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

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

Note by the Secretariat

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

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

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I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Council resolution 33/12. In the report, the Special Rapporteur provides a brief summary of her activities since her previous report to the Council (A/HRC/33/42) as well as a thematic study on the impacts of climate change and climate finance on indigenous peoples' rights.

II. Activities of the Special Rapporteur

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

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

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

5. In relation to climate finance, the Special Rapporteur has participated in a number of assessments and consultations over the past two years, such as the global training of indigenous peoples on the Green Climate Fund and climate finance, held in Bangkok in September 2015; regional trainings on the same topic held in Hanoi, Lima and Nairobi in April 2016; and the dialogue on the engagement of the Green Climate Fund as a possible funding window for indigenous peoples, held in Marrakech, Morocco, in November 2016.

III. Indigenous peoples and climate change

A. Impact of climate change on indigenous peoples

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

7. Indigenous peoples are heavily dependent on lands and natural resources for their basic needs and livelihoods, such as food, medicine, shelter and fuel, and they are among the poorest and most marginalized people in the world. While indigenous peoples account for 5 per cent of the world's population, they comprise 15 per cent of those living in poverty. Some 33 per cent of people living in extreme rural poverty globally come from indigenous communities. The World Bank estimates that more than 100 million people

¹ United Nations Environment Programme (UNEP), *Climate Change and Human Rights* (Nairobi, 2015), pp. 2-8.

across the world risk being forced into extreme poverty by 2030 due to climate change.² This has significant implications for indigenous peoples, who are already facing severe socioeconomic disadvantages. These figures are particularly alarming given the wealth of natural resources that are located within indigenous territories and the valuable contributions indigenous peoples can provide in alleviating climate change. Traditional indigenous territories encompass about 22 per cent of the world's land surface and overlap with areas that hold 80 per cent of the planet's biodiversity.³ Their role is vital for sustainable environmental management of natural resources and biodiversity conservation, both of which are essential elements for combating climate change.

8. The correlation between secure indigenous land tenure and positive conservation outcomes is well known (A/71/229), as are the related implications of reduced deforestation resulting in lower global carbon dioxide emissions. For example, in the Brazilian Amazon, in areas where the State has recognized the forest rights of indigenous peoples, the deforestation rate was 11 times lower than in forests where their rights were not recognized. A recent study of 80 forest areas in 10 countries in South Asia, East Africa and Latin America showed that community-owned and -managed forests delivered both superior community benefits and greater carbon storage, and concluded that strengthening indigenous peoples' rights to their forests is an effective way for Governments to meet climate goals.⁴

9. The impact of climate change has been a long-standing concern for the mandate of the Special Rapporteur on the rights of indigenous peoples. As the previous mandate holder stated back in 2007: "Extractive activities, cash crops and unsustainable consumer patterns have generated climate change, widespread pollution and environmental degradation. These phenomena have had a particularly serious impact on indigenous people, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of indigenous peoples from their ancestral territories, while increasing the levels of poverty and disease" (see A/HRC/4/32, para. 49). Climate change not only poses a grave threat to indigenous peoples' natural resources and livelihoods, but also to their cultural identity and survival.

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

11. Gendered impacts of climate change such as migration (being forced to seek informal wage labour) and water scarcity (being forced to walk longer distances to seek drinkable water) are likely to affect women and girls in particular, making them more vulnerable to discrimination and exploitation.⁵

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

13. The Special Rapporteur, in her previous role as Chair of the Permanent Forum on Indigenous Issues, undertook a study in 2007 on the impact of climate change mitigation measures on indigenous peoples and on their territories and lands (E/C.19/2008/10). In the study she called for increased consultation with and participation of indigenous peoples in climate change mitigation processes, raised concerns over the failure to apply a human

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

³ World Bank, *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners* (Washington, D.C., 2008), p. 5.

⁴ World Resources Institute and Rights and Resources Initiative, *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change* (Washington, D.C., 2014).

⁵ International Labour Organization (ILO), *Indigenous Peoples and Climate Change: From Victims to Change Agents through Decent Work* (Geneva, 2017), pp. 16-18.

rights-based approach to such measures and highlighted that indigenous peoples had not benefited from climate change funds, which were largely market-driven.

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

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

B. Indigenous peoples' contributions to adaptation and mitigation strategies

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

17. In the early days of climate change law and policy, notably in the negotiations for the United Nations Framework Convention on Climate Change in the early 1990s, indigenous peoples were not involved in any significant way. However, persistent and successful advocacy has resulted in recognition of indigenous peoples as a constituency with observer status under the Convention. Indigenous peoples' organizations can thus apply for observer status, and those accepted can nominate participants to attend the sessions of the different climate change bodies. The International Indigenous Peoples' Forum on Climate Change is a joint indigenous peoples' caucus established in 2008 to coordinate indigenous peoples' efforts and activities concerning Convention-related processes.⁶

18. International climate change law and policy revolve around the twin strategies of mitigation (the State obligation to reduce greenhouse gas emissions) and adaptation (the State obligation to protect people against the effects of climate change by supporting their capacity to adapt to its effects). Under the Convention's equity principle, developed States, as the principal producers of greenhouse gases historically and the most resource rich, shall carry a heavier burden in mitigation and adaptation strategies, including assistance to poorer countries and the development of technology.

