the eviction of members of the Ogiek community, who successfully challenged the State before the African Court on Human and Peoples’ Rights. Among other findings, the Court affirmed that the eviction violated the Ogiek community’s right to economic, social and cultural development. In the Republic of Tanzania, tens of thousands of indigenous Maasai are reportedly at risk of eviction in the Ngorongoro Conservation Area, a UNESCO World Heritage site.

74. In the case of protected areas, donors routinely emphasize the important economic and social development projects instituted in nearby villages and the purported benefits that flow to displaced communities. These benefits may take the form of improved infrastructure, the building of schools, microcredit programmes and small-scale agricultural initiatives, among others. There is a lack of recognition that these same communities are entitled to their right to cultural development, which can only be realized through their access to their lands, territories and resources.

#### **VII. Conclusions and recommendations**

96. There is a need to adopt a human-rights-based approach that includes cultural rights throughout the implementation and monitoring of Goals. The indivisibility, universality and interdependence of all human rights ensure coherence and provide clear red lines to guarantee sustainability and prevent harm; the realization of one human right cannot be isolated from its impacts on other rights, either in planning, implementation or impact assessment and evaluation.

97. In many cases, “development” policies and strategies reflecting dominant cultural viewpoints or those of the most powerful sectors of society, with historic ties to colonialism and domination, are designed and implemented to the detriment of the most vulnerable in a manner that impedes the future sustainable development and survival of these persons and communities and probably, in the longer term, of humanity. The need to accept and consider frameworks that sit outside mainstream approaches has become urgent. Cultural diversity is as key to our future as biodiversity is; they are interrelated.

98. People and peoples must be the primary beneficiaries of sustainable development processes. The Special Rapporteur recommends, in particular, that States, international organizations and other stakeholders ensure that sustainable development processes: (a) Are culturally sensitive and appropriate, contextualised to specific cultural environments and seek to fully align themselves with the aspirations, customs, traditions, systems and world views of the individuals and groups most likely to be affected; (b) Fully respect and integrate the participation rights and the right of affected people and communities to free, prior and informed consent; (c) Are self-determined and community led; (d) Are preceded by human rights impact assessments to avoid any negative impacts on human rights, including impact assessments on cultural rights; any impact assessment failing to address living heritage or the cultural significance of affected natural resources, or conducted without

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<sup>71</sup> <https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F290&Language=E&DeviceType=Desktop&LangRequested=False>.



the free, prior and informed consent, consultation and active participation of the persons and communities affected directly or indirectly, should be rejected as insufficient and incomplete; (e) Recognize that indigenous peoples must give their free, prior and informed consent before any project that affects them is implemented.

#### 2.4 International legal frameworks related to climate change, culture and cultural rights, A/75/298, 10 October 2020<sup>72</sup>

### B. Recommendations

**81. To implement cultural rights and safeguard culture and cultural heritage in the face of the climate emergency, States and other relevant actors, including international organizations, environmental bodies, businesses and experts should urgently: [...]**

(u) Provide funding and capacity-building to enhance the ability of indigenous people to employ their traditional knowledge to mitigate and adapt to climate change, and to develop inventories of such knowledge where they are unavailable; and ensure that traditional knowledge is used with the free, prior

and informed consent of indigenous peoples and in ways that respect their internationally guaranteed rights;

(v) Guarantee that all climate action and initiatives are taken in coordination with, and with the participation of, indigenous peoples and directly affected local groups; and that the free, prior and informed consent of indigenous peoples is required before implementation;

### 3. Special Rapporteur on freedom of religion or belief

#### 3.1 Indigenous peoples and the right to freedom of religion or belief: Interim Report, A/77/514, 10 October 2022<sup>73</sup>

### J. Conclusion

83. Reflecting the richness and diversity of human experiences, the Special Rapporteur recalls that indigenous peoples belong to all faiths and none—and many enjoy them syncretistically. Protecting indigenous peoples' freedom of religion or belief must consider their distinctive spiritual needs, practices, and beliefs through a consultative approach. Such conditions include access to and use of territories, which are essential components of their physical, spiritual, and cultural survival and effective realization of their human rights more broadly, especially noting the holistic nature of their "worldview." Reports of forced displacement and sedentarization—frequently during development, extractive, tourism, or conservation projects—desecration and destruction of their sacred sites and, in several States, violence against indigenous HRDs raise serious concerns for their right to freedom of religion or belief. The Special Rapporteur emphasizes that it is impossible to analyse existing challenges to their exercise of freedom of religion or belief without acknowledging past exclusion and inequality. Systematic discrimination further makes it difficult for indigenous peoples to live, let alone live consistently with their spirituality.

### K. Recommendations

#### 1. States

(viii) Collaborate with indigenous spiritual leaders and influencers to support conservation efforts and sustainable development of traditional lands through a human rights-based approach. States should also comply with Akwé: Kon guidelines.

### 4. Special Rapporteur on extreme poverty and human rights

#### 4.1 Visit to Nepal, A/HRC/50/38/Add.2, 13 May 2022

### III. Situation of poverty and inequality in Nepal

[...]

#### Protected areas

<sup>72</sup> <https://www.ohchr.org/en/documents/thematic-reports/a75298-report-climate-change-culture-and-cultural-rights>.

<sup>73</sup> [https://www.ohchr.org/sites/default/files/2022-11/A\\_77\\_514\\_AUV.docx](https://www.ohchr.org/sites/default/files/2022-11/A_77_514_AUV.docx).

38. The lack of practical protections for land users, despite the guarantees of the 1964 Lands Act, particularly affects indigenous people (Janajati Adivasi). National parks and other “protected areas” in Nepal cover almost one quarter of the country. Most of these areas have been established on the ancestral land of indigenous populations, many of whom were evicted and have since remained landless. By some estimates, as of 2015, about 65 per cent of ancestral lands formerly owned by indigenous peoples had been replaced with national parks and reserves,<sup>49</sup> forcing many Janajati to relocate elsewhere.

## 5. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

### 5.1 Towards a just transformation: climate crisis and the right to housing, A/HRC/52/28, 23 December 2022<sup>74</sup>

#### **Guideline No. 13. Ensure that the right to housing informs and is responsive to climate change and address the effects of the climate crisis on the right to housing**

[...]

72. Implementation measures: ...

(d) States must work with affected communities to develop and promote environmentally sound housing construction and maintenance to address the effects of climate change while ensuring the right to housing. The particular vulnerability of indigenous peoples to climate change must be recognized and all necessary support should be provided to enable indigenous peoples to develop their own responses. Forests and conservation areas must be protected in a manner that fully respects the rights of indigenous peoples to their lands and resources and to their traditional and environmentally sustainable practices in housing.

## 6. Special Rapporteur on the human rights of internally displaced persons

### **6.1 Reflections of the Special Rapporteur on her tenure and development-induced displacement, A/77/182, 18 July 2022**

30. Even development projects with ostensibly benign aims can provoke significant displacement. Conservation projects have the important aim of safeguarding wildlife and the environment yet often result in the displacement of indigenous peoples from their lands, which they have managed sustainably for generations. Tourism projects, such as the development of resort zones or the construction of stadiums for global sporting events, may lead to the forced eviction and arbitrary displacement of local communities. Urban renewal or “city beautification” projects can benefit local communities, yet they often result in those communities being forcibly evicted or displaced by economic pressures as renewed neighbourhoods become more desirable to wealthier groups.

## **VI. Potential consequences of development-induced displacement on the enjoyment of human rights**

### **VIII. Conclusions and recommendations**

63. Unlike displacement caused by conflict or disasters, development-induced displacement can be prevented through appropriate policy choices and by States fully implementing their existing human rights commitments. This requires a change in mindset, one that is centred on individuals and communities and empowers them to realize their right to development rather than paternalistically treating them as passive subjects whose agency is subordinate to State interests. The recommendations below are provided in that spirit.

#### **A. Ensure meaningful disclosure, participation and consent**

[...]

65. States and development actors should:

(a) Ensure that information provided to affected populations is timely, is provided in a space and format that is physically, culturally and linguistically appropriate and accessible for all literacy levels, and is updated in advance of each phase of project planning and implementation;

(b) Improve the quality of disclosure and consultation processes by providing disclosure and consultation venues that are accessible to all groups, including women, persons with disabilities, older persons, indigenous peoples and minorities, and by ensuring meaningful participation and continuous and good-faith consultation throughout all phases of the project cycle; (c) Seek the informed consent of, rather than merely engaging, affected populations

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<sup>74</sup> <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F52%2F28&Language=E&DeviceType=Desktop&LangRequested=False>.

by providing them with the opportunity to shape development and resettlement plans, propose alternatives or refuse projects entirely, in line with the right to development;  
(d) Facilitate access to legal and technical assistance to enable affected communities' informed participation.

### **Housing, land and property issues in the context of internal displacement, A/HRC/47/37, 21 April 2021**

[...]

#### **C. Understanding the relationship between housing, land and property, internal displacement and human rights**

##### **Housing, land and property issues as causes of displacement**

23. The impact on land and housing of development and business activities such as largescale investments in land, infrastructure, mining and urban renewal have led to displacement and expropriation under conditions amounting to forced eviction. Conservation measures have also resulted in forced evictions and displacement in numerous countries and particularly affected the land rights of indigenous people.<sup>23</sup> In other cases, competition over access to valuable resources has resulted in violent attacks on civilians, the destruction or occupation of housing and property and sustained conflict involving military forces, non-State armed groups and criminal organizations.

##### **Specific groups**

[...]

40. Indigenous peoples' strong cultural, spiritual and economic attachment to their lands is recognized under human rights law, which details the measures to be taken to protect them from displacement, including by requiring their free, prior and informed consent in respect of any measures and projects affecting the use of their land and natural resources and of attempts to relocate them away from their land. Indigenous peoples' tenure is mostly customary, with limited legal recognition or protection from the State. Their housing, land and property rights have typically been threatened by displacement caused by conflict, environmental conservation laws and investment projects authorized by the State. ..

### **6.2 Progress and challenges relating to the human rights of IDPs, A/HRC/32/35, 29 April 2016**

68. While displacement due to development is commonly associated with major projects, such as dams, numerous activities cause displacement annually, including mining and extractive industries, logging, pipelines, national parks and conservation projects, port or military installations, sports projects and events, industrial plants and urbanization and infrastructure projects. Small-scale development projects can be just as damaging as larger-scale projects and are often harder to identify and monitor. While some projects meet international standards of consultation prior to displacement and compensation, resettlement and rehabilitation when displacement takes place, many fail to do so. Those affected are often poor, belong to marginalized or indigenous groups and lack political representation or an equal voice in decision-making.

69. Under Principle 6 of the General Guiding Principles, the prohibition of arbitrary displacement includes displacement caused by "cases of large-scale development projects, which are not justified by compelling and overriding public interests". As in all cases of international human rights law, such justification would be subject to proportionality and a pressing social need. In addition, under Principle 9 of the General Guiding Principles, there is a particular international obligation for States to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

70. The Kampala Convention calls upon States Parties to "endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests". It requires States to "ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts" and to "ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement". International standards relating to the operations of business enterprises, including the 2011 Guiding Principles on Business and Human Rights, require States and businesses to comply with all applicable laws and to respect human rights.

74. The 2007 Basic principles and guidelines on development-based evictions and displacement<sup>23</sup> provide valuable guidance in addressing the human rights implications of development-linked evictions and related displacement. They provide practical guidance to States on measures and procedures to be taken in order to ensure that development-based evictions are not undertaken in contravention of existing international human

rights standards and do not thus constitute “forced evictions”. The guidelines also focus on effective remedies for those whose human rights have been violated, should prevention measures fail. Independent human rights and environmental impact assessments of development and business activities likely to cause displacement should be conducted at the earliest opportunity, with their findings informing a legal project approval process and resettlement and rehabilitation programmes.

75. The 2030 Agenda for Sustainable Development can give new impetus to attempts to ensure that development is conducted responsibly and takes into account the impact on those displaced. It requires that the development activities are implemented in a manner that is consistent with the rights and obligations of States under international law, including human rights law and standards. It is important that this new global development agenda is not interpreted as giving States a green light to pursue development without due consideration to human rights and the costs to those who own or occupy the lands on which development projects may take place. The pledge by States to “leave no one behind”, including internally displaced persons, also requires that those who are displaced by development projects and other triggers benefit from and are the target of development programmes.

3. Recognizing the vulnerability of disadvantaged and marginalized groups to internal displacement<sup>76</sup>. In some situations, internal displacement disproportionately affects certain communities that, due to their characteristics, geographical location, poverty, discrimination or other unique circumstances, make them particularly vulnerable to internal displacement. Such groups may include indigenous peoples and ethnic, religious or other minorities, who are frequently numerically few relative to majority communities, among the poorest, and who may experience different forms of marginalization and commonly lack representation in political or other State bodies. In some cases they may face long-standing discrimination and violence targeted against them. Such population groups are often overrepresented in internally displaced person populations.

77. These and other factors may make certain marginalized communities vulnerable to violent displacement in situations of conflict and intercommunity or interfaith tensions or result in their being poorly equipped to resist efforts to displace them from their lands due to development or business activities. Greater research and data is required globally to reveal the full impact of displacement on such communities, as well as regional trends, patterns and dynamics of displacement. In particular, this makes it necessary to disaggregate data not only by sex and age but also by diversity categories, such as ethnicity and religion, that’ should be determined by contextual realities. Such information, fully adhering to international standards of data protection and use, would help to predict and prevent displacement targeted against certain communities and contribute to much needed displacement risk assessment and early warning mechanisms.

80. The Special Rapporteur has been struck by the vulnerability of indigenous peoples to internal displacement, including during his official visit to the Philippines, following which he highlighted the impact of displacement or threatened displacement on them. Indigenous peoples are severely affected by displacement given their ties to ancestral lands and may have more challenges in adopting coping mechanism or survival when displaced. The protection of the rights of indigenous peoples displaced or threatened by displacement must be strengthened in law and practice. Legal provisions on land rights and the rights of indigenous peoples should be fully implemented and specific provisions on the rights of indigenous peoples should be included in laws on internally displaced persons where appropriate.

## Conclusions and recommendations

...

99. National authorities should collect and share data on all causes of displacement in their country, including generalized and criminal violence and hate-based crimes, development and business activities. Equality and anti-discrimination laws and legal protection of minorities, indigenous peoples and other potentially vulnerable groups should be in place and include provisions relating to the prohibition of unlawful displacement.

103. Recognition of internally displaced persons as holders of civil and political rights and economic and social rights is crucial and requires human rights-based approaches. As such, all States must recognize, respect and protect the fundamental rights of such persons, including to be consulted, informed and to participate and exercise free choice in decisions affecting them, including decisions on whether to return to their places of origin or to choose to settle and integrate elsewhere.

### **6.3 Mission to Kenya, A/HRC/19/54/Add.2, 6 February 2012**

#### 2. Other multiple causes of internal displacement

13. In addition to the above, there have been various other causes of internal displacement in Kenya over the years. Some of these displacements affect relatively few people and are short lived (for example, over a few

days), while others are large-scale and prolonged. Causes of these displacements include, inter alia: resource-based conflicts between communities; evictions related to development or environmental conservation projects; insecurity; urban disasters (such as fires); and natural disasters, including due to the effects of climate change.

30. Moreover, significant internal displacements have taken place despite the above initiatives, including due to inter-ethnic clashes, conflicts over land, and State-led disarmament programmes related to pastoralist communities, such as the 2009 Government disarmament operations which led to several deaths and the displacement of hundreds of people from a number of communities, and a similar operation in the Mount Elgon region in 2008, which also resulted in the displacement of thousands of persons.

37 As detailed elsewhere in the present report, displacements have also taken place as a result of development and environmental conservation projects, with evictions often being conducted without effective redress and compensation mechanisms for affected communities and without sufficient assistance or alternative durable solutions in place

## B. Protection during displacement

### 2. Non-registered internally displaced persons

#### (b) Other categories of non-identified/non-registered IDPs

47. The Special Rapporteur is also concerned by the situation of many forest evictees, who have been displaced due to environmental conservation projects. During the country visit, he had the opportunity to visit displacement sites of IDPs who had been evicted from the Mau Forest complex in the latter part of 2009, when an estimated 12,000 people were displaced into makeshift camps in the periphery of the forest. That population is now spread over seven IDP satellite camps. In one such camp, the Tiriya camp, with a population of approximately 868 persons, he found that people, who are largely of the Ogiek community, were living in emergency-like conditions, years after having been displaced, under worn-out tents which no longer offer any real shelter from the harsh climatic conditions, receiving small amounts of food aid at irregular intervals, and had no meaningful access to health or educational facilities. According to reports received, the conditions in the other Mau Forest IDP camps were very similar. Like the Tiriya camp, most were isolated, and nearly inaccessible due to the lack of any adequate roads, making it extremely difficult for the IDPs to access services and assistance, and to effectively draw attention to their situation. In order to supplement food aid, women and children relied on obtaining scarce work in neighbouring farms.

48. Focused discussion groups with women in the camp further highlighted: the fact that many children could not attend school at all or on a regular basis due to hunger, the need to work or the inability of families to pay school fees; the dangers of collecting firewood (e.g. attacks by men or animals); the lack of bedding, clothing for children, and infant-feeding formulas (for those unable to breastfeed); maternal and infant health care; and the needs of vulnerable groups and the sick. There were also reports of deaths among children due to the very difficult life conditions, and exposure to cold and rain. The Special Rapporteur stresses that there is an urgent need for humanitarian assistance to address these gaps, and ensure basic life conditions until durable solutions are identified. He further notes that, to date, the residents of the camp had received no compensation or monetary allowances. According to information and documents provided by some families in the camp, members of the community had been evicted under the British administration, and in some cases later sold or reinstated small plots of land by the Government of Kenya, but they had all suffered multiple displacements afterwards.

## V. Conclusions and recommendations

### A. Conclusions

56. Kenya has experienced repeated waves of internal displacement in its recent history due to political, ethnic and land - related disputes, as well as a number of other causes. Addressing the root causes provoking many of these displacements is essential to the prevention of forced displacement in the future, including the repeated post-election violence displacement episodes that have impacted the country in the last two decades. The Special Rapporteur is pleased to note that under the agenda 4 reforms, the Government is putting in place frameworks, mechanisms and institutions to address the root causes of displacement in the country. However, the Kenyan population is also affected by multiple other factors likely to exacerbate internal displacements, including, inter alia: more severe and frequent natural disasters, both sudden and slow onset, due to the effects of climate change and other factors; environmental conservation and development projects; land and resource-based conflicts; and forced evictions, especially in urban areas.

## B. Recommendations

### 1. Recommendations to the Government of Kenya

61. In cooperation with the international community and civil society :

(a) Develop accurate, efficient and disaggregated data - collection and database/registration systems which are comprehensive and inclusive of all categories of IDPs. Data - collection systems must be timely, adapted to the context, and aim to facilitate assistance, protection and durable solutions ;

(b) In relation to IDPs currently displaced but not included in the present registration/database system, undertake at the earliest opportunity a comprehensive data - collection exercise (including data on IDPs uprooted due to post-election violence , natural disasters , and development or environmental conservation projects), with a view to considering how best to identify, assess and respond to their assistance, protection and durable - solution needs, with particular attention to vulnerable groups. With regard to post-election violence IDPs in particular, include in this exercise: vulnerable groups, persons who registered locally but were not accepted in the central data bank, those unable to register before the cut-off date, and those referred to as “integrated IDPs ” .

## 7. Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment)

### 7.1 Mission to Mongolia, A/HRC/37/58/Add.2, 2 May 2018

#### Conservation and protected areas

[...]

67. While conservation is and should be a national priority, States must ensure that they comply with their human rights obligations in adopting and implementing conservation measures, just as they do in other areas. For example, restrictions on hunting and other uses of forests should be imposed only after consultation with local communities, especially communities that have long relied on such uses for their material and cultural existence. In particular, the Special Rapporteur is aware of complaints concerning restrictions on hunting in the Tengis Shishged protected area, in the forests of northern Mongolia near the border with the Russian Federation. Anti-poaching laws have been strictly applied to the small ethnic minority of the Dukha, also known as the Tsataans, who follow herds of reindeer and rely on the forests for their traditional way of life. The Government should consult with them, and with others in their position, to find ways of including them in its management of the protected area and ensuring that the restrictions on hunting and other uses of the natural ecosystems do not prevent them from enjoying their culture and traditions.

#### Conclusions and recommendations

85. As Mongolia reviews its laws on minerals and mining, civil society should have opportunities for informed and meaningful participation in this process. The Special Rapporteur encourages Mongolia to:

(a) Clarify and strengthen the standards for reclamation of mines, and provide more effective oversight of reclamation practices; (b) Provide local communities with more time to conduct consultations on proposals for mines; (c) Increase the transparency of agreements between mining companies and local authorities;

(d) Ensure that the conclusions of environmental assessments are taken into account in the environmental management plans for mines; (e) Provide for full transparency of payments by mining companies into reclamation funds, and of payments of royalties to local development funds; (f) Provide for effective grievance mechanisms that are accessible to affected communities, including herder communities, taking into account the positive resolution of the conflict between herders and the Oyu Tolgoi mine.

88. The Special Rapporteur urges Mongolia to strengthen its conservation laws, including by: (a) Providing clearer guidelines for designation and management of protected areas; (b) Providing for more systematic and complete information on biodiversity conservation, including on the status of ecosystems and species; c) Providing for and facilitating greater participation by local communities in the monitoring and protection of protected areas; (d) Ensuring that restrictions on hunting and other uses of natural ecosystems respect the human rights of traditional communities.

### 7.2 Mission to Uruguay, A/HRC/37/58/Add.1, 7 February 2018

55. The relationship between those who live in and near protected areas and the government agencies responsible for administering them should be one of mutual support (see A/HRC/25/53/Add.1, para. 44). Moreover, mining permits should result in benefits not only for the country as a whole, but for the local

communities most directly affected by the mining. The Government must impose restrictions that ensure that mining activities proceed only if these requirements are met. In relation to Quedabra de los Cuervos, the Government should take steps to rebuild a relationship of trust with the local communities, including by demonstrating that no projects will be allowed to go forward without adequate environmental impact assessment and safeguards to protect against environmental harm, including in particular harm to this protected area. 56. Closely related to the right to public participation are the rights to freedom of expression, peaceful assembly and association. The obligations of States to respect and protect these rights 21 encompass the exercise of the rights in relation to environmental matters (see A/HRC/37/59, annex, framework principle 5). Restrictions on the exercise of these rights are permitted only if they are provided by law and necessary in a democratic society to protect the rights of others, or to protect national security, public order, or public health or morals. Any restrictions must be narrowly tailored to avoid undermining the rights. For example, blanket prohibitions on protests surrounding the operations of mining, forestry or other resource extraction companies are unjustifiable (see A/HRC/29/25, para. 22)

79. Uruguay should fulfil its commitment to ratify the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169). Although indigenous peoples constitute a very small percentage of the Uruguayan population, ratifying the Convention would nevertheless provide greater protection to indigenous peoples against the persistence of stereotypes and prejudice against them. Ratification would also highlight the importance of the treaty in the international context, by moving it closer to universal membership

### **7.3 Costa Rica, A/HRC/25/53/Add.1, 8 April 2014**

Conclusions and recommendations 63. Although Costa Rica has a strong record of protecting and promoting environmentally related human rights, it does face several challenges. First, it is highly troubling that communities, including minority communities, are being threatened with expulsion from homes that they have occupied for generations, as a result of strict interpretations of laws governing protected areas. Conservation should not impose an undue cost on communities that have deep historical roots in areas of environmental importance. The right to a healthy environment need not conflict with other fundamental rights. The Independent Expert therefore recommends that Costa Rica move with greater expedition to resolve this situation before the expiration in 2014 of the two-year moratorium on the eviction of coastal communities living in protected areas, in a manner that:

- (a) Safeguards both the right to a healthy and ecologically balanced environment and the rights of those who have lived in and near the protected areas for many years;
- (b) Takes into account that many of those affected are members of minority groups that have been historically on the margins of Costa Rican political life, and ensures that the resolution of the situation is free from discrimination on any prohibited grounds;
- (c) Does not regard the absence of formal legal title as necessarily dispositive, in the light of the fact that rights may arise in relation to long-occupied property even in the absence of such title;
- (d) Provides for the full and informed participation of those affected in the process of reaching a resolution.

64. Second, with respect to all of its citizens, the Independent Expert recommends that Costa Rica continue to build on its efforts to engage those individuals and communities that are most directly concerned with the protection of particular areas in order to draw on their abilities and interests. Perhaps its greatest strength in relation to human rights and the environment is the broad-based commitment of its people to environmental protection and sustainable development.

### **VIII. Conclusion and Recommendations**

78. To achieve the Sustainable Development Goals and fulfil the right to a clean, healthy and sustainable environment, States should apply a human rights based approach to all aspects of improving air quality, ensuring safe and sufficient water, accelerating ambitious climate action to limit global warming to 1.5°C, detoxifying the economy, shifting to a sustainable food system, and conserving, protecting and restoring healthy ecosystems and biodiversity. For example, a rights-based approach to conservation is essential to ensure that the designation and management of protected terrestrial, freshwater and marine areas do not violate the rights of indigenous peoples, peasants, Afrodescendants or nature-dependent local communities. A human rights-based approach to preventing exposure to pollution and toxic chemicals could save millions of lives every year, while avoiding billions of episodes of illness and generating trillions of dollars in benefits.

#### **7.4 Additional good practices in the implementation of the right to a safe, clean, healthy and sustainable environment, A/HRC/43/53/Annex III, 13 December 2019**

94. Many developing countries—Brazil, Costa Rica, and Kenya, for example—are pursuing to national REDD+ strategies. REDD+ is an international framework whose name stands for ‘reducing emissions from deforestation and forest degradation, conservation of existing forest carbon stocks, sustainable forest management and enhancement of forest carbon stocks’. In essence, the program is intended to preserve and strengthen the role of tropical forests in mitigating climate change, facilitating adaptation, and promoting human development. From 2006 to 2014 the EU and its member states provided over 3 billion Euros in financing to developing countries to support REDD+ activities. It is essential that human rights safeguards be implemented to ensure that forest protection supports, rather than harms, the rights and interests of Indigenous peoples and local communities that depend on forests for livelihoods and culture. This involves obtaining the free, prior and informed consent of Indigenous peoples as set forth in the UN Declaration on the Rights of Indigenous Peoples.

95. Guyana and Norway created a partnership in 2009 whose goal is to promote development in Guyana without an increase in deforestation. Guyana’s tropical forests cover 87 percent of its territory, and its main success has been keeping its deforestation rate very low. The performance-based payments of up to \$250 million over five years are used for programs that involve recognizing the land rights of Amerindian communities in the interior of the country and awarding them official land title, as well as for low-carbon development projects.

100. There is a positive correlation between secure indigenous land tenure and improved conservation outcomes, including reduced deforestation, which contributes to lower global carbon dioxide emissions (A/71/229). For example, areas in the Brazilian Amazon where the forest rights of indigenous peoples are recognized enjoy a deforestation rate that is eleven times lower than areas where these rights lack recognition.

143. In 2011, the Basarwa indigenous people living in a game reserve in Botswana won a lawsuit in which they argued that the Government violated their human rights by denying them access to a borehole they used for decades as a source of water. The Government had attempted to force them to move out of the game reserve. The court referred to General Assembly resolution 64/292 on the rights to water and sanitation and found that denying the Basarwa permission to use the borehole on the land where they resided violated their human rights.

187. In 1997, Costa Rica started a program to improve the livelihoods of Indigenous peoples, small-scale farmers, agroforestry producers, and landowners by paying them to conserve, restore, and sustainably use forests. The program focused on low-income and Indigenous communities and has resulted in the conservation and protection of more than 1.2 million hectares of forest and the payment of over \$500 million between 1997 and 2018. Almost 3,000 women landowners have signed contracts to receive funds under this program. Funding comes from Costa Rica’s carbon tax, and has grown consistently, enabling contracts for an average of 270,000 hectares per year from 2014 to 2018. Additional benefits include reduced greenhouse gas emissions, carbon storage, protection of water, protection of biodiversity for conservation and sustainable use, and protection of nature’s beauty, which benefits the people and the tourism industry.

#### **7.5 Right to a healthy environment: good practices, A/HRC/43/53, 30 December 2019**

25. In Norway, the Environmental Information Act includes provisions for public participation in environmental decision-making, while the Planning and Building Act provides extensive opportunities for residents to advocate for local plans that advance sustainability. A national guide to public participation in planning was published in 2014, with special attention paid to the protection of the interests of vulnerable groups. In 2018, Norway adopted a new Local Government Act, which requires all local and regional authorities to establish three councils, to represent young people, older persons and persons with disabilities. Norway also formalized a consultation procedure with the Sami indigenous people in 2005, fulfilling the right of indigenous peoples to participate in decision-making processes.

28. Honduras enacted a new law in 2015, establishing a national protection mechanism to safeguard the rights of human rights defenders, journalists and judges. Associated regulations were adopted in 2016. The Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Officials was established in 2018 with six prosecutors, four assistant prosecutors, and 10 investigators (see A/HRC/40/60/Add.2). These positive steps were taken to respond to the murders of high profile defenders, and implement recommendations made by the Inter-American Commission on Human Rights. In 2019, seven men were sentenced to at least 30 years in jail for their role in the murder of Berta Cáceres, an indigenous environmental defender.

29. In Peru, the national human rights plan for 2018–2021 highlights the vital work of human rights defenders. In 2019, the Ministry of Justice drafted a protocol guaranteeing the protection of human rights defenders. The objectives are to promote the recognition of human rights defenders, to take specific protection measures for those at risk, to work towards the implementation of preventive measures, and to ensure prompt



and effective investigation of threats against defenders. In the first case of its kind, prosecutors are seeking a 35-year jail sentence for two businessmen and three loggers implicated in the murder of four indigenous environmental human rights defenders.

57. Nationally determined contributions comprise the commitments made by States pursuant to the Paris Agreement on a five-year cycle. In the first cycle, 24 such contributions incorporated human rights. Seventeen States committed to taking a rights-based approach to climate action: the Plurinational State of Bolivia, Brazil, Chad, Chile, Costa Rica, Ecuador, Georgia, Guatemala, Guyana, Honduras, Malawi, the Marshall Islands, Mexico, Morocco, the Philippines, South Sudan and Uganda. Seven States – Cuba, El Salvador, Indonesia, Nepal, the Bolivarian Republic of Venezuela, Yemen and Zimbabwe – identified human rights as a key element of the legal context in which actions would be taken. Nationally determined contributions from more than 50 States address gender issues, participation and the empowerment of women, while those from 19 other States include references to indigenous peoples and/or traditional knowledge.

