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## REFLECTIONS ON RACISM, CONSERVATION AND HUMAN RIGHTS OF INDIGENOUS PEOPLES

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### INTRODUCTION

Today, 21 March 2024, marks simultaneously the United Nations International Day for the Elimination of Racial Discrimination and the United Nations International Day of Forests. The UN General Assembly resolution 2142 (XXI), adopted on 26 October 1966, proclaimed 21 March as the International Day for the Elimination of Racial Discrimination to commemorate the killings in 1960 of 69 people at a peaceful demonstration against the apartheid “pass laws” in Sharpeville, South Africa. The United Nations General Assembly adopted resolution 67/200 on 21 December 2012 which proclaimed 21 March as the UN International Day of Forests to be commemorated annually.

### I. RACISM AND INDIGENOUS PEOPLES

The issue of Indigenous Peoples’ rights entered the United Nation human rights system in the seventies—precisely because of the ongoing and pervasive effects of racism and racial discrimination on the living conditions of Indigenous Peoples. In August 1970, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, by resolution 4 B (XXIII) of 26 August 1970, recommended that a complete and comprehensive study of the problem of discrimination against Indigenous Peoples be undertaken. This study was drafted by

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my dear friend from Guatemala, Augusto Willemsen Diaz, and took more than 12 years of work. The various chapters of the Study of the problem of discrimination against indigenous populations were published between 1981 and 1983.<sup>2</sup> This pioneering work details throughout XXII chapters the various forms of discrimination experienced by Indigenous Peoples in all regions of the world, points out the existence of a pattern of structural and systemic racism and recommends hundreds of measures and actions<sup>3</sup> to come to term with such scourge.

The Declaration and Programme of Action World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance adopted on 8 September 2001 recognizes “that the Indigenous Peoples have been victims of discrimination for centuries and affirm that they are free and equal in dignity and rights and should not suffer any discrimination, particularly on the basis of their indigenous origin and identity, and stress the continuing need for action to overcome the persistent racism, racial discrimination, xenophobia and related intolerance that affect them.”

The various impacts of what I would term “structural discrimination” and “institutional racism” on Indigenous Peoples are reflected in low standards of living, high levels of poverty and extreme poverty, malnutrition, suicide rates, maternal and infant mortality and low life expectancy, marginalization, social exclusion and limited access to: adequate housing, water and sanitation facilities, healthcare, education, employment and decent working conditions, participation in decision making processes, representation in political and public life, and justice.

Racism is a centuries old ideology, which has survived and constitutes on its own, a real barrier to the recognition of Indigenous Peoples as equal human rights holders and to the exercise of their fundamental rights and freedoms including their rights to self-determination, to live in peace and security, to own, control, use and conserve their ancestral lands, territories and natural resources, to be secure in the enjoyment of their own means of subsistence and to free and prior informed consent.

Discrimination and racism were used to justify colonial invasion and expansion, occupation of indigenous lands and territories, exploitation and domination of Indigenous Peoples and the whole scale destruction of entire indigenous societies.

Racism was implicit in many legal doctrines such as the Doctrine of Discovery’s concepts of “terra nullius” and “effective occupation” which were used to justify the invasion of indigenous territories and the dispossession of their ancestral territories.

Racism justified the civilizing mission of colonial powers and their duty to bring the so-called benefits of Western civilization or religion to so-called “uncivilized,” “primitive” peoples or “inferior” races around the world.

Racism is behind the disproportionate contamination of indigenous lands, waters and territories by nuclear testing, waste incinerators, dumping of toxic wastes, highly hazardous pesticides, aerial fumigation, mining, drilling, the building of dams<sup>4</sup> or what is generally called “environmental racism.”

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<sup>2</sup> See U.N. Special Rapporteur, José Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/476 (July 30, 1981).

<sup>3</sup> See U.N. Special Rapporteur, José Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations, Conclusions, proposals and recommendations*, U.N. Doc. E/CN.4 Sub.2 /1983/21/Add.8 (September 30, 1983).