19. The International Union for Conservation of Nature has raised the concern that the emphasis on monetary, knowledge and technology transfer from developed to developing countries tends not to recognize indigenous peoples' own coping and adaptive strategies.⁷

20. The Intergovernmental Panel on Climate Change is the international body responsible for assessing the science related to climate change. The Panel was established in 1988 by the World Meteorological Organization and the United Nations Environment

⁶ See www.iipfcc.org/.

⁷ International Union for Conservation of Nature, *Indigenous and Traditional Peoples and Climate Change*, Issues Paper (2008), p. 4.

Programme (UNEP) to provide policymakers with regular scientific assessments of climate change, its impacts and future risks, and options for adaptation and mitigation. Its assessments provide a scientific basis for governments at all levels to develop climate-related policies.⁸

21. In its Fifth Assessment Report, published in 2014, the Panel raised concerns that the existing climate change policies and regulations might lead to limiting access to territories, substitution of traditional livelihoods, reduced genetic diversity and harvesting opportunities as well as loss of transmission of indigenous knowledge, which in turn may limit the effect of climate change adaptation measures in many regions.⁹

22. The Panel also noted that indigenous knowledge has been effective in developing measures to cope with climate hazards and has contributed to increased food security in many parts of the world. Examples include the Inuit knowledge of climate variability when hunting, the Inca traditions of crop diversification and knowledge of genetic diversity and, in the Sahel, the use of water-harvesting strategies and weather forecasting.¹⁰

23. The Panel confirmed indigenous peoples' long-standing claim in relation to traditional knowledge that "indigenous, local, and traditional knowledge systems and practices, including indigenous peoples' holistic view of community and environment, are a major resource for adapting to climate change, but these have not been used consistently in existing adaptation efforts. Integrating such forms of knowledge with existing practices increases the effectiveness of adaptation".¹¹

24. Indigenous peoples can assist in providing solutions to mitigate and adapt to the effects of climate change. The International Indigenous Peoples' Forum on Climate Change and UNEP have noted that indigenous peoples can contribute to numerous potential adaptation activities by drawing on their traditional knowledge. Examples of such activities include documentation of traditional knowledge; climate monitoring and reporting; traditional fire management, disaster preparedness and response and early warning systems; rainwater harvesting; traditional agriculture techniques; coastal marine management; alternative energy development; and the development of sustainable livelihoods. Furthermore, indigenous peoples can play a role in stopping deforestation by land titling, forest management and conservation and local governance strengthening.¹²

IV. Human rights bodies, indigenous peoples and climate change

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

26. The Permanent Forum on Indigenous Issues, which addresses human rights issues as part of its advisory mandate, as long as a decade ago decided to debate climate as a special theme at its annual session and has undertaken several studies on the impact of climate change on indigenous peoples (E/C.19/2008/10, E/C.19/2010/7).

27. Human rights treaty bodies, notably the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, have addressed the impact of climate change on indigenous peoples in the context of their periodic reviews of States parties. Human rights treaty bodies have specifically called on States to develop national plans, policies and programmes to address climate change, while fully engaging indigenous peoples in their design. They have also called for disaster preparedness and emergency

⁸ See www.ipcc.ch/.

⁹ Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Part A: Global and Sectoral Aspects, Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (New York, Cambridge University Press, 2014), chap. 7, p. 517. Available from www.ipcc.ch/report/ar5/wg2/.

¹⁰ *Ibid.*, chap. 11, p. 718.

¹¹ *Ibid.*, Summary for Policymakers, p. 26.

¹² UNEP, *Climate Change and Human Rights*, p. 27; see also www.iipfcc.org/key-issues.

management and strengthened social protection frameworks to more effectively mitigate the multiple social, economic and environmental impacts on indigenous peoples. Furthermore, they have urged States to intensify the efforts to address climate change, including through carbon reduction schemes, and to take all necessary measures to mitigate the adverse consequences on the rights to food and to water of indigenous peoples.¹³

28. The Office of the United Nations High Commissioner for Human Rights has addressed the adverse effects of climate change on human rights (A/HRC/10/61) and in October 2016 hosted an expert meeting which highlighted the impact climate change has on indigenous peoples.¹⁴ The Office's key messages on climate change and human rights, published prior to the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Paris in December 2015, emphasized the right of indigenous peoples to participate in decision-making and to benefit from the use of their knowledge, innovations and practices.

29. On 5 June 2015, World Environment Day, in a joint public statement, 27 special procedure mandate holders, including the Special Rapporteur on the rights of indigenous peoples, urged States to make sure that human rights are at the core of climate change governance.¹⁵

30. In 2016, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment examined States' human rights obligations in the context of climate change and highlighted the rights of indigenous peoples (A/HRC/31/52).

31. Concerns over climate change are also increasingly being raised by States in the context of the universal periodic review process, further highlighting the growing recognition of climate change as a human rights issue. The Council has adopted several resolutions related to climate change and indigenous peoples.¹⁶

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

32. Climate change has a negative impact on a broad range of human rights and indigenous peoples are particularly vulnerable due to the exposure of their traditional lands and territories. Human rights obligations entail State obligations to respect, protect and fulfil human rights and redress violations. These duties require States to take action to meet their obligations on human rights issues stemming from climate change. Human rights bodies have established that States' human rights obligations include a duty to protect rights holders against foreseeable environmental impairment of human rights, whether or not the particular environmental harm violates human rights law and even when the harm is not directly caused by the State (A/HRC/25/53, A/HRC/31/52). States have specifically committed to international cooperation through a range of international treaties.

33. As noted by the Permanent Forum on Indigenous Issues, the international system as a whole requires that all the various international legal "subsystems", including those governing human rights and climate change, act consistently (E/C.19/2010/7).