72. The Global Environment Facility established an indigenous peoples advisory group and an indigenous peoples fellowship programme. These are important first steps towards increasing flows of climate finance to indigenous peoples.

103. Humanity depends on nature for a vast range of products and ecological services, from food, fibre and medicine to pollination, clean air, water and soil. Human rights may be jeopardized by lack of access to nature's bounty or by actions taken to protect nature that fail to take rights into consideration (see A/HRC/34/49). Globally, wildlife populations have declined by 60 per cent since 1970, and as many as 1 million species are at risk of extinction. The decline or disappearance of a particular species could have a devastating impact on an indigenous community and their rights. The creation of a new protected area without the consultation and consent of indigenous peoples or local communities could, however, violate their rights (see A/71/229).

109. Laws that recognize the land rights of indigenous peoples and local communities have recently been passed by Kenya (the Community Land Act of 2016), Mali (Agricultural Land Law of 2017) and Zambia (Forest Act of 2015). Indigenous peoples and local communities are more likely to invest in the good management of forests, soil and water if they have clear user rights and security against eviction. They are more likely to invest in improving yields on existing land and less likely to extend cultivation into marginal or forest areas. Forests that are legally owned and/or designated for use by indigenous peoples and local communities deliver a wide range of ecological and social benefits, including lower rates of deforestation and forest degradation, greater investments in forest restoration and maintenance, improved biodiversity conservation, lower carbon emissions and more carbon storage, reduced conflict, and poverty reduction.

110. The Maya Biosphere Reserve in Guatemala is one of the world's most biodiverse areas. To help to conserve the reserve, the Government gave nine local communities land concessions so they can make a sustainable living from the forest. The concessions have generated more than \$5 million in annual revenue, as well as jobs for local community members. The forest concessions have had a near-zero deforestation rate for the past 14 years. According to research, there is a positive relationship between socioeconomic progress (income, investments, savings, capitalization of community enterprises, and asset building at the household and enterprise levels) and conservation of the concession areas.

## **7.6 Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188, 19 July 2018 “Greening” human rights [...]**

22. Finally, human rights law requires States to take special care to respect, protect and fulfil the rights of those who are most at risk from environmental harm. As the Human Rights Council has recognized, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations (see Human Rights Council resolution 34/20). Persons may be vulnerable because they are unusually susceptible to certain types of environmental harm or because they are denied their human rights, or both. Those who are at greater risk from environmental harm for either or both reasons often include women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, national, ethnic, religious or linguistic minorities and displaced persons. Many persons are vulnerable and subject to discrimination along more than one dimension, such as children living in poverty or indigenous women.

23. Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories. Traditional (sometimes called “local”) communities that do not self-identify as indigenous may also have close relationships with their ancestral territories and depend directly on nature for their material needs and cultural life. Examples include the

descendants of Africans brought to Latin America as slaves, who escaped and formed tribal communities. In order to protect the human rights of the members of such traditional communities, States have obligations towards them as well. The obligations of States towards indigenous peoples and traditional communities that are of particular relevance in the environmental context include the obligations to:

(a) recognize and protect the rights of indigenous peoples and traditional communities to the lands, territories and resources that they have traditionally owned, occupied or used; (b) consult with them and obtain their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources; (c) respect and protect their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; and (d) ensure that they fairly and equitably share the benefits from activities relating to their lands, territories or resources

### **7.7 Framework principles on human rights and the environment, A/HRC/37/59, 24 January 2018**

Framework principle 15 States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by: (a) Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used; (b) Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources; (c) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; (d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

Commentary<sup>47</sup>. Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories. The United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other human rights and conservation agreements, set out obligations of States in relation to the rights of indigenous peoples. Those obligations include, but are not limited to, the four highlighted here, which have particular relevance to the human rights of indigenous peoples in relation to the environment.

48. Traditional (sometimes called “local”) communities that do not self-identify as indigenous may also have close relationships to their ancestral territories and depend directly on nature for their material needs and cultural life. Examples include the descendants of Africans brought to Latin America as slaves, who escaped and formed tribal communities. To protect the human rights of the members of such traditional communities, States owe them obligations as well. While those obligations are not always identical to those owed to indigenous peoples, they should include the obligations described below (see A/HRC/34/49, paras. 52–58).

49. First, States must recognize and protect the rights of indigenous peoples and traditional communities to the lands, territories and resources that they have traditionally owned, occupied or used, including those to which they have had access for their subsistence and traditional activities. The recognition of the rights must be conducted with due respect for the customs, traditions and land tenure systems of the peoples or communities concerned. Even without formal recognition of property rights and delimitation and demarcation of boundaries, States must protect against actions that might affect the value, use or enjoyment of the lands, territories or resources, including by instituting adequate penalties against those who intrude on or use them without authorization.

50. Second, States must ensure the full and effective participation of indigenous peoples and traditional communities in decision-making on the entire spectrum of matters that affect their lives. States have obligations to consult with them when considering legislative or administrative measures which may affect them directly, before undertaking or permitting any programmes for the exploration or exploitation of resources pertaining to their lands or territories and when considering their capacity to alienate their lands or territories or otherwise transfer their rights outside their own community. States should assess the environmental and social impacts of proposed measures and ensure that all relevant information is provided to them in understandable and accessible forms (framework principles 7–8). Consultations with indigenous peoples and traditional communities should be in accordance with their customs and traditions, and occur early in the decision-making process (framework principle 9).

51. The free, prior and informed consent of indigenous peoples or traditional communities is generally necessary before the adoption or implementation of any laws, policies or measures that may affect them, and in particular before the approval of any project affecting their lands, territories or resources, including the extraction or exploitation of mineral, water or other resources, or the storage or disposal of hazardous materials. Relocation of indigenous peoples or traditional communities may take place only with their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return.

52. Third, States should respect and protect the knowledge and practices of indigenous peoples and traditional communities in relation to the conservation and sustainable use of their lands, territories and resources.

Indigenous peoples and traditional communities have the right to the conservation and protection of the environment and the productive capacity of their lands, territories and resources, and to receive assistance from States for such conservation and protection. States must comply with the obligations of consultation and consent with respect to the establishment of protected areas in the lands and territories of indigenous peoples and traditional communities, and ensure that they can participate fully and effectively in the governance of such protected areas.

53. Fourth, States must ensure that indigenous peoples and traditional communities affected by extraction activities, the use of their traditional knowledge and genetic resources, or other activities in relation to their lands, territories or resources fairly and equitably share the benefits arising from such activities. Consultation procedures should establish the benefits that the affected indigenous peoples and traditional communities are to receive, in a manner consistent with their own priorities. Finally, States must provide for effective remedies for violations of their rights (framework principle 10), and just and fair redress for harm resulting from any activities affecting their lands, territories or resources. They have the right to restitution or, if this is not possible, just, fair and equitable compensation for their lands, territories and resources that have been taken, used or damaged without their free, prior and informed consent.

### **7.8 Human rights obligations relating to the conservation and sustainable use of biodiversity, A/HRC/34/49, 19 January 2017**

#### Obligations in relation to people in vulnerable situations

49. Although the global failure to protect biodiversity ultimately affects everyone, it is already having catastrophic consequences for indigenous peoples and others who depend directly on ecosystems for their food, water, fuel and culture. In all parts of the world, from the Gualcarque River in Honduras to the Kaya forests in Kenya, from Koh Kong in Cambodia to Standing Rock in the United States, indigenous peoples and local communities are working to protect the ecosystems on which they rely from unsustainable development. While they achieve some successes, too often overexploitation of natural resources pollutes their rivers and aquifers, cuts down their forests, destroys their sacred places and displaces them from their homes. Peaceful opposition is often met with harassment, violence and even death. States have obligations not only to protect environmental defenders, but also to protect the ecosystems on which the human rights of so many people directly depend.

50. In general, States have heightened duties with respect to those who are particularly vulnerable to environmental harm (see A/HRC/25/53, paras. 69-78). As section II explains, indigenous peoples and others who closely depend on nature for their material and cultural needs are especially vulnerable to actions that adversely affect ecosystems. States should ensure that such actions, whether carried out by Governments or private actors, do not prevent the enjoyment of their human rights, including their rights to life, health, food, water, housing and culture.

51. The rights of indigenous peoples are recognized in international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and they have been elaborated by human rights authorities. There is no need to review the corresponding duties in detail here, beyond reiterating that, among other obligations, States have duties to recognize the rights of indigenous peoples in the territory that they have traditionally occupied and the natural resources on which they rely, to ensure that indigenous peoples receive reasonable benefits from authorized activities affecting such territory or resources, and to provide access to effective remedies, including compensation, for harm caused by these activities. States must facilitate the participation of indigenous peoples in decisions that concern them, and development or extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent, subject only to narrow exceptions (see A/HRC/24/41, para. 27).

52. Many people who do not self-identify as indigenous also have close relationships to the territory that they have traditionally occupied and depend directly on nature for their material needs and cultural life.<sup>71</sup> Although there is no instrument equivalent to the United 70 Decision XIII/1, para. 6.

71 The line between indigenous peoples and non-indigenous communities is not always clear, and the United Nations Declaration on the Rights of Indigenous Peoples does not attempt to define it. A key Nations Declaration on the Rights of Indigenous Peoples for non-indigenous communities that have similarly close relationships with their ancestral territories, States nevertheless have heightened obligations to protect people in these situations from the adverse effects of exploitation of natural resources. These protections arise from multiple sources, including the general obligation of States to respect and protect the human rights of members of these communities, taking into account that their close relationship with nature makes their ability to enjoy these rights especially vulnerable to environmentally harmful actions. Among other obligations, States therefore have heightened duties to ensure that they are able to enjoy the rights to information, participation, freedom of

expression and association, and effective remedies in relation to actions that may adversely affect their relationship with the ecosystems on which they depend, as well as substantive rights to protection of the ecosystems themselves.

53. Non-indigenous as well as indigenous persons may also be owed heightened obligations because of their status as members of minorities. Article 27 of the International Covenant on Civil and Political Rights provides that “persons belonging to [ethnic, religious or linguistic] minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. The Human Rights Committee has stated that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples”, and that the enjoyment of rights to traditional activities, such as hunting and fishing, may require “positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”

54. The Human Rights Committee has made clear that States may not promote their economic development at the expense of the rights protected by article 27 of the Covenant. Whether measures that substantially interfere with the culturally significant economic activities of a minority community are acceptable depends on whether the members of the community were able to participate in the decision-making process that resulted in the measures and whether they will continue to benefit from their traditional economy. The Committee has stated that “participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members”.

55. Protections for non-indigenous as well as indigenous people may also arise from the principle of non-discrimination, which is recognized in the Universal Declaration of Human Rights (art. 2) and throughout human rights law. States are required to ensure that measures, including measures that may appear non-discriminatory on their face, do not have disproportionate impacts on the enjoyment of human rights on prohibited grounds, including race and ethnicity. Because measures that adversely affect ecosystems may well have disproportionately severe effects on the enjoyment of human rights of members of marginalized ethnic groups who rely directly on the ecosystems, States have heightened consideration is whether the people themselves self-identify as indigenous. In particular, human rights bodies have emphasized that States should protect the special relationship of people with the territory that they have traditionally occupied when their subsistence and culture is closely linked to that territory.

56. In particular, human rights bodies have emphasized that States should protect the special relationship of people with the territory that they have traditionally occupied when their subsistence and culture is closely linked to that territory. For example, the Inter- American Court of Human Rights has held that States have heightened obligations to protect the right to property, as recognized in the American Convention on Human Rights (art. 21), of Afrodescendant tribal communities. Because such communities have their own customs and a special relationship with their ancestral territories, the Court held that, like indigenous peoples, they “require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of property rights, in order to safeguard their physical and cultural survival”. These special measures include an obligation on the State to recognize and protect their communal property right in the territory and the natural resources they have traditionally used. Restrictions on this right are acceptable only if they are previously established by law, necessary, proportional and have “the aim of achieving a legitimate objective in a democratic society”.<sup>76</sup> In addition, restrictions may not deny a community’s survival as a tribal or indigenous people, which requires the State to conduct assessment, consultation and benefit-sharing and, with respect to projects that would have a major impact, to obtain their free, prior and informed consent. Similarly, the Committee on the Elimination of Racial Discrimination has urged the review of forestry laws “to ensure respect for ethnic groups’ way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment” (see CERD/C/THA/CO/1-3, para. 16).<sup>7</sup>

57. Human rights bodies continue to clarify the duties owed to non-indigenous as well as indigenous people whose way of life depends directly on ecosystems. While much more work remains to be done to define these obligations and the obligations owed to others in vulnerable situations (who may include women, children, the elderly, the disabled and the extremely poor) in relation to environmental harm in general and the loss of ecosystem services in particular, the obligations are already clear enough that States and others should take them into account.

58. These obligations apply not only to measures aimed at exploitation of resources, but also to those aimed at conservation. The Special Rapporteur on the rights of indigenous peoples has identified many examples of forced displacement from protected areas, whose consequences have included “marginalization, poverty, loss of livelihoods, food insecurity, extrajudicial killings, and disrupted links with spiritual sites and denial of access to justice and remedy” (see A/71/229, para. 51). Non-indigenous communities, including Afrodescendants, have

also experienced adverse effects as a result of conservation measures (see, e.g., A/HRC/25/53/Add.1, para. 63). While States should do more to protect biodiversity, they must act in accordance with the human rights of those who have long-standing, close relationships with their ancestral territories.

59. Protecting the rights of those who live closest to nature is not just required by human rights law; it is also often the best or only way to ensure the protection of biodiversity. The knowledge and practices of the people who live in biodiversity-rich ecosystems are vital to the conservation and sustainable use of those ecosystems. It has been estimated that territories and areas conserved by indigenous peoples and local communities (called, for historical reasons, ICCAs, for indigenous and community conserved areas) cover at least as much land surface as protected areas administered by Governments. Protecting the human rights of indigenous peoples and local communities has been shown to result in improved protection for ecosystems and biodiversity. Conversely, trying to conserve biodiversity by excluding them from a protected area typically results in failure. In short, respect for human rights should be seen as complementary, rather than contradictory, to environmental protection.

60. International and national institutions have recognized the importance of respecting the rights of indigenous peoples and local communities who closely depend on natural resources and of supporting their efforts to conserve and sustainably use biodiversity. In particular, article 8 (j) of the Convention on Biological Diversity requires each party, “subject to its national legislation”, to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”, to promote their wider application and to encourage the equitable sharing of benefits. Article 10 (c) urges parties to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. The parties to the Convention have built on these provisions, including through the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention, which, among other things, provides for “the prior informed consent or approval and involvement of indigenous and local communities” in relation to access to traditional knowledge associated with genetic resources (art. 7), and requires that the parties take steps to ensure that the benefits arising from utilization of genetic resources and traditional knowledge are shared in a fair and equitable way with the communities concerned (art. 5).

61. The Conference of the Parties has taken a number of other decisions that recognize and support the role of indigenous peoples and local communities in the protection of biodiversity, including by encouraging the parties to the Convention to support their management of ICCAs and protected areas. The strategic plan for 2011-2020 (see paras. 45-46 above) includes the goals of restoring and safeguarding ecosystems that provide essential services, taking into account the needs of indigenous and local communities as well as women, the poor and the vulnerable (target 14) and respecting and fully integrating the traditional knowledge and practices of indigenous and local communities in the implementation of the Convention (target 18). Some States have reported significant progress in supporting the traditional and participatory management of natural resources.

62. Conservation organizations have also committed to respect and support the rights of indigenous peoples and local communities. In Durban in 2003, the World Parks Congress of the International Union for Conservation of Nature (IUCN), an umbrella organization with more than 1,000 members, including States, government agencies and civil society organizations, adopted a new paradigm for protected areas. Replacing exclusionary “fortress” models of conservation, the Durban Accord announced, among other things, that protected areas should be established and managed in full compliance with the rights of indigenous peoples and local communities (see A/71/229, paras. 39-41). Subsequent IUCN World Parks and World Conservation Congresses have continued to endorse and develop this approach, including by expressing support for ICCAs.

63. Despite these commitments, however, substantial gaps in implementation remain. In December 2016, the Conference of the Parties to the Convention on Biological Diversity noted “the limited progress made towards Aichi Biodiversity Targets 18 and 14 at the national level and in mainstreaming Article 8 (j) and related provisions into various areas of work under the Convention, including capacity development and the participation of indigenous peoples and local communities in the work of the Convention”, and also noted with concern that only a limited number of national biodiversity strategies and action plans even refer to indigenous peoples and local communities or customary sustainable use. Similarly, the Special Rapporteur on the rights of indigenous peoples has identified shortcomings in implementation of the Durban commitments, including the failure of IUCN and most other conservation organizations to institute effective grievance mechanisms (see A/71/229, para. 49). On a more positive note, in 2016 the World Conservation Congress amended the IUCN statute to make it easier for indigenous peoples’ organizations to join IUCN, which should facilitate closer ties with conservation organizations.

64. Other good practices in support of indigenous peoples and local communities also deserve to be highlighted and replicated. A shining example is the Small Grants Programme of the Global Environment Facility, implemented by the United Nations Development Programme (UNDP), which over the past 25 years has funded 20,000 projects in over 125 countries through grants averaging about \$25,000 each. Nearly half of the grants have supported indigenous and local efforts aimed at the conservation and sustainable use of biodiversity. On his visit

to Madagascar, the Special Rapporteur observed how one of these grants has directly assisted a local community to conserve endangered wildlife. Another excellent practice is the UNDP Equator Initiative, which works to support local solutions for sustainable development by building local capacity, sharing good practices and recognizing successes through its annual Equator Prizes.

#### Conclusions and recommendations

71. States must do more to respect and protect the rights of those who are most vulnerable to the degradation and loss of biodiversity. States should recognize that members of non-indigenous minority communities that have separate cultural traditions and close material and cultural ties to their ancestral territories have rights that are similar (but not simply identical) to those of indigenous peoples, and States should respect and protect their rights as well as those of indigenous peoples. States should support indigenous and local efforts to protect biodiversity, including through ICCAs, recognizing that the traditional knowledge and commitment of indigenous peoples and local communities often make them uniquely qualified to do so.

72. Businesses should respect human rights in their biodiversity-related actions, including by:

(a) Complying with the Guiding Principles on Business and Human Rights in all actions that may affect biodiversity and ecosystems; (b) Following the Akwé: Kon voluntary guidelines; (c) Implementing the recommendations of the Special Rapporteur on the rights of indigenous peoples with respect to extractive activities (A/HRC/24/41); (d) Not seeking or exploiting concessions in protected areas or ICCAs.

73. Conservation organizations should increase their efforts to fulfil their commitments to a rights-based approach to conservation, including by implementing the recommendations of the Special Rapporteur on the rights of indigenous peoples (see A/71/229, paras. 77-82), and by: (a) Sharing good practices; (b) Building more active partnerships with human rights organizations; (c) Conducting human rights impact assessments; (d) Establishing effective grievance mechanisms.

### 7.9 Compilation of good practices, A/HRC/28/61, 3 February 2015

#### Obligations relating to transboundary environmental harm

90. Two other States provide good practices in ensuring that efforts to abate or adapt to climate change respect the rights of indigenous and tribal peoples. The Reducing Emissions from Deforestation and Forest Degradation (REDD+) programme, which was initiated by the sixteenth Conference of the Parties to the UN Framework Convention on Climate Change, creates incentives for developing countries to reduce emissions from deforestation and forest degradation, including through forest conservation and sustainable management.

To avoid conflicts and to protect the rights of indigenous peoples in forests that might be subject to REDD+ projects, Suriname created the REDD+ Assistants Programme, in which representatives selected by their own communities are trained by the Government to understand REDD+ and to help involve indigenous and tribal peoples in the REDD+ decision-making process

100. Indigenous organizations have engaged in good practices to protect indigenous rights and promote the sustainable use of resources, including in connection with protected areas. For example, the Commission on Environmental, Economic and Social Policy of the International Union for Conservation of Nature, the Forest Peoples Programme and other indigenous peoples' organizations help local communities to assess and redress situations where they believe that they have been negatively affected by the designation or management of a protected area.

101. An example of a good practice in the management of protected areas is provided by the Sarstoon Temash Institute for Indigenous Management (SATIIM), a community-based indigenous environmental organization that co-manages, together with the Forest Department of Belize, the Sarstoon Temash National Park on lands traditionally used by indigenous Garifuna and Maya communities. With the assistance of SATIIM, in 2008 the communities of Conejo and Santa Teresa prepared forest sustainable management plans, which identify the timber and other resources that each community can harvest based on ecological surveys, and which include mitigation measures for any possible adverse effects on the environment.

102. Another good practice is raising the awareness of indigenous communities of their rights. Natural Justice, a civil society organization based in South Africa, assists local communities and indigenous groups to prepare "community protocols" that set out their understanding of their customary, national and international rights relating to their land and natural resources. Each community develops its own protocols in a format that is most meaningful to that community. Protocols can be written documents, and can also take the form of visual art, theatre or music.

## 8. Special Rapporteur on the right to food

### 8.1 Visit to Cameroon, A/HRC/22/50/Add.2, 18 December 2012 (late publication)

1. The Special Rapporteur on the right to food undertook an official visit to Cameroon between 16 and 23 July 2012, at the invitation of the Government. ...

#### Indigenous Peoples

66. Lastly, the Special Rapporteur notes that the Government is willing to take advantage of the opportunities presented by the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), which offers compensation for forest conservation. He encourages the Government to explore the possibilities for funding forest conservation activities, and stresses the importance, in the implementation of the mechanism, of providing guarantees for indigenous populations that depend on the forests in accordance with articles 25 to 27 of the Declaration on the Rights of Indigenous Peoples.

### 8.2 Critical perspective on food systems, food crises and the future of the right to food, A/HRC/43/44, 21 January 2020

Critical perspective: globalization and commodification of food systems:

Loss of biodiversity and environmental degradation

40. Indigenous peoples are custodians of 80 per cent of the world's remaining biodiversity, but are facing severe food insecurity, extreme poverty and other human rights deprivations. Despite the protections set forth in the United Nations Declaration on the Rights of Indigenous Peoples, mining projects, hydroelectric developments, the creation of national parks and the designation of protected areas have compromised the rights of indigenous peoples in Argentina, Bangladesh, Botswana, Canada, Chile, Ecuador, Ethiopia, Namibia, the Russian Federation, South Africa, Uganda and elsewhere (see A/HRC/42/37).

Report of the Special Rapporteur, A/HRC/40/56, 25 January 2019

Challenges to achieving the right to food for fishery workers

Conclusion and recommendations<sup>83</sup>. States should:

(q) Fulfil their commitments with respect to Sustainable Development Goals 1, 2 and 14 in order to end hunger and poverty, achieve food security, improve nutrition and conserve and sustainably use the oceans, seas and marine resources for sustainable development, and fulfil the decent work goal for all by 2030;

(r) Fully implement the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, which recognize the role of small-scale fisheries as a more sustainable source of income for many people than industrial fisheries, including by limiting catches;

(s) Take drastic measures to prevent overfishing as well as illegal, unregulated and unreported fishing by developing and protecting fish sanctuaries, with the consent of and in cooperation with the affected indigenous and coastal communities; (t) Adopt measures to prevent, limit and combat the waste and discard of captured fish, marine and water pollution and environmental damage affecting the ecosystem and marine biodiversity, including as a result of intensive aquaculture, and more generally strengthen measures to limit climate change

## 9. Independent Expert on Minority Issues

### 9.1 Visit to Cameroon, A/HRC/25/56/Add.1, 31 January 2014

#### X. Conclusions and recommendations

80. The current legal and administrative regulations governing land use, occupation and ownership do not offer certain minority and indigenous communities adequate protection of their land rights, and should be reviewed and amended to provide stronger legal protection against land grabbing, illegal eviction, forced displacement and ongoing land disputes. Specific legal and policy measures are required to protect the land rights of those who practice nomadic, transhumance and hunter-gatherer lifestyles, including their right to have access to traditional forest habitats and to use land seasonally for grazing.

81. The Government is urged to ratify ILO Convention No. 169. Importantly, the Convention requires

that indigenous and tribal peoples be consulted on issues that affect them and be able to engage in policy and development processes that affect them. It also requires their free, prior and informed consent for projects implemented on their lands and territories. A specific national law on the rights of minority and indigenous peoples should be drafted in consultation with the communities concerned

## **9.2 1. Mission to Rwanda, 31 January–7 February 2011, A/HRC/19/56/Add.1, 28 November 2011**

### **The situation of Batwa communities in Rwanda**

#### **1. Identity**

54. Batwa representatives emphasize their ethnic and cultural distinctiveness.<sup>28</sup> It was noted by Batwa NGOs that Batwa have distinctive dialects and intonation comprehensible only to other Batwa, and unique elements of culture and customs. In contrast to the Government's official version of the country's ethnic history, Batwa historical narrative maintains that they were the original inhabitants of Rwandan forests following hunter-gatherer subsistence livelihoods. As other ethnic groups encroached onto their territories bringing livestock farming and cultivation, the Batwa were forced to move to ever more remote areas of forest. In the modern era, widespread subsistence and commercial agriculture, national parks and tourism development have forced Batwa to leave the remaining areas of forest which they occupied.

55. Community representatives in the vicinity of Musanze near the Volcanoes National Park stated that they were forced from the forests to areas on the lower slopes of the volcanoes after 1994. Some community members stated that they wished to return to the forest and traditional hunter-gatherer ways of life, but could no longer access the forests and their forest-based food and medicinal sources. The distinct hunter-gatherer identities of the Batwa and their deep knowledge of the forests have undoubtedly been lost by new generations.

#### **5. Government responses**

71. The Government states that it "doesn't deny the existence of a people called Batwa [but] refutes the tendency to allege that the Batwa population of Rwanda constitutes an ethnic group or an indigenous people".<sup>35</sup> It acknowledged that, in accordance with the policy on rural settlement and programme of natural forests and national parks, Batwa and other Rwandans were removed from forests and relocated to organized settlements across the country through a consultative process. The Government asserts that by living in organized settlements, historically marginalized people have greater access to essential services and are better able to benefit from socio-economic opportunities and assistance programmes.

## **10. Special Rapporteur on the rights to water and sanitation**

### **10.1 Human rights to safe drinking water and sanitation of indigenous peoples, A/HRC/51/24, 27 June 2022**

#### **C. Protected and conservation areas and the human rights to water and sanitation of indigenous peoples**

65. While the establishment of protected areas and national parks is aimed at safeguarding biodiversity and ecosystems, in several instances their establishment has had adverse effects on indigenous peoples. In 2016, the Special Rapporteur on the rights of indigenous peoples noted that indigenous peoples may lose their land, sacred sites, resources and livelihoods under agreements on environmental conservation that ignore their right to self-determination and their authorities, leading to forced displacement and land expropriation. For example, forced evictions of indigenous peoples in India were allegedly justified by asserting that the presence of human beings was harmful to tigers.

66. Similarly, the Special Rapporteur on human rights and the environment noted that the post-2020 global biodiversity framework draft, which aims to protect 30 per cent of land and waters by 2030, enhances the risk of violating indigenous peoples' rights owing, inter alia, to their absence in decision-making processes, with devastating impacts on their access to safe drinking water and sanitation once their effective participation is marginalized and their right to free, prior and informed consultation is ignored.

67. In the United Republic of Tanzania, thousands of indigenous Maasai pastoralists are at risk of being forcibly evicted from their traditional lands and their homes demolished in the Ngorongoro conservation area,



which could result, among other serious impacts, in the loss of access to their traditional water sources both for human consumption and livestock.

## 11. Special Rapporteur on the rights to freedom of peaceful assembly and of association

### 11.1 Mission to the United States of America, A/HRC/35/28/Add.2, 17 June 2017

95. The stifling of civil society groups involved in natural resource governance poses difficulties for the achievement of Goals 13, 14 and 15, related to climate change and the sustainable management of the planet's natural resources. In paragraph 33 of the 2030 Agenda, States made a commitment to the conservation and sustainable use of oceans and seas, freshwater resources, forests, mountains and dry lands and to the protection of biodiversity, ecosystems and wildlife. States cannot achieve those goals without engaging with indigenous and other communities that own or manage natural resources.

#### D. Communications sent by Special Procedures on violations related to protected areas<sup>75</sup>

##### 1. Thailand, THA 3/2022, 1 December 2022

Communication sent by the Special Rapporteurs on housing, climate change, environment, food human rights defenders, minority issues, poverty and racism concerning the threat of forced evictions of 14 Isan minority members (9 women, 5 men), who are also land-right defenders, from their lands and homes in the Sab Wai village, situated in the Sai Thong National Park, under forest conservation policies and legislation. The eviction orders have been issued in the context of the Government's climate change mitigation action without the provision of alternative accommodation and productive land, nor adequate compensation. Allegedly, the national strategy to address the adverse effects of climate change pursues "false solutions" that are resulting in practice in the criminalization and impoverishment of poor small-scale farmers who depend on forests for their livelihoods, while the need to reform the energy sector is neglected.

##### 2. Uganda, UGA 5/2022, 20 October 2022

Communication sent by the Special Rapporteurs indigenous peoples, arbitrary detention, executions housing, internally displaced persons, violence against women and girls and water and sanitation about information received concerning the multiple forced evictions of Benet indigenous peoples from their ancestral lands at Mt. Elgon National Park in Uganda, as well as the torture and ill-treatment they are continuously subjected to.

##### 3. Sweden, SWE 2/2022, 03 February 2022,

Communication sent by the Special Rapporteurs on indigenous peoples and environment concerning allegations of human rights violations of the Saami and of threats to the World Heritage Site Laponia due to the proposed Gállok/Kallak mining project by the British company Beowulf Mining's and their fully-owned Swedish subsidiary Jokkmokk Iron Mines AB. Concerns have been raised over the failure to consult and seek the free, prior and informed consent of the indigenous community, the impact on their traditional cultural practices and the lack of sufficient documentation and recognition of environmental risks and irreversible damage to the nearby heritage-listed site, Laponia.

##### 4. EMCO. EMCO Holding AL OTH 251/251, 30 November 2021

Communication sent by the Special Rapporteurs on human rights defenders, business, environment, water and sanitation on mining activities and detention of 8 human rights defenders for their work defending land and environment in the National Park Montaña de Botaderos Carlos Escaleras Mejía.

##### 5. Empresa Minera Inversiones Los Pinares AL OTH 248/251, 30 November 2021

Communication sent by the Special Rapporteurs on human rights defenders, business, environment, water and sanitation on mining activities and detention of 8 human rights defenders for their work defending land and environment in the National Park Montaña de Botaderos Carlos Escaleras Mejía.

