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

Report on observations to communications sent and replies received by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya

Addendum

Observations on communications*

* Reproduced as received.

Contents

I. Introduction

1. The Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, submits to the Human Rights Council, pursuant to resolution 24/9, the present report on specific cases examined concerning alleged violations of human rights of indigenous peoples. The Special Rapporteur ended his mandate on 1 June 2014. The present report includes cases examined since the issuance of the Special Rapporteur's last report on communications to the Human Rights Council in September 2013 (A/HRC/24/41/Add.4) through communications sent up to 1 June 2013 and replies received up to 31 May 2014. Some responses from Governments have been received after 1 June and these will be included in upcoming joint communications reports of Special Procedures mandate holders.

2. Cases included in the present report have been grouped by country, with countries listed alphabetically. "Other letters" sent by the Special Rapporteur to non-governmental entities are included at the end of the report. For each of the cases, the date of the initial letter sent, any follow-up by the Special Rapporteur, and any reply or replies received by the State or other party concerned are indicated. This report should be considered in conjunction with the joint communications reports of the Special Procedures mandate holders that have been issued over the past year (A/HRC/25/74; A/HRC/26/21; A/HRC/27/72). The full letters of the cases included in the present report can be accessed through the electronic versions of those joint communications reports.

3. For some cases, and as indicated below in each specific case, the Special Rapporteur issued follow-up letters, either containing new allegations or evaluation of the case. For each case, the Special Rapporteur provides a brief summary of the allegations transmitted, the response of the Government concerned or other party if any, and observations. The Special Rapporteur's observations may highlight aspects or comment on the adequacy of any response to the allegations transmitted, reiterate recommendations previously made to the Government or other actor concerned, or make reference to relevant international standards.

II. Cases examined

1. Argentina

Caso no. ARG 6/2013: Alegaciones en relación con los ataques físicos contra la familia del defensor de derechos humanos, Sr. Félix Díaz

- Carta del Relator Especial: 20/12/2013
- Repuesta del Estado: 28/01/2014
- Repuesta del Estado: 26/03/2014

Alegaciones transmitidas

4. En la carta enviada el 20 de diciembre de 2013 conjuntamente con los Relatores Especiales sobre la situación de los defensores de los derechos humanos; sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; y sobre el derecho a la libertad de reunión y de asociación, el Relator Especial transmitió las alegaciones sobre supuestos ataques físicos contra familiares del Sr. Félix Díaz, líder de la comunidad indígena Qom de Potae Napocna Navagoh ("La Primavera"), en la provincia de Formosa. Según la información recibida, el hijo de Félix Díaz fue amenazado de muerte el 28 de junio de 2012. En enero de 2013, habría muerto un sobrino de Félix Díaz de una fractura de cráneo presuntamente a causa de un ataque. El 3 de mayo de 2013, el hijo de

Félix Díaz fue atacado por un grupo de 30 personas. El 27 de noviembre de 2013, la hija de Félix Díaz habría sido asaltada por un hombre armado con cuchillo. El 29 de noviembre de 2013, la esposa de Félix Díaz habría sido asaltada en las inmediaciones de su casa. Se ha expresado la preocupación de que estos ataques estuvieran relacionados con las actividades del Sr. Díaz en reivindicación de los derechos territoriales de su comunidad.

Respuesta del Gobierno

5. En su respuesta del 7 de febrero de 2014, el Gobierno de Argentina informó principalmente sobre los esfuerzos realizados para implementar las medidas cautelares dictaminadas por la Comisión Interamericana de Derechos Humanos en 2011 a favor de los miembros de la comunidad Qom de Potae Napocna Navagoh ("La Primavera"). Las medidas cautelares de la Comisión Interamericana solicitaban al Estado argentino la adopción de medidas para garantizar la vida y la integridad física de los miembros de la comunidad contra posibles amenazas, agresiones u hostigamientos por miembros de la fuerza pública u otros agentes estatales, así como también implementar las medidas necesarias para que Félix Díaz y su familia pudieran retornar a la comunidad en condiciones de seguridad. Estas medidas cautelares se emitieron a