34. The rights of indigenous peoples pertinent to climate change are firmly established in a range of international standards that converge in various branches of international law, notably international human rights law, international environmental law and international labour law. In the preparation of the present report, the Special Rapporteur requested States

¹³ See CEDAW/C/HND/CO/7-8, CEDAW/C/VCT/CO/4-8, CRC/C/SUR/CO/3-4, CRC/C/NZL/CO/5, E/C.12/CAN/CO/6, E/C.12/FIN/CO/6 and E/C.12/AUS/CO/4. Treaty body concluding observations are available from <http://uhri.ohchr.org/>.

¹⁴ See www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx.

¹⁵ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E.

¹⁶ Resolutions 10/4 (2009), 18/22 (2011), 26/27 (2014), 29/15 (2015) and 32/33 (2016).

to reply to a questionnaire and was pleased to note that in their responses States recognized the importance of applying the rights of indigenous peoples to climate change adaptation and mitigation measures, and that additional funding was being allocated for such purposes.

35. Among the key rights affected are self-determination; the right to development; free, prior and informed consent and the right to participation; land rights; the rights to health, food, water and an adequate standard of living; and cultural rights. All these rights are closely linked, and thus their interrelatedness requires consideration.¹⁷

36. The United Nations Framework Convention on Climate Change, which entered into force in 1994, sets a lofty goal: to stabilize greenhouse gas concentrations at a level that would prevent dangerous human-induced interference with the climate system, based on a dual strategy of mitigation and adaptation measures.¹⁸

37. Building on the Convention, the Paris Agreement, which entered into force in 2016, aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century to below 2° Celsius above preindustrial levels and to pursue efforts to limit the temperature increase even further, to 1.5° Celsius.¹⁹ As of 1 September 2017, of the 197 parties to the Convention, 160 had ratified the Paris Agreement.

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

39. Despite these important developments, indigenous peoples were disappointed that indigenous peoples' rights were not more securely included in the Paris Agreement. One of their key objectives was to include references to the rights of indigenous peoples in all the relevant provisions on mitigation and adaptation. During the negotiations, Canada, Guatemala, Mexico, Nicaragua, Peru and the Philippines, along with several Pacific island States, supported the inclusion of references to indigenous peoples in the text. On the other hand, other countries argued against their inclusion on the grounds that they were not directly relevant to the purposes of the Agreement and out of concern over the potential liability of including such references in the operative part of the text. The voluntary nature of the references to indigenous knowledge systems in article 7 (5) on adaptation is viewed as falling short of the goals of indigenous peoples.

A. Self-determination and the right to development

40. Self-determination is a fundamental principle of international law and of utmost importance for indigenous peoples as it affirms their right to freely pursue their economic, social and cultural development. It is a key right in the areas of climate change and climate finance because of its links with land rights and the right of indigenous peoples to participate in processes and decisions affecting them. The right to self-determination is enshrined in common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples.

41. Denial of indigenous peoples' right to self-determination and their economic, social and cultural rights is strongly linked to indigenous peoples' historical experiences of marginalization, dispossession, the environmental destruction of their ancestral lands and their lack of autonomy. Unless climate finance recognizes this inequality, it could

¹⁷ See <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/63-panel-hrc-cc> and A/HRC/31/52.

¹⁸ See http://unfccc.int/essential_background/convention/items/6036.php.

¹⁹ See http://unfccc.int/paris_agreement/items/9485.php.

contribute to the causes of poverty and further denial of the right to self-determination among indigenous communities.

42. The right to development is affirmed in several provisions of the Declaration, notably article 32 (1), which states that “indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources”.²⁰

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

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

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

45. The Declaration sets out that States shall consult and cooperate with indigenous peoples to obtain their free, prior and informed consent before adopting measures or approving projects that may affect them (arts. 27 and 32). The Declaration furthermore affirms that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (arts. 5, 18 and 27).

46. The right to participation is also entrenched in the United Nations Framework Convention on Climate Change. Article 6 establishes that all parties to the Convention shall promote and facilitate public access to information on climate change and its effects, and public participation in addressing climate change and its effects and developing adequate responses.

47. The Cancun Agreements, adopted at the sixteenth session of the Conference of the Parties to the Convention, held in 2010 (FCCC/CP/2010/7/Add.1), recognize that the participation of indigenous peoples is important for effective action on all aspects of climate change. In an analogous manner, the General Assembly has also recognized the importance of public participation in addressing the impacts of climate change and recognized the need to engage a broad range of stakeholders at the global, regional, national and local levels, and that indigenous peoples are important for effective action on all aspects of climate change.²¹

48. A prerequisite to ensuring effective participation is the provision of and access to information. As set out in article 4 (1) (f) of the Convention, States should undertake environmental impact assessments and ensure that such information is publicly available.²² The Special Rapporteur on human rights and the environment has underlined the importance of undertaking assessments of actions designed to alleviate the effects of climate change (see A/HRC/31/52, para. 53). Furthermore, the International Court of Justice has affirmed that it is a requirement under general international law to undertake an environmental impact assessment where there is a risk that an activity may have a

²⁰ See also articles 21 and 23.

²¹ Resolution 67/210, para. 12.