##### 6. Honduras AL HND 5/251, 30 November 2021

Communication sent by the Special Rapporteurs on human rights defenders, business, environment, water and sanitation on mining activities and detention of 8 human rights defenders for their work defending land and environment in the National Park Montaña de Botaderos Carlos Escaleras Mejía.

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<sup>75</sup> All communications can be found in SPB communications database: <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

**7. International Council on Monuments and Sites, OTH 264/2021, 9 February 2022**

Communication sent by the Special Rapporteurs on "housing, cultural rights, environment, food indigenous peoples, internally displaced persons, poverty and water and sanitation concerning plans for resettlement, forced evictions, home demolitions and additional restrictions to livelihood, which are due to affect by 2027 some 82,000 residents of the Ngorongoro Conservation Area, including indigenous Maasai pastoralists. Such plans have allegedly not been consulted with the Maasai people with a view to obtaining their free, prior and informed consent and would jeopardize their physical and cultural survival in the name of "nature conservation", ignoring the close relationship that the Maasai have traditionally had with their territories, their stewardship role and the root causes of the current threats to the healthy environment of these territories.

**8. International Union for the Conservation of Nature, OTH 263/2021, 9 February 2022**

Communication sent by the Special Rapporteurs on "housing, cultural rights, environment, food indigenous peoples, internally displaced persons, poverty and water and sanitation concerning plans for resettlement, forced evictions, home demolitions and additional restrictions to livelihood, which are due to affect by 2027 some 82,000 residents of the Ngorongoro Conservation Area, including indigenous Maasai pastoralists. Such plans have allegedly not been consulted with the Maasai people with a view to obtaining their free, prior and informed consent and would jeopardize their physical and cultural survival in the name of "nature conservation", ignoring the close relationship that the Maasai have traditionally had with their territories, their stewardship role and the root causes of the current threats to the healthy environment of these territories.

**9. UNESCO OTH 262/2021, 9 February 2022**

Communication sent by the Special Rapporteurs on "housing, cultural rights, environment, food indigenous peoples, internally displaced persons, poverty and water and sanitation concerning plans for resettlement, forced evictions, home demolitions and additional restrictions to livelihood, which are due to affect by 2027 some 82,000 residents of the Ngorongoro Conservation Area, including indigenous Maasai pastoralists. Such plans have allegedly not been consulted with the Maasai people with a view to obtaining their free, prior and informed consent and would jeopardize their physical and cultural survival in the name of "nature conservation", ignoring the close relationship that the Maasai have traditionally had with their territories, their stewardship role and the root causes of the current threats to the healthy environment of these territories.

**10. United Republic of Tanzania, TZA 3/2021, 9 February 2022**

Communication sent by the Special Rapporteurs on "housing, cultural rights, environment, food indigenous peoples, internally displaced persons, poverty and water and sanitation concerning plans for resettlement, forced evictions, home demolitions and additional restrictions to livelihood, which are due to affect by 2027 some 82,000 residents of the Ngorongoro Conservation Area, including indigenous Maasai pastoralists. Such plans have allegedly not been consulted with the Maasai people with a view to obtaining their free, prior and informed consent and would jeopardize their physical and cultural survival in the name of "nature conservation", ignoring the close relationship that the Maasai have traditionally had with their territories, their stewardship role and the root causes of the current threats to the healthy environment of these territories.

**11. Botswana, JAL BWA 3/2021 , 17 November 2021**

Communication sent by the Special Rapporteurs on business, environment and indigenous peoples concerning the impacts of oil and gas exploration and extraction on the lands of the San indigenous peoples in Kalahari Desert upstream and the Okavango Delta in Namibia and Botswana. A 25-year petroleum exploration license over 34,000km/8.4 million acres of lands traditionally used and occupied by the San peoples was granted to the Canadian-based Reconnaissance Oil and Gas (ReconAfrica), through its locally registered subsidiaries and joint ventures. The San, who were previously evicted from their traditional territory within the Central Kalahari Game Reserve, have strongly objected to petroleum exploration and any future extraction that may cause irrevocable damage to the fragile ecosystem and protected areas on which they depend for their physical and cultural survival.

**12. Canada, JAL CAN 7/2021, 17 November 2021**

Communication sent by the Special Rapporteurs on business, environment and indigenous peoples concerning the impacts of oil and gas exploration and extraction on the lands of the San indigenous peoples in Kalahari Desert upstream and the Okavango Delta in Namibia and Botswana. A 25-year petroleum exploration license over 34,000km/8.4 million acres of lands traditionally used and occupied by the San peoples was granted to the

Canadian-based Reconnaissance Oil and Gas (ReconAfrica), through its locally registered subsidiaries and joint ventures. The San, who were previously evicted from their traditional territory within the Central Kalahari Game Reserve, have strongly objected to petroleum exploration and any future extraction that may cause irrevocable damage to the fragile ecosystem and protected areas on which they depend for their physical and cultural survival.

**13. Namibia, JAL, NAM 2/2021, 17 November 2021**

Communication sent by the Special Rapporteurs on business, environment and indigenous peoples concerning the impacts of oil and gas exploration and extraction on the lands of the San indigenous peoples in Kalahari Desert upstream and the Okavango Delta in Namibia and Botswana. A 25-year petroleum exploration license over 34,000km/8.4 million acres of lands traditionally used and occupied by the San peoples was granted to the Canadian-based Reconnaissance Oil and Gas (ReconAfrica), through its locally registered subsidiaries and joint ventures. The San, who were previously evicted from their traditional territory within the Central Kalahari Game Reserve, have strongly objected to petroleum exploration and any future extraction that may cause irrevocable damage to the fragile ecosystem and protected areas on which they depend for their physical and cultural survival.

**14. National Petroleum Corporation of Namibia, JAL, OTH 255/2021, 17 November 2021**

Communication sent by the Special Rapporteurs on business, environment and indigenous peoples concerning the impacts of oil and gas exploration and extraction on the lands of the San indigenous peoples in Kalahari Desert upstream and the Okavango Delta in Namibia and Botswana. A 25-year petroleum exploration license over 34,000km/8.4 million acres of lands traditionally used and occupied by the San peoples was granted to the Canadian-based Reconnaissance Oil and Gas (ReconAfrica), through its locally registered subsidiaries and joint ventures. The San, who were previously evicted from their traditional territory within the Central Kalahari Game Reserve, have strongly objected to petroleum exploration and any future extraction that may cause irrevocable damage to the fragile ecosystem and protected areas on which they depend for their physical and cultural survival.

**15. ReconAfrica, JAL, OTH 252/2021, 17 November 2021**

Communication sent by the Special Rapporteurs on business, environment and indigenous peoples concerning the impacts of oil and gas exploration and extraction on the lands of the San indigenous peoples in Kalahari Desert upstream and the Okavango Delta in Namibia and Botswana. A 25-year petroleum exploration license over 34,000km/8.4 million acres of lands traditionally used and occupied by the San peoples was granted to the Canadian-based Reconnaissance Oil and Gas (ReconAfrica), through its locally registered subsidiaries and joint ventures. The San, who were previously evicted from their traditional territory within the Central Kalahari Game Reserve, have strongly objected to petroleum exploration and any future extraction that may cause irrevocable damage to the fragile ecosystem and protected areas on which they depend for their physical and cultural survival.

**16. World Heritage Centre, OTH 209/2021, 30 June 2021**

Communication sent by the Special Rapporteurs environment, human rights defenders and indigenous peoples received concerning alleged violations of the rights of the Karen indigenous peoples in the Kaeng Krachan Forest Complex (KKFC), including ongoing harassment and criminalisation of members of the community, impunity for past violations, the lack of independent monitoring in situ, the lack of measures to address the land rights of indigenous peoples and concerns regarding the national legal framework, inadequate consultations and lack of good faith cooperation in order to obtain their free, prior and informed consent and their right to participate in conservation management, in line with international human rights standards, including United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international environmental law.

**17. Thailand THA 4/2021, 30 June 2021**

Communication sent by the Special Rapporteurs on environment, human rights defenders and indigenous peoples concerning alleged violations of the rights of the Karen indigenous peoples in the Kaeng Krachan Forest Complex (KKFC), including ongoing harassment and criminalisation of members of the community, impunity for past violations, the lack of independent monitoring in situ, the lack of measures to address the land rights of indigenous peoples and concerns regarding the national legal framework, inadequate consultations and lack of good faith cooperation in order to obtain their free, prior and informed consent and their right to participate in

conservation management, in line with international human rights standards, including United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international environmental law.

**18. IUCN, OTH 22/2020, 21 April 2020**

Communication sent by the Special Rapporteur indigenous peoples, disappearances, environment and human rights defenders regarding concerns over in compliance with requirements set out in the Operational Guidelines for the Implementation of the World Heritage Convention (alleged violations of the rights of the Karen indigenous communities in the Kaeng Krachan Forest Complex (KKFC).

**19. UNESCO World Heritage Centre, OTH 23/2020, 21 Apr 2020**

Communication sent by the Special Rapporteur indigenous peoples, disappearances, environment and human rights defenders regarding concerns over in compliance with requirements set out in the Operational Guidelines for the Implementation of the World Heritage Convention (alleged violations of the rights of the Karen indigenous communities in the Kaeng Krachan Forest Complex (KKFC).

**20. Nepal, NPL 3/2020, 16 Oct 2020**

Communication sent by the Special Rapporteurs environment, housing, indigenous peoples and torture concerning the forced eviction of Chepang indigenous families and the alleged torture and killing of Mr. Raj Kumar Chepang in the Chitwan National Park in July 2020.

**21. United Republic of Tanzania, TZA 2/2019, 11 Oct 2019**

Communication sent by the Special Rapporteurs environment, health, internally displaced persons Indigenous peoples, on Information received regarding the continuing harassment of Maasai peoples in the Liliondo area, including destruction of homes, confiscation of livestock and intimidation of indigenous Maasai villagers in relation to the activities of two tourism-based companies, Tanzania Conservation Limited (TCL) and Ortello Business Corporation (OBC).

**22. Thailand, THA, 7/2019, 19 August 2019**

Communications sent by the Special Rapporteurs on environment, housing, human rights defenders and poverty concerning the conviction of 14 land rights defenders and the imprisonment of 13 of them in connection with their resistance to eviction from lands belonging to the Sai Thong National Park.

**23. Thailand, THA 2/2019, 21 Feb 2019**

Communications sent by the Special Rapporteurs on disappearances, environment, human rights defenders and indigenous peoples on alleged attacks and renewed harassment of the indigenous Karen peoples in the Kaeng Krachan Forest Complex (KKFC) by officials of the National Park, Wildlife and Plant Conservation Department and over the failure to ensure accountability for these violations.

**24. UNESCO, OTH 8/2019, 28 Feb 2019**

Communications sent by the Special Rapporteurs on disappearances, environment, human rights defenders and indigenous peoples regarding alleged attacks and renewed harassment of the indigenous Karen peoples in the Kaeng Krachan Forest Complex (KKFC) by officials of the National Park, Wildlife and Plant Conservation Department and over the failure to ensure accountability for these violations.

**25. China, 27 July 2018, CHN 16/2018,**

Communication sent by the Special Rapporteurs on cultural rights and environment concerning the rights of Tibetans implicated by the restriction to access the Hoh Xil nature reserve.

**26. World Heritage Programme, OTH 8/2019, 28 Feb 2019**

Communications sent by the Special Rapporteurs on disappearances, environment, human rights defenders and indigenous peoples regarding alleged attacks and renewed harassment of the indigenous Karen peoples in the Kaeng Krachan Forest Complex (KKFC) by officials of the National Park, Wildlife and Plant Conservation Department and over the failure to ensure accountability for these violations.

**27. Guatemala, GTM 5/2017, July 10, 2017**

Communication sent by the Special Rapporteurs on housing, water and sanitation on displacement, threats of eviction and destruction of housing in the entire community of Laguna Larga (municipality of San Andrés

Petén), and approximately 107 families that are now in a situation of humanitarian emergency at the Mexican border in an improvised camp close to the community El Desengaño.

**28. India, IND 9/2017, 24 Aug 2017**

Communications sent by the Special Rapporteur on Indigenous Peoples concerning the failure to ensure free, prior and informed consent in the States of Jharkhand, Madhya Pradesh, Chhattisgarh and Telangana in the context of logging, mining and conservation projects (Panna Tiger Reserve, Amrabad tiger reserve in the Nallamala Forest) affecting indigenous lands and resources.

**29. Chile, CHL 1/2016, 15 Jan 2016**

Communications sent by the Special Rapporteur indigenous peoples concerning Allegations of violations of rights of members of the Rapa Nui people on Easter Island, including arrests of Rapa Nui leaders and improper search and closure of Rapa Nui Parliament offices. According to the information received, the alleged facts are related to the rights of the Rapa Nui over their lands, territories and resources, including the ceremonial and ancestral sites now included in the Rapa Nui National Park. Allegations of lack of effectiveness of the process of the working commissions and the agreements adopted that have failed to establish a climate of dialogue and good faith, following allegations about the arrests of Rapa Nui representatives and investigations and searches of some of their organizations. (unofficial translation).

**30. United Republic of Tanzania, TZA 1/2016, 16 Sep 2016**

Communications sent by the Special Rapporteurs arbitrary detention, human rights defenders and indigenous peoples and torture concerning the arrests of 57 Maasai from the Loliondo community in Ngorongoro District, Northern Tanzania, and the continued threat of further detentions of individuals who are contesting Government plans to provide Maasai ancestral lands to tourism and gaming companies.

**31. Ecuador, AL, ECU 7/2016, 27 Dec 2016**

Communication sent by the Special Rapporteur Indigenous Peoples concerning allegations received regarding potential risks to the life and safety of members of the Aorani people and members of the Tagaeri and Taromenane indigenous peoples in isolation in Tagaeri Taromenane “Intangible” or Untouchable Zone (ZITT) within Yasuní National Park in the Amazon region of Ecuador.

**32. Kenya, KEN 1/2014, 10 Jan 2014**

Communication sent by the Special Rapporteur Indigenous Peoples on alleged imminent threat of eviction faced by the Sengwer indigenous people. According to the information received, police are poised to forcibly evict Sengwer indigenous people from their homes in the Embobut Forest area. For centuries, the Sengwer indigenous people, also known as the Cherangany indigenous people, have lived, hunted and gathered in the Embobut Forest area in the Rift Valley of Kenya. Sengwer continue to live in or near the Embobut Forest and to engage in cultural and subsistence practices in the area. According to reports, police forces have been gathering in the Embobut Forest area in preparation of evictions ordered by the Government in pursuit of forest and water conservation objectives. Sources report that since the 1970s Kenyan authorities have made repeated attempts to forcibly evict the Sengwer from the forest for resettlement in other areas.

**33. United Republic of Tanzania, TZA 1/2014, 02 Apr 2014**

Communication sent by the Special Rapporteurs indigenous peoples, torture and mercenaries on alleged beatings of three Maasai pastoralists of Sukenya Village, an area subject to ongoing dispute regarding access. According to the information received, Sukenya Farm constitutes the ancestral territory of Maasai pastoralists from both Sukenya and Mondorosi villages. The land has been traditionally used by these pastoralists for grazing livestock, accessing important water sources and for moving between villages and sub-villages. Since 2006, the Maasai have not been able to access this land and resources freely as Sukenya Farm’s leasehold was sold by Tanzania Breweries Limited (TBL) to Tanzania Conservation Limited (TCL) for tourism purposes. TCL is owned by a locally incorporated company called Thomson Safaris Company (TSC). Thomson Safaris is a subsidiary of Wineland-Thomson Adventures Inc. based in Boston, United States of America. It is alleged that in the past years, agents and employees including private security guards of Thomson Safaris have been exerting pressure on Maasai pastoralists to leave the Sukenya Farm area. Maasai pastoralists are alleged to have been subjected to forcible evictions, beatings (including Munjaa son of Musa, Kendo son of Maiwa, and Naboye Ngukwo of Sukenya Village), and arrests and detentions when they have attempted to access Sukenya Farm.

**34. Nepal JAL NPL 1/2014, 20 Jun 2014**

Communication sent by the Special Rapporteur indigenous peoples and summary executions concerning the alleged violent conflicts in Dho village, Dolpo district, related to the collection of royalties for the harvesting of “Yarsagumba” (caterpillar fungus). According to the information received, on 3 June 2014, clashes erupted during a meeting between indigenous residents of Dho village who harvest Yarsagumba and officials of the Buffer Zone Management Committee, a State entity of the Shey Phoksundo National Park. The Buffer Zone Management Committee was accompanied by members of the Armed Police Force and the Nepal Police, who intervened in the clash. Reportedly, the incident resulted in the death of two people and injury of some 50 others.

**35. Botswana, 12 Feb 2013, 1/2013**

Communication sent by the Special Rapporteurs Indigenous Peoples concerning Allegations concerning the situation of the Basarwa and Bakgalagadi indigenous peoples in the Central Kalahari Game Reserve. According to the information received, there are approximately 500 to 600 Basarwa and Bakgalagadi indigenous residents living in five communities within the Central Kalahari Game Reserve. Approximately 2,200 to 2,400 Basarwa and Bankgaladi people who were former residents of the Reserve, but who have been evicted from their traditional lands, now live in the resettlement sites of Xere, New Xade and Kaudwane. In the Roy Sesana and Others v. The Attorney General decision of 2006, the High Court of Botswana held that the Government’s refusal to allow the applicants in the case to enter the Reserve unless they were issued with permits was unlawful and unconstitutional. However, the Government has allegedly maintained a position that only the 243 applicants who were named in the Sesana case can return to the Reserve without obtaining a temporary entry permit. Further, indigenous residents in the Reserve have allegedly been criminally prosecuted, arrested, harassed, beaten and intimidated by police and park officials for engaging in their traditional subsistence hunting and gathering activities.

**36. United Republic of Tanzania, TZA 3/2013, 14 Nov 2013**

Communications sent by the Special Rapporteur indigenous peoples and mercenaries concerning the Alleged forcible eviction and other alleged human rights violations affecting indigenous Maasai pastoralists. According to the information received, Sukenya Farm is a locality encompassing approximately 12,617 acres in the Loliondo Division, Ngorongoro District, in the Arusha Region. Reportedly, Sukenya Farm is a large grazing area that constitutes part of the ancestral territories of Maasai pastoralists. Maasai groups have used this territory to carry out their traditional activities including grazing cattle and accessing important water sources. In 1984, the Government of Tanzania in conjunction with the Ngorongoro District Council allocated 10,000 acres within the then Soitsambu village to the parastatal company Tanzanian Breweries Limited (TBL). Subsequently, in 2006, TBL sold its remaining 96-year leasehold to a tourism company known as Tanzania Conservation Limited (TCL). It is reported that since the 2006 evictions, private security guards connected to TCL and local police have continually subjected Maasai pastoralists to acts of intimidation, harassment, and beatings when they have attempted to graze their cattle or access water points in the disputed land area.

**37. United Republic of Tanzania, TZA 2/2013, 08 May 2013**

Communication sent by the Special Rapporteur on allegations concerning the indigenous Maasai pastoralists in the Loliondo Game Controlled Area. According to the information received, on 26 March 2013, the Minister of Environment and Tourism announced plans to declare a corridor of 1500 square km in the Loliondo area as a “game controlled area” in accordance with the Wildlife Management Act of 2009. The Government of Tanzania asserted that the declaration is an effort to address the ongoing land conflicts in the Loliondo area. However, concern is expressed that the Government declared the corridor as a game controlled area in order to reserve that area exclusively for hunting, thereby reducing significantly the areas available to Maasai for grazing their livestock and potentially ultimately leading to their eviction from village lands in that area. The letter follows up on related issues raised by the Special Rapporteur in previous communications (see A/HRC/15/37/Add.1, para 421).

**38. UNESCO World Heritage Centre, OTH 10/2013, 18 November 2013**

Communication sent by Special Rapporteur Indigenous Peoples concerning recent developments regarding the nomination and declaration of World Heritage sites by the World Heritage Committee. In this letter, the Special Rapporteur notes that the World Heritage Committee will hold a discussion on potential reforms to site nomination criteria and the Advisory Bodies’ evaluation process at its next annual session. According to the

information received, reform efforts have arisen mainly due to the difficulties in the nomination process of the Pimachiowin Aki site in Canada, an indigenous-led nomination developed through a collaborative process between the Government of Canada and First Nations. The site was nominated as “mixed property” for both, its cultural and natural significance under the Operational Guidelines for the Implementation of the World Heritage Convention. However, the World Heritage Committee reportedly deferred the Pimachiowin Aki nomination in large part because the Advisory Bodies were unable to concurrently consider natural and cultural values under the present criteria and evaluation processes.

**39. Bolivia (Plurinational State of), BOL 1/2012, 13 March 2012**

Communication sent by the Special Rapporteur Indigenous Peoples to follow-up to a communication sent on 27 September 2011 regarding the situation of indigenous peoples in the Isiboro Sécore Indigenous Territory and National Park (TIPNIS) (A/HRC/19/44, BEN 3/2011). According to the new information received, on February 10, 2012, the President of Bolivia promulgated the "Law on Consultation with the Indigenous Peoples of the Isiboro Sécore Indigenous Territory and National Park – TIPNIS" (Law No. 222) which convenes a consultation process with the Mojeño-Trinitario, Chimane and Yuracaré peoples who inhabit the reserve. Concerns and strong criticism have been expressed about this new law and the conflicting effects it could generate. According to the information received, Law 222 was enacted due to pressure exerted by some sectors of the population within the TIPNIS who have supported the construction of the highway. It has been alleged, however, that through this new law, the Government would have sought to reopen the possibility of building the road, despite the fact that this would allegedly contravene Law 180 which represented the Government's commitment not to build a road in TIPNIS. (Unofficial translation).

**40. Bolivia (Plurinational State of), BOL UA 27 September 2011<sup>76</sup>**

17. Las comunicaciones enviadas por el Relator Especial el 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.

**E. Universal Periodic Review**

**1.1 A/HRC/49/17 (UPR 2021) Thailand**

51.62 Continue to enhance the participation of local communities in land conservation and forest management, including by recognizing the local community's role in the global climate action agenda (Indonesia);

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<sup>76</sup> A/HRC/21/47/Add.3

### **1.2 A/HRC/37/6 (UPR 2017) Gabon**

119.18 Ensure indigenous people's participation in decision-making at all levels, in all matters affecting them, including conservation efforts (Sierra Leone);

120.11 Ensure effective and systematic application of the principle of prior consultation with indigenous peoples, inter alia in its conservation efforts, including by providing specific regulatory or legislative framework (Slovenia);

### **1.3 A/HRC/27/5 (UPR 2014) Democratic Republic of the Congo**

134.162 Ensure land rights of indigenous communities within protected natural parks, in particular Pygmies. Likewise harmonize projects of greenhouse gas reduction, deforestation reduction and forest degradation in line with the United Nations Declaration on the Rights of Indigenous Peoples (Mexico);

### **1.4 A/HRC/23/7 (UPR 2013) Botswana**

117.33 . Fully implement the 2006 High Court ruling and allow all San individuals who want to live on the Central Kalahari Game Reserve to do so (United States of America);

117.35. Ensure that tourism development in the Central Kalahari Reserve allows indigenous peoples to continue with its traditional practices, including hunting and harvesting for subsisting, as well as access to water (Mexico);

### **1.5 A/HRC/WG.6/9/L.4 (UPR 2010), Panama**

69.32. Conduct prior consultations with indigenous communities, as required by international standards, in relation to all plans and projects that might affect them, in particular when it comes to large-scale projects such as hydroelectric dams and mining activities and regarding national plans and projects to reduce emissions from deforestation and forest degradation (Norway);

69.33. Reinstate the requirement to produce environmental impact studies which take into account the possible impact on the rights of persons living in the affected area for all major projects, especially in indigenous and protected areas, and that these studies are made public (United Kingdom)

## **III PERMANENT FORUM ON INDIGENOUS ISSUES**

### **1. Report on the twenty-first session (25 April–6 May 2022)<sup>77</sup> E/2022/43-E/C.19/2022/11**

54. The Permanent Forum recommends that the Department of Economic and Social Affairs, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), facilitate a series of online regional meetings in 2023 to discuss the development of standards and redress mechanisms for conservation programmes that affect indigenous peoples' lands, territories and waters. The dialogue should include the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, the Permanent Forum, indigenous peoples' representatives, non-governmental organizations, the private sector and other stakeholders. The Permanent Forum would welcome a presentation of the outcomes of such a meeting at its twenty-third session, to be held in 2024.

60. The Permanent Forum urges the Government of Kenya to implement the recommendations of the African Commission on Human and Peoples' Rights on the rights of Endorois to the ownership of their ancestral lands, to the restitution thereof and to compensation in that connection.

61. The Permanent Forum calls upon the Government of the United Republic of Tanzania to immediately cease efforts to evict the Maasai people from the Ngorongoro Conservation Area

72. The Permanent Forum takes note of the sixth call for proposals of the Indigenous Peoples Assistance Facility of IFAD, which is focused on advancing indigenous peoples' biodiversity conservation and sustainable management for adaptation and resilience to climate change. The Permanent Forum urges IFAD to facilitate direct access to climate financing to indigenous peoples' communities and organizations through the Facility

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<sup>77</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/355/75/PDF/N2235575.pdf?OpenElement>



and the Adaptation for Smallholder Agriculture Programme, and encourages Governments and donors to support those initiatives.

87. Ensuring a human rights-based approach to indigenous peoples' rights to land, waters, territories and resources, governance and secure customary tenure is essential for their continued contribution and significant role in achieving the post-2020 global biodiversity framework. Indigenous lands, waters and territories need to be recognized directly and as a category separate from "protected areas" or "other E/2022/43 E/C.19/2022/11 22-07676 17/27 effective area-based conservation measures", including when recognizing the land rights of indigenous women. A core element of the post-2020 global biodiversity framework should be the development of indicators reflecting indigenous peoples' rights to facilitate monitoring and implementation. There is an urgent and continuing need for resource mobilization for indigenous peoples, including for indigenous women, to ensure their participation in shaping and implementing the post-2020 global biodiversity framework. In this regard, the Permanent Forum acknowledges the recommendation to organize an expert meeting to develop and study the options and mechanisms for direct access to funding, to be transmitted to the secretariat of the Convention on Biological Diversity. Furthermore, the Permanent Forum supports the continuation of the work of the Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and related provisions of that Convention and urges States parties thereto to ensure adequate support to provide for a robust work programme.

## 2. Report on the eighteenth session (22 April–3 May 2019)<sup>78</sup> E/2019/43-E/C.19/2019/10

36. Recognizing the urgent need for concerted action to address conservation and the rights of indigenous peoples, the Permanent Forum held its second dialogue on the topic during its eighteenth session. Research increasingly and consistently demonstrates that recognizing indigenous peoples' rights to their territories and resources is the most effective way to safeguard biological diversity and protect the ecological integrity of critical ecosystems. Ecological knowledge systems and resource management strategies of indigenous peoples play a key role in implementing truly sustainable conservation strategies and policies.

37. This dialogue follows on the international expert group meeting on the theme "Conservation and the rights of indigenous peoples" (E/C.19/2019/7). The Permanent Forum endorses the recommendations from the meeting and urges States, conservation organizations, indigenous peoples and United Nations entities to work together in implementing the recommendations.

38. The Permanent Forum expresses concern about continuing violations of indigenous peoples' rights in relation to conservation initiatives and will continue to advance efforts to develop concrete action to ensure that conservation strategies and programmes are in line with the Declaration.

39. The Permanent Forum recommends that the specialist group on indigenous peoples, customary and environmental law and human rights within the Commission on Environmental, Economic and Social Policy of the International Union for Conservation of Nature host a series of regional meetings to discuss the development of standards for the conservation of indigenous peoples' lands and waters by 2020, together with indigenous peoples, NGOs and other stakeholders, in consultation with the Forum, United Nations special rapporteurs and the Expert Mechanism on the Rights of Indigenous Peoples.

40. The Permanent Forum urges the member organizations of the Conservation Initiative on Human Rights to commission independent evaluations of the impact of their organizations' work on indigenous peoples.

41. The Permanent Forum recommends that the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination conduct a study on the use of private military and security companies in conservation and their impact on the rights of indigenous peoples.

131. The Permanent Forum expresses concern that indigenous peoples' participation is insufficient and traditional knowledge not respected in the intergovernmental conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The Forum invites the conference organizers

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<sup>78</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/144/80/PDF/N1914480.pdf?OpenElement>

to ensure the participation of indigenous peoples through the establishment of an indigenous peoples' advisory committee, in its third session, in August 2019, and fourth session, in the first half of 2020.

### **3. Report on the seventeenth session (16–27 April 2018)<sup>79</sup> E/2018/43\*-E/C.19/2018/11\***

#### **Conservation and the rights of indigenous peoples**

24. The Permanent Forum expresses concern that conservation programmes based on the concept of excluding human beings from the environment have had negative consequences on the rights of indigenous peoples through forced evictions and other E/2018/43 E/C.19/2018/11 18-07701 9/26 harms, while their natural custodianship of the environment and ecosystems has been unrecognized.

25. The Permanent Forum urges the International Union for Conservation of Nature and the secretariat of the Convention on Biological Diversity to undertake, in collaboration with indigenous peoples, a study on the contributions of indigenous peoples to the management of ecosystems and the protection of biodiversity, and submit a report to the Forum by its nineteenth session.

26. The Permanent Forum recommends that the secretariat of the Convention on Biological Diversity and the International Union for Conservation of Nature actively engage with indigenous organizations, relevant United Nations entities, non-governmental organizations and other actors to develop a set of actions and commitments in relation to conservation and human rights in the context of the post-2020 biodiversity framework and the next World Conservation Congress. 27. The Permanent Forum requests the Global Environment Facility, as well as other funding mechanisms, to prioritize support for conservation approaches that are led or co-managed by indigenous peoples.

28. The Permanent Forum calls on States to enter into discussions with indigenous peoples whose traditional lands are now incorporated in protected areas, with a view to reaching binding agreements that will not only acknowledge the legitimate interests of wildlife conservation but also recognize and guarantee the rights of those communities under articles 8 (2), 18, 19, 26 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples.

29. The Permanent Forum calls on international donors to engage in dialogue with indigenous peoples with the aim of developing an approach to conservation based on recognition of and respect for the rights of indigenous peoples.

30. The Permanent Forum invites the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples to strengthen collaboration in charting ways forward in promoting conservation models that recognize and respect the rights of indigenous peoples.