<sup>4</sup> See U.N. Special Rapporteur on toxics and human rights, Marcos Orellana, *The impact of toxic substances on the human rights of Indigenous Peoples – Report of the Special Rapporteur on the implications of the environmentally sound management and disposal of hazardous substances and wastes*, U.N. Doc. A/77/183 (July 28, 2022).

## II. RACISM AND CONSERVATION

Racism is also behind the dismissal of indigenous traditional knowledge, land management and conservation practices. Indigenous Peoples supposed “backwardness” and “irrationality” to use, manage and conserve their lands and natural resources have crystallized as conventional wisdom in the minds of many states officials and other conservation actors.

As mentioned earlier on, today is also the International Day of Forests. The word “forest” originates as a juridical term in early middle age in Europe to designate royal game preserves reserved for the king’s recreational activities. In Asia and Africa, the first protected areas established were hunting grounds for the local kings and Western colonial elites. In the United States, the first “protected areas” such as Yellowstone National Park or the Yosemite National Park involved the violent evictions of Indigenous Peoples who had been living on these lands for thousands of years. Some of the earliest American advocates of conservation and protected areas promoting pristine environment, the exclusion of Indigenous Peoples and the “fortress conservation” approach, founders of high-profile conservation NGOs who still exist today, were also famous proponents of scientific racism. Indigenous Peoples were portrayed as weak and inferior “races,” and were doomed to vanish in the course of progress and modernity.

Conservation’s colonial underpinnings continue to portray Indigenous Peoples as unable to manage and conserve their lands, or as responsible for conservation problems, and permit practices that forcibly evict Indigenous Peoples from their ancestral lands, often by extreme violence and militarized means.

In many countries, national laws on forests, conservation or protected areas have the effect of nullifying and the rights of Indigenous Peoples to their lands and territories and the recognition, enjoyment, or exercise, on an equal footing, of their human rights and fundamental freedoms, as defined under Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

## III. PARADIGM SHIFT

With this confrontation of enduring realities, it is now time to acknowledge and come to terms with the Western conservation’s deep-seated systemic racism, which has historically excluded Indigenous Peoples and continues to do so. A paradigm shift was announced by the world’s leading conservationists at the International Union for Conservation of Nature World Conservation Congress held in Durban in 2003.

In this regard, Targets 8 and 9 of the 2003 Durban Action Plan require that all existing and future protected areas are managed and established in full compliance with the rights of Indigenous Peoples and “have representatives chosen by Indigenous Peoples in their management proportionate to their rights and interests.” Target 10 requires the adoption and implementation by 2010 of participatory mechanisms for the restitution of Indigenous Peoples’ traditional lands and territories that were incorporated in protected areas without their free and informed consent.

Twenty-one years after such an announcement, where are we? Conservation organisations, institutions and policies continue to exclude and discriminate against Indigenous

Peoples. The overwhelming majority of Indigenous Peoples who had been dispossessed of their lands to establish protected areas did not obtain the restitution of their ancestral lands or any other form of redress. In the name of protecting nature, protected areas continue to be established on the lands of Indigenous Peoples without their consent, in violation of their rights to own, control and conserve their lands, natural resources and self-determination. Indigenous Peoples continue to be forcibly removed from their lands with devastating consequences. The colonial and discriminatory “fortress conservation” model continues to prevail and to be duplicated in conservation initiatives in Asia and Africa.

#### IV. HUMAN RIGHTS VIOLATIONS AND CONSERVATION

The Conservation sector is about to become one of the main industries destroying Indigenous Peoples’ lives and violating their human rights. The various negative consequences Indigenous Peoples have faced in the wake of evermore expanding protected areas have been repeatedly raised by many United Nations Special Rapporteurs including the four successive Special Rapporteurs on the Rights of Indigenous Peoples and by the United Nations Treaty Bodies.