²² UNEP, *Climate Change and Human Rights*, pp. 16-17; see also A/HRC/31/52, paras. 50-55.

significant adverse impact in a transboundary context and, in particular, on a shared resource.²³

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

50. Climate change projects may create barriers to indigenous landownership. This is underlined by concerns that climate finance has been provided for mitigation measures such as biofuel production and renewable energy projects, including hydroelectric dams, on indigenous territories without undertaking consultations to ensure the free, prior and informed consent of the affected peoples. Such projects risk compounding long-standing and systemic violations of the rights of indigenous peoples. Displacements caused by the loss of land and territory further undermine the cultural integrity and protection of indigenous peoples.

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

51. Article 11 of the International Covenant on Economic, Social and Cultural Rights upholds the fundamental right of everyone to be free from hunger. While the Covenant does not explicitly refer to the right to water, the Committee on Economic, Social and Cultural Rights has underlined that the right to water is part of the right to an adequate standard of living and has stressed that the right to water is inextricably linked to the rights to health, adequate housing and food. It has also affirmed that States should adopt comprehensive programmes to ensure sufficient water for future generations by assessing the impacts of actions that may impinge upon water availability and natural ecosystems, such as climate change.²⁴ States are obliged to progressively realize the rights contained in the Covenant.

52. Article 2 of both the United Nations Framework Convention and the Paris Agreement affirms the objective to ensure that food production is not threatened by climate change. The right to health is explicitly referred to in the preamble to the Agreement. In relation to indigenous peoples and climate change, human rights treaty bodies have expressed concern over how climate change mitigation measures such as biofuel projects affect indigenous peoples, and in particular the threats monoculture poses to food security.²⁵

53. In the Fifth Assessment Report, the Intergovernmental Panel on Climate Change concludes that indigenous peoples, who depend heavily on local resources and live in parts of the world where the climate is changing quickly, are generally at greater risk of economic losses and poor health.²⁶ The Panel furthermore notes that indigenous knowledge is important for food security in many parts of the world and that climate change policies may risk reducing the contribution that indigenous knowledge can make to effective climate adaptation.²⁷

D. Culture and traditional knowledge

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

²³ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14.

²⁴ General comment No. 15 (2002) on the right to water; submission by the Office of the United Nations High Commissioner on Human Rights to the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

²⁵ E/C.12/IDN/CO/1; CERD/C/IDN/CO/3; CERD/C/COL/CO/14; CERD/C/NLD/CO/19-21.

²⁶ Intergovernmental Panel on Climate Change, *Climate Change 2014*, chap. 11, p. 718.

²⁷ *Ibid.*, chap. 7, p. 520.

55. Article 7 (5) of the Paris Agreement provides: “Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions.” The recognition of these knowledge systems provides an important foundation for climate change adaptation and mitigation policies.

56. In the outcome document adopted at the World Conference on Indigenous Peoples, held in 2014, States explicitly confirm that indigenous peoples’ knowledge and strategies to sustain their environment should be respected and taken into account in developing national and international approaches to climate change mitigation and adaptation.²⁸

57. In the Fifth Assessment Report, the Intergovernmental Panel on Climate Change notes that indigenous knowledge is challenged by climate change impacts and is often neglected in policy and research, and that its mutual recognition and integration with scientific knowledge will increase the effectiveness of adaptation strategies.²⁹ The Panel furthermore states that local and indigenous knowledge and diverse stakeholder interests, values and expectations are fundamental to building trust within climate change decision-making processes.³⁰

58. In a positive development, the decision adopted by the Conference of the Parties to the United Nations Framework Convention at its twenty-first session accompanying the adoption of the Paris Agreement, which lays out the programme of work for the coming years, specifically recognizes the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and to establish a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner (see FCCC/CP/2015/10/Add.1, para. 135).

59. As noted by the International Indigenous Peoples’ Forum on Climate Change, it is essential to respect the traditional knowledge that indigenous peoples bring to address issues relating to climate change, including causes, adaptation, mitigations and solutions. Indigenous peoples are committed to protect, use and apply traditional knowledge and practices to implement solutions and ways to adapt to climate change within indigenous communities. Climate change solutions cannot be limited to Western scientific knowledge, but must include indigenous peoples’ traditional knowledge, innovations and practices, which have historically contributed to the efforts of conservation of ecosystems and biodiversity.³¹

E. International cooperation

60. Under the Convention, industrialized States agree to support climate change activities in developing countries by providing financial support for action. The Convention acknowledges the vulnerability of all countries to the effects of climate change and calls for special efforts to ease the consequences, especially in developing countries that lack the resources to do so on their own.³²

61. International cooperation to promote and protect human rights lies at the heart of the Charter of the United Nations (see A/HRC/10/61, para. 85). The obligation to undertake such cooperation is explicitly affirmed in provisions of the Declaration,³³ the International

²⁸ General Assembly resolution 69/2, para. 36.

²⁹ Intergovernmental Panel on Climate Change, *Climate Change 2014*, chap. 12, p. 758.

³⁰ *Ibid.*, chap. 2, p. 198.

³¹ See www.iipfcc.org/key-issues/.

³² See http://unfccc.int/essential_background/convention/items/6036.php.

³³ Articles 39 and 41.

Covenant on Economic, Social and Cultural Rights³⁴ and the Convention on the Rights of the Child.³⁵

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

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

F. Right to redress and reparation

64. Climate change is already having a severe impact on indigenous peoples by damaging their natural resources. Climate mitigation measures undertaken without their free, prior and informed consent are forcing indigenous peoples to leave their lands and territories.

65. The rights to redress and reparation are well-established principles of international law³⁶ and reflected in human rights treaties.³⁷ Article 8 of the Declaration sets out the right to effective mechanisms for prevention of, and redress for, actions which have the aim or effect of dispossessing indigenous peoples of their lands, territories or resources.