31. The Permanent Forum invites the Expert Mechanism on the Rights of Indigenous Peoples, at its forthcoming meeting on transitional justice, to examine opportunities for restitution in the context of historic conservation-related evictions and other harms. 32. The Permanent Forum urges Member States to reform the agreements of intergovernmental conservation organizations, such as the North Atlantic Salmon Conservation Organization, to comply with the principles of the United Nations Declaration on the Rights of Indigenous Peoples

#### **Regional dialogues with indigenous peoples and Member States**

94. The Permanent Forum urges Governments in the Arctic, Eastern Europe, the Russian Federation, Central Asia and Transcaucasia to fully implement the relevant international obligations related to environmental and social safeguards to assure the conservation of nature and access to natural resources for indigenous peoples within their territories in accordance with Sustainable Development Goals 12, 14 and 15

### **4. Report on the sixteenth session (24 April-5 May 2017)<sup>80</sup> E/2017/43**

#### **Environment**

33. The Permanent Forum has made a number of recommendations, in particular at its seventh and ninth sessions, on conservation and human rights, which to date remain largely unimplemented. Particular attention

<sup>79</sup> <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/06/Report-on-ForumEnglish.pdf>

<sup>80</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/141/24/PDF/N1714124.pdf?OpenElement>,

has been given by the Forum to the critical issue of free, prior and informed consent of indigenous peoples in establishing and managing any protected area that affects their territories, livelihoods and resources. Those recommendations should be implemented urgently, considering the continued infliction of human rights violations on indigenous peoples in relation to conservation measures.

34. The Permanent Forum urges the Government of Kenya to recognize and formally protect the land and resource rights of the Ogiek and Sengwer peoples in line with the Constitution of Kenya, the Community Land Act of 2016 and other E/2017/43 E/C.19/2017/11 10/25 17-08011 relevant laws, before moving ahead with planned conservation efforts in the Cherangany Hills.

35. The Permanent Forum urges the International Union for Conservation of Nature to establish a task force on conservation and human rights to work with indigenous peoples' communities and organizations to clearly articulate the rights of indigenous peoples in the context of conservation initiatives and to continue to promote grievance mechanisms and avenues for redress in the context of conservation action, including the Whakatane Mechanism. The Forum invites the Union to report on progress made in the implementation of these recommendations in future sessions.

36. The Permanent Forum recommends that States develop laws and policies to ensure the recognition, continued vitality and protection from misappropriation of indigenous traditional knowledge.

37. The Permanent Forum calls upon Member States to start the work, in the context of the United Nations Convention on the Law of the Sea, of creating a place and a voice for indigenous peoples in the governance of the world's oceans. This effort involves the participation of indigenous peoples in all aspects of the work and decision-making regarding the Convention on the Law of the Sea, including the environmental provisions and the delimitation of the continental shelf. It may also include establishing advisory committees of indigenous peoples to guide the work under the Convention, as has been done under the Convention on Biological Diversity.

38. The Permanent Forum calls upon the United Nations bodies and Member States to ensure that indigenous peoples have a voice equal to States in the development of and negotiations on the international agreement to address marine biodiversity in areas beyond national jurisdiction. States and the United Nations should guarantee that the agreement upholds and respects indigenous peoples' role in governing the oceans and the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples.

#### **Studies to be prepared by members of the Permanent Forum**

106. The Permanent Forum appoints Brian Keane and Elifuraha Laltaika, members of the Forum, to undertake a study to examine conservation and indigenous peoples' human rights, to be submitted to the Forum at its seventeenth session

#### **5. Report on the thirteenth session (12-23 May 2014)<sup>81</sup> (E/C.19/2014/11)**

Paragraph 022 The Permanent Forum recommends that States immediately begin the process of demarcation of indigenous peoples' lands and territories in accordance with customary laws and the norms reflected in the United Nations Declaration on the Rights of Indigenous Peoples, with a view to further protecting indigenous peoples' lands and resources from expropriation, exploitation and designation as conservation areas or national parks without the free, prior and informed consent of indigenous peoples, as set out in articles 19, 26 and 27 of the Declaration.

023 The Permanent Forum welcomes the recommendations of the international expert workshop on the World Heritage Convention and indigenous peoples, held in Copenhagen on 20 and 21 September 2012, and the anticipated establishment by the World Heritage Committee of a consultative body on the Operational Guidelines for the Implementation of the World Heritage Convention during its thirty-seventh session, to be held in Phnom Penh from 17 to 27 June 2013, in order to consider, among others, revisions to the guidelines relating to the human rights of indigenous peoples, including the principle of free, prior and informed consent. The Forum recommends that UNESCO and the World Heritage Committee implement the Convention in

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<sup>81</sup> <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/C.19/2014/11&Lang=E>

accordance with the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, taking an approach based on human rights. The Forum members will endeavour to participate in the thirty-seventh session of the Committee, including the meetings of the consultative body on the Operational Guidelines, as observers.

**6. Report on the twelfth session (20-31 May 2013)<sup>82</sup> E/2013/43-E/C.19/2013/25**

030 The Permanent Forum urges the concerned States to implement the decision of the African Commission on Human and Peoples' Rights, including in the Endorois case; the order of provisional measures of the African Court on Human and Peoples' Rights in the Ogiek case; and the decision of the High Court of Botswana in the case concerning the Kalahari Game Reserve. These cases are important because they contribute to the development of jurisprudence on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

## IV REGIONAL HUMAN RIGHTS MECHANISMS

### A. Inter-American Commission and Court on Human Rights

#### 1. Kalina and Lonkono peoples v. Suriname (2015)<sup>83</sup>

#### VIII OPERATIVE PARAGRAPHS

329. Therefore,

THE COURT DECLARES,

By six votes to one, that

1. The State is responsible for the violation of the right to recognition of juridical personality, recognized in Article 3 of the American Convention, in relation to Articles 1(1), 2, 21 and 25 thereof, to the detriment of the Kaliña and Lokono peoples and their members, pursuant to paragraphs 105 to 114 of this Judgment. Judge Pérez Pérez dissenting.

By six votes to one, that

2. The State is responsible for the violation of the right to collective property and political rights, recognized in Articles 21 and 23 of the American Convention, in relation to Articles 1(1)

and 2 of this instrument, to the detriment of the Kaliña and Lokono peoples and their members,

pursuant to paragraphs 122 to 230 of this Judgment.

Judge Pérez Pérez dissenting.

By six votes to one, that

3. The State is responsible for the violation of the right to judicial protection, recognized in Article 25 of the American Convention, in relation to Articles 1(1), 2 and 13 thereof, to the detriment of the Kaliña and Lokono peoples and their members, pursuant to paragraphs 237 to 268 of this Judgment.

Judge Pérez Pérez dissenting.

AND ESTABLISHES,

Unanimously, that:

4. This Judgment constitutes, per se, a form of reparation.

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<sup>82</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/361/72/PDF/N1336172.pdf?OpenElement>

<sup>83</sup> [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_309\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf)

5. The State shall grant the Kaliña and Lokono peoples legal recognition of collective juridical personality, as established in paragraph 279.i.a of this Judgment.
6. The State shall delimit and demarcate the traditional territory of the members of the Kaliña and Lokono peoples, as well as grant them collective title to that territory and ensure their effective use and enjoyment thereof, taking into account the rights of other tribal peoples in the area, as established in paragraphs 279.i.b, 284 and 285 of this Judgment.
7. The State shall, through its competent authorities, establish how the territorial rights of the Kaliña and Lokono peoples will be protected in cases in which the land claimed is owned by the State or by third parties, as established in paragraphs 280 to 285 of this Judgment.
8. The State shall take the appropriate measures to ensure the access, use and participation of the Kaliña and Lokono peoples in the Galibi and Wane Kreek Nature Reserves, as established in paragraph 286 of this Judgment.
9. The State shall take the necessary measures to ensure that no activities are carried out that could have an impact on the traditional territory, in particular in the Wane Kreek Nature Reserve, while the above-mentioned processes for the effective participation of the Kaliña and Lokono peoples have not been guaranteed, as established in paragraph 287 of this Judgment.
10. The State shall implement the sufficient and necessary measures to rehabilitate the affected area in the Wane Kreek Nature Reserve, as established in paragraphs 290 and 291 of this Judgment.
11. The State shall create a community development fund for the members of the Kaliña and Lokono peoples, in the terms and within the time frame established in paragraphs 295 to 299 of this Judgment.
12. The State shall implement the necessary inter-institutional coordination mechanisms in order to ensure the effectiveness of the measures established above, within three months of 84 notification of this Judgment, as established in paragraphs 285, 290, 291, 295 and 299 of this Judgment.
13. The State shall take the necessary measures to recognize the collective juridical personality of indigenous and tribal peoples in Suriname, as established in paragraph 305.a of this Judgment.
14. The State shall take the necessary measures to establish an effective mechanism for delimiting, demarcating and titling the territories of indigenous and tribal peoples in Suriname, as established in paragraph 305.b of this Judgment.
15. The State shall take the necessary measures to establish domestic remedies, or adapt those that exist, in order to ensure effective collective access to justice for indigenous and tribal peoples, as established in paragraph 305.c of this Judgment.
16. The State shall take the necessary measures to ensure: (a) effective participation processes for indigenous and tribal peoples in Suriname; (b) the execution of social and environmental impact assessments; and (c) the distribution of benefits, as appropriate, as established in paragraphs 305.d of this Judgment.
17. The State shall implement permanent programs or courses on the human rights of indigenous and tribal peoples, as established in paragraph 309 of this Judgment.
18. The State must issue the publications and the radio broadcast, as established in paragraphs 312 to 313 of this Judgment.
19. The State must pay the amounts established in paragraph 323 of this Judgment as reimbursement of costs and expenses within six months of notification hereof.
20. The State must, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply therewith.
21. The Court will monitor full compliance with the Judgment, in execution of its authority and in compliance with its obligations under the American Convention on Human Rights, and will consider this case concluded when the State has complied fully with its provisions. Judges Humberto Antonio Sierra Porto and Eduardo

Ferrer Mac-Gregor Poisot advised the Court of their joint concurring opinion, and Judge Alberto Pérez Pérez advised the Court of his dissenting opinion, both of which accompany this Judgment.

## 2. The Garifuna community of Triunfo de la Cruz and its members v. Honduras (2015)<sup>84</sup>

### IX. OPERATIVE PARAGRAPHS

Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State is responsible for the violation of the right to collective property, enshrined in Article 21 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same, in detriment of the Garifuna Community of Triunfo de la Cruz and its members, in the terms of paragraphs 99 to 182 of this judgment.
2. The State is responsible for the violation of the rights to a fair trial and judicial protection, enshrined in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, in detriment of the Garifuna Community of Triunfo de la Cruz and its members, in the terms of paragraphs 226 to 253 of this judgment.
3. The State is responsible for the violation of the obligation to adopt domestic legal stipulations, enshrined in Article 2 of the American Convention on Human Rights, in relation to Articles 1(1), 21, 8, and 25 of that same instrument, in detriment of the Garifuna Community of Triunfo de la Cruz and its members, in the terms of paragraphs 187 to 200 of this judgment.
4. The State is not responsible for the violation of the right to life, enshrined in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) of that same instrument, in detriment of Messrs. Jesús Álvarez Roche, Oscar Brega, Jorge Castillo Jiménez, and Julio Alberto Morales, in the terms of paragraphs 204 to 214 of this judgment.

AND ESTABLISHES

unanimously, that:

5. This judgment constitutes, per se, a form of reparation.
6. The State shall, within a two-year term computed as of the notification of this judgment, proceed to demarcate the lands over which collective property has been granted to the Community of Triunfo de la Cruz in full ownership and guarantee of occupation, with their full participation and taking into consideration the Community's customary law, uses, and customs, pursuant to paragraph 259 of this judgment.
7. The State shall, within a two-year term computed as of the notification of this judgment, grant the Community of Triunfo de la Cruz a collective property title deed duly delimited and demarcated over the area designated as "Plot A1" (infra Map Annex), pursuant to paragraphs 260 to 264 of this judgment.
8. The State shall, within a reasonable period of time, start the investigations related to the death of Mr. Jesús Álvarez and Messrs. Óscar Brega, Jorge Castillo Jiménez, and Julio Alberto Morales, in order to determine the possible criminal responsibilities and, if it were the case, effectively apply the punishments and consequences established by law, pursuant to paragraphs 266 and 267 of this judgment.
9. The State shall make the publications and radio broadcast within a 6-month term, as of the notification of this judgment, in the terms of paragraphs 271 and 272 of this judgment.

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<sup>84</sup> [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_305\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_305_ing.pdf)

10. The Court shall, within a one-year period computed as of the notification of this judgment, carry out a public act of acknowledgment of international responsibility, pursuant to that stated in paragraph 274 of this judgment.

11. The State shall guarantee free access, use, and enjoyment of the collective property by the Community of Triunfo de la Cruz in the part of its territory that overlaps with an area of the Punta Izopo National Park, pursuant to that stated in paragraph 280 of this judgment.

12. The State shall, within a reasonable period of time, create adequate mechanisms to regulate its Property Registry system in the terms stated in paragraph 282 of this judgment.

13. The State shall create a Community development fund in favor of the members of the Garífuna Community of Triunfo de la Cruz, in the terms and periods stated in paragraphs 289 to 299 of this judgment.

14. The State shall pay the amounts set for the concept of reimbursement of costs and expenses within a one-year term, computed as of the notification of the judgment and in the terms indicated in paragraph 304 of this judgment.

15. The State shall, within a ninety-day period, reimburse the amount spent during the processing of this case to the Legal Aid Fund for Victims of the Inter-American Court of Human Rights pursuant to paragraph 308 of this judgment.

16. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

17. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights and will consider this case closed when the State has complied fully with all its provisions. Judge Humberto Antonio Sierra Porto informed the Court of his concurring opinion, which accompanies this judgment.

### **3. Xákmok Kásek v. Paraguay (2010)<sup>85</sup>**

#### **XIII OPERATIVE PARAGRAPHS**

337. Therefore, THE COURT DECIDES,

Unanimously,

1. To reject the State's request to suspend these proceedings, in the terms of paragraphs 36 to 50 of this judgment.

DECLARES,

By seven votes to one, that:

2. The State violated the rights to communal property, judicial guarantees and judicial protection recognized in Articles 21(1), 8(1), 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the Xákmok Kásek Community, in the terms of paragraphs 54 to 182 of this judgment.

By seven votes to one, that:

3. The State violated the right to life, established in Article 4(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of all the members of the Xákmok Kásek Community, in the terms of paragraphs 195, 196, 202 to 202, 205 to 208 and 211 to 217 of this judgment.

By seven votes to one, that:

4. The State violated the right to life established in Article 4(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Sara González López, Yelsi Karina López Cabañas, Remigia Ruiz, Aida Carolina González, NN [Note: NN = no first name] Ávalos or Ríos Torres, Abundio Inter Dermott, NN Dermott

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<sup>85</sup> [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf)

Martínez, NN García Dermott, Adalberto González López, Roberto Roa González, NN Ávalos or Ríos Torres, NN Dermontt Ruiz and NN Wilfrida Ojeda, in the terms of paragraphs 231 to 234 of this judgment.

Unanimously, that:

5. The State violated the right to personal integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of all the members of the Xákmok Kásek Community, in the terms of paragraphs 242 to 244 of this judgment.

By seven votes to one, that:

6. The State violated the right to juridical personality recognized in Article 3 of the American Convention, in relation to Article 1(1) thereof, to the detriment of NN Jonás Ávalos or Jonás Ríos Torres, Rosa Dermott, Yelsi Karina López Cabañas, Tito García, Aída Carolina González, Abundio Inter. Dermot, NN Dermott Larrosa, NN Ávalos or Ríos Torres, NN Dermott Martínez, NN Dermott Larrosa, NN García Dermott, Adalberto González López, Roberto Roa González, NN Ávalos or Ríos Torres, NN Ávalos or Ríos Torres; NN Dermott Ruiz, Mercedes Dermott Larrosa, Sargento Giménez, and Rosana Corrientes Domínguez, in the terms of paragraphs 251 to 254 of this judgment.

Unanimously, that:

7. The State did not violate the right to juridical personality recognized in Article 3 of the American Convention, to the detriment of the Xákmok Kásek Community, in the terms of paragraph 255 of this judgment.

77

Unanimously, that

8. The State violated the rights of the child established in Article 19 of the American Convention, in relation to Article 1(1) thereof, to the detriment of all the children of the Xákmok Kásek Community, in the terms of paragraphs 259 to 264 of this judgment.

By seven votes to one, that

9. The State failed to comply with its obligation not to discriminate established in Article 1(1) of the American Convention, in relation to the rights recognized in Articles 21(1), 8(1), 25(1), 4(1), 3 and 19 of the American Convention, in the terms of paragraphs 273 to 275 of this judgment.

Unanimously, that:

10. The State indicated its acceptance of certain reparations, according to the provisions of paragraph 32 of this judgment, and this has been assessed positively by the Court, as established in the said paragraph of this judgment.

AND ORDERS,

unanimously, that:

11. This judgment constitutes per se a form of reparation. 12. The State must return to the members of the Xákmok Kásek Community the 10,700 hectares it is claiming, in the way and within the time established in paragraphs 281 to 290 of this judgment.

13. The State must ensure immediately that the territory claimed by the Community is not harmed due to actions of the State itself or of private third parties, in the terms of paragraph 291 of this judgment

14. The State must, within six months of notification of this judgment, remove the formal obstacles to granting title to the 1,500 hectares of “25 de Febrero” to the Xákmok Kásek Community, in the terms of paragraph 293 of this judgment.

15. The State must, within one year of notification of this judgment, grant title to the 1,500 hectares of “25 de Febrero” to the Xákmok Kásek Community, in keeping with the provisions of paragraphs 294 and 295 hereof.



16. The State must organize a public act of acknowledgement of responsibility within one year of notification of this judgment, in the terms of paragraph 297 hereof.
17. The State must make the publications ordered in paragraph 298 of this judgment, in the manner and within the time indicated in the said paragraph.
18. The State must broadcast the official summary of the judgment delivered by the Court on a radio station with widespread coverage in the Chaco region, in the way and within the time indicated in paragraphs 301 and 302 of this judgment.
19. While it is processing the award of the traditional land or, if applicable, alternate land to the members of the Community, the State must take immediately, periodically or permanently the measures indicated in paragraphs 301 and 302 of this judgment.
20. The State must prepare the study indicated in paragraph 303 within six months of notification of this judgment in the terms of paragraphs 304 and 305 hereof.
21. The State must establish a permanent health clinic in “25 de Febrero,” equipped with the necessary supplies and medicines to provide adequate health care, within six months of notification of this judgment, in the terms of paragraph 306 hereof.
22. The State must establish immediately in “25 de Febrero” the communication system indicated in paragraph 306 of this judgment.
23. The State must ensure that the health care center and the communication system indicated in the twenty-first and twenty-second operative paragraphs supra are moved to the site of the Community’s definitive settlement once it has recovered its traditional land, in keeping with the provisions of the twelfth operative paragraph supra.
24. The State must implement, within one year of notification of this judgment at most, a registration and documentation program, in the terms of paragraph 297 of this judgment.
25. The State must, within two years of notification of this judgment, adopt in its domestic law the legislative, administrative and any other kind of measures that may be necessary to create an effective system for the indigenous peoples to reclaim ancestral or indigenous lands, which allows them to exercise their right to property, in the terms of paragraphs 309 and 310 of this judgment.
26. The State must adopt immediately the necessary measures to ensure that Decree No. 11,804, declaring part of the land claimed by the Community a protected wooded area, will not be an obstacle for the return of the traditional lands, in keeping with the provisions of paragraphs 311 and 313 of this judgment.
27. The State must, within two years of notification of this judgment, pay the amounts established in paragraphs 318, 325 and 331 as compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses, as appropriate, in the terms of paragraphs 317, 321, 322 and 330 of this judgment.
28. The State must establish a community development fund, in the terms of paragraph 323 of this judgment, and set up a committee to operate the fund, in the terms and within the time frame established in paragraph 324 of this judgment.
29. The Court will monitor full compliance with this judgment in exercise of its competence and in compliance with its obligations under the American Convention, and will consider the case closed when the State has complied fully with all its provisions. Within six months of notification of the judgment, the State must provide the Court with a report on the measures adopted to comply with it.

## B. African Commission and Court on Human and Peoples’s Rights

### 1. **African Commission on Human and Peoples’ Rights v. Republic of Kenya, Judgment, Application No. 006/212<sup>86</sup> (2022)**

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<sup>86</sup> <https://www.african-court.org/cpmt/storage/app/uploads/public/62b/44e/f59/62b44ef59e0bc692084052.pdf>

## VIII. OPERATIVE PART

160. For these reasons

THE COURT,

Unanimously,

On the Respondent State's objections

i. Dismisses all the Respondent State's objections;

64 Rule 30 of the Rules of Court 2 June 2010.

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On pecuniary reparations

ii. Orders the Respondent State to pay the sum of KES 57 850 000. (Fifty seven million, eight hundred and fifty thousand Kenya Shillings), free from any government tax, as compensation for the material prejudice suffered by the Ogiek;

iii. Orders the Respondent State to pay the sum of KES 100 000 000 (One hundred million Kenya Shillings), free from any government tax, as compensation for the moral prejudice suffered by the Ogiek;

On non-pecuniary reparations

iv. Orders the Respondent State to take all necessary measures, legislative, administrative or otherwise to identify, in consultation with the Ogiek and/or their representatives, and delimit, demarcate and title Ogiek ancestral land and to grant collective title to such land in order to ensure, with legal certainty, the Ogiek's use and enjoyment of the same.;

v. Orders the Respondent State, where concessions and/or leases have been granted over Ogiek ancestral land, to commence dialogue and consultations between the Ogiek and their representatives and the other concerned parties for purposes of reaching an agreement on whether or not they can be allowed to continue their operations by way of lease and/or royalty and benefit sharing with the Ogiek in line with all applicable laws. Where it proves impossible to reach a compromise, the Respondent State is ordered to compensate the concerned third parties and return such land to the Ogiek;

vi. Orders that the Respondent State must take all appropriate measures, within one (1) year, to guarantee full recognition of the Ogiek as an indigenous people of Kenya in an effective manner, including but not limited to according full recognition to the Ogiek language and Ogiek cultural and religious practices;

vii. Dismisses the Applicant's prayer for a public apology;

viii. Dismisses the Applicant's prayer for the erection of a monument to commemorate the human rights violations suffered by the Ogiek;

ix. Orders the Respondent State to take all necessary legislative, administrative or other measures to recognise, respect and protect the right of the Ogiek to be effectively consulted, in accordance with their tradition/customs in respect of all development, conservation or investment projects on Ogiek ancestral land;

x. Orders the Respondent State to ensure the full consultation and participation of the Ogiek, in accordance with their traditions/customs, in the reparation process as ordered in this judgment;

xi. Orders the Respondent State to adopt legislative, administrative and/or any other measures to give full effect to the terms of this judgment as a means of guaranteeing the non-repetition of the violations identified;

xii. Orders the Respondent State to take the necessary administrative, legislative and any other measures within twelve (12) months of the notification of this judgment to establish a community development fund for the Ogiek which should be a repository of all the funds ordered as compensation in this case;

xiii. Orders the Respondent State, within twelve (12) months of notification of this judgment, to take legislative, administrative or any other measures to establish and operationalise the Committee for the management of the development fund ordered in this Judgment;

#### On implementation and reporting

xiv. Orders that the Respondent State must, within six (6) months of notification of this judgment, publish the official English summaries, developed by the Registry of the Court, of this judgment together with that of the judgment of 26 May 2017. These summaries must be published, once in the official Government Gazette and once in a newspaper with widespread national

circulation. The Respondent State must also, within the six (6) months period earlier referred to, publish the full judgments on merits and on reparations together with the summaries provided by the Registry of the Court on an official government website where they should remain available for a period of at least one (1) year;

xv. Orders the Respondent State to submit, within twelve (12) months from the date of notification of this Judgment, a report on the status of implementation of all the Orders herein;

xvi. Holds, that it shall conduct a hearing on the status of implementation of the orders made in this judgment on a date to be appointed by the Court twelve (12) months from the date of this judgment.

#### On Costs

xvii. Decides that each party shall bear its own costs;

## 2. African Commission on Human and Peoples' Rights v. Kenya (2017)<sup>87</sup>

### VII. ON THE MERITS

(...)

#### i. The Ogieks as an Indigenous Population

#### The Court's Assessment

105. The Court notes that the concept of indigenous population is not defined in the Charter. For that matter, there is no universally accepted definition of "indigenous population" in other international human rights instruments. There have, however, been efforts to define indigenous populations. In this regard, the Court draws inspiration from the work of the Commission through its Working Group on Indigenous Populations/Communities. The Working Group has adopted the following criteria to identify indigenous populations:

#### ii. Self-identification;

ii. A special attachment to and use of their traditional land whereby their ancestral land and territory have a fundamental importance for their collective physical and cultural survival as peoples; and

iii. A state of subjugation, marginalisation, dispossession, exclusion, or discrimination because these peoples have different cultures, ways of life or mode of production than the national hegemonic and dominant model. "

106. The Court also draws inspiration from the work of the United Nations Special Rapporteur on Minorities, which specifies the criteria to identify indigenous populations as follows: That indigenous people can be appropriately considered as "Indigenous communities, peoples and nations which having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-

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<sup>87</sup> <https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/5fe/9a9/5f55fe9a96676974302132.pdf>

dominant sectors of society and are determined to preserve, develop, and transmit to future generations, their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems"; ii. That an indigenous individual for the same purposes is "... one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference" .

107. From the foregoing, the Court deduces that for the identification and understanding of the concept of indigenous populations, the relevant factors to consider are the presence of priority in time with respect to the occupation and use of a specific territory; a voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organisation, religion and spiritual values, modes of production, laws and institutions; self-identification as well as recognition by other groups, or by State authorities that they are a distinct collectivity; and an experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist.

108. These criteria generally reflect the current normative standards to identify indigenous populations in international law. The Court deems it appropriate, by virtue of Article 60 and 61 of the Charter, which allows it to draw inspiration from other human rights instruments to apply these criteria to this Application.

109. With respect to the issue of priority in time, different reports and submissions by the parties filed before the Court reveal that the Ogieks have priority in time, with respect to the occupation and use of the Mau Forest ancestral home. The most salient feature of most indigenous populations is their strong attachment with nature, particularly, land and the natural environment. Their survival in a particular way depends on unhindered access to and use of their traditional land and the natural resources thereon. In this regard, the Ogieks, as a hunter-gatherer community, have for centuries depended on the Mau Forest for their residence and as a source of their livelihood.

110. The Ogieks also exhibit a voluntary perpetuation of cultural distinctiveness, which includes aspects of language, social organisation, religious, cultural and spiritual values, modes of production, laws and institutions through self-identification and recognition by other groups and by State authorities, as a distinct group. Despite the fact that the Ogieks are divided into clans made up of patrilineal lineages each with its own name and area of habitation, they have their own language, albeit currently spoken by very few and more importantly, social norms and forms of subsistence, which make them distinct from other neighbouring tribes. They are also identified by these neighbouring tribes, such as the Maasai, Kipsigis and Nandi, with whom they have had regular interaction, as distinct 'neighbours' and as a distinct group..

111. The records before this Court show that the Ogieks have suffered from continued subjugation, and marginalisation." Their suffering as a result of evictions from their ancestral lands and forced assimilation and the very lack of recognition of their status as a tribe or indigenous population attest to the persistent marginalisation that the Ogieks have experienced for decades.

112. In view of the above, the Court recognises the Ogieks as an indigenous population that is part of the Kenyan people having a particular status and deserving special protection deriving from their vulnerability.

(...)

B. Alleged violation of Article 14 of the Charter

(...)

The Court's Assessment

122. Article 14 of the Charter provides as follows:

"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

123. The Court observes that, although addressed in the part of the Charter which enshrines the rights recognised for individuals, the right to property as guaranteed by Article 14 may also apply to groups or communities; in effect, the right can be individual or collective.

124. The Court is also of the view that, in its classical conception, the right to property usually refers to three elements namely: the right to use the thing that is the subject of the right (*usus*), the right to enjoy the fruit thereof (*fructus*) and the right to dispose of the thing, that is, the right to transfer it (*abusus*).

125. However, to determine the extent of the rights recognised for indigenous communities in their ancestral lands as in the instant case, the Court holds that Article 14 of the Charter must be interpreted in light of the applicable principles especially by the United Nations.

126. In this regard, Article 26 of the United Nations General Assembly Declaration 61/295 on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007, provides as follows:

"1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."

127. It follows in particular from Article 26 (2) of the Declaration that the rights that can be recognised for indigenous peoples/communities on their ancestral lands are variable and do not necessarily entail the right of ownership in its classical meaning, including the right to dispose thereof (*abusus*). Without excluding the right to property in the traditional sense, this provision places greater emphasis on the rights of possession, occupation, use/utilization of land.

128. In the instant case, the Respondent does not dispute that the Ogiek Community has occupied lands in the Mau Forest since time immemorial. In the circumstances, since the Court has already held that the Ogieks constitute an indigenous community (*supra* paragraph 112), it holds, on the basis of Article 14 of the Charter read in light of the above-mentioned United Nations Declaration, that they have the right to occupy their ancestral lands, as well as use and enjoy the said lands.

129. . However, Article 14 envisages the possibility where a right to property including land may be restricted provided that such restriction is in the public interest and is also necessary and proportional 27

130. In the instant case, the Respondent's public interest justification for evicting the Ogieks from the Mau Forest has been the preservation of the natural ecosystem. Nevertheless, it has not provided any evidence to the effect that the Ogieks' continued presence in the area is the main cause for the depletion of natural environment in the area. Different reports prepared by or in collaboration with the Respondent on the situation of the Mau Forest also reveal that the main causes of the environmental

degradation are encroachments upon the land by other groups and government excisions for settlements and ill-advised logging concessions. 28 In its pleadings, the Respondent also concedes that "the Mau Forest degradation cannot entirely be associated or is not associable to the Ogiek people".<sup>29</sup> In this circumstance, the Court is of the view that the continued denial of access to and eviction from the Mau Forest of the Ogiek population cannot be necessary or proportionate to achieve the purported justification of preserving the natural ecosystem of the Mau Forest.

131. In view of the foregoing considerations, the Court holds that by expelling the Ogieks from their ancestral lands against their will, without prior consultation and without respecting the conditions of expulsion in the interest of public need, the Respondent violated their rights to land as defined above and as guaranteed by Article 14 of the Charter read in light of the United Nations Declaration on the Rights of Indigenous Peoples of 2007.

C. Alleged violation of Article 2 of the Charter

(...)

#### The Court's Assessment

136. Article 2 of the Charter provides that: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, birth or any status."

137. Article 2 of the Charter is imperative for the respect and enjoyment of all other rights and freedoms protected in the Charter. The provision strictly proscribes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment.