In the past 14 years, Special Procedures mandate holders sent more than 50 communications to express concerns about human rights violations of Indigenous Peoples in protected areas, national parks, and other game reserves to the governments of Bolivia, Botswana, Canada, Chile, China, Ecuador, Guatemala, Honduras, India, Indonesia, Kenya, Malaysia, Namibia, Nepal, Sweden, Thailand, Uganda and the United Republic of Tanzania. During the same period, they undertook country visits, observed, and underlined conservation related human rights violations of Indigenous Peoples perpetrated in Argentina, Botswana, Cameroon, Costa Rica, Ecuador, Guatemala, Honduras, Kenya, Mexico, Mongolia, Namibia, New Zealand, Paraguay, Republic of Congo, Russian Federation, Rwanda and Uruguay.

In the meantime, the Treaty Bodies, in particular the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women have also expressed concerns about human rights violations of Indigenous Peoples in protected areas in Bolivia, Botswana, Colombia, Cameroon, Costa Rica, Ecuador, Democratic Republic of Congo, Gabon, Honduras, Kenya, Mongolia, Rwanda, Suriname, Sri Lanka, United Republic of Tanzania, Thailand and Uganda. Under its Early Warning/Urgent Action and Follow Up Procedures, the CERD considered human rights violations of Indigenous Peoples living in or near protected areas in Brazil, Chile, Kenya, Peru, Sweden, United Republic of Tanzania, and Thailand.

The extreme violence and the destructive impacts of so-called conservation projects on Indigenous Peoples include patterns of land dispossessions, forced evictions, destruction of houses and private properties, confiscation and destruction of cattle, bush meat, subsistence crops and other traditional means of livelihoods. Indigenous Peoples are denied access to their ancestral lands, they can no longer hunt, fish, graze their cattle, gather food, grow their crops, or access to their religious, sacred and cultural sites, burial grounds and medicinal plants. Their social structures, institutions and cultural traditions are disrupted. Indigenous Peoples are often forced to relocate without any resettlement programme or access to adequate housing, essential services, water, food, health care or education. They are eventually denied access to justice, redress and reparation, including restitution and compensation.

As pointed out by the Special Rapporteur on Indigenous Peoples and their relationship to land and Chairperson of the United Nations Working Group on Indigenous Populations, Erica-Irene Daes: “Land is not only an economic resource for indigenous peoples. It is also the peoples' library, laboratory and university; land is the repository of all history and scientific knowledge. All that indigenous peoples have been, and all that they know about living well and humanly, is embedded in their land and in the stories associated with every feature of the landscape.”<sup>5</sup> Due to this special bond and to “the distinctive and profound spiritual and material relationship” that Indigenous Peoples have with their lands<sup>6</sup> which “has various social, cultural, spiritual, economic and political dimensions and responsibilities,”<sup>7</sup> Indigenous Peoples who are losing their lands experience intense suffering, mental alienation, cultural dislocation, severe trauma and transgenerational post-traumatic stress disorder.

Often, forced evictions are accompanied by other gross human rights abuses perpetrated by states actors including forest officials and eco-rangers, police officers and army officials including torture and ill treatment, arbitrary arrests and detentions, extra-judicial killings, summary executions, enforced disappearances, sexual gender-based violence, death threats etc. Of the 1733 environmental and land defenders killed because of their work between 2012 and 2022, 39 percent were from Indigenous Peoples.<sup>8</sup>

## V. INDIGENOUS CONSERVATION

Beyond this horrific human toll, the business model of fortress conservation undermines the very goals of conservation. Decades of experience with fortress conservation practices contradicts the argument that the eviction of Indigenous Peoples is necessary to achieve biodiversity conservation or restoration. Indigenous ancestral territories encompass about 20-25 percent of the world's land surface that hold 80 percent of the planet's biodiversity. Wildlife is abundant on indigenous lands, but not because such areas are left untouched, but precisely because Indigenous Peoples have been occupying, caring for and conserving such lands for centuries. Mounting studies<sup>9</sup> have shown that Indigenous Peoples possess the knowledge and