66. The Declaration (art. 10) stipulates that indigenous peoples shall not be forcibly removed from their lands unless they have provided their free, prior and informed consent. Should such violations have occurred, victims have the right to fair redress, including restitution and compensation, and, where possible, the option of returning to their lands. When this is not possible, they are entitled to just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress (article 28 of the Declaration).

67. Human rights treaty bodies have expressed concerns over the forcible displacement of indigenous peoples, noting the special relationship that indigenous peoples have with their land and the profound impact forced displacement has on their survival, and urged States to provide reparation, with emphasis on the obligation to provide restitution of the original lands.³⁸ Reparation measures should be provided in accordance with international standards and, where appropriate, entail elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.³⁹

68. The United Nations Framework Convention does not recognize a right to access justice or remedies for individuals; it refers only to modalities for dispute settlement between parties. At the nineteenth session of the Conference of the Parties, held 2013,

³⁴ Articles 2 (1), 11 (2), 15 (4), 22 and 23.

³⁵ Articles 4 and 24 (4).

³⁶ *Factory at Chorzów (Germany v. Poland)*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, pp. 21, 47; International Law Commission, draft articles on responsibility of States for internationally wrongful acts, *Official Records of the General Assembly, Fifty-sixth Session (A/56/10)*, chap. IV.E.1.

³⁷ Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2 (3) (a), International Convention on the Elimination of All Forms of Racial Discrimination, art. 6.

³⁸ Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples; CERD/C/BWA/CO/16; CERD/C/NAM/CO/12; E/C.12/MEX/CO/4.

³⁹ General Assembly resolution 60/147.

parties established the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts, including extreme events and slow-onset events in developing countries that are particularly vulnerable to the adverse effects of climate change.⁴⁰

69. The Paris Agreement affirms in article 8 that parties should enhance understanding, action and support, including through the Warsaw International Mechanism, on a cooperative basis with respect to loss and damage associated with the adverse effects of climate change. As noted by the Special Rapporteur on human rights and the environment, it is important to apply a human rights perspective when identifying the types of loss and damage (see A/HRC/31/52, para. 64). It is furthermore of crucial importance that the rights of indigenous peoples be taken into due account when addressing loss and damage caused by climate change.

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

G. Sustainable Development Goals

71. Although not legally binding, the Sustainable Development Goals, adopted in 2015, constitute the global development agenda until 2030. They incorporate several important elements relevant to climate change and indigenous peoples' rights.

72. The voice of indigenous peoples is key in moving towards greater policy coherence. This is particularly the case when development interventions seek to attain intrinsically linked objectives related to economic growth, poverty reduction, sustainable development and climate change.⁴¹ The following highlights some of the Goals that climate change policy and finance need to take into account to address the rights of indigenous peoples.

73. The Goal relating to climate change establishes targets for the promotion of mechanisms for raising capacity for effective climate change-related planning and management in least developed countries, including focusing on women, youth and local and marginalized communities (target 13.b). This target relates to, and should be read in conjunction with, the Declaration which in article 5 provides that "indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State" and to article 18, which provides indigenous peoples with the "right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions".

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

⁴⁰ See http://unfccc.int/adaptation/workstreams/loss_and_damage/items/8134.php.

⁴¹ ILO, *Indigenous Peoples and Climate Change*, p. 20.

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

75. Parties to the United Nations Framework Convention on Climate Change must submit national reports, also known as communications, on implementation of the Convention to the Conference of the Parties.⁴² The required content of national reports and the timetable for their submission are different for annex I and non-annex I parties, in accordance with the principle of “common but differentiated responsibilities” enshrined in the Convention.⁴³

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

77. The study concluded that international reporting processes still tended to deal with human rights and climate change as separate issues. The authors urged the adoption of a more cohesive approach that would better reflect realities on the ground, where rights, development and climate change are interlinked.⁴⁴

78. Furthermore, in 2013 the Conference of the Parties invited all parties to develop reports by 2015 on intended nationally determined contributions (INDCs) towards achieving the objective of the Convention, as set out in its article 2.⁴⁵ INDCs play an important role in the framework established by the Paris Agreement as they form the implementation plans through which each Government defines the level of its commitment and identifies how it will implement its obligations. UNEP has raised concerns that only 14 of the first 119 INDCs submitted referred to linkages between climate change and the impact of mitigation and or adaptation measures on indigenous peoples.⁴⁶ Of further concern is that references in INDCs to respect for human rights tended to be general, without concrete detail.

79. Furthermore, a review undertaken by the non-governmental organization (NGO) Rights and Resources Initiative of 161 INDCs noted that only 21 of them, representing less than 13 per cent of the world’s tropical and subtropical forest area, included clear commitments to implement community-based tenure or natural resource management strategies as part of their climate change mitigation plans or adaptation actions.⁴⁷

80. Parties to the Convention should prepare their INDCs in a manner that enables the full and effective participation by indigenous peoples and civil society, as well as other parts of the population particularly affected by climate response measures.⁴⁸ Furthermore, parties should explain the steps taken to increase participation of all stakeholders in developing the INDC reports.

81. Without a participatory approach and public access and awareness of reporting processes, States may seek to eschew their obligations under human rights law by conceptualizing climate change processes as disconnected from human rights. In order to prove their commitment to honour their human rights obligations, States must acknowledge

⁴² Article 7.