138. The right not to be discriminated against is related to the right to equality before the law and equal protection of the law as guaranteed by Article 3 of the Charter.<sup>31</sup> The scope of the right to non-discrimination extends beyond the right to equal treatment by the law and also has practical dimension in that individuals should in fact be able to enjoy the rights enshrined in the Charter without distinction of any kind relating to their race, colour, sex, religion, political opinion, national extraction or social origin, or any other status. The expression 'any other status' under Article 2 encompasses those cases of discrimination, which could not have been foreseen during the adoption of the Charter. In determining whether a ground falls under this category, the Court shall take into account the general spirit of the Charter.

139. In terms of Article 2 of the Charter, while distinctions or differential treatment on grounds specified therein are generally proscribed, it should be pointed out that not all forms of distinction can be considered as discrimination. A distinction or differential treatment becomes discrimination, and hence, contrary to Article 2, when it does not have

140. In the instant case, the Court notes that the Respondent's national laws as they were before 2010, including the Constitution of Kenya 1969 (as Amended in 1997), the Government Lands Act Chapter 280, Registered Land Act Chapter 300, Trust Land Act Chapter 285 and the Forest Act Chapter 385, recognised only the concept of ethnic groups or tribes. While some of these laws were enacted during the colonial era, the Respondent maintained them with few amendments or their effect persisted to date even after independence in 1963.

141. In so far as the Ogieks are concerned, the Court notes from the records available before it that their request for recognition as a tribe goes back to the colonial period, where their request was rejected by the then Kenya Land Commission in 1933, asserting that "they [the Ogieks] were a savage and barbaric people who deserved no tribal status" and consequently, the Commission proposed that "they should become members of and be absorbed into the tribe in which they have the most affinity". The denial of their request for recognition as a tribe also denied them access to their own land as, at the time, only those who had tribal status were given land as "special reserves" or "communal reserves". This has been the case since independence and is still continuing. In contrast, other ethnic groups such as the Maasai, have been recognised as tribes and consequently, been able to enjoy all related rights derived from such recognition, thus proving differential treatment.

142. The Court accordingly finds that, if other groups which are in the same category of communities, which lead a traditional way of life and with cultural distinctiveness highly dependent on the natural

environment as the Ogieks, were granted recognition of their status and the resultant rights, the refusal of the Respondent to recognise and grant the same rights to the Ogieks, due to their way of life as a hunter-gatherer community amounts to 'distinction' based on ethnicity and/or 'other status' in terms of Article 2 of the Charter.

143. With regard to the Respondent's submission that, following the adoption of a new Constitution in 2010, all Kenyans enjoy equal opportunities in terms of education, health, employment, and access to justice and there is no discrimination among different tribes in Kenya including the Ogieks, the Court notes that indeed the 2010 Constitution of Kenya recognises and accords special protection to indigenous populations as part of "marginalised community" and the Ogieks could theoretically fit into that category and benefit from the protection of such constitutional safeguards. All the same, this does not diminish the responsibility of the

Respondent with respect to the violations of the rights of the Ogieks not to be discriminated against between the time the Respondent became a Party to the Charter and when the Respondent's new Constitution was enacted.

144. In addition, as stated above, the prohibition of discrimination may not be fully guaranteed with the enactment of laws which condemn discrimination; the right can be effective only when it is actually respected and, in this vein, the persisting eviction of the Ogieks, the failure of the authorities of the Respondent to stop such evictions and to comply with the decisions of the national courts demonstrate that the new Constitution and the institutions which the Respondent has set up to remedy past or on-going injustices are not fully effective.

145. On the Respondent's purported justification that the evictions of the Ogieks were prompted by the need to preserve the natural ecosystem of the Mau Forest, the Court considers that this cannot, by any standard, serve as a reasonable and objective justification for the lack of recognition of the Ogieks' indigenous or tribal status and denying them the associated rights derived from such status. Moreover, the Court recalls its earlier finding that contrary to what the Respondent is asserting, the Mau Forest has been allocated to other people in a manner which cannot be considered as compatible with the preservation of the natural environment and that the Respondent itself concedes that the depletion of the natural ecosystem cannot be entirely imputed to the Ogieks.

146. In light of the foregoing, the Court finds that the Respondent, by failing to recognise the Ogieks' status as a distinct tribe like other similar groups and thereby denying them the rights available to other tribes, violated Article 2 of the Charter.

#### D. Alleged violation of Article 4 of the Charter

(...)

#### The Court's Assessment

151. Article 4 of the Charter stipulates that: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right"

152. The right to life is the cornerstone on which the realisation of all other rights and freedoms depend. The deprivation of someone's life amounts to eliminating the very holder of these rights and freedoms. Article 4 of the Charter strictly prohibits the arbitrary privation of life. Contrary to other human rights instruments, the Charter establishes the link between the right to life and the inviolable nature and integrity of the human being. The Court finds that this formulation reflects the indispensable correlation between these two rights.

153. The Court notes that the right to life under Article 4 of the Charter is a right to be enjoyed by an individual irrespective of the group to which he or she belongs. The Court also understands that the violation of economic, social and cultural rights (including through forced evictions) may generally engender conditions unfavourable to a decent life. However, the Court is of the view that the sole fact of eviction and deprivation of economic, social and cultural rights may not necessarily result in the violation of the right to life under Article 4 of the Charter.

154. The Court considers that it is necessary to make a distinction between the classical meaning of the right to life and the right to decent existence of a group. Article 4 of the Charter relates to the physical rather than the existential understanding of the right to life.

155. In the instant case, it is not in dispute between the Parties that that the Mau Forest has, for generations, been the environment in which the Ogiek population has always lived and that their livelihood depends on it. As a hunter-gatherer population, the Ogieks have established their homes, collected and produced food, medicine and ensured other means of survival in the Mau Forest. There is no doubt that their eviction has adversely affected their decent existence in the forest. According to the Applicant, some members of the Ogiek population died at different times, due to lack of basic necessities such as food, water, shelter, medicine, exposure to the elements, and diseases, subsequent to their forced evictions. The Court notes however that the Applicant has not established the causal connection between the evictions of the Ogieks by the Respondent and the deaths alleged to have occurred as a result. The Applicant has not adduced evidence to this effect.

156. In view of the above, the Court finds that there is no violation of Article 4 of the Charter.



F. Alleged violation of Article 8 of the Charter

(...)

The Court's Assessment

162. Article 8 of the Charter provides:

"Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms."

163. The above provision requires State Parties to fully guarantee freedom of conscience, the profession and free practice of religion. The right to freedom of worship offers protection to all forms of beliefs regardless of denominations: theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The right to manifest and practice religion includes the right to worship, engage in rituals, observe days of rest, and wear religious garb, allow individuals or groups to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes, as well as to celebrate ceremonies in accordance with the precepts of one's religion or Belief.

164. The Court notes that, in the context of traditional societies, where formal religious institutions often do not exist, the practice and profession of religion are usually inextricably linked with land and the environment. In indigenous societies in particular, the freedom to worship and to engage in religious ceremonies depends on access to land and the natural environment. Any impediment to, or interference with accessing the natural environment, including land, severely constrains their ability to conduct or engage in religious rituals with considerable repercussion on the enjoyment of their freedom of worship.

165. In the instant case, the Court notes from the records before it<sup>44</sup> that the Ogieks' religious sites are in the Mau Forest and they perform their religious practices there. The Mau Forest constitutes their spiritual home and is central to the practice of their religion. It is where they bury the dead according to their traditional rituals, where certain types of trees are found for use to worship and it is where they have kept their sacred sites for generations.

166. The records also show that the Ogiek population can no longer undertake their religious practices due to their eviction from the Mau Forest. In addition, they must annually apply and pay for a license for them to have access to the Forest. In the opinion of the Court, the eviction measures and these regulatory requirements interfere with the freedom of worship of the Ogiek population.

167. Article 8 of the Charter however allows restrictions on the exercise of freedom of religion in the interest of maintaining law and order. Though the Respondent can interfere with the religious practices of the Ogieks to protect public health and maintain law and order, these restrictions must be examined with regard to their necessity and reasonableness. The Court is of the view that, rather than evicting the Ogieks from the Mau Forest, thereby restricting their right to practice their religion, there were other less onerous measures that the Respondent could have put in place that would have ensured their continued enjoyment of this right while ensuring maintenance of law and order and public health. These measures include undertaking sensitisation campaigns to the Ogieks on the requirement to bury their dead in accordance with the requirements of the Public Health Act and collaborating towards maintaining the religious sites and waiving the fees to be paid for the Ogieks to access their religious sites.

168. On the contention that the Ogieks have abandoned their religion and converted to Christianity, the Court notes from the records before it, specifically from the testimony of the Applicant's witnesses that, not all the Ogieks have converted to Christianity. Indeed, the Respondent has not submitted any evidence to support its position that the adoption of Christianity means a total abandonment of the Ogiek traditional religious practices. Even though some members of the Ogieks might have been converted to Christianity, the evidence before this Court show that they still practice their traditional religious rites. Accordingly, the alleged transformation in the way of life of the Ogieks and their manner of worship cannot be said to have entirely eliminated their traditional spiritual values and rituals.



169. From the foregoing, the Court is of the view that given the link between indigenous populations and their land for purposes of practicing their religion, the evictions of the Ogieks from the Mau Forest rendered it impossible for the community to continue its religious practices and is an unjustifiable interference with the freedom of religion of the Ogieks. The Court therefore finds that the Respondent is in violation of Article 8 of the Charter.

F. Alleged violation of Articles 17(2) and (3) of the Charter  
(...)

The Court's Assessment

176. Article 17 of the Charter provides: "1. Every individual shall have the right to education. 2. Every individual may freely, take part in the cultural life of his community. 3. The promotion and protection of morals and traditional values Recognised by the community shall be the duty of the State" .

177. The right to culture as enshrined in Article 17 (2) and (3) of the Charter is to be considered in a dual dimension, in both its individual and collective nature. It ensures protection, on the one hand, of individuals' participation in the cultural life of their community and, on the other, obliges the State to promote and protect traditional values of the community.

178. Article 17 of the Charter protects all forms of culture and places strict obligations on State Parties to protect and promote traditional values. In a similar fashion, the Cultural Charter for Africa obliges States to adopt a national

policy which creates conditions conducive for the promotion and development of culture 49 The Cultural Charter specifically stresses "the need to take account of national identities, cultural diversity being a factor making for balance within the nation and a source of mutual enrichment for various communities".

179. The protection of the right to culture goes beyond the duty, not to destroy or deliberately weaken minority groups, but requires respect for, and protection of, their cultural heritage essential to the group's identity. In this respect, culture should be construed in its widest sense encompassing the total way of life of a particular group, including the group's languages, symbols such as dressing codes and the manner the group constructs shelters; engages in certain economic activities, produces items for survival; rituals such as the group's particular way of dealing with problems.

180. The Court notes that in the context of indigenous populations, the preservation of their culture is of particular importance. Indigenous populations have often been affected by economic activities of other dominant groups and large scale developmental programmes. Due to their obvious vulnerability often stemming from their number or traditional way of life, indigenous populations even have, at times, been the subject and easy target of deliberate policies of exclusion, exploitation, forced assimilation, discrimination and other forms of persecution, whereas some have encountered extinction of their cultural distinctiveness and continuity as a distinct group.

181. The UN Declaration on Indigenous Peoples, states that "indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture" and States shall provide effective mechanisms to prevent any action that deprives them of "their integrity as distinct peoples, or of their cultural values or ethnic identities".

182. In the instant case, the Court notes from the records available before it that the Ogiek population has a distinct way of life centred and dependent on the Mau Forest Complex. As a hunter-gatherer community, they get their means of survival through hunting animals and gathering honey and fruits, they have their own traditional clothes, their own language, distinct way of entombing the dead, practicing rituals and traditional medicine, and their own spiritual and traditional values, which distinguish them from other communities living around and outside the Mau Forest Complex, thereby demonstrating that the Ogieks have their own distinct culture.

183. The Court notes, based on the evidence available before it and which has not been contested by the Respondent that the Ogieks have been peacefully carrying out their cultural practices until their territory was

encroached upon by outsiders and they were evicted from the Mau Forest. Even in the face of this, the Ogieks still undertake their traditional activities: traditional wedding ceremonies, oral traditions, folklores, and songs. They still maintain their clan boundaries in the Mau Forest and each clan ensures the maintenance of the environment within the boundary it is allocated. However, in the course of time, the restrictions on access to and evictions from the Mau Forest have greatly affected their ability to preserve these traditions. In view of this, the Court holds that the Respondent interfered with the enjoyment of the right to culture of the Ogiek population.

184. Having found that there has been interference by the Respondent with the cultural rights of the Ogieks, the next issue for the Court to determine is whether or not such interference could be justified by the need to attain a legitimate aim under the Charter. In this regard, the Court notes the Respondent's contention that the Ogiek population has evolved on their own by adopting a different culture and identity and that, in any event, the eviction measures the Respondent effected against them were aimed to prevent adverse impacts on the Mau Forest which was caused by the Ogiek lifestyle and culture.

185. With regard to the first contention that the Ogieks have evolved and their way of life has changed through time to the extent that they have lost their distinctive cultural identity, the Court reiterates that the Respondent has not sufficiently demonstrated that this alleged shift and transformation in the lifestyle of the Ogieks has entirely eliminated their cultural distinctiveness. In this vein, the Court stresses that stagnation or the existence of a static way of life is not a defining element of culture or cultural distinctiveness. It is natural that some aspects of indigenous populations' culture such as a certain way of dressing or group symbols could change over time. Yet, the values, mostly, the invisible traditional values embedded in their self-identification and shared mentality often remain unchanged.

186. In so far as the Ogiek population is concerned, the testimony tendered by Mrs. Mary Jepkemei, a member of the Ogiek Community, attests that the Ogieks still have their traditional values and cultural ceremonies which make them distinct from other similar groups. In addition, the Court notes that, to some extent, some of the alleged changes in the way the Ogieks used to live in the past are caused by the restrictions put in place by the Respondent itself on their right to access their land and natural environment.

187. With respect to the second contention that the eviction measures were in the public interest of preserving the natural environment of the Mau Forest Complex, the Court first notes that Article 17 of the Charter does not provide exceptions to the right to culture. Any restrictions to the right to culture shall accordingly be dealt with in accordance with Article 27 of the Charter, which stipulates that: "1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."

188. In the instant case, the restriction of the cultural rights of the Ogiek population to preserve the natural environment of the Mau Forest Complex may in principle be justified to safeguard the "common interest" in terms of Article 27 (2) of the Charter. However, the mere assertion by a State Party of the existence of a common interest warranting interference with the right to culture is not sufficient to allow the restriction of the right or sweep away the essence of the right in its entirety. Instead, in the circumstances of each case, the State Party should substantiate that its interference was indeed genuinely prompted by the need to protect such common interest. In addition, the Court has held that any interference with the rights and freedoms guaranteed in the Charter shall be necessary and proportional to the legitimate interest sought to be attained by such interference.

189. In the instant case, the Court has already found that the Respondent has not adequately substantiated its claim that the eviction of the Ogiek population was for the preservation of the natural ecosystem of the Mau Forest. 58 Considering that the Respondent has interfered with the cultural rights of the Ogieks through the evictions and given that the Respondent invokes the same justification of preserving the natural ecosystem for its interference, the Court reiterates its position that the interference cannot be said to have been warranted by an objective and reasonable justification. Although the Respondent alleges generally, that certain cultural activities of the Ogieks are inimical to the environment, it has not specified which particular activities and how these activities have degraded the Mau Forest. In view of this, the purported reason of preserving the natural environment cannot constitute a legitimate justification for the Respondent's interference with the Ogieks' exercise of their cultural rights. Consequently, the Court deems it unnecessary to examine further whether the interference was necessary and proportional to the legitimate aim invoked by the Respondent.

190. The Court therefore finds that the Respondent has violated the right to culture of the Ogiek population contrary to Article 17 (2) and (3) of the Charter by evicting them from the Mau Forest area, thereby, restricting them from exercising their cultural activities and practices.

#### G. Alleged violation of Article 21 of the Charter The Court's Assessment

195. Article 21 of the Charter states that: "1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. 2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation. 3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principle of international law 4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity.

196. The Court notes, in general terms, that the Charter does not define the notion of "peoples". In this regard, the point has been made that the drafters of the Charter deliberately omitted to define the notion in order to "permit a certain flexibility in the application and subsequent interpretation by future users of the legal instrument, the task of fleshing out the Charter being left to the human rights protection bodies.""

197. It is generally accepted that, in the context of the struggle against foreign domination in all its forms, the Charter primarily targets the peoples comprising the populations of the countries struggling to attain independence and national sovereignty.

198. In the circumstances, the question is whether the notion "people" used by the Charter covers not only the population as the constituent elements of the State, but also the ethnic groups or communities identified as forming part of the said population within a constituted State. In other words, the question that arises is whether the enjoyment of the rights unquestionably recognised for the constituent peoples of the population of a given State can be extended to include sub-state ethnic groups and communities that are part of that population.

199. In the view of the Court, the answer to this question is in the affirmative, provided such groups or communities do not call into question the sovereignty and territorial integrity of the State without the latter's consent. It would in fact be difficult to understand that the States which are the authors of the Charter intended, for example, to automatically recognise for the ethnic groups and communities that constitute their population, the right to self-determination and independence guaranteed under Article 20 (1) of the Charter, which in this case would amount to a veritable right to secession". On the other hand, nothing prevents other peoples' rights, such as the right to development (Article 22), the right to peace and security (Article 23) or the right to a healthy environment (Article. 24) from being recognised, where necessary, specifically for the ethnic groups and communities that constitute the population of a State.

200. In the instant case, one of the rights at issue is the right of peoples to freely dispose of their wealth and natural resources guaranteed under Article 21 of the Charter. In essence, as indicated above, the Applicant alleges that the Respondent violated the aforesaid right insofar as, following the expulsion of the Ogieks from the Mau Forest, they were deprived of their traditional food resources.

201. The Court recalls, in this regard, that it has already recognised for the Ogieks a number of rights to their ancestral land, namely, the right to use (*usus*) and the right to enjoy the produce of the land (*fructus*), which presuppose the right of access to and occupation of the land. In so far as those rights have been violated by the Respondent, the Court holds that the latter has also violated Article 21 of the Charter since the Ogieks have been deprived of the right to enjoy and freely dispose of the abundance of food produced by their ancestral lands.

#### H. Alleged violation of Article 22 of the Charter

(...)

The Court's Assessment

207. Article 22 of the Charter provides that: “1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.”

208. The Court reiterates its view above with respect to Article 21 of the Charter that the term “peoples” in the Charter comprises all populations as a constitutive element of a State. These populations are entitled to social, economic and cultural development being part of the peoples of a State. Accordingly, the Ogiek population, has the right under Article 22 of the Charter to enjoy their

right to development.

209. The Court considers that, Article 22 of the Charter should be read in light of Article 23 of the UNDRIP which provides as follows: “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

210. In the instant case, the Court recalls that the Ogieks have been continuously evicted from the Mau Forest by the Respondent, without being effectively consulted. The evictions have adversely impacted on their economic, social and cultural development. They have also not been actively involved in developing and determining health, housing and other economic and social programmes affecting them.

211. The Court therefore holds that the Respondent violated Article 22 of the Charter.

#### I. Alleged violation of Article 1 of the Charter

(...)

#### The Court's Assessment

214. Article 1 of the Charter declares that "The Member States of the Organization of African Unity parties to the present Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them".

215. The Court observes that Article 1 of the Charter imposes on State Parties the duty to take all legislative and other measures necessary to give effect to the rights and freedoms guaranteed in the Charter.

216. In the instant case, the Court observes that by enacting its Constitution in 2010, the Forest Conservation and Management Act No. 34 of 2016 and the Community Land Act, Act No. 27 of 2016, the Respondent has taken some legislative measures to ensure the enjoyment of rights and freedoms protected under the Charter. However, these laws were enacted relatively recently. This Court has also found that the Respondent failed to recognise the Ogieks, like other similar groups, as a distinct tribe, leading to denial of access to their land in the Mau Forest and the consequential violation of their rights under Article 2, 8, 14, 17(2) and (3), 21 and 22. In addition to these legislative lacunae, the Respondent has not demonstrated that it has taken other measures to give effect to these rights.

217. In view of the above, the Respondent has violated article 1 of the Charter by not

taking adequate legislative and other measures to give effect to the rights enshrined under article 2, 8, 14, 17 (2) and (3), 21 and 22 of the Charter.

### VIII. REMEDIES AND REPARATIONS

## The Court's Assessment

222. The Court's power on reparations is set out in Article 27(1) of the Protocol which states that: "if the Court finds that there has been violation of a human and peoples' rights, it shall make appropriate orders to remedy the violation including the payment of fair compensation or reparation". Further, pursuant to Rule 63 of the Rules, "The Court shall rule on the request for reparation submitted in accordance with Rules 34(5) of these Rules, by the same decision establishing the violation of a human and peoples' rights or, if the circumstance so require, by a separate decision".

223. The Court decides that it shall rule on any other forms of reparations in a separate decision, taking into consideration the additional submissions from the Parties.

## IX. COSTS

224. Neither the Applicant nor the Respondent made claims as to costs.

225. The Court notes that Rule 30 of its Rules states that, "Unless otherwise decided by the Court, each party shall bear its own costs."

226. The Court shall rule on cost when making its ruling on other forms of reparation.

227. For these reasons, the Court unanimously:

### On Jurisdiction

- i) Dismisses the objection to the Court's material jurisdiction to hear the Application;
- ii) Dismisses the objection to the Court's personal jurisdiction to hear the Application;
- iii) Dismisses the objection to the Court's temporal jurisdiction to hear the Application;
- iv) Declares that it has jurisdiction to hear the Application.

### On Admissibility

- i) Dismisses the objection to the admissibility of the Application on the ground that the Matter is pending before the African Commission on Human and

### Peoples' Rights;

- ii) Dismisses the objection to the admissibility of the Application on the ground that the Court did not conduct a preliminary examination of the admissibility of the Application;
- iii) Dismisses the objection to the admissibility of the Application on the ground that the author of the Application is not the aggrieved party in the complaint;
- iv) Dismisses the objection to the admissibility of the Application on the ground of failure to exhaust local remedies;
- v) Declares the Application admissible.

### On the Merits

i) Declares that the Respondent has violated Articles 1, 2, 8, 14

17(2) and (3), 21 and 22 of the Charter;

ii) Declares that the Respondent has not violated Article 4 of the Charter;

iii) Orders the Respondent to take all appropriate measures within a reasonable time frame to remedy all the violations established and to inform the Court of the measures taken within six (6) months from the date of this Judgment;

iv) Res e r v e sit s ruling on rep a rat ion s ;

v) Requests the Applicant to file submissions on Reparations within 60 days from the date of this judgment and thereafter, the Respondent shall file its Response thereto within 60 days of receipt of the Applicant's submissions on Reparations and Costs.

**3. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003<sup>88</sup>**

Decision on Merits

144. The present Communication alleges that the Respondent State has violated the human rights of the Endorois community, an indigenous people, by forcibly removing them from their ancestral land, the failure to adequately compensate them for the loss of their property, the disruption of the community's pastoral enterprise and violation of the right to practice their religion and culture, as well as the overall process of development of the Endorois people.

145. Before addressing the articles alleged to have been violated, the Respondent State has requested the African Commission to determine whether the Endorois can be recognised as a 'community' / sub-tribe or clan on their own. The Respondent State disputes that the Endorois are a distinct community in need of special protection. The Respondent State argues that the Complainants need to prove this distinction from the Tugen sub-tribe or indeed the larger Kalenjin tribe. The immediate questions that the African Commission needs to address itself to are:

146. Are the Endorois a distinct community? Are they indigenous peoples and thereby needing special protection? If they are a distinct community, what makes them different from the Tugen sub-tribe or indeed the larger Kalenjin tribe?

147. Before responding to the above questions, the African Commission notes that the concepts of "peoples" and "indigenous peoples / communities" are contested terms. As far as "indigenous peoples" are concerned, there is no universal and unambiguous definition of the concept, since no single accepted definition captures the diversity of indigenous cultures, histories and current circumstances. The relationships between indigenous peoples and dominant or mainstream groups in society vary from country to country. The same is true of the concept of "peoples." The African Commission is thus aware of the political connotation that these concepts carry. Those controversies led the drafters of the African Charter to deliberately refrain from proposing any definitions for the notion of "people(s)." In its Report of the Working Group of Experts on Indigenous Populations/Communities,<sup>48</sup> the African Commission describes its dilemma of defining the concept of "peoples" in the following terms: Despite its mandate to interpret all provisions of the African Charter as per Article 45(3), the African Commission initially shied away from interpreting the concept of 'peoples'. The African Charter itself does not define the concept. Initially the African Commission did not feel at ease in developing rights where there was little concrete international jurisprudence. The ICCPR and the ICESR do not define 'peoples.' It is evident that the drafters of the African Charter intended to distinguish between the traditional individual rights where the sections preceding Article 17 make reference to "every individual." Article 18 serves as a break by referring to the family. Articles 19 to 24 make specific reference to "all peoples."

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<sup>88</sup> [https://www.eschr-net.org/sites/default/files/Endorois\\_Decision.pdf](https://www.eschr-net.org/sites/default/files/Endorois_Decision.pdf)



148. The African Commission, nevertheless, notes that while the terms ‘peoples’ and ‘indigenous community’ arouse emotive debates, some marginalised and vulnerable groups in Africa are suffering from particular problems. It is aware that many of these groups have not been accommodated by dominating development paradigms and in many cases they are being victimised by mainstream development policies and thinking and their basic human rights violated. The African Commission is also aware that indigenous peoples have, due to past and ongoing processes, become marginalised in their own country and they need recognition and protection of their basic human rights and fundamental freedoms.

149. The African Commission also notes that normatively, the African Charter is an innovative and unique human rights document compared to other regional human rights instruments, in placing special emphasis on the rights of “peoples.” It substantially departs from the narrow formulations of other regional and universal human rights instruments by weaving a tapestry which includes the three “generations” of rights: civil and political rights; economic, social, and cultural rights; and group and peoples’ rights. In that regard, the African Commission notes its own observation that the term “indigenous” is also not intended to create a special class of citizens, but rather to address historical and present-day injustices and inequalities. This is the sense in which the term has been applied in the African context by the Working Group on Indigenous Populations/Communities of the African Commission. In the context of the African Charter, the Working Group notes that the notion of “peoples” is closely related to collective rights.

150. The African Commission also notes that the African Charter, in Articles 20 through 24, provides for peoples to retain rights as peoples, that is, as collectives. The African Commission through its Working Group of Experts on Indigenous Populations/Communities has set out four criteria for identifying indigenous peoples. These are: the occupation and use of a specific territory; The African Charter is not an accident of history. Its creation by the OAU came at a time of increased scrutiny of states for their human rights practices, and the ascendancy of human rights as a legitimate subject of international discourse. For African states, the rhetoric of human rights had a special resonance for several reasons, including the fact that post-colonial African states were born out of the anti-colonial human rights struggle, a fight for political and economic self-determination and the need to reclaim international legitimacy and salvage its image .

151. The African Commission is thus aware that there is an emerging consensus on some objective features that a collective of individuals should manifest to be considered as “peoples”, viz: a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities they collectively enjoy – especially rights enumerated under Articles 19 to 24 of the African Charter – or suffer collectively from the deprivation of such rights. What is clear is that all attempts to define the concept of indigenous peoples recognize the linkages between peoples, their land, and culture and that such a group expresses its desire to be identified as a people or have the consciousness that they are a people.

152. As far as the present matter is concerned, the African Commission is also enjoined under Article 61 of the African Charter to be inspired by other subsidiary sources of international law or general principles in determining rights under the African Charter.<sup>56</sup> It takes note of the working definition proposed by the UN Working Group on Indigenous Populations: ... that indigenous peoples are ...those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.

153. But this working definition should be read in conjunction with the 2003 Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities, which is the basis of its ‘definition’ of indigenous populations.<sup>58</sup> Similarly it notes that the International Labour Organisation has proffered a definition of indigenous peoples in Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries: Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

154. The African Commission is also aware that though some indigenous populations might be first inhabitants, validation of rights is not automatically afforded to such pre-invasion and pre-colonial claims. In terms of ILO Convention 169, even though many African countries have not signed and satisfied the said Convention, and like the UN Working Groups' conceptualisation of the term, the African Commission notes that there is a common thread that runs through all the various criteria that attempts to describe indigenous peoples – that indigenous peoples have an unambiguous relationship to a distinct territory and that all attempts to define the concept recognise the linkages between people, their land, and culture. In that regard, the African Commission notes the observation of the UN Special Rapporteur, where he states that in Kenya indigenous populations/communities include pastoralist communities such as the Endorois, Borana, Gabra, Maasai, Pokot, Samburu, Turkana, and Somali, and hunter-gatherer communities whose livelihoods remain connected to the forest, such as the Awer (Boni), Ogiek, Sengwer, or Yaaku. The UN Special Rapporteur further observed that the Endorois community have lived for centuries in their traditional territory around Lake Bogoria, which was declared a wildlife sanctuary in 1973.

155. In the present Communication the African Commission wishes to emphasise that the Charter recognises the rights of peoples. The Complainants argue that the Endorois are a people, a status that entitles them to benefit from provisions of the African Charter that protect collective rights. The Respondent State disagrees. The African Commission notes that the Constitution of Kenya, though incorporating the principle of non-discrimination and guaranteeing civil and political rights, does not recognise economic, social and cultural rights as

such, as well as group rights. It further notes that the rights of indigenous pastoralist and hunter-gatherer communities are not recognized as such in Kenya's constitutional and legal framework, and no policies or governmental institutions deal directly with indigenous issues. It also notes that while Kenya has ratified most international human rights treaties and conventions, it has not ratified ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, and it has withheld its approval of the United Nations Declaration on the Rights of Indigenous Peoples of the General Assembly. 156. After studying all the submissions of the Complainants and the Respondent State, the African Commission is of the view that Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands – Lake Bogoria and the surrounding area. It agrees that Lake Bogoria and the Monchongoi Forest are central to the Endorois' way of life and without access to their ancestral land, the Endorois are unable to fully exercise their cultural and religious rights, and felt disconnected from their land and ancestors.

157. In addition to a sacred relationship to their land, self-identification is another important criterion for determining indigenous peoples.<sup>65</sup> The UN Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous People also supports self-identification as a key criterion for determining who is indeed indigenous. The African Commission is aware that today many indigenous peoples are still excluded from society and often even deprived of their rights as equal citizens of a state. Nevertheless, many of these communities are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity. It accepts the arguments that the continued existence of indigenous communities as 'peoples' is closely connected to the possibility of them influencing their own fate and to living in accordance with their own cultural patterns, social institutions and religious systems. The African Commission further notes that the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities (WGIP) emphasises that peoples' self-identification is an important ingredient to the concept of peoples' rights as laid out in the Charter. It agrees that the alleged violations of the African Charter by the Respondent State are those that go to the heart of indigenous rights – the right to preserve one's identity through identification with ancestral lands, cultural patterns, social institutions and religious systems. The African Commission, therefore, accepts that self-identification for Endorois as indigenous individuals and acceptance as such by the group is an essential component of their sense of identity.