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<sup>5</sup>Erica-Irene A. Daes, *Introduction: Article 3 of the Draft United Nations Declaration on the Rights of Indigenous peoples: Obstacles and consensus* in Seminar Right to Self-Determination of Indigenous Peoples, May 18, 2002, page 8 ([https://reviewboard.ca/upload/project\\_document/EA1011-002\\_NSMA\\_submission\\_for\\_TNR\\_Project.PDF](https://reviewboard.ca/upload/project_document/EA1011-002_NSMA_submission_for_TNR_Project.PDF)).

<sup>6</sup>Erica-Irene A. Daes, Special Rapporteur, United Nations Working Group on Indigenous Populations, *Indigenous peoples and their relationship to land: Final working paper*, ¶ 117, E/CN.4/Sub.2/2001/25 (June 30, 2000).

<sup>7</sup> *Id.*

<sup>8</sup> Global Witness, *Decade of Defiance, Ten years of reporting land and environmental activism worldwide*, p. 16 (September 2022),

[https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/?gad\\_source=1&gclid=Cj0KCQjwlZixBhCoARIsAIC745AVy0UDNIBHQZKirkTYX5Gzv8B7NcjJBVfOU2c1v5TAcIR0SFt33FQaAhpjEALw\\_wcB](https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/?gad_source=1&gclid=Cj0KCQjwlZixBhCoARIsAIC745AVy0UDNIBHQZKirkTYX5Gzv8B7NcjJBVfOU2c1v5TAcIR0SFt33FQaAhpjEALw_wcB).

<sup>9</sup> See generally Julia E. Fa et al., *Importance of Indigenous Peoples' lands for the conservation of Intact Forest Landscapes*, 18 FRONTIERS OF THE ECOLOGY AND THE ENVIRONMENT 3 (Jan. 6, 2020), <https://esajournals.onlinelibrary.wiley.com/doi/10.1002/fee.2148>; Neil M. Dawson et al., *The role of Indigenous peoples and local communities in effective and equitable conservation*, 26 Ecology and Society 3, 19 (Sep. 3, 2021), <https://www.ecologyandsociety.org/vol26/iss3/art19/>; Richard Schuster et al., *Vertebrate biodiversity on indigenous-managed lands in Australia, Brazil, and Canada equals that in protected areas*, 101 ENVIRONMENTAL SCIENCE AND POLICY 1–6 (Nov. 2019), <https://www.sciencedirect.com/science/article/pii/S1462901119301042>; Rights

ability necessary to successfully conserve and manage critical bio-diverse ecosystems more effectively than governments or conservation organisations, particularly where their human rights, particularly their rights to control their lands are recognized. Indigenous Peoples have been observing nature cycles for thousands of years and have accumulated extensive knowledge of the properties of the trees, plants, animals, and insects in their territories. The loss of the guardianship of Indigenous Peoples often leaves critical ecosystems exposed to poaching, narco-trafficking, large-scale tourism, legal and illegal logging and mining and other forms of degradation in direct conflict with biodiversity conservation goals.

In December 2022, UN member states endorsed the goal of protecting and conserving 30 percent of the planet's lands and waters by 2030 in the Kunming-Montreal Global Biodiversity Framework at the COP15, also known as the 30 by 30. The Framework acknowledges the important roles and contributions of Indigenous Peoples as custodians of biodiversity and as partners in its conservation, restoration, and sustainable use. It also states that implementation must ensure that “the rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices of Indigenous Peoples are respected, and documented and preserved with their free, prior and informed consent, including through their full and effective participation in decision-making, in accordance with relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, and human rights law.”