⁴³ See http://unfccc.int/national_reports/non-annex_i_natcom/items/10124.php.

⁴⁴ See www.mrfcj.org/.

⁴⁵ See http://unfccc.int/files/focus/indc_portal/application/pdf/synthesis_report_-_overview.pdf; and http://unfccc.int/focus/indc_portal/items/8766.php.

⁴⁶ UNEP, *Climate Change and Human Rights*, pp. 30-31.

⁴⁷ See http://rightsandresources.org/wp-content/uploads/2016/04/Indigenous-Peoples-and-Local-Community-Tenure-in-the-INDCs-Status-and-Recommendations_RRI_April-2016.pdf.

⁴⁸ See www.ciel.org/wp-content/uploads/2017/05/Delivering-On-Paris-Web.pdf.

the implications of climate change on human rights in the context of climate change mitigation and adaptation law and policies.

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

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

VII. Climate finance and safeguards

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

85. UNEP has warned that a significant gap is likely to emerge between the resources needed to adapt to warming of 2° Celsius and the funding that will be made available through international climate funds and other finance mechanisms. The existing estimates of global adaptation costs are probably significantly underestimated, notably for the period after 2030. Most international climate finance to developing countries in the past few years has been channelled towards mitigation, rather than adaptation.⁴⁹

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

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

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

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

⁴⁹ UNEP, *Climate Change and Human Rights*, p. 32.

A. Global Environment Facility

90. The Global Environmental Facility, established in 1991 through the World Bank, is the oldest financial mechanism under the United Nations Framework Convention on Climate Change. Between 15 and 20 per cent of the Facility's projects involve indigenous peoples and some projects have indigenous executing agencies. Important steps have been undertaken by the Facility to support indigenous participation. Principles and guidelines for engagement with indigenous peoples were adopted in 2012.⁵⁰ Among the positive initiatives undertaken by the Facility is the establishment of the Indigenous Peoples Advisory Group and the creation of the Indigenous Peoples Fellowship Programme.

91. The Facility has created a small grants programme which has provided over \$850 million to over 22,000 projects in 129 countries. However, it has to be noted that as yet there are no disaggregated data available on how much of these funds went directly to indigenous peoples' communities. An assessment is needed of the lessons learned in terms of impact and of ensuring that the rights and priorities of indigenous peoples are respected and to show the real amount of funds received by indigenous peoples compared with the overall amounts released.

B. Clean Development Mechanism

92. The Clean Development Mechanism has been operational since 2006. Through its emission reduction projects, developing countries earn certified emission reduction credits which can be used by developed countries to meet a part of their emission reduction targets under the Kyoto Protocol.⁵¹ The Mechanism has been widely criticized for having failed to safeguard human rights as its lack of safeguards has resulted in support for projects which have resulted in the displacement of local communities, and the Special Rapporteur has received allegations of violations of indigenous peoples' rights experienced in such renewable energy projects funded by the Mechanism as hydroelectric dams and tree plantations. The International Indigenous Peoples' Forum on Climate Change has been very critical of Mechanism projects set up in indigenous communities without consultation or the free, prior and informed consent of the affected community.

93. UNEP also notes that the Mechanism projects have been characterized by insufficient local stakeholder consultations and clear evidence that they have caused harm to the local populations and/or ecosystems.⁵² The Special Rapporteur on human rights and the environment referred to the Mechanism in 2016 as the one climate mechanism which most obviously lacks effective social and environmental safeguards and which has been dogged by the strongest accusations of supporting projects with serious human rights abuses.⁵³

94. There is criticism of the very nature of the Mechanism. Developed countries are the main greenhouse gas emitters and, according to the Convention, they are the ones that should carry the heavier burden of mitigation. However, the Mechanism allows developed countries to buy carbon credits from developing countries so that they can emit more but still meet the Kyoto targets. As a result, developed world's burden of cutting back emissions is met by the efforts of the developing world. Developed countries support mitigation projects in developing countries through subsidies in the form of loans or grants, and the certified emission reductions from such Mechanism projects will be owned by the developed countries to add to their emission reduction targets.

⁵⁰ See www.thegef.org/publications/principles-and-guidelines-engagement-indigenous-peoples.

⁵¹ See <http://cdm.unfccc.int/index.html>.

⁵² UNEP, *Climate Change and Human Rights*, p. 36.

⁵³ See www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19962&LangID=E.

C. United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (REDD-plus)

95. In 2007, the parties agreed that a comprehensive approach to mitigating climate change should include incentives to reduce emissions from deforestation. REDD-plus is a global initiative to pay countries to protect their forests in order to reduce emissions of greenhouse gases.

96. The strong advocacy of indigenous peoples and NGOs at the sixteenth session of the Conference of the Parties in 2010 resulted in the adoption of safeguards for REDD-plus which call, inter alia, for respect for the knowledge and rights of indigenous peoples and members of local communities by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly had adopted the Declaration.⁵⁴

97. The “Cancun safeguards” also include the need to ensure the full and effective participation of indigenous peoples and local communities. Subsequent guidance notes developed by REDD-plus have further elaborated on how the free, prior and informed consent of indigenous peoples will be obtained. However, implementation of these safeguards has proved problematic. Indigenous peoples and local communities are often not recognized as owners of forests by the State in national laws; there is therefore concern that they will not see equitable benefits from REDD-plus projects and that forest and climate schemes risk driving a global “green land grab”.⁵⁵

98. Several indigenous peoples in countries where REDD-plus is being implemented have actively engaged with Governments to ensure that the safeguards are implemented. REDD-plus finance provided by Governments, including Australia, Germany, Norway and the United States of America, include resources to help build capacity to implement the safeguards. While there are still serious challenges in efforts to implement REDD-plus safeguards, opportunities for indigenous peoples to enter into constructive dialogues with Governments have been enhanced.