158. Furthermore, in drawing inspiration from international law on human and peoples' rights, the African Commission notes that the IACtHR has dealt with cases of self-identification where Afro-descendent communities were living in a collective manner, and had, for over 2-3 centuries, developed an ancestral link to their land. Moreover, the way of life of these communities depended heavily on the traditional use of their land, as did their cultural and spiritual survival due to the existence of ancestral graves on these lands.

159. The African Commission notes that while it has already accepted the existence of indigenous peoples in Africa through its WGIP reports, and through the adoption of its Advisory Opinion on the UN Declaration on the Rights of Indigenous Peoples, it notes the fact that the Inter-American Court has not hesitated in granting the



collective rights protection to groups beyond the “narrow/aboriginal/pre-Colombian” understanding of indigenous peoples traditionally adopted in the Americas. In that regard, the African Commission notes two relevant decisions from the IACtHR: *Moiwana v Suriname* and *Saramaka v Suriname*. The *Saramaka* case is of particular relevance to the *Endorois* case, given the views expressed by the Respondent State during the oral hearings on the Merits.

160. In the *Saramaka* case, according to the evidence submitted by the Complainants, the *Saramaka* people are one of six distinct Maroon groups in Suriname whose ancestors were African slaves forcibly taken to Suriname during the European colonisation in the 17th century. The IACtHR considered that the *Saramaka* people make up a tribal community whose social, cultural and economic characteristics are different from other sections of the national community, particularly because of their special relationship with their ancestral territories, and because they regulate themselves, at least partially, by their own norms, customs, and/or traditions.

161. Like the State of Suriname, the Respondent State (Kenya) in the instant Communication is arguing that the inclusion of the *Endorois* in ‘modern society’ has affected their cultural distinctiveness, such that it would be difficult to define them as a distinct group that is very different from the *Tugen* sub-tribe or indeed the larger *Kalenjin* tribe. That is, the Respondent State is questioning whether the *Endorois* can be defined in a way that takes into account the different degrees to which various members of the *Endorois* community adhere to traditional laws, customs, and economy, particularly those living within the *Lake Bogoria* area. In the *Saramaka* case, the IACtHR disagreed with the State of Suriname that the *Saramaka* could not be considered a distinct group of people just because a few members do not identify with the larger group. In the instant case, the African Commission, from all the evidence submitted to it, is satisfied that the *Endorois* can be defined as a distinct tribal group whose members enjoy and exercise certain rights, such as the right to property, in a distinctly collective manner from the *Tugen* sub-tribe or indeed the larger *Kalenjin* tribe.

162. The IACtHR also noted that the fact that some individual members of the *Saramaka* community may live outside of the traditional *Saramaka* territory and in a way that may differ from other *Saramakas* who live within the traditional territory and in accordance with *Saramaka* customs does not affect the Distinctiveness of this tribal group, nor its communal use and enjoyment of their property. In the case of the *Endorois*, the African Commission is of the view that the question of whether certain members of the community may assert certain communal rights on behalf of the group is a question that must be resolved by the *Endorois* themselves in accordance with their own traditional customs and norms and not by the State. The *Endorois* cannot be denied a right to juridical personality just because there is a lack of individual identification with the traditions and laws of the *Endorois* by some members of the community. From all the evidence (both oral and written and video testimony) submitted to the African Commission, the African Commission agrees that the *Endorois* are an indigenous community and that they fulfil the criterion of ‘distinctiveness.’ The African Commission agrees that the *Endorois* consider themselves to be a distinct people, sharing a common history, culture and religion. The African Commission is satisfied that the *Endorois* are a “people”, a status that entitles them to benefit from provisions of the African Charter that protect collective rights. The African Commission is of the view that the alleged violations of the African Charter are those that go to the heart of indigenous rights – the right to preserve one’s identity through identification with ancestral lands.

#### Alleged Violation of Article 8

163. The Complainants allege that *Endorois*’ right to freely practice their religion has been violated by the Respondent State’s action of evicting the *Endorois* from their land, and refusing them access to *Lake Bogoria* and other surrounding religious sites. They further allege that the Respondent State’s has interfered with the *Endorois*’ ability to practice and worship as their faith dictates; that religious sites within the *Game Reserve* have not been properly demarcated and protected and since their eviction from the *Lake Bogoria* area, the *Endorois* have not been able to freely practice their religion. They claim that access as of right for religious rituals – such as circumcisions, marital rituals, and initiation rights – has been denied the community. Similarly, they state that the *Endorois* have not been able to hold or participate in their most significant annual religious ritual, which occurs when the *Lake* undergoes seasonal changes.

164. The Complainants further argue that the *Endorois* have neither been able to practice the prayers and ceremonies that are intimately connected to the *Lake*, nor have they been able to freely visit the spiritual home of all *Endorois*, living and dead. They argue that the *Endorois*’ spiritual beliefs and ceremonial practices constitute a religion under international law. They point out that the term “religion” in international human rights instruments covers various religious and spiritual beliefs and should be broadly interpreted. They argue

that the HRC states that the right to freedom of religion in the International Covenant on Civil and Political Rights (ICCPR): protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.<sup>72</sup> To rebut the allegation of a violation of Article 8 of the African Charter, the Respondent State argues that the Complainants have failed to show that the action of the Government to gazette the Game Reserve for purposes of conserving the environment and wildlife and to a great extent the Complainants’ cultural grounds fails the test of the constitution of reasonableness and justifiability. It argues that through the gazetting of various areas as protected areas, National Parks or Game Reserves or falling under the National Museums, it has been possible to conserve some of the areas which are threatened by encroachment due to modernisation. The Respondent State argues that some of these areas include ‘Kayas’ (forests used as religious ritual grounds by communities from the coast province of Kenya) which has been highly effective while the communities have continued to access these grounds without fear of encroachment.

165. Before deciding whether the Respondent State has indeed violated Article 8 of the Charter, the Commission wishes to establish whether the Endorois’ spiritual beliefs and ceremonial practices constitute a religion under the African Charter and international law. In that regard, the African Commission notes the observation of the HRC in paragraph 164 (above). It is of the view that freedom of conscience and religion should, among other things, mean the right to worship, engage in rituals, observe days of rest, and wear religious garb. The African Commission notes its own observation in *Free Legal Assistance Group v. Zaire*, that it has held that the right to freedom of conscience allows for individuals or groups to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes, as well as to celebrate ceremonies in accordance with the precepts of one’s religion or belief.

166. This Commission is aware that religion is often linked to land, cultural beliefs and practices, and that freedom to worship and engage in such ceremonial acts is at the centre of the freedom of religion. The Endorois’ cultural and religious practices are centred around lake Bogoria and are of prime significance to all Endorois. During oral testimony, and indeed in the Complainants’ written submission, this Commission’s attention was drawn to the fact that religious sites are situated around Lake Bogoria, where the Endorois pray and where religious ceremonies regularly take place. It takes into cognisance that Endorois’ ancestors are buried near the Lake, and has already above, Lake Bogoria is considered the spiritual home of all Endorois, living and dead. 167. It further notes that one of the beliefs of the Endorois is that their Great Ancestor, Dorios, came from the Heavens and settled in the Mochongoi Forest. It notes the Complainants’ arguments, which have not been contested by the Respondent State, that the Endorois believe that each season the water of the Lake turns red and the hot springs emit a strong odour, signalling a time that the community performs traditional ceremonies to appease the ancestors who drowned with the formation of the Lake.

168. From the above analysis, the African Commission is of the view that the Endorois spiritual beliefs and ceremonial practices constitute a religion under the African Charter.

169. The African Commission will now determine whether the Respondent State by its actions or inactions have interfered with the Endorois’ right to religious freedom.

170. The Respondent State has not denied that the Endorois’ have been removed from their ancestral land they call home. The Respondent State has merely advanced reasons why the Endorois can no longer stay within the Lake Bogoria area. The Complainants argue that the Endorois’ inability to practice their religion is a direct result of their expulsion from their land and that since their eviction the Endorois have not been able to freely practice their religion, as access for religious rituals has been denied the community

171. It is worth noting that in *Amnesty International v. Sudan*, the African Commission recognised the centrality of practice to religious freedom. The African Commission noted that the State Party violated the authors’ right to practice their religion, because non-Muslims did not have the right to preach or build their churches and were subjected to harassment, arbitrary arrest, and expulsion. The African Commission also notes the case of *Loren Laroye Riebe Star* from the IACmHR, which determined that expulsion from lands central to the practice of religion constitutes a violation of religious freedoms. It notes that the Court held that the expulsion of priests from the Chiapas area was a violation of the right to associate freely for religious purposes.

172. The African Commission agrees that in some situations it may be necessary to place some form of limited restrictions on a right protected by the African Charter. But such a restriction must be established by law and

must not be applied in a manner that would completely vitiate the right. It notes the recommendation of the HRC that limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. The *raison d'être* for a particularly harsh limitation on the right to practice religion, such as that experienced by the Endorois, must be based on exceptionally good reasons, and it is for the Respondent State to prove that such interference is not only proportionate to the specific need on which they are predicated, but is also reasonable. In the case of *Amnesty International v. Sudan*, the African Commission stated that a wide-ranging ban on Christian associations was “disproportionate to the measures required by the Government to maintain public order, security, and safety.” The African Commission further went on to state that any restrictions placed on the rights to practice one’s religion should be negligible. In the above mentioned case, the African Commission decided that complete and total expulsion from the land for religious ceremonies is not minimal.

173. The African Commission is of the view that denying the Endorois access to the Lake is a restriction on their freedom to practice their religion, a restriction not necessitated by any significant public security interest or other justification. The African Commission is also not convinced that removing the Endorois from their ancestral land was a lawful action in pursuit of economic development or ecological protection. The African Commission is of the view that allowing the Endorois to use the land to practice their religion would not detract from the goal of conservation or developing the area for economic reasons.

The African Commission therefore finds against the Respondent State a violation of Article 8 of the African Charter. The African Commission is of the view that the Endorois’ forced eviction from their ancestral lands by the Respondent State interfered with the Endorois’ right to religious freedom and removed them from the sacred grounds essential to the practice of their religion, and rendered it virtually impossible for the Community to maintain religious practices central to their culture and religion.

The African Commission is of the view that the limitations placed on the state’s duties to protect rights should be viewed in light of the underlying sentiments of the African Charter. This was the view of the Commission, in *Amnesty International v. Zambia*, where it noted that the ‘claw-back’ clauses must not be interpreted against the principles of the Charter ... and that recourse to these should not be used as a means of giving credence to violations of the express provisions of the Charter.”<sup>80</sup>

#### Alleged Violation of Article 14

174. The Complainants argue that the Endorois community have a right to property with regard to their ancestral land, the possessions attached to it, and their cattle. The Respondent State denies the allegation.

175. The Respondent State further argue that the land in question fell under the definition of Trust Land and was administered by the Baringo County Council for the benefit of all the people who were ordinarily resident in their jurisdiction which comprised mainly the four Tungen tribes. It argues that Trust Land is not only established under the Constitution of Kenya and administered under an Act of Parliament, but that the Constitution of Kenya provides that Trust Land may be alienated through registration to another person other than the County Council; an Act of Parliament providing for the County Council to set apart an area of Trust Land vested in it for use and occupation of public body or authority for public purposes; person or persons or purposes which, in the opinion of the Council, is likely to benefit the persons ordinarily resident in that area; by the President in consultation with the Council. It argues that Trust Land may be set apart as government land for government purposes or private land 176. The Respondent State argues that when Trust Land is set apart for whatever purpose, the interest or other benefits in respect of that land that was previously vested in any tribe, group, family or individual under African customary law are extinguished. It, however, states that the Constitution and the Trust Land Act provide for adequate and prompt compensation for all residents. The Respondent State, in both its oral and written submissions, is arguing that the Trust Land Act provides a comprehensive procedure for assessment of compensation where the Endorois should have applied to the District Commissioner and lodged an appeal if they were dissatisfied. The Respondent State further argues that the Endorois have a right of access to the High Court of Kenya by the Constitution to determine whether their rights have been violated.

177. According to the Respondent State, with the creation of more local authorities, the land in question now comprises parts of Baringo and Koibatek County Councils, and through Gazette Notice No 239 of 1973, the land was first set apart as Lake Hannington Game Reserve, which was later revoked by Gazette Notice No 270 of 1974, where the Game Reserve was renamed Lake Baringo Game Reserve, and the boundaries and purpose

of setting apart this area specified in the Gazette Notices as required by the Trust Land Act. It argues that the Government offered adequate and prompt compensation to the affected people, “a fact which the Applicants agree with.”

178. In its oral and written testimonies, the Respondent State argues that the gazettelement of a Game Reserve under the Wildlife laws of Kenya is with the objective of ensuring that wildlife is managed and conserved to yield to the nation in general and to individual areas in particular optimum returns in terms of cultural, aesthetic and scientific gains as well as economic gains as are incidental to proper wildlife management and conservation. The Respondent State also argues that National Reserves unlike National Parks, where the Act expressly excludes human interference save for instances where one has got authorisation, are subject to agreements as to restrictions or conditions relating to the provisions of the area covered by the reserve. It also states that communities living around the National Reserves have in some instances been allowed to drive their cattle to the Reserve for the purposes of grazing, so long as they do not cause harm to the environment and the natural habitats of the wild animals. It states that with the establishment of a National Reserve particularly from Trust Land, it is apparent that the community’s right of access is not extinguished, but rather its propriety right as recognised under the law (that is, the right to deal with property as it pleases) is the one which is minimised and hence the requirement to compensate the affected people.

179. Rebutting the claim of the Complainants that the Kenyan Authorities

prevented them from occupying their other ancestral land, Muchongoi Forest, the Respondent State argued that the land in question was gazetted as a forest in 1941, by the name of Ol Arabel Forest, which means that the land ceased being communal land by virtue of the gazettelement. It states that some excisions have been made from the Ol Arabel Forest to create the Muchongoi Settlement Scheme to settle members of the four Tungen tribes of the Baringo district, one of which is the Endorois.

180. The Respondent State also argues that it has also gone a step further to formulate “Rules”, namely the “The Forests (Tugen-Kamasia) Rules” to enable the inhabitants of the Baringo District, including the Endorois to enjoy some privileges through access to the Ol Arabel Forest for some purposes. The Rules, it states, allow the community to collect dead wood for firewood, pick wild berries and fruits, take or collect the bark of dead trees for thatching beehives, cut and remove creepers and lianes for building purposes, take stock, including goats, to such watering places within the Central Forests as may be approved by the District Commissioner in consultation with the Forest Officer, enter the Forest for the purpose of holding customary ceremonies and rites, but no damage shall be done to any tree, graze sheep within the Forest, graze cattle for specified periods during the dry season with the written permission of the District Commissioner or the Forest Officer and to retain or construct huts within the Forest by approved forest cultivators among others.

181. The Respondent State argues further that the above Rules ensure that the livelihoods of the community are not compromised by the gazettelement, in the sense that the people could obtain food and building materials, as well as run some economic activities such as beekeeping and grazing livestock in the Forest. They also say they were at liberty to practice their religion and culture. Further, it states that the due process of law regarding compensation was followed at the time of the said gazettelement.

182. Regarding the issue of dispossession of ancestral land in the alleged Mochongoi Forest, the Respondent State did not address it, as it argues that it was not part of the matters addressed by the High Court case, and therefore the African Commission would be acting as a tribunal of first instance if it did so.

183. The Respondent State does not dispute that the Lake Bogoria area of the Baringo and Koibatek Administrative Districts is the Endorois’ ancestral land. One of the issues the Respondent State is disputing is whether the Endorois are indeed a distinct Community. That question has already been answered supra. In para 1.1.6 of the Respondent State Merits brief, the State said: “Following the Declaration of the Lake Bogoria Game Reserve, the Government embarked on a resettlement exercise, culminating in the resettlement of the majority of the Endorois in the Mochongoi settlement scheme. This was over and above the compensation paid to the Endorois after their ancestral land around Lake was gazetted

184. It is thus clear that the land surrounding Lake Bogoria is the traditional land of the Endorois people. In para 1 of the Merits brief, submitted by the Complainants, they write: “The Endorois are a community of approximately 60, 000 people who, from time immemorial, have lived in the Lake Bogoria area of the Baringo

and Koibatek Administrative Districts.”<sup>83</sup> In para 47, the Complainants also state that: “For centuries the Endorois have constructed homes on the land, cultivated the land, enjoyed unchallenged rights to pasture, grazing, and forest land, and relied on the land to sustain their livelihoods.” The Complainants argue that apart from a confrontation with the Masai over the Lake Bogoria region three hundred years ago, the Endorois have been accepted by all neighbouring tribes, including the British Crown, as bona fide owners of their land. The Respondent State does not challenge those statements of the Complainants. The only conclusion that could be reached is that the Endorois community has a right to property with regard to its ancestral land, the possessions attached to it, and their animals.

185. Two issues that should be disposed of before going into the more substantive questions of whether the Respondent State has violated Article 14 are a determination of what is a ‘property right’ (within the context of indigenous populations) that accords with African and international law, and whether special measures are needed to protect such rights, if they exist and whether Endorois’ land has been encroached upon by the Respondent State. The Complainants argue that “property rights” have an autonomous meaning under international human rights law, which supersedes national legal definitions. They state that both the European Court of Human Rights (ECHR) and IActHR have examined the specific facts of individual situations to determine what should be classified as ‘property rights’, particularly for displaced persons, instead of limiting themselves to formal requirements in national law.

186. To determine that question, the African Commission will look, first, at its own jurisprudence and then at international case law. In *Malawi African Association and Others v. Mauritania*, land was considered ‘property’ for the purposes of Article 14 of the Charter. The African Commission in the Ogoni case also found that the ‘right to property’ includes not only the right to have access to one’s property and not to have one’s property invaded or encroached upon, but also the right to undisturbed possession, use and control of such property however the owner(s) deem fit.<sup>87</sup> The African Commission also notes that the ECHR have recognised that ‘property rights’ could also include the economic resources and rights over the common land of the applicants.

187. The Complainants argue that both international and domestic courts have recognised that indigenous groups have a specific form of land tenure that creates a particular set of problems. Common problems faced by indigenous groups include the lack of “formal” title recognition of their historic territories, the failure of domestic legal systems to acknowledge communal property rights, and the claiming of formal legal title to indigenous land by the colonial authorities. This, they argue, has led to many cases of displacement from a people’s historic territory, both by colonial authorities and post-colonial states relying on the legal title they inherited from the colonial authorities. The African Commission notes that its Working Group on Indigenous Populations/Communities has recognised that some African minorities do face dispossession of their lands and that special measures are necessary in order to ensure their survival in accordance with their traditions and customs. The African Commission is of the view that the first step in the protection of traditional African communities is the acknowledgement that the rights, interests and benefits of such communities in their traditional lands constitute ‘property’ under the Charter and that special measures may have to be taken to secure such ‘property rights’.

188. The case of *Doğan and others v Turkey*<sup>90</sup> is instructive in the instant Communication. Although the Applicants were unable to demonstrate registered title of lands from which they had been forcibly evicted by the Turkish authorities, the European Court of Human Rights observed that: [T]he notion ‘possessions’ in Article 1 has an autonomous meaning which is certainly not limited to ownership of physical goods: certain other rights and interests constituting assets can also be regarded as ‘property rights’, and thus as ‘possessions’ for the purposes of this provision.

189. Although they did not have registered property, they either had their own houses constructed on the land of their ascendants or lived in the houses owned by their fathers and cultivate the land belonging to the latter. The Court further noted that the Applicants had unchallenged rights over the common land in the village, such as the pasture, grazing and the forest land, and that they earned their living from stockbreeding and tree-felling.

190. The African Commission also notes the observation of the IActHR in the seminal case of *The Mayagna (Sumo) Awas Tingni v Nicaragua*,<sup>92</sup> that the Inter- American Convention protected property rights in a sense which include the rights of members of the indigenous communities within the framework of communal property and argued that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.



191. In the opinion of the African Commission, the Respondent State has an obligation under Article 14 of the African Charter not only to respect the 'right to property', but also to protect that right. In 'the Mauritania Cases',<sup>93</sup> the African Commission concluded that the confiscation and pillaging of the property of black Mauritians and the expropriation or destruction of their land and houses before forcing them to go abroad constituted a violation of the right to property as guaranteed in Article 14. Similarly, in *The Ogoni case 2001*<sup>94</sup> the African Commission addressed factual situations involving removal of people from their homes. The African Commission held that the removal of people from their homes violated Article 14 of the African Charter, as well as the right to adequate housing which, although not explicitly expressed in the African Charter, is also guaranteed by Article 14.

192. The *Saramaka* case also sets out how the failure to recognise an indigenous/tribal group becomes a violation of the 'right to property.'<sup>96</sup> In its analysis of whether the State of Suriname had adopted an appropriate framework to give domestic legal effect to the 'right to property', the IACtHR addressed the following issues: This controversy over who actually represents the *Saramaka* people is precisely a natural consequence of the lack of recognition of their juridical personality.

193. In the *Saramaka* case, the State of Suriname did not recognise that the *Saramaka* people can enjoy and exercise property rights as a community. The Court observed that other communities in Suriname have been denied the right to seek judicial protection against alleged violations of their collective property

rights precisely because a judge considered they did not have the legal capacity necessary to request such protection. This, the Court opined, placed the *Saramaka* people in a vulnerable situation where individual 'property rights' may trump their rights over communal property, and where the *Saramaka* people may not seek, as a juridical personality, judicial protection against violations of their 'property rights' recognised under Article 21 of the Convention.

194. As is in the instant case before the African Commission, the State of Suriname acknowledged that its domestic legal framework did not recognise the right of the members of the *Saramaka* people to the use and enjoyment of property in accordance with their system of communal property, but rather a privilege to use land. It also went on to provide reasons, as to why it should not be held accountable for giving effect to the *Saramaka* claims to a right to property, for example because the land tenure system of the *Saramaka* people, particularly regarding who owns the land, presents a practical problem for state recognition of their right to communal property. The IACtHR rejected all of the State's arguments. In the present Communication, the High Court of Kenya similarly dismissed any claims based on historic occupation and cultural rights.

195. The IACtHR went further to say that, in any case, the alleged lack of clarity as to the land tenure system of the *Saramakas* should not present an insurmountable obstacle for the State, which has the duty to consult with the 51 members of the *Saramaka* people and seek clarification of this issue, in order to comply with its obligations under Article 21 of the Convention.

196. In the present Communication, the Respondent State (the Kenyan Government) during the oral hearings argued that legislation or special treatment in favour of the *Endorois* might be perceived as being discriminatory. The African Commission rejects that view. The African Commission is of the view that the Respondent State cannot abstain from complying with its international obligations under the African Charter merely because it might be perceived to be discriminatory to do so. It is of the view that in certain cases, positive discrimination or affirmative action helps to redress imbalance. The African Commission shares the Respondent State's concern over the difficulty involved; nevertheless, the State still has a duty to recognise the right to property of members of the *Endorois* community, within the framework of a communal property system, and establish the mechanisms necessary to give domestic legal effect to such right recognised in the Charter and international law. Besides, it is a well established principle of international law that unequal treatment towards persons in unequal situations does not necessarily amount to impermissible discrimination. Legislation that recognises said differences is therefore not necessarily discriminatory.

197. Again drawing on the *Saramaka v Suriname* case, which confirms earlier jurisprudence of the *Moiwana v Suriname*, *Yakye Axa v Paraguay*<sup>100</sup>, *Sawhoyamaya v Paraguay*<sup>101</sup>, and *Mayagna Awas Tingni v Nicaragua*;<sup>102</sup> the *Saramaka* case has held that Special measures of protection are owed to members of the tribal community to guarantee the full exercise of their rights. The IACtHR stated that based on Article 1(1) of the Convention, members of indigenous and tribal communities require special measures that guarantee the full

exercise of their rights, particularly with regard to their enjoyment of 'property rights' in order to safeguard their physical and cultural survival.

198. Other sources of international law have similarly declared that such special measures are necessary. In the *Moiwana* case, the IACtHR determined that another Maroon community living in Suriname was also not indigenous to the region, but rather constituted a tribal community that settled in Suriname in the 17th and 18th century, and that this tribal community had "a profound and all-encompassing relationship to their ancestral lands" that was centred, not "on the individual, but rather on the community as a whole." This special relationship to land, as well as their communal concept of ownership, prompted the Court to apply to the tribal *Moiwana* community its jurisprudence regarding indigenous peoples and their right to communal property under Article 21 of the Convention.

199. The African Commission is of the view that even though the Constitution of Kenya provides that Trust Land may be alienated and that the Trust Land Act provides comprehensive procedure for the assessment of compensation, the Endorois property rights have been encroached upon, in particular by the expropriation and the effective denial of ownership of their land. It agrees with the Complainants that the Endorois were never given the full title to the land they had in practice before the British colonial administration. Their land was instead made subject to a trust, which gave them beneficial title, but denied them actual title. The African Commission further agrees that though for a decade they were able to exercise their traditional rights without restriction, the trust land system has proved inadequate to protect their rights.

200. The African Commission also notes the views expressed by the Committee on Economic, Social and Cultural Rights which has provided a legal test for forced removal from lands which is traditionally claimed by a group of people as their property. In its 'General Comment No. 4' it states that "instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law." This view has also been reaffirmed by the United Nations Commission on Human Rights which states that forced evictions are a gross violation of human rights, and in particular the right to adequate housing.<sup>104</sup> The African Commission also notes General Comment No. 7 requiring States Parties, prior to carrying out any evictions, to explore all feasible alternatives in consultation with affected persons, with a view to avoiding, or at least minimizing, the need to use force.

201. The African Commission is also inspired by the European Commission of Human Rights. Article 1 of Protocol 1 to the European Convention states: Every natural or legal person is entitled to the peaceful enjoyment of his [or her] possessions. No one shall be deprived of his [or her] possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

202. The African Commission also refers to *Akdivar and Others v. Turkey*. The European Court held that forced evictions constitute a violation of Article 1 of Protocol 1 to the European Convention. *Akdivar and Others* involved the destruction of housing in the context of the ongoing conflict between the Government of Turkey and Kurdish separatist forces. The petitioners were forcibly evicted from their properties, which were subsequently set on fire and destroyed. It was unclear which party to the conflict was responsible. Nonetheless, the European Court held that the Government of Turkey violated both Article 8 of the European Convention and Article 1 of Protocol 1 to the European Convention because it has a duty to both respect and protect the rights enshrined in the European Convention and its Protocols.

203. In the instant case, the Respondent State sets out the conditions when Trust Land is set apart for whatever purpose.

204. The African Commission notes that the UN Declaration on the Rights of Indigenous Peoples, officially sanctioned by the African Commission through its 2007 Advisory Opinion, deals extensively with land rights. The jurisprudence under international law bestows the right of ownership rather than mere access. The African Commission notes that if international law were to grant access only, indigenous peoples would remain vulnerable to further violations/dispossession by the State or third parties. Ownership ensures that indigenous peoples can engage with the state and third parties as active stakeholders rather than as passive beneficiaries.

205. The Inter-American Court jurisprudence also makes it clear that mere access or de facto ownership of land is not compatible with principles of international law. Only de jure ownership can guarantee indigenous peoples' effective protection.

206. In the Saramaka case, the Court held that the State's legal framework merely grants the members of the Saramaka people a privilege to use land, which does not guarantee the right to effectively control their territory without outside interference. The Court held that, rather than a privilege to use the land, which can be taken away by the State or trumped by real property rights of third parties, members of indigenous and tribal peoples must obtain title to their territory in order to guarantee its permanent use and enjoyment. This title must be recognised and respected not only in practice but also in law in order to ensure its legal certainty. In order to obtain such title, the territory traditionally used and occupied by the members of the Saramaka people must first be delimited and demarcated, in consultation with such people and other neighbouring peoples. The situation of the Endorois is not different. The Respondent State simply wants to grant them privileges such as restricted access to ceremonial sites. This, in the opinion of the Commission, falls below internationally recognised norms. The Respondent State must grant title to their territory in order to guarantee its permanent use and enjoyment.

207. The African Commission notes that that Articles 26 and 27 of the UN Declaration on Indigenous Peoples use the term "occupied or otherwise used." This is to stress that indigenous peoples have a recognised claim to ownership to ancestral land under international law, even in the absence of official title deeds. This was made clear in the judgment of *Awas Tingni v Nicaragua*. In the current leading international case on this issue, *The Mayagna (Sumo) Awas Tingni v Nicaragua*,<sup>110</sup> the IActHR recognised that the Inter-American Convention protected property rights "in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property." It stated that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.

208. The African Commission also notes that in the case of *Sawhoyamaxa v Paraguay*, the IActHR, acting within the scope of its adjudicatory jurisdiction, decided on indigenous land possession in three different situations, viz: in the Case of the *Mayagna (Sumo) Awas Tingni Community*, the Court pointed out that possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration;<sup>113</sup> in the Case of the *Moiwana Community*, the Court considered that the members of the N'djuka people were the "legitimate owners of their traditional lands", although they did not have possession thereof, because they left them as a result of the acts of violence perpetrated against them, though in this case, the traditional lands were not occupied by third parties

209. In the view of the African Commission, the following conclusions could be drawn: (1) traditional possession of land by indigenous people has the equivalent effect as that of a state-granted full property title; (2) traditional possession entitles indigenous people to demand official recognition and registration of property title; (3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; and (4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality. Consequently, possession is not a requisite condition for the existence of indigenous land restitution rights. The instant case of the Endorois is categorised under this last conclusion. The African Commission thus agrees that the land of the Endorois has been encroached upon.

210. That such encroachment has taken place could be seen by the Endorois' inability, after being evicted from their ancestral land, to have free access to religious sites and their traditional land to graze their cattle. The African Commission is aware that access roads, gates, game lodges and a hotel have all been built on the ancestral land of the Endorois community around Lake Bogoria and imminent mining operations also threatens to cause irreparable damage to the land. The African Commission has also been notified that the Respondent State is engaged in the demarcation and sale of parts of Endorois historic lands to third parties.

211. The African Commission is aware that encroachment in itself is not a violation of Article 14 of the Charter, as long as it is done in accordance with the law. Article 14 of the African Charter indicates a two-pronged test, where that encroachment can only be conducted - 'in the interest of public need or in the general interest of the community' and 'in accordance with appropriate laws'. The African Commission will now assess whether an encroachment 'in the interest of public need' is indeed proportionate to the point of overriding the rights of indigenous peoples to their ancestral lands. The African Commission agrees with the Complainants that the test



laid out in Article 14 of the Charter is conjunctive, that is, in order for an encroachment not to be in violation of Article 14, it must be proven that the encroachment was in the interest of the public need/general interest of the community and was carried out in accordance with appropriate laws.