Given that some 15.7 percent of the world's land is currently covered by protected areas, to reach 30 per cent would require a doubling of the area under some form of conservation protection. 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 self-determination, free and prior informed consent, ownership and ancestral lands, waters, territories and other natural resources are not protected and implemented. Human rights-based conservation is the most effective, efficient, and equitable path forward to safeguarding biodiversity and achieving positive conservation outcomes.

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and Resources Initiative, *Rights-Based Conservation: The Path to Preserving Earth's Biological and Cultural Diversity?* (Nov. 2020), [https://rightsandresources.org/wp-content/uploads/2020/12/Final\\_Rights\\_Conservation\\_RRI.pdf](https://rightsandresources.org/wp-content/uploads/2020/12/Final_Rights_Conservation_RRI.pdf); Grazia Borrini-Feyerabend et al., *Bio-Cultural Diversity Conserved by Indigenous Peoples & Local Communities: Examples & Analysis: Companion Document to IUCN/CEESP Briefing Note No. 10* (2010); World Resources Institute and the Rights and Resources Initiative, *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change* (July 2014), [https://www.researchgate.net/publication/265048530\\_Securing\\_Rights\\_Combating\\_Climate\\_Change\\_How\\_Strengthening\\_Community\\_Forest\\_Rights\\_Mitigates\\_Climate\\_Change](https://www.researchgate.net/publication/265048530_Securing_Rights_Combating_Climate_Change_How_Strengthening_Community_Forest_Rights_Mitigates_Climate_Change); Daniel Curtis Nepstad et al., *Inhibition of Amazon Deforestation and Fire by Parks and Indigenous Lands*, 20 CONSERVATION BIOLOGY: THE JOURNAL FOR THE CONSERVATION OF BIOLOGY 65–73 (Feb. 2006), [https://www.researchgate.net/publication/6877189\\_Inhibition\\_of\\_Amazon\\_Deforestation\\_and\\_Fire\\_by\\_Parks\\_and\\_Indigenous\\_Lands/citation/download](https://www.researchgate.net/publication/6877189_Inhibition_of_Amazon_Deforestation_and_Fire_by_Parks_and_Indigenous_Lands/citation/download); Christoph Nolte et al., *Governance Regime and Location Influence Avoided Deforestation: Success of Protected Areas in the Brazilian Amazon*, 110 Proceedings of the National Academy of Sciences 13 (Mar. 11, 2013), <https://www.pnas.org/doi/10.1073/pnas.1214786110>; Forest Peoples Programme et al., *Local Biodiversity Outlooks 2: The Contributions of Indigenous Peoples and Local Communities to the Implementation of the Strategic Plan for Biodiversity 2011–2020 and to Renewing Nature and Cultures*, <https://www.cbd.int/gbo/gbo5/publication/lbo-2-en.pdf>; Frances Seymour et al., *Climate and Land Use Alliance* (Feb. 2014), [https://www.climateandlandusealliance.org/wp-content/uploads/2015/08/Community\\_level\\_tenure\\_and\\_forest\\_condition\\_bibliography.pdf](https://www.climateandlandusealliance.org/wp-content/uploads/2015/08/Community_level_tenure_and_forest_condition_bibliography.pdf); United Nations Environmental Programme, *Cultural and Spiritual Values of Biodiversity* (Oct. 8, 1999) <https://www.unep.org/resources/publication/cultural-and-spiritual-values-biodiversity>.

## VI. INTERNATIONAL HUMAN RIGHTS STANDARDS

My predecessor and myself formulated a large number of recommendations in 2016 and 2022 in our two thematic reports<sup>10</sup> to the General Assembly on the issues of indigenous rights, conservation and protected areas. In addition, the United Nations Treaty Bodies, in particular the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on Elimination of All Forms of Discrimination against Women have consistently reminded States parties to the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), International Convention on the Elimination of All Forms of Racial Discrimination (1969) and International Convention on the Elimination of All Forms of Discrimination against Women (1979) of their obligations to protect the human rights of Indigenous Peoples affected by human rights violations stemming out of conservation measures.