D. Adaptation Fund

99. The Adaptation Fund was created in 2001 under the United Nations Framework Convention and designed to finance climate change adaptation projects based on the priorities of eligible developing countries. Its primary funding comes from a 2 per cent share of proceeds of the certified emission reductions issued by the Clean Development Mechanism.⁵⁶

100. The environmental and social policy of the Fund requires that all projects comply with the rights and responsibilities contained in the Declaration and other applicable international instruments relating to indigenous peoples. The implementing entity has to describe how the project complies with the Declaration, particularly with regard to free, prior and informed consent, during project design and implementation, as well as how expected outcomes will affect the indigenous communities. The implementing entity must provide documentary evidence, including detailed outcomes of the consultation process.

101. The policy also requires that environmental and social assessments be available for public consultation. The Adaptation Fund is one of the better mechanisms for addressing the relevant human rights obligations of States.

⁵⁴ See FCCC/CP/2010/7/Add.1, decision 1/CP.16, appendix I, para. 2 (e).

⁵⁵ See www.forestpeoples.org/en/work-themes/climate-forests/redd-and-related-initiatives.

⁵⁶ See www.adaptation-fund.org/about/.

E. Green Climate Fund

102. In 2010, the Conference of Parties to the United Nations Framework Convention also established the Green Climate Fund as its financial operating entity to disburse funds for low-emission and climate-resilient projects, taking into account the needs of States that are particularly vulnerable to climate change impacts.⁵⁷ The Fund, which began approving proposals in 2015, aims for an equal balance between mitigation and adaptation investments. It is the largest international climate fund helping developing countries respond to climate change.

103. In 2014, the Fund's board decided to adopt, on an interim basis, the environmental and social performance standards of the International Finance Corporation for projects financed by the Fund. These standards and the Fund's governing instrument stipulate the need to demonstrate full respect for the rights of indigenous people and to protect their cultural heritage. The board also adopted terms of reference for an independent redress mechanism to receive complaints related to the operation of the Fund.⁵⁸

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

105. At its fifteenth meeting, the board requested the secretariat to develop a Fund-wide indigenous peoples policy. A draft was published on 12 July 2017 for consultation.⁵⁹ The overall objective is to provide a framework for ensuring that activities of the Fund are developed and implemented while fostering full respect for indigenous peoples' dignity, human rights and cultural uniqueness so that they receive culturally appropriate social and economic benefits and do not suffer adverse effects during the development process. The policy provides an opportunity for the Fund to incorporate indigenous peoples' considerations into its decision-making and operations in ways that not only include safeguard measures of "do no harm", but also identify opportunities to "do good" and improve outcomes.

106. In conclusion, the safeguards, policies and practices, including for redress, that have been developed for indigenous peoples, in particular by the Adaptation Fund and the Green Climate Fund, are significant. Their practical application, however, does require continuous independent monitoring.

VIII. Examples of mitigation projects of concern

107. Since assuming the mandate in 2014, the Special Rapporteur has received a number of allegations regarding specific projects funded in the context of climate finance which have not respected safeguards and have negatively affected indigenous peoples' rights. Cases relating to renewable energy projects as mitigation measures which have been subject to urgent actions by the mandate include the Barro Blanco hydropower project in Panama,⁶⁰ the Water Towers Protection and Climate Change Mitigation and Adaptation Programme in Kenya⁶¹ and the Agua Zarca dam in the Río Blanco region in Intibucá, Honduras.⁶² These cases highlight the risks associated with climate change mitigation projects which do not uphold respect for indigenous peoples' rights, notably their rights to be consulted and to provide their free, prior and informed consent.

⁵⁷ See www.greenclimate.fund/.

⁵⁸ See www.greenclimate.fund/independent-redress-mechanism.

⁵⁹ Tebtebba Foundation, *Indigenous Peoples and the Green Climate Fund* (Baguio City, Philippines, 2017).

⁶⁰ PAN1/2016. All public cases are available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

⁶¹ KEN1/2017.

⁶² HND4/2013, HND3/2014, HND2/2016, HND4/2016, HND4/2017.

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

A. Barro Blanco hydroelectric project in Panama

109. Test flooding at the Barro Blanco reservoir project in 2016 prompted allegations of displacement and negative impacts on the traditional lands and cultural sites of the Ngäbe peoples. The project was eligible for carbon credits and registered under the Clean Development Mechanism, which, as previously noted, does not have standards to protect against human rights violations, nor does it provide a forum for affected communities to register complaints. In late 2016, under pressure from indigenous communities and international organizations, Panama withdrew the project from the Mechanism's registry.⁶³ The Center for International Environmental Law reported that this was the first time that a host country had taken such action because of human rights concerns.⁶⁴

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

110. Despite the Sengwer people's strong ties to their ancestral lands in the Embobut forest, members of the community have been subjected to numerous displacements by the Kenyan authorities since the 1970s. An escalation of the situation took place in December 2016, despite ongoing judicial proceedings to clarify the rights of the Sengwer to remain in the forest. Conservation projects in the past have resulted in loss of access to the forest, as recognized by the World Bank Inspection Panel in the context of activities undertaken by the Natural Resource Management Project run by the World Bank from 2007 to 2013. A World Bank investigation report⁶⁵ concluded that the project had neglected the customary rights of the Sengwer and that the implementation agent, the Kenya Forest Service, then funded by the World Bank, had applied a policy based on undertaking evictions, in violation of World Bank safeguards and international law.