212. The ‘public interest’ test is met with a much higher threshold in the case of encroachment of indigenous land rather than individual private property. In this sense, the test is much more stringent when applied to ancestral land rights of indigenous peoples. In 2005, this point was stressed by the Special Rapporteur of the United Nations Sub-Commission for the Promotion and Protection of Human Rights who published the following statement: Limitations, if any, on the right to indigenous peoples to their natural resources must flow only from the most urgent and compelling interest of the state. Few, if any, limitations on indigenous resource rights are appropriate, because the indigenous ownership of the resources is associated with the most important and fundamental human rights, including the right to life, food, the right to self-determination, to shelter, and the right to exist as a people.

213. Limitations on rights, such as the limitation allowed in Article 14, must be reviewed under the principle of proportionality. The Commission notes its own conclusions that “... the justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow.

214. The African Commission is of the view that any limitations on rights must be proportionate to a legitimate need, and should be the least restrictive measures possible. In the present Communication, the African Commission holds the view that in the pursuit of creating a Game Reserve, the Respondent State has unlawfully evicted the Endorois from their ancestral land and destroyed their possessions. It is of the view that the upheaval and displacement of the Endorois from the land they call home and the denial of their property rights over their ancestral land is disproportionate to any public need served by the Game Reserve.

215. It is also of the view that even if the Game Reserve was a legitimate aim and served a public need, it could have been accomplished by alternative means proportionate to the need. From the evidence submitted both orally and in writing, it is clear that the community was willing to work with the Government in a way that respected their property rights, even if a Game Reserve was being created. In that regard, the African Commission notes its own conclusion in the Constitutional Rights Project Case, where it says that “a limitation may not erode a right such that the right itself becomes illusory.” At the point where such a right becomes illusory, the limitation cannot be considered proportionate – the limitation becomes a violation of the right. The African Commission agrees that the Respondent State has not only denied the Endorois community all legal rights in their ancestral land, rendering their property rights essentially illusory, but in the name of creating a Game Reserve and the subsequent eviction of the Endorois community from their own land, the Respondent State has violated the very essence of the right itself, and cannot justify such an interference with reference to “the general interest of the community” or a “public need.”

216. The African Commission notes that the link to the right to life, in paragraph 219 above, is particularly notable, as it is a non-derogable right under international law. Incorporating the right to life into the threshold of the ‘public interest test’ is further confirmed by jurisprudence of the IActHR. In *Yakye Axa v Paraguay* the Court found that the fallout from forcibly dispossessing indigenous peoples from their ancestral land could amount to an Article 4 violation (right to life) if the living conditions of the community are incompatible with the principles of human dignity.

217. The IActHR held that one of the obligations that the State must inescapably undertake as guarantor to protect and ensure the right to life is that of generating minimum living conditions that are compatible with the dignity of the human person and of not creating conditions that hinder or impede it. In this regard, the State has the duty to take positive, concrete measures geared towards fulfilment of the right to a decent life, especially in the case of persons who are vulnerable and at risk, whose care becomes a high priority.

218. The African Commission also notes that the ‘disproportionate’ nature of an encroachment on indigenous lands – therefore falling short of the test set out by the provisions of Article 14 of the African Charter – is to be considered an even greater violation of Article 14, when the displacement at hand was undertaken by force. Forced evictions, by their very definition, cannot be deemed to satisfy Article 14 of the Charter’s test of being done ‘in accordance with the law’. This provision must mean, at the minimum, that both Kenyan law and the relevant provisions of international law were respected. The grave nature of forced evictions could amount to a gross violation of human rights. Indeed, the United Nations Commission on Human Rights, in Resolutions 1993/77 and 2004/28, has reaffirmed that forced evictions amount to a gross violations of human rights and in

particular the right to adequate housing.” Where such removal was forced, this would in itself suggest that the ‘proportionality’ test has not been satisfied.

219. With respect to the ‘in accordance with the law’ test, the Respondent State should also be able to show that the removal of the Endorois was not only in the public interest, but their removal satisfied both Kenyan and international law. If it is settled that there was a trust in favour of the Endorois, was it legally extinguished? If it was, how was it satisfied? Was the community adequately compensated? Also, did the relevant legislation creating the Game Reserve, expressly required the removal of the Endorois from their land?

220. The African Commission notes that the Respondent State does not contest the claim that the traditional lands of the Endorois people are classified as Trust Land. In fact S. 115 of the Kenyan Constitution gives effect to that claim. In the opinion of the African Commission it created a beneficial right for the Endorois over their ancestral land. This should have meant that the County Council should give effect to such rights, interest or other benefits in respect of the land.

221. The Complainants argue that the Respondent State created the Lake Hannington Game Reserve, including the Endorois indigenous lands, on 9 November 1973. The name was changed to Lake Bogoria Game Reserve in a second notice in 1974.<sup>121</sup> The 1974 notice was made by the Kenyan Minister for Tourism and Wildlife under the Wild Animals Protection Act (WAPA).<sup>122</sup> The Complainants argue that WAPA applied to Trust Land as it did to any other of human rights and in particular the right to adequate housing.

222. They further argue that the relevant legislation did not give authority for the removal of any individual or group occupying the land in a Game Reserve. Instead, WAPA merely prohibited the hunting, killing or capturing of animals within the Game Reserve.<sup>123</sup> The Complainants argue that despite no clear legal order asking them to relocate to another land, the Endorois community was informed from 1973 onwards that they would have to leave their ancestral lands.

223. In rebuttal, the Respondent State argues that the Constitution of Kenya provides that Trust Land may be alienated. It also states that the “Government offered adequate and prompt compensation to the affected people...” As regards the Complainants’ claim that the Respondent State prevented the Endorois community from accessing their other ancestral lands, Muchongoi forest, the Respondent State argues that the land in question was gazetted in 1941 by the name of Ol Arabel Forest with the implication that the land ceased being communal by virtue of the gazettelement.

224. The African Commission agrees that WAPA merely prohibited the hunting, killing or capturing of animals within the Game Reserve. Additionally, the Respondent State has not been able to prove without doubt that the eviction of the Endorois community satisfied both Kenyan and international law. The African Commission is not convinced that the whole process of removing the Endorois from their ancestral land satisfied the very stringent international law provisions. Furthermore, the mere gazetting of Trust Land is not sufficient to legally extinguish the trust. WAPA should have required that the land be taken out of the Trust before a Game Reserve could be declared over that land. This means that the declaration of the Lake Bogoria Game Reserve by way of the 1974 notice did not affect the status of the Endorois land as Trust Land. The obligation of Baringo and Koibatek County Councils to give effect to the rights and interests of the Endorois people continued. That also has to be read in conjunction with the concept of adequate compensation. The African Commission is in agreement with the Complainants that the only way under Kenyan law in which Endorois benefit under the trust could have been dissolved is if the County Council or the President of Kenya had “set apart” the land. However, the Trust Land Act required that to be legal, such setting apart of the land must be published in the Kenyan Gazette.

225. Two further elements of the ‘in accordance with the law’ test relate to the requirements of consultation and compensation.

226. In terms of consultation, the threshold is especially stringent in favour of indigenous peoples, as it also requires that consent be accorded. Failure to observe the obligations to consult and to seek consent – or to compensate - ultimately results in a violation of the right to property.

227. In the Saramaka case, in order to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory do not amount to a denial of their survival as a tribal people, the Court stated that the State must abide by the following three safeguards first, ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan within Saramaka territory; second, guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory; third,

ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the State's supervision, perform a prior environmental and social impact assessment. These safeguards are intended to preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory, which in turn ensures their survival as a tribal people.

228. In the instant case, the African Commission is of the view that no effective participation was allowed for the Endorois, nor has there been any reasonable benefit enjoyed by the community. Moreover, a prior environment and social impact assessment was not carried out. The absence of these three elements of the 'test' is tantamount to a violation of Article 14, the right to property, under the Charter. The failure to guarantee effective participation and to guarantee a reasonable share in the profits of the Game Reserve (or other adequate forms of compensation) also extends to a violation of the right to development.

229. On the issue of compensation, the Respondent State in rebutting the Complainants' allegations that inadequate compensation was paid, argues that the Complainants do not contest that a form of compensation was done, but that they have only pleaded that about 170 families were compensated. It further argues that, if at all the compensations paid was not adequate, the Trust Land Act provides for a procedure for appeal, for the amount and the people who feel that they are denied compensation over their interest.

230. The Respondent State does not deny the Complainants' allegations that in 1986, of the 170 families evicted in late 1973, from their homes within the Lake Bogoria Game Reserve, each receiving around 3,150 Kshs (at the time, this was Act in respect of S.117 Constitution, and by s.7(1) and (4) of the Trust land Act in respect of S.118 Constitution.

231. The African Commission is of the view that the Respondent State did not pay the prompt, full compensation as required by the Constitution. It is of the view that Kenyan law has not been complied with and that though some members of the Endorois community accepted limited monetary compensation that did not mean that they accepted it as full compensation, or indeed that they accepted the loss of their land.

232. The African Commission notes the observations of the United Nations Declaration on the Rights of Indigenous Peoples, which, amongst other provisions for restitutions and compensations, states: Indigenous peoples have the right to restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used; and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status. 127

233. In the case of *Yakye Axa v Paraguay* the Court established that any violation of an international obligation that has caused damage entails the duty to provide appropriate reparations. To this end, Article 63(1) of the American Convention establishes that: [i]f the Court finds that there has been a violation of a right or freedom protected by th[e] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

234. The Court said that once it has been proved that land restitution rights are still current, the State must take the necessary actions to return them to the members of the indigenous people claiming them. However, as the Court has pointed out, when a State is unable, on objective and reasonable grounds, to adopt measures aimed at returning traditional lands and communal resources to indigenous populations, it must surrender alternative lands of equal extension and quality, which will be chosen by agreement with the members of the indigenous peoples, according to their own consultation and decision procedures. This was not the case in respect of the Endorois. The land given them is not of equal quality.

235. The reasons of the Government in the instant Communication are questionable for several reasons including: (a) the contested land is the site of a conservation area, and the Endorois – as the ancestral guardians of that land – are best equipped to maintain its delicate ecosystems; (b) the Endorois are prepared to continue the conservation work begun by the Government; (c) no other community have settled on the land in question, and even if that is the case, the Respondent State is obliged to rectify that situation,<sup>130</sup> (d) the land has not been spoliated and is thus inhabitable; (e) continued dispossession and alienation from their ancestral land continues to threaten the cultural survival of the Endorois' way of life, a consequence which clearly tips the proportionality argument on the side of indigenous peoples under international law.

236. It seems also to the African Commission that the amount of £30 as compensation for one's ancestral home land flies in the face of common sense and fairness.

237. The African Commission notes the detailed recommendations regarding compensation payable to displaced or evicted persons developed by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. These recommendations, which have been considered and applied by the European Court of Human Rights,<sup>132</sup> set out the following principles for compensation on loss of land: Displaced persons

should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve upon their former living standards, income earning capacity and production levels, or at least to restore them. These recommendations could be followed if the Respondent State is interested in giving a fair compensation to the Endorois.

238. Taking all the submissions of both parties, the African Commission agrees with the Complainants that the Property of the Endorois people has been severely encroached upon and continues to be so encroached upon. The encroachment is not proportionate to any public need and is not in accordance with national and international law. Accordingly, the African Commission finds for the Complainants that the Endorois as a distinct people have suffered a violation of Article 14 of the Charter.

Alleged Violation of Article 17 (2) and (3)

239. The Complainants allege that the Endorois' cultural rights have been violated on two counts: first, the community has faced systematic restrictions on access to cultural sites and, second, that the cultural rights of the community have been violated by the serious damage caused by the Kenyan Authorities to their pastoralist way of life.

240. The Respondent State denies the allegation claiming that access to the forest areas was always permitted, subject to administrative procedures. The Respondent State also submits that in some instances some communities have allowed political issues to be disguised as cultural practices and in the process they endanger the peaceful coexistence with other communities. The Respondent State does not substantiate who these "communities" or what these "political issues to be disguised as cultural practices" are.

241. The African Commission is of the view that protecting human rights goes beyond the duty not to destroy or deliberately weaken minority groups, but requires respect for, and protection of, their religious and cultural heritage essential to their group identity, including buildings and sites such as libraries, churches, mosques, temples and synagogues. Both the Complainants and the Respondent State seem to agree on that. It notes that Article 17 of the Charter is of a dual dimension in both its individual and collective nature, protecting, on the one hand, individuals' participation in the cultural life of their community and, on the other hand, obliging the state to promote and protect traditional values recognised by a community. It thus understands culture to mean that complex whole which includes a spiritual and physical association with one's ancestral land, knowledge, belief, art, law, morals, customs, and any other capabilities and habits acquired by humankind as a member of society - the sum total of the material and spiritual activities and products of a given social group that distinguish it from other similar groups. It has also understood cultural identity to encompass a group's religion, language, and other defining characteristics.

242. The African Commission notes that the preamble of the African Charter acknowledges that "civil and political rights cannot be dissociated from the economic, social and cultural rights ... social, cultural rights are a guarantee for the enjoyment of civil and political rights", ideas which influenced the 1976 African Cultural Charter which in its preamble highlights "the inalienable right [of any people] to organise its cultural life in full harmony with its political, economic, social, philosophical and spiritual ideas.<sup>134</sup> Article 3 of the same Charter states that culture is a source of mutual enrichment for various communities.

243. This Commission also notes the views of the Human Rights Committee with regard to the exercise of the cultural rights protected under Article 27 of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Committee observes that "culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them."

244. The African Commission notes that a common theme that usually runs through the debate about culture and its violation is the association with one's ancestral land. It notes that its own Working Group on Indigenous Populations/Communities has observed that dispossession of land and its resources is "a major human rights problem for indigenous peoples."

245. In the case of indigenous communities in Kenya, the African Commission notes the critical 'Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in Kenya' that "their livelihoods and cultures have been traditionally discriminated against and their lack of legal recognition and empowerment reflects their social, political and economic marginalization." He also said that the principal human rights issues they face "relate to the loss and environmental degradation of their land, traditional forests and natural resources, as a result of dispossession in colonial times and in the post-independence period. In recent decades, inappropriate development and conservationist policies have aggravated the violation of their economic, social and cultural rights."

246. The African Commission is of the view that in its interpretation of the African Charter, it has recognised

the duty of the state to tolerate diversity and to introduce measures that protect identity groups different from those of the majority/dominant group. It has thus interpreted Article 17(2) as requiring governments to take measures “aimed at the conservation, development and diffusion of culture,” such as promoting “cultural identity as a factor of mutual appreciation among individuals, groups, nations and regions; . . . promoting awareness and enjoyment of cultural heritage of national ethnic groups and minorities and of indigenous sectors of the population.”

247. The African Commission’s WGIP has further highlighted the importance of creating spaces for dominant and indigenous cultures to co-exist. The WGIP notes with concern that: Indigenous communities have in so many cases been pushed out of their traditional areas to give way for the economic interests of other more dominant groups and to large scale development initiatives that tend to destroy their lives and cultures rather than improve their situation.

248. The African Commission is of the opinion that the Respondent State has a higher duty in terms of taking positive steps to protect groups and communities like the Endorois, but also to promote cultural rights including the creation of opportunities, policies, institutions, or other mechanisms that allow for different cultures and ways of life to exist, develop in view of the challenges facing indigenous communities. These challenges include exclusion, exploitation, discrimination and extreme poverty; displacement from their traditional territories and deprivation of their means of subsistence; lack of participation in decisions affecting the lives of the communities; forced assimilation and negative social statistics among other issues and, at times, indigenous communities suffer from direct violence and persecution, while some even face the danger of extinction.

249. In its analysis of Article 17 of the African Charter, the African Commission is aware that unlike Articles 8 and 14, Article 17 has no claw-back clause. The absence of a claw-back clause is an indication that the drafters of the Charter envisaged few, if any, circumstances in which it would be appropriate to limit a people’s right to culture. It further notes that even if the Respondent State were to put some limitation on the exercise of such a right, the restriction must be proportionate to a legitimate aim that does not interfere adversely on the exercise of a community’s cultural rights. Thus, even if the creation of the Game Reserve constitutes a legitimate aim, the Respondent State’s failure to secure access, as of right, for the celebration of the cultural festival and rituals cannot be deemed proportionate to that aim. The Commission is of the view that the cultural activities of the Endorois community pose no harm to the ecosystem of the Game Reserve and the restriction of cultural rights could not be justified, especially as no suitable alternative was given to the community.

250. It is the opinion of the African Commission that the Respondent State has overlooked that the universal appeal of great culture lies in its particulars and that imposing burdensome laws or rules on culture undermines its enduring aspects. The Respondent State has not taken into consideration the fact that by restricting access to Lake Bogoria, it has denied the community access to an integrated system of beliefs, values, norms, mores, traditions and artifacts closely linked to access to the Lake.

251. By forcing the community to live on semi-arid lands without access to medicinal salt licks and other vital resources for the health of their livestock, the Respondent State have created a major threat to the Endorois pastoralist way of life. It is of the view that the very essence of the Endorois’ right to culture has been denied, rendering the right, to all intents and purposes, illusory. Accordingly, the Respondent State is found to have violated Article 17(2) and (3) of the Charter.

252. The Complainants allege that the Endorois community has been unable to access the vital resources in the Lake Bogoria region since their eviction from the Game Reserve.

253. The Respondent State denies the allegation. It argues that it is of the view that the Complainants have immensely benefited from the tourism and mineral prospecting activities, noting for example: a) Proceeds from the Game Reserve have been utilised to finance a number of projects in the area, such as schools, health facilities, wells and roads. b) Since the discovery of ruby minerals in the Weseges area near Lake Bogoria, three companies have been issued with prospecting licences, noting that two out of three companies belong to the community, including the Endorois. In addition, the company which does not consist of the locals, namely Corby Ltd, entered into an agreement with the community, binding itself to deliver some benefits to the latter in terms of supporting community projects. It states that it is evident (from the minutes of a meeting of the community and the company) that the company is ready to undertake a project in the form of an access road to the prospecting site for the community’s and prospecting company’s use.

c) The Respondent State also argues that the mineral prospecting activities are taking place outside the Lake Bogoria Game Reserve, which means that the land is not the subject matter of the Applicants' complaint.

254. The Respondent State also argue that the community has been holding consultations with Corby Ltd., as evidence by the agreement between them is a clear manifestation of the extent to which the former participants in the decisions touch on the exploitation of the natural resources and the sharing of the benefits emanating therefrom.

255. The African Commission notes that in The Ogoni case the right to natural resources contained within their traditional lands is also vested in the indigenous people, making it clear that a people inhabiting a specific region within a state could also claim under Article 21 of the African Charter.<sup>145</sup> The Respondent State does not give enough evidence to substantiate the claim that the Complainants have immensely benefited from the tourism and mineral prospecting activities.

256. The African Commission notes that proceeds from the Game Reserve have been used to finance a lot of useful projects, 'a fact' that the Complainants do not contest. The African Commission, however, refers to cases in the Inter-American Human Rights system to understand this area of the law. The American Convention does not have an equivalent of the African Charter's Article 21 on the Right to Natural Resources. It therefore reads the right to natural resources into the right to property (Article 21 of the American Convention), and in turn applies similar limitation rights on the issue of natural resources as it does on limitations of the right to property. The "test" in both cases makes for a much higher threshold when potential spoliation or development of the land is affecting indigenous land.

257. In the Saramaka case and Inter-American case law, an issue that flows from the IActHR assertion that the members of the Saramaka people have a right to use and enjoy their territory in accordance with their traditions and customs is the issue of the right to the use and enjoyment of the natural resources that lie on and within the land, including subsoil natural resources. In the Saramaka case

both the State and the members of the Saramaka people claim a right to these natural resources. The Saramakas claim that their right to use and enjoy all such natural resources is a necessary condition for the enjoyment of their right to property under Article 21 of the Convention. The State argued that all rights to land, particularly its subsoil natural resources, are vested in the State, which it can freely dispose of these resources through concessions to third parties.

258. The IActHR addressed this complex issue in the following order: first, the right of the members of the Saramaka people to use and enjoy the natural resources that lie on and within their traditionally owned territory; second, the State's grant of concessions for the exploration and extraction of natural resources, including subsoil resources found within Saramaka territory; and finally, the fulfilment of international law guarantees regarding the exploration extraction concessions already issued by the State.

259. First, the IActHR analysed whether and to what extent the members of the Saramaka people have a right to use and enjoy the natural resources that lie on and within their traditionally owned territory. The State did not contest that the Saramakas have traditionally used and occupied certain lands for centuries, or that the Saramakas have an "interest" in the territory they have traditionally used in accordance with their customs. The controversy was the nature and scope of the said interest. In accordance with Suriname's legal and constitutional framework, the Saramakas do not have property rights per se, but rather merely a privilege or permission to use and occupy the land in question. According to Article 41 of the Constitution of Suriname, and Article 2 of its 1986 Mining Decree, ownership rights of all natural resources are vested in the State. For this reason, the State claimed to have an inalienable right to the exploration and exploitation of those resources. On the other hand, the customary laws of the Saramaka people give them a right over all natural resources within its traditional territory.

260. The IActHR held that the cultural and economic survival of indigenous and tribal peoples and their members depends on their access and use of the natural resources in their territory that are related to their culture and are found therein, and that Article 21 of the Inter-American Convention protects their right to such natural resources. The Court further said that in accordance with their previous jurisprudence as stated in the Yakye Axa and Sawhoyamaya cases, members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to

own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake;<sup>146</sup> hence, the Court opined, the need to protect the lands and resources they have traditionally used to prevent their extinction as a people. It said that the aim and purpose of special measures required on behalf of members of indigenous and tribal communities is to guarantee that they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected by states.

261. But the Court further said that the natural resources found on and within indigenous and tribal people's territories that are protected under Article 21 (of the American Convention) are those natural resources traditionally used and necessary for the very survival, development and continuation of such people's way of life.

262. In the Saramaka case, the Court had to determine which natural resources found on and within the Saramaka people's territory are essential for the survival of their way of life, and are thus protected under Article 21 of the Convention. This has direct relevance to the matter in front of the African Commission, given the ruby mining concessions which were taking place on lands, both ancestral and adjacent to Endorois ancestral land, and which the Complainants allege poisoned the only remaining water source to which the Endorois had access.

263. The African Commission notes the opinion of the IActHR in the Saramaka case as regards the issue of permissible limitations. The State of Suriname had argued that, should the Court recognise a right of the members of the Saramaka people to the natural resources found within traditionally owned lands, this right must be limited to those resources traditionally used for their subsistence, cultural and religious activities. According to the State, the alleged land rights of the Saramakas would not include any interests on forests or minerals beyond what the tribe traditionally possesses and uses for subsistence (agriculture, hunting, fishing etc), and the religious and cultural needs of its people.

264. The Court opined that while it is true that all exploration and extraction activity in the Saramaka territory could affect, to a greater or lesser degree, the use and enjoyment of some natural resource traditionally used for the subsistence of the Saramakas, it is also true that Article 21 of the Convention should not be interpreted in a way that prevents the State from granting any type of concession for the exploration and extraction of natural resources within Saramaka territory. The Court observed that this natural resource is likely to be affected by extraction activities related to other natural resources that are not traditionally used by or essential for the survival of the Saramaka community and, consequently, their members. That is, the extraction of one natural resource is most likely to affect the use and enjoyment of other natural resources that are necessary for the survival of the Saramakas.

265. Nevertheless, the Court said that protection of the right to property under Article 21 of the Convention is not absolute and therefore does not allow for such a strict interpretation. The Court also recognised the interconnectedness between the right of members of indigenous and tribal peoples to the use and enjoyment of their lands and their right to those resources necessary for their survival but that these property rights, like many other rights recognised in the Convention, are subject to certain limitations and restrictions. In this sense, Article 21 of the Convention states that the "law may subordinate [the] use and enjoyment [of property] to the interest of society." But the Court also said that it had previously held that, in accordance with Article 21 of the Convention, a State may restrict the use and enjoyment of the right to property where the restrictions are: a) previously established by law; b) necessary; c) proportional, and d) with the aim of achieving a legitimate objective in a democratic society.

266. The Saramaka case is analogous to the instant case with respect to ruby mining. The IActHR analysed whether gold-mining concessions within traditional Saramaka territory have affected natural resources that have been traditionally used and are necessary for the survival of the members of the Saramaka community. According to the evidence submitted before the Court, the Saramaka community, traditionally, did not use gold as part of their cultural identity or economic system. Despite possible individual exceptions, the Saramaka community do not identify themselves with gold nor have demonstrated a particular relationship with this natural resource, other than claiming a general right to "own everything, from the very top of the trees to the very deepest place that you could go under the ground." Nevertheless, the Court stated that, because any gold mining activity within Saramaka territory will necessarily affect other natural resources necessary for the survival of the See case of the Indigenous Yakye Axa Community, paras. 144-145 citing (*mutatis mutandi*) Case of Saramakas, such as waterways, the State has a duty to consult with them, in conformity with their



traditions and customs, regarding any proposed mining concession within Saramaka territory, as well as allow the members of the community to reasonably participate in the benefits derived from any such possible concession, and perform or supervise an assessment on the environmental and social impact prior to the commencement of the project. The same analysis would apply regarding concessions in the instant case of the Endorois. . In the instant case of the Endorois, the Respondent State has a duty to evaluate whether a restriction of these private property rights is necessary to preserve the survival of the Endorois community. The African Commission is aware that the Endorois do not have an attachment to ruby. Nevertheless, it is instructive to note that the African Commission decided in The Ogoni case that the right to natural resources contained within their traditional lands vested in the indigenous people. This decision made clear that a people inhabiting a specific region within a state can claim the protection of Article 21.149Article 14 of the African Charter indicates that the two-pronged test of ‘in the interest of public need or in the general interest of the community’ and ‘in accordance with appropriate laws’ should be satisfied.

268. As far as the African Commission is aware, that has not been done by the Respondent State. The African Commission is of the view the Endorois have the right to freely dispose of their wealth and natural resources in consultation with the Respondent State. Article 21(2) also concerns the obligations of a State Party to the African Charter in cases of a violation by spoliation, through provision for restitution and compensation. The Endorois have never received adequate compensation or restitution of their land. Accordingly, the Respondent State is found to have violated Article 21 of the Charter.

#### Alleged Violation of Article 22

269. The Complainants allege that the Endorois’ right to development have been violated as a result of the Respondent State’s creation of a Game Reserve and the Respondent State’s failure to adequately involve the Endorois in the development process.

270. In rebutting the Complainants’ allegations, the Respondent State argues that the task of communities within a participatory democracy is to contribute to the well-being of society at large and not only to care selfishly for one’s own community at the risk of others. It argues that the Baringo and Koibatek Country Councils are not only representing the Endorois, but other clans of the Tugen tribe, of which the Endorois are only a clan. However, to avoid the temptation of one community domineering the other, the Kenyan political system embraces the principle of a participatory model of community through regular competitive election for representatives in those councils. It states that elections are by adult suffrage and are free and fair.

271. The Respondent State also submits it has instituted an ambitious programme for universal free primary education and an agricultural recovery programme which is aimed at increasing the household incomes of the rural poor, including the Endorois; and initiated programmes for the equitable distribution of budgetary resources through the Constituency Development Fund, Constituency Bursary Funds, Constituency Aids Committees and District Roads Board.

272. It adds that for a long time, tourism in Kenya has been on the decline. This, it argues, has been occasioned primarily by the ethnic disturbance in the Coast and the Rift Valley provinces which are the major tourist circuits in Kenya, of which the complainants land falls and therefore it is expected that the Country Councils of Baringo and Koibatek were affected by the economic down turn.

273. Further rebutting the allegations of the Complainants, the Respondent State argues that the Complainants state in paragraph 239 of their Merits brief that due to lack of access to the salts licks and their usual pasture, their cattle died in large numbers, thereby making them unable to pay their taxes and that, consequently, the government took away more cattle in tax; and that they were also unable to pay for primary and secondary education for their children is utterly erroneous as tax is charged on income. According to the Respondent State it argues that if the Endorois were not able to raise income which amounts to the taxable brackets from their animal husbandry, they were obviously not taxed. The Respondent State adds that this allegation is false and intended to portray the Government in bad light.

274. The Respondent State argues that the Complainants allege that the consultations that took place were not in ‘good faith’ or with the objective of achieving agreement or consent, and furthermore that the Respondent State failed to honour the promises made to the Endorois community with respect to revenue sharing from the Game Reserve, having a certain percentage of jobs, relocation to fertile land and compensation. The Respondent State



accuses the Complainants of attempting to mislead the African Commission because the County Council collects all the revenues in the case of Game Reserves and such revenues are ploughed back to the communities within the jurisdictions of the County Council through development projects carried out by the County Council.

275. Responding to the allegation that the Game Reserve made it particularly difficult for the Endorois to access basic herbal medicine necessary for maintaining a healthy life, the Respondent State argues that the prime purpose of gazetting the National Reserve is conservation. Also responding to the claim that the Respondent State has granted several mining and logging concessions to third parties, and from which the Endorois have not benefited, the Respondent State asserts that the community has been well informed of those prospecting for minerals in the area. It further states that the community's mining committee had entered into an agreement with the Kenyan company prospecting for minerals, implying that the Endorois are fully involved in all community decisions.

276. The Respondent State also argues that the community is represented in the Country Council by its elected councillors, therefore presenting the community the opportunity to always be represented in the forum where decisions are made pertaining to development. The Respondent State argues that all the decisions complained about have had to be decided upon by a full council meeting.

277. The African Commission is of the view that the right to development is a two-pronged test, that it is both constitutive and instrumental, or useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development. Fulfilling only one of the two prongs will not satisfy the right to development. The African Commission notes the Complainants' arguments that recognising the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in the right to development.

278. In that regard it takes note of the report of the UN Independent Expert who said that development is not simply the state providing, for example, housing for particular individuals or peoples; development is instead about providing people with the ability to choose where to live. He states "... the state or any other authority cannot decide arbitrarily where an individual should live just because the supplies of such housing are made available". Freedom of choice must be present as a part of the right to development.

279. The Endorois believe that they had no choice but to leave the Lake and when some of them tried to reoccupy their former land and houses they were met with violence and forced relocations. The Complainants argue this lack of choice directly contradicts the guarantees of the right to development. The African Commission also notes a Report produced for the UN Working Group on Indigenous Populations requiring that "indigenous peoples are not coerced, pressured or intimidated in their choices of development."

280. The African Commission notes the Respondent State's submissions that the community is well represented in the decision making structure, but this is disputed by the Complainants. In paragraph 27 of the Complainants Merits brief, they allege that the Endorois have no say in the management of their ancestral land. The EWC, the representative body of the Endorois community, have been refused registration, thus denying the right of the Endorois to fair and legitimate consultation. The Complainants further allege that the failure to register the EWC has often led to illegitimate consultations taking place, with the authorities selecting particular individuals to lend their consent 'on behalf' of the community.

281. The African Commission notes that its own standards state that a Government must consult with respect to indigenous peoples especially when dealing with sensitive issues as land.<sup>153</sup> The African Commission agrees with the Complainants that the consultations that the Respondent State did undertake with the community were inadequate and cannot be considered effective participation. The conditions of the consultation failed to fulfil the African Commission's standard of consultations in a form appropriate to the circumstances. It is convinced that community members were informed of the impending project as a fait accompli, and not given an opportunity to shape the policies or their role in the Game Reserve.

282. Furthermore, the community representatives were in an unequal bargaining position, an accusation not denied or argued by the Respondent State, being both illiterate and having a far different understanding of property use and ownership than that of the Kenyan Authorities. The African Commission agrees that it was incumbent upon the Respondent State to conduct the consultation process in such a manner that allowed the

representatives to be fully informed of the agreement, and participate in developing parts crucial to the life of the community. It also agrees with the Complainants that the inadequacy of the consultation undertaken by the Respondent State is underscored by Endorois' actions after the creation of the Game Reserve. The Endorois believed, and continued to believe even after their eviction, that the Game Reserve and their pastoralist way of life would not be mutually exclusive and that they would have a right of re-entry on to their land. In failing to understand their permanent eviction, many families did not leave the location until 1986.

283. The African Commission wishes to draw the attention of the Respondent State that Article 2(3) of the UN Declaration on Development notes that the right to development includes "active, free and meaningful participation in development". The result of development should be empowerment of the Endorois community. It is not sufficient for the Kenyan Authorities merely to give food aid to the Endorois. The capabilities and choices of the Endorois must improve in order for the right to development to be realised.

284. The case of the Yakye Axa is instructive. The Inter-American Court found that the members of the Yakye Axa community live in extremely destitute conditions as a consequence of lack of land and access to natural resources, caused by the facts that were the subject matter of proceedings in front of the Court as well as the precariousness of the temporary settlement where they have had to remain, waiting for a solution to their land claim.

285. The IActHR noted that, according to statements from members of the Yakye Axa community during the public hearing, the members of that community might have been able to obtain part of the means necessary for their subsistence if they had been in possession of their traditional lands. Displacement of the members of the community from those lands has caused special and grave difficulties to obtain food, primarily because the area where their temporary settlement is located does not have appropriate conditions for cultivation or to practice their traditional subsistence activities, such as hunting, fishing, and gathering. Furthermore, in this settlement the members of the Yakye Axa Community do not have access to appropriate housing with the basic minimum services, such as clean water and toilets.

286. The precariousness of the Endorois' post-dispossession settlement has had similar effects. No collective land of equal value was ever accorded (thus failing the test of 'in accordance with the law', as the law requires adequate compensation). The Endorois were relegated to semi-arid land, which proved unsustainable for pastoralism, especially in view of the strict prohibition on access to the Lake area's medicinal salt licks or traditional water sources.

287. In the case of the Yakye Axa community, the Court established that the State did not guarantee the right of the members of the Yakye Axa community to communal property. The Court deemed that this had a negative effect on the right of the members of the community to a decent life, because it deprived them of the possibility of access to their traditional means of subsistence, as well as to the use and enjoyment of the natural resources necessary to obtain clean water and to practice traditional medicine to prevent and cure illnesses.

288. In the instant Communication in front of the African Commission, video evidence from the Complainants shows that access to clean drinking water was severely undermined as a result of loss of their ancestral land (Lake Bogoria) which has ample fresh water sources. Similarly, their traditional means of subsistence – through grazing their animals – has been curtailed due to lack of access to the green pastures of their traditional land. Elders commonly cite having lost more than half of their cattle since the displacement. The African Commission is of the view that the Respondent State has done very little to provide necessary assistance in these respects.

289. Closely allied with the right to development is the issue of participation. The IActHR has stated that in ensuring the effective participation of the Saramaka people in development or investment plans within their territory, the State has a duty to actively consult with the said community according to their customs and traditions. This duty requires the State to both accept and disseminate information, and entails constant communication between the parties. These consultations must be in good faith, through culturally appropriate procedures and with the objective of reaching an agreement.

290. In the instant Communication, even though the Respondent State says that it has consulted with the Endorois community, the African Commission is of the view that this consultation was not sufficient. It is convinced that the Respondent State did not obtain the prior, informed consent of all the Endorois before designating their land as a Game Reserve and commencing their eviction. The Respondent State did not impress

upon the Endorois any understanding that they would be denied all rights of return to their land, including unfettered access to grazing land and the medicinal salt licks for their cattle. The African Commission agrees that the Complainants had a legitimate expectation that even after their initial eviction, they would be allowed access to their land for religious ceremonies and medicinal purposes – the reason, in fact why they are in front of the African Commission.

291. Additionally, the African Commission is of the view that any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions.

292. From the oral testimony and even the written brief submitted by the Complainants, the African Commission is informed that the Endorois representatives who represented the community in discussions with the Respondent State were illiterates, impairing their ability to understand the documents produced by the Respondent State. The Respondent State did not contest that statement. The African Commission agrees with the Complainants that the Respondent State did not ensure that the Endorois were accurately informed of the nature and consequences of the process, a minimum requirement set out by the Inter-American Commission in the Dann case.

293. In this sense, it is important to note that the U.N. Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People observed that: “[w]herever [large-scale projects] occur in areas occupied by indigenous peoples it is likely that their communities will undergo profound social and economic changes that are frequently not well understood, much less foreseen, by the authorities in charge of promoting them. [...] The principal human rights effects of these projects for indigenous peoples relate to loss of traditional territories and land, eviction, migration and eventual resettlement, depletion of resources necessary for physical and cultural survival, destruction and pollution of the traditional environment, social and community disorganization, long-term negative health and nutritional impacts as well as, in some cases.

294. In relation to benefit sharing, the IActHR in the Saramaka case said that benefit sharing is vital both in relation to the right to development and by extension the right to own property. The right to development will be violated when the development in question decreases the well-being of the community. The African Commission similarly notes that the concept of benefit-sharing also serves as an important indicator of compliance for property rights; failure to duly compensate (even if the other criteria of legitimate aim and proportionality are satisfied) result in a violation of the right to property.

295. The African Commission further notes that in the 1990 ‘African Charter on Popular Participation in Development and Transformation’ benefit sharing is key to the development process. In the present context of the Endorois, the right to obtain “just compensation” in the spirit of the African Charter translates into a right of the members of the Endorois community to reasonably share in the benefits made as a result of a restriction or deprivation of their right to the use and enjoyment of their traditional lands and of those natural resources necessary for their survival.

296. In this sense, the Committee on the Elimination of Racial Discrimination has recommended not only that the prior informed consent of communities must be sought when major exploitation activities are planned in indigenous territories but also “that the equitable sharing of benefits to be derived from such exploitation be ensured.” In the instant case, the Respondent State should ensure mutually acceptable benefit sharing. In this context, pursuant to the spirit of the African Charter benefit sharing may be understood as a form of reasonable equitable compensation resulting from the exploitation of traditionally owned lands and of those natural resources necessary for the survival of the Endorois community.

297. The African Commission is convinced that the inadequacy of the consultations left the Endorois feeling disenfranchised from a process of utmost importance to their life as a people. Resentment of the unfairness with which they had been treated inspired some members of the community to try to reclaim the Mochongoi Forest in 1974 and 1984, meet with the President to discuss the matter in 1994 and 1995, and protest the actions in peaceful demonstrations. The African Commission agrees that if consultations had been conducted in a manner that effectively involved the Endorois, there would have been no ensuing confusion as to their rights or resentment that their consent had been wrongfully gained. It is also convinced that they have faced substantive losses - the actual loss in well-being and the denial of benefits accruing from the Game Reserve. Furthermore, the Endorois have faced a significant loss in choice since their eviction from the land. It agrees that the

Endorois, as beneficiaries of the development process, were entitled to an equitable distribution of the benefits derived from the Game Reserve.

298. The African Commission is of the view that the Respondent State bears the burden for creating conditions favourable to a people's development. It is certainly not the responsibility of the Endorois themselves to find alternate places to graze their cattle or partake in religious ceremonies. The Respondent State, instead, is obligated to ensure that the Endorois are not left out of the development process or benefits. The African Commission agrees that the failure to provide adequate compensation and benefits, or provide suitable land for grazing indicates that the Respondent State did not adequately provide for the Endorois in the development process. It finds against the Respondent State that the Endorois community has suffered a violation of Article 22 of the Charter .

#### Recommendations

1. In view of the above, the African Commission finds that the Respondent State is in violation of Articles 1, 8, 14, 17, 21 and 22 of the African Charter. The African Commission recommends that the Respondent State:

- (a) Recognise rights of ownership to the Endorois and Restitute Endorois ancestral land.
- (b) Ensure that the Endorois community has unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle.
- (c) Pay adequate compensation to the community for all the loss suffered.
- (d) Pay royalties to the Endorois from existing economic activities and ensure that they benefit from employment possibilities within the Reserve.
- (e) Grant registration to the Endorois Welfare Committee.
- (f) Engage in dialogue with the Complainants for the effective implementation of these recommendations.
- (g) Report on the implementation of these recommendations within three months from the date of notification.

2. The African Commission avails its good offices to assist the parties in the implementation of these recommendations.

#### **4. Mission of the African Commission on Human and Peoples' Rights to the United Republic of Tanzania, 23-28 January 2023<sup>89</sup>**

In view of all the above, the Delegation, in the interim, urges the Government of Tanzania to:

##### General:

- Domesticated and observe the provisions of the African Charter on Human and Peoples' Rights, the Maputo Protocol on the Rights of Women in Africa, as well as other regional human rights legal instruments that have been ratified by Tanzania;
- Ratify the regional and international human rights instruments that have not yet been ratified by Tanzania, including: the African Union Convention on the Conservation of Nature and Natural Resources, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons, and the African Convention on Data Protection and Cyber Security;

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<sup>89</sup> <https://achpr.au.int/en/news/press-releases/2023-02-24/press-statement-promotion-mission-untied-republic-tanzania> (pending report)

- Consider re-instating the declaration under Article 34(6) of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, which permits individual and NGO access to the African Court on Human and Peoples' Rights, which was withdrawn in 2019.
- Implement the recommendations given in the Promotion Mission to the United Republic of Tanzania, which was conducted by the Commission in 2008, as well as the Research and Information Visit conducted by its Working Group on the Rights of Indigenous Peoples/Communities and Minorities, in 2013;
- Submit outstanding Periodic Reports under Article 62 of the African Charter and participate regularly in the activities of the Commission including attending sessions and programmes of the Commission; and
- Put in place effective mechanisms for ensuring the protection of Human Rights Defenders from attacks, including by conducting prompt investigations into reported attacks and guaranteeing access to justice.

Specifically:

- In light of several communities' calls for effective and conclusive consultations, explore fresh rounds of civil dialogues with the respective pastoral and farming communities in the Ngorongoro Conservation Area, Loliondo and Msomera, to advance peaceful resolutions of individual and group grievances in the implementation of the Government's conservation efforts in the Ngorongoro Conservation Area and in Loliondo;
- Ensure, in accordance with the African Charter on Human and Peoples' Rights, including specifically Articles 21 and 22 of the same, the inclusive, effective, and rigorous participation of local and affected communities, including the women and youth, in all conservation programs and processes initiated by the Government, in the Ngorongoro Conservation Area and in Loliondo;
- Provide adequate information and timely assistance to pastoralists in the Ngorongoro Conservation Area who have signed up for voluntary relocation and ensure their adequate and effective compensation in line with the African Charter on Human and Peoples' Rights; and
- Attend to the complaints about the decline in social amenities and infrastructure in the Ngorongoro Conservation Area, to ensure continued dignified living conditions for the local communities whilst awaiting the relocation of those who have volunteered to be relocated, as well as for those who choose to remain behind, in respect of which latter group the Government should reach a mutually acceptable strategy with the affected people.

**5. Resolution on the Protection of Indigenous Peoples' Rights in the Context of the World Heritage Convention and the Designation of Lake Bogoria as a World Heritage site - ACHPR/Res.197(L)2011<sup>90</sup>**

- 1. Emphasizes that the inscription of Lake Bogoria on the World Heritage List without involving the Endorois in the decision-making process and without obtaining their free, prior and informed consent contravenes the African Commission's Endorois Decision and constitutes a violation of the Endorois' right to development under Article 22 of the African Charter;
- 2. Urges the World Heritage Committee and UNESCO to review and revise current procedures and Operational Guidelines, in consultation and cooperation with the UN Permanent Forum on Indigenous Issues and indigenous peoples, in order to ensure that the implementation of the World Heritage Convention is consistent with the UN Declaration on the Rights of Indigenous Peoples and that indigenous peoples' rights, and human rights generally, are respected, protected and fulfilled in World Heritage areas;

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<sup>90</sup> <https://achpr.au.int/en/adopted-resolutions/197-resolution-protection-indigenous-peoples-rights-context>

- 3. Calls on the World Heritage Committee to consider establishing an appropriate mechanism through which indigenous peoples can provide advice to the World Heritage Committee and effectively participate in its decision-making processes;
- 4. Urges IUCN to review and revise its procedures for evaluating World Heritage nominations as well as the state of conservation of World Heritage sites, with a view to ensuring that indigenous peoples are fully involved in these processes, and that their rights are respected, protected and fulfilled in these processes and in the management of World Heritage areas;
- 5. Urges the Government of Kenya, the World Heritage Committee and UNESCO to ensure the full and effective participation of the Endorois in the decision-making regarding the “Kenya Lake System” World Heritage area, through their own representative institutions;

**6. Letter of appeal of the Working Group on Indigenous Populations/Communities to Democratic Republic of Congo (DRC), March & August 2021**

- The letter to the DRC addressed reports alleging that two members of the Indigenous Batwa community and six militia were killed in an army operation aimed at dislodging Batwa from the Kahuzi-Biega National Park, a habitat of lowland gorillas, in the east of the DRC. According to information, this occurred as a result of a joint operation of the Armed Forces of the DRC and eco-guards in Muyange. It was reported that at least 87 mostly straw huts were burned during the operation. In the Joint Letter of Appeal, the Government of the DRC was informed that, if the allegations were correct, the DRC would be in violation of Article 4 on the right to life and Article 14, which states that the right to property shall be guaranteed and may only be violated in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.
- The Joint Letter of Appeal urged the Government of the DRC to: provide clarification to the Commission regarding the allegations; conduct prompt and impartial investigations into the allegations and hold the perpetrators accountable; ensure full and effective reparations to address the harm suffered by victims; adhere to the provisions of General Comment No. 3 on the Right to Life; and, generally, comply with the letter and spirit of the African Charter, General Comment No. 3 on the Right to Life, as well as other relevant human rights instruments to which the DRC is a party.

**7. Resolution 489 on Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa**

- Resolution 489 notes the increasing rural poverty, loss of wildlife and habitat, lack of inclusion of communities in decision-making, and lack of respect for the specific rights of Indigenous and local peoples in Africa. It acknowledges that a key component of Africa’s economic potential lies in its biodiversity and wildlife economy, and that the use of Community-Based Resource Management, a community conservation effort, offers a unique competitive advantage with which to fight poverty and build resilient Indigenous and local communities. It recognizes Indigenous populations’ and local communities’ right to participation in, and governance and use of, natural resources as share-holders and not mere stakeholders. The ACHPR, among other things, calls on African states to recognize the rights of Indigenous populations and communities to the conservation, control, management and sustainable use of their natural resources, including wildlife. It urges African states to take the necessary measures to strengthen community governance and institutions. It finally strongly encourages governments, Indigenous and local populations, intergovernmental organizations, national human rights institutions, civil society organizations and academic institutions to support the Working Group on Indigenous Populations/Communities and Minorities in Africa in building and enhancing the local capacity of communities to govern, manage, and sustainably use and benefit from their natural resources.



## CONCLUDING OBSERVATIONS

Indigenous Peoples' rights in the context of conservation and protected areas must be understood and addressed under the framework of the United Nations Declaration on the Rights of Indigenous Peoples (2007), the International Labour Organisation Indigenous and Tribal Peoples Convention, 1989 (No. 169) and other general international and regional human rights conventions and norms such as the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Elimination of All Forms of Racial Discrimination (1969), the African Charter on Human and Peoples' Rights (1981), the American Declaration of the Rights and Duties of Man (1948) and the American Convention on Human Rights (1969). Several environmental agreements and standards also contain provisions related to the protection and promotion of the rights of Indigenous Peoples in relation to conservation and protected areas<sup>91</sup>.

The decisions, concluding observations, and recommendations issued by United Nations Treaty Bodies, Special Rapporteurs, Independent Experts of the Human Rights Council, Bodies of the Inter-American and African Human Rights systems and other international and regional human rights mechanisms over the past-decade reflect and reaffirm the norms set out in the UNDRIP. They have recognized Indigenous Peoples' rights to: equality and non-discrimination in the enjoyment of their human rights, self-identification, ownership, use, control, management and conservation of their lands, waters and other natural resources, self-determination, autonomy and self-government, maintenance and development of their political, economic and social systems or institutions, enjoyment of their own means of subsistence, cultural integrity, cultural traditions, customs and spirituality. In addition, States governments have to the duty to consult Indigenous Peoples to obtain their free and prior informed consent before adopting laws and policies that may affect them, undertaking projects that affect their rights and lands and they cannot forcibly removed Indigenous Peoples from their lands. Article 29 of the UNDRIP provides that Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources and States shall establish and implement assistance programmes for Indigenous Peoples for such conservation and protection, without discrimination. In international human rights law, human rights violations trigger remedies designed to provide redress for the victims of violations. Indigenous Peoples, who lost their means of subsistence, possession of their lands and natural resources or their cultural, intellectual, religious and spiritual property without their free and prior informed consent, are entitled to the restitution of their lands as well as other forms of redress. Failure to respect Indigenous Peoples' rights can therefore affect the legitimacy and continuation of protected areas and other conservation related projects that were established on indigenous lands.

As described in Section I, concluding observations adopted by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination in relation to human rights violations related to conservation and protection measures have consistently reminded States parties of their obligation to protect the human rights of Indigenous Peoples affected by conservation and protected areas.

The CERD notably called upon: Colombia<sup>92</sup> to ensure that indigenous peoples living in protected areas, in particular Tayrona National Park, are able to dispose freely of their lands and natural resources and that they are

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<sup>91</sup> The UN Framework Convention on Climate Change (UNFCCC) (2010) Cancun Agreement, includes safeguards on respect for the knowledge and rights of indigenous peoples and members of local communities and their full and effective participation, in relation to policies and incentives for reducing emissions from deforestation and forest degradation, and conserving, sustainably managing and enhancing forest carbon stocks. The Convention on Biological Diversity (CBD) (1992) addresses indigenous rights in a number of biodiversity conservation contexts. Article 8j stipulates that States Parties shall "respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities embodying traditional life styles relevant for the conservation and sustainable use of biological diversity," "promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices," and "encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices." Article 10(c) calls upon States Parties to "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements." Element 2 of the CBD Programme of Work on Protected Areas, established in 2004, focuses on governance, participation, equity, and benefit sharing in protected areas establishment and management can call upon parties to recognize and promote a broad set of protected area governance types, including areas conserved by indigenous and local communities, ensure full and effective participation of indigenous and local communities, and "ensure that any resettlement of indigenous communities ... will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations." The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS), (2010) provides a legal framework for the fair and equitable sharing of benefits arising out of the utilization of genetic resources and associated traditional knowledge covered by the CBD. Finally, the Akwé: Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments, address proposed developments that will take place on or impact sacred sites and lands and waters traditionally occupied or used by indigenous and local communities.

<sup>92</sup> CERD/C/COL/CO/17-19

consulted in all processes and decisions that affect them, Mongolia<sup>93</sup> to set minimal hunting and fishing quotas in the Tengis Shishged protected area in consultation with the Tsaatans to enable them to continuously enjoy their cultural rights and practices; ensure the rights of Tsaatans to access grazing pasturelands traditionally used for reindeer herding, include the Tsaatans in the management of the Tengis Shishged protected area and ensure that the Tsaatans are fully and effectively consulted with a view to obtaining their free, prior and informed consent in relation to all decisions affecting , their rights and lands. Taking note of the forced evictions of the Sengwer people from their traditional forest lands in the Embobut Forest, attacks and forced evictions of the Endorois people by armed raiders and forced eviction of the Ogiek people from the Mau Forest, the CERD called upon Kenya<sup>94</sup> to prevent, investigate, prosecute and sanction acts threatening the physical security and property of the Sengwer, Endorois and Ogiek peoples. Kenya was also requested to ensure legal acknowledgement of Indigenous People's collective rights to own, develop, control and use their lands, resources and communal and to participate in the management and conservation of natural resources and obtain their free, prior and informed consent before implementing projects to conserve indigenous ancestral land and associated resources projects. Suriname<sup>95</sup> was recommended to ensure legal acknowledgement of the collective rights of Indigenous peoples to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure systems and to participate in the management and conservation of the associated natural resource. Taking notes of the land expropriation of the Batwa without prior consultation for the construction of national parks, Rwanda<sup>96</sup> was recommended to offer them adequate land so that they can retain their traditional lifestyle and engage in income-generating activities. Cameroon<sup>97</sup> was recommended to take measures to protect the rights of Indigenous peoples to land and to obtain their free and informed consent before approving any project that affects their lands, territories or other resources and compensation for lands, territories and resources which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Taking note of the abuse and assaults suffered by Indigenous people at the hands of civil servants and employees of the national parks and protected areas, the CERD recommended Cameroon<sup>98</sup> to protect Indigenous people against any attacks on their physical and mental integrity and prosecute the perpetrators of acts of violence and assaults against them.

Under its Early Warning/Urgent Action and Follow Up Procedures, the CERD reminded Brazil<sup>99</sup> to obtain free, prior and informed consent of the indigenous peoples to establish the Monte Roraima National Park, Kenya<sup>100</sup> to respond to the decisions of the African Commission of Human and People's Rights regarding the forced evictions of the Ogiek and Endorois Indigenous peoples and ensure that they receive appropriate redress, Tanzania<sup>101</sup> to protect the Maasai Communities evicted from their traditional lands in Ngorongoro, against acts of intimidation, harassment, arrests and detentions and ensure access of to their traditional lands and provide adequate compensation for the alleged losses suffered. Thailand<sup>102</sup> was finally urged to halt the eviction of the Karen Indigenous people from the Kaeng Krachan National Park and prevent any irreparable harm to their livelihood.

Expressing concerns about acts of violence and intimidation committed against Indigenous communities in natural parks in Democratic Republic of Congo <sup>103</sup>, the CDESCR recommended to prevent acts of violence and intimidation against the communities and guarantee effective protection for them. Bolivia<sup>104</sup> was recommended to adopt measures to guarantee the integrity of the Isiboro Sécure National Park and Indigenous Territory while Ecuador<sup>105</sup> was requested to ensure the integrity of the territories of the Tagaeri and Taromenane peoples and prevent hydrocarbon activities in the Yasuni National Park protected area and its buffer zone. Ecuador was also requested to ensure consultation and the free, prior and informed consent of Indigenous Peoples on the establishment and management of protected areas in respect of their lands and territories. The CDESCR highlighted that the designation of large tracts of land as national parks and sanctuaries led to repeated displacement and have had a detrimental impact on the livelihoods and traditional ways of the Veddah people, including by prohibiting access to their traditional hunting grounds and honey sites in Sri Lanka. The CDESCR recommended to Sri Lanka to ensure that the Veddahs can return to and remain undisturbed on the lands from which they were evicted, within the Maduru Oya reserve in particular, and ensure that the declaration of land as national parks and sanctuaries is

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<sup>93</sup> CERD/C/MNG/CO/19-22, CERD/C/MNG/CO/23-24

<sup>94</sup> CERD/C/KEN/CO/5-7

<sup>95</sup> CERD/C/SUR/CO/13-15

<sup>96</sup> CERD/C/RWA/CO/13-17

<sup>97</sup> CERD/ C/CMR/CO/15-18

<sup>98</sup> CERD/ C/CMR/CO/15-18

<sup>99</sup> 31 May 2010

<sup>100</sup> 30 August 2013

<sup>101</sup> 1 March 2013

<sup>102</sup> 3 October 2016

<sup>103</sup> E/C.12/COD/CO/6,

<sup>104</sup> E/C.12/BOL/CO/3

<sup>105</sup> E/C.12/ECU/CO/4



always done in close consultation and with the prior consent of affected communities. Finally, the Committee recommended Tanzania<sup>106</sup> that the establishment of game reserves, the granting of licences for hunting, or other projects on Indigenous ancestral lands be preceded by the free, prior and informed consent of the people affected. Tanzania was also recommended to ensure that pastoralist and hunter-gatherer communities, are effectively protected from forced evictions from traditional lands, investigate past forced evictions and violations, bring perpetrators to justice and offer adequate compensation to victims.

The CCPR expressed concerns that former residents of the Central Kalahari Game Reserve, in particular the Basarwa and Bakgalagadi are required to obtain entry permits to enter the reserve and recommended Botswana<sup>107</sup> to ensure that no restrictions are imposed on current and former residents of the Central Kalahari Game Reserve, including those who were not applicants in *Roy Sesana and Others v. the Attorney General*, to their return to and stay in the reserve. Botswana was also recommended that the rights of Indigenous Peoples particularly in relation to their traditional lands and natural resources, be protected and recognized in law and in practice, including through the development and enactment of dedicated legislation and ensure the application of the principle of free, prior and informed consent before any activity take place on indigenous lands. Taking note that Kenya<sup>108</sup> has not implemented the decision of the *African Commission on Human and Peoples' Rights in the case Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* and expressing concerns at forced evictions and dispossession of ancestral land of the Ogiek and Endorois communities, the CCPR recommended that Kenya respect the rights of Indigenous groups to their ancestral land and to their traditional livelihood in planning natural resource conservation projects and that decisions be based on free and informed consent by this community.

Although States are considered the primary duty bearers under international human rights law, human rights norms and standards are increasingly considered to apply to non-State entities, in accordance with the 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/31, annex). The CESCR also adopted in 2017 its General Comment No. 24, on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities<sup>109</sup>. Since 2014, the CESCR has adopted the practice to issue concluding observations calling upon States parties to the International Covenant on Economic, Social and Cultural Rights to adopt appropriate legislative and administrative measures to ensure the legal liability of business entities and their subsidiaries, as well as sub-suppliers, legally domiciled in and/or owned by the State party, regarding violations of economic, social and cultural rights in the context of their activities abroad. In this context, all non-state actors involved in conservation and protected areas, including international organizations, non-governmental organizations, businesses, philanthropic foundations and other donors, have a duty to respect the rights of Indigenous Peoples. Furthermore, extraterritorial obligation requires States parties to take steps to prevent and redress infringements of human rights law that occur outside their territories due to the activities of non-governmental organizations, and business entities including subsidiaries (including all business entities in which they have invested) or business partners (including suppliers, franchisees and subcontractors) and other actors over which they can exercise control<sup>110</sup>.

As detailed in Section IV, six landmark judgments and decisions related to conservation and protected areas were adopted by human rights regional mechanisms including *African Commission on Human and Peoples' Rights v. Republic of Kenya, Judgment, Application No. 006/212 (2022)*<sup>111</sup>, *Xákmok Kásek v. Paraguay* (2010)<sup>112</sup>, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (2010)<sup>113</sup>, *Kaliña and Lokono Peoples v. Suriname* (2015)<sup>114</sup>, *Garifuna community of Triunfo de la Cruz and its members v. Honduras* (2015)<sup>115</sup> and *African Commission on Human and Peoples' Rights v. Kenya* (2017)<sup>116</sup>. Violations of the rights to communal property, judicial protection, non-discrimination, recognition of

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<sup>106</sup> E/C.12/TZA/CO/1-3

<sup>107</sup> CCPR/C/BWA/CO/2

<sup>108</sup> CCPR/C/KEN/CO/3,

<sup>109</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/237/17/PDF/G1723717.pdf?OpenElement>

<sup>110</sup> See para 28 CESCR General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. See also 2011 Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/31, annex)

<sup>111</sup> <https://www.esccr-net.org/sites/default/files/caselaw/62babafd8d467689318212.pdf>

<sup>112</sup> [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_214\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf)

<sup>113</sup> [https://www.esccr-net.org/sites/default/files/Endorois\\_Decision.pdf](https://www.esccr-net.org/sites/default/files/Endorois_Decision.pdf)

<sup>114</sup> [https://www.corteidh.or.cr/docs/casos/articulos/resumen\\_309\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/resumen_309_ing.pdf)

<sup>115</sup> [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_305\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_305_ing.pdf)

<sup>116</sup> <https://www.esccr-net.org/sites/default/files/caselaw/62babafd8d467689318212.pdf>

juridical personality and participation in connection with the State's failure to consult were notably found. States were ordered to take effective measure to guarantee Indigenous Peoples' free access to and use of their ancestral territories, protect their collective property rights of lands located within national parks, identify, delimit, demarcate the ancestral land, grant collective title in consultation with affected indigenous communities, ensure Indigenous Peoples' use and enjoyment of the lands, restitute lost lands or parts of their traditional territory<sup>117</sup>, provide adequate compensation, ensure effective participation of Indigenous Peoples to the management of protected areas including in the benefits and/or royalty derived from conservation and ensure consultation with the affected people on whether or not they can be allowed to continue their operations.

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<sup>117</sup> In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* (2010), Kenya was ordered to "restitute Endorois ancestral land". In *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Judgment, Application No. 006/212 (2022), Kenya was ordered "where concessions and/or leases have been granted over Ogiek ancestral land, to commence dialogue and consultations between the Ogiek and their representatives and the other concerned parties for purposes of reaching an agreement on whether or not they can be allowed to continue their operations by way of lease and/or royalty and benefit sharing with the Ogiek in line with all applicable laws. Where it proves impossible to reach a compromise, the Respondent State is ordered to compensate the concerned third parties and return such land to the Ogiek". In *Xákmok Kásek*, the Court ruled that the affected people's right "to recover their lost lands remains in effect" and it ordered restitution of the same. In *Kaliña and Lokono*, the Court ruled that they have the right to "the possible restitution of the parts of their traditional territory within the nature reserves".