The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women notably called upon states parties to: ensure that Indigenous Peoples living in protected areas are able to access and dispose freely of their lands, natural resources and traditional means of livelihoods and; enjoy their cultural rights and practices including fishing, grazing and hunting. They also called upon states parties to ensure the legal acknowledgement of Indigenous Peoples' rights to own, control and conserve their lands, territories and resources, consult and obtain their free and prior informed consent before the declaration of land as national parks, sanctuaries, game reserves, the granting of hunting licenses, or any decision affecting rights or lands. They also recommended ensuring indigenous participation in the management and conservation of natural resources. A number of states were also recommended to protect Indigenous Peoples from forced evictions occurring in the context of conservation, halt, prevent and investigate forced evictions, bring perpetrators to justice, provide redress including by returning the lands from which they were evicted, offering adequate land or compensation so that Indigenous Peoples can retain their traditional lifestyle and engage in income-generating activities. Some states' parties were also reminded to protect and guarantee the physical and mental integrity of Indigenous Peoples affected by conservation related violence, acts of intimidation, harassment, arrest, and detention. Such recommendations reflect and reaffirm the norms contained in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007.

Landmark decisions on violations of Indigenous Peoples' rights in relation to conservation were also adopted by the African Commission on Human and Peoples' Right, the African Court on Human and Peoples' Rights and the Inter-American Commission on and Court

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<sup>10</sup> See U.N. Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, *Report of the Special Rapporteur on the rights of indigenous peoples*, U.N. Doc. A/HRC/33/42 (Aug. 11, 2016); U.N. Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, *Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge: Report of the Special Rapporteur on the rights of indigenous peoples*, U.N. Doc. A/HRC/51/28 (Aug. 9, 2022).

of Human Rights calling upon governments to protect and recognise collective property rights to lands in protected areas, including the right to restitution of lands within protected areas (privately and publicly owned), equal participation in management decisions that includes respect for certain rights, and to sharing of benefits. These include the Endorois and Ogiek Indigenous Peoples in Kenya,<sup>11</sup> Kaliña and Lokono Peoples in Suriname,<sup>12</sup> the Xákmok Kásek Indigenous Community in Paraguay<sup>13</sup> and the Garífuna in Honduras.<sup>14</sup> In the Ogiek case, the African Court found that the evidence did not support the view that the Ogiek's traditional ownership of lands in the Mau Forest was harmful to the environment, rather, it showed that it was the State and others causing the harm. Therefore, it ruled "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."<sup>15</sup> These legal developments support the conclusion that failure to respect Indigenous Peoples' rights can affect the legitimacy and continuation of a large number of protected areas, national parks or conservation projects.

### CALL FOR ACTION

On this United Nations International Day for the Elimination of Racial Discrimination and International Day of Forests, I call the international community including United Nations member states, United Nations Specialized Agencies, Funds and Programmes, including United Nations Environment Programme, United Nations Educational, Scientific and Cultural Organization, conservation NGOs, Co-operation Agencies as well as other public and private donors to join their efforts to eradicate racism and racial discrimination and all discriminatory practises in conservation which continue to devastate the lives of millions of Indigenous Peoples across the world.

I urge member states to review and align domestic conservation and environmental legislations with their obligations to protect the human rights of Indigenous Peoples and ensure that a rights-based approach is applied to the creation or expansion of existing protected areas. I also urge them to establish accountability and reparation mechanisms for infringements on indigenous rights in the context of conservation and restitute Indigenous Peoples' traditional lands and territories that were incorporated in protected areas without their free and informed consent.

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<sup>11</sup> See, e.g., African Comm'n on Hum. and Peoples' Rts. v. Republic of Kenya, Judgment (Reparations), Application No. 006/2012, African Court on Hum. and Peoples' Rts. (June 23, 2022); African Comm'n on Hum. and Peoples' Rts. v. Republic of Kenya, Judgment (Merits), Application No. 006/2012, African Court on Hum. and Peoples' Rts. (May 26, 2017) [hereinafter "Ogiek Merits"]; Centre for Minority Rts. Dev. (Kenya) and Minority Rts. Grp. Int'l on behalf of Endorois Welfare Council v. Kenya, Application No. 276/2003, African Comm'n on Hum. and Peoples' Rts. (Feb. 4, 2010) [hereinafter "Endorois"].

<sup>12</sup> Kaliña and Lokono Peoples v. Suriname, Judgment (Merits, Reparations and Costs), Inter-Am. Ct. H.R. (ser. C) No. 309, (Nov. 25, 2015).

<sup>13</sup> Xákmok Kásek Indigenous Community v. Paraguay, Judgment (Merits, Reparations, and Costs), Inter-Am. Ct. H.R. (ser. C) No. 214, (Aug. 24, 2010).

<sup>14</sup> Garífuna Community of Triunfo de la Cruz v. Honduras, Judgment (Merits, Reparations, and Costs), Inter-Am. Ct. H.R. (ser. C) No. 305, (Oct. 8, 2015).

<sup>15</sup> Ogiek Merits, ¶ 130. See also Endorois, ¶ 214–15 (stating also, at ¶ 212, that "[t]he '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.").



Forest and biodiversity conservation programmes should be designed, developed, and led by those who have known, occupied and protected these lands for thousands of years. Indigenous Peoples should be acknowledged as key stakeholders in protecting ecosystems and restoring nature and recognized for their unique contributions. Conservation public and private donors should direct financial flows towards Indigenous Peoples and their organisations to enable them to conserve and protect their environment, lands, territories, and resources without discrimination and to develop and sustain their own conservation initiatives in line with article 29 of the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous knowledge, and sustainable practices must be placed at the forefront of efforts to identify, designate, and manage areas important for cultural and biological diversity, including Indigenous protected and conserved areas.

I urge in particular the Wildlife Conservation Society and the World Wide Fund for Nature and all their national offices to operate a drastic shift and demonstrate a genuine commitment to a human rights-based approach to conservation. Ensuring respect for the basic human rights of Indigenous Peoples, rather than violating their human rights, will ultimately benefit the environment, biodiversity conservation and mankind as a whole.

A number of influential conservation organisations have no adequate policy to protect the human rights of Indigenous Peoples. Others have standards or policy statements which present substantial weaknesses and gaps and or do not reflect the current human rights standards and jurisprudence as it applied to Indigenous Peoples' rights. Very often they are not backed up by proper effective monitoring mechanisms. I call upon conservation organisations to adopt policies and guidelines protecting the human rights of Indigenous Peoples that are aligned with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Guiding Principles on Business and Human Rights and recent developments and jurisprudence.

I also call upon cooperation agencies, and other public and private funders to adopt similar legislations, policies and guidelines. In this regard, I notably encourage the government of the United States of America to adopt urgently the H.R.7025 - Advancing Human Rights-Centered International Conservation Act of 2022. The adoption of such an instrument would represent a major shift in the funding of conservation projects worldwide and hopefully lead the way for other cooperation agencies who are funding conservation programmes. Conservation funders should conduct a due diligence process to ensure that their support does not inadvertently contribute to human rights abuses by checking the human rights records of the funding recipient to ensure its capacity to conduct the project without harming Indigenous Peoples and by conditioning funding on the adoption and application of a solid Indigenous human rights-based policy by the funding recipient backed by monitoring and implementation mechanisms. Finally, in line with human rights standards and jurisprudence, funding to projects resulting in the forced evictions or displacements of Indigenous Peoples or forced restriction of access to their traditional and customary resources, livelihoods and means of subsistence should be strictly prohibited. Funding to projects developed without the free, prior and informed consent of Indigenous Peoples and or on lands and territories where the rights to lands of Indigenous Peoples are not legally recognised should also be strictly prohibited.