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

C. Agua Zarca hydroelectric project in Honduras

112. The Agua Zarca dam in Honduras is another emblematic case of violence, impunity and lack of access to justice that threatens indigenous peoples in the context of climate change-related investment projects. Following her country visit to Honduras in 2015, the Special Rapporteur drew attention to the impacts generated by investment projects on the lands, natural resources, cultures, spirituality, social coexistence, lives and personal integrity of the indigenous peoples in Honduras. Between 2010 and 2014, 101 human rights

⁶³ See <http://carbonmarketwatch.org/press-statement-in-landmark-decision-panama-withdraws-un-registration-for-barro-blanco-hydrodam-project/>.

⁶⁴ See www.ciel.org/panama-withdraws-problematic-barro-blanco-dam-project-cdm-registry/.

⁶⁵ World Bank, *Kenya: Natural Resource Management Project: Management Report and Recommendation in Response to the Inspection Panel Investigation Report* (Washington, D.C., 2014).

defenders were killed in Honduras, many of them from indigenous communities that resisted development projects on their territory.⁶⁶

113. The Agua Zarca dam is a renewable energy project carried out on the Gualcarque River by the Government of Honduras as part of its larger energy policy supporting the implementation of hydroelectric and wind projects to reduce the use of fossil fuels. It is one of about 40 hydroelectric projects. The project involves a 20-year concession in favour of the Honduran company Desarrollo Energético S.A. and was initially funded by a private equity fund whose main contributor was the International Finance Corporation, part of the World Bank Group. In 2011, the company began to acquire lands that were part of the ancestral territory of indigenous Lenca communities. The communities objected to the project as it affected their lands, crops, water sources and habitat. In addition, they consider the Gualcarque River sacred as it is home to female spiritual beings. The dam has resulted in great community divisions, death threats, harassment, criminalization and the extrajudicial executions of indigenous Lenca leaders opposed to the project.

114. Protests against the dam in 2013 led to the withdrawal of the private equity fund, so the World Bank ceased active participation in the project. In March 2016, Lenca leaders Berta Cáceres and Nelson García, who had both led protests against the Agua Zarca project, were assassinated. Following their killings, the investors, the Netherlands Development Finance Company-FMO, the Central American Bank for Economic Integration and Finnfund, suspended funding for the project.

D. Other related situations

115. There are numerous projects related to human rights violations against indigenous peoples in the context of renewable energy projects but where the funding cannot be certifiably linked to climate finance. A potential example includes the construction of the Don Sahong dam in the Lao People's Democratic Republic.⁶⁷

116. The Don Sahong dam project is currently under construction, affecting indigenous peoples living along the banks of the Lower Mekong River (which also spans Cambodia, Thailand and Viet Nam). Mega First, a Malaysian company which is leading the construction, manifests its intention to increase investments in clean, renewable sources of energy.⁶⁸

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

IX. Conclusions and recommendations

A. Conclusions

118. Indigenous peoples have been engaged with the climate change processes since 1992, when the United Nations Framework Convention on Climate Change was opened for ratification, and have consistently advocated for respect and protection of their rights. While there are no references to indigenous peoples in the Convention, indigenous peoples' rights have been recognized in subsequent decisions of the Conferences of the Parties and in the Paris Agreement. Respect for human rights

⁶⁶ See www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/.

⁶⁷ LAO1/2016.

⁶⁸ See http://mega-first.com/pdf/ar_2016.pdf.

must be an integral component of all decisions and actions taken on climate change mitigation and adaptation measures.

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

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

121. Regarding climate change funds, indigenous peoples' rights are referred to in the policies and safeguards of REDD-plus, the Green Climate Fund, the Adaptation Fund and the Global Environmental Facility. The practical application of these policies, however, requires continuous independent monitoring. Some climate finance mechanisms still fail to acknowledge the United Nations Declaration on the Rights of Indigenous Peoples and human rights standards. The adoption of a human rights-based approach to all climate finance is crucial.

B. Recommendations

122. States should:

(a) Adopt all necessary policy, legal and administrative measures to effectively engage indigenous peoples in climate change adaptation and mitigation measures with full recognition of their rights over their lands, territories and resources as enshrined in international human rights law and recognized in the United Nations Framework Convention and the Sustainable Development Goals;

(b) Ensure that indigenous peoples are effectively included in national climate change planning and monitoring processes;

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

(d) Promote participation of indigenous self-governance structures, which should be formally included in decision-making relating to international climate change policies and finance measures;

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

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

(g) Ensure that gender considerations are adequately integrated into the development of climate change adaptation and mitigation policies and projects;

(h) Provide funding for reparation, and notably for the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts.

123. **Funds and donors should:**

(a) **Respect and support the rights of indigenous peoples as recognized in international human rights law and enhance their ability to engage in climate change activities by advocating for recognition of their collective and individual rights;**

(b) **Implement existing policies and safeguards and ensure their effective dissemination as well as trainings for staff, especially for those involved in implementation at the regional and national levels;**

(c) **Develop more dedicated direct funding mechanisms to support indigenous peoples' own initiatives for climate change and sustainable development;**

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

(e) **As part of due diligence, improve monitoring and include compliance with indigenous peoples' rights in regular project, programme and policy assessments;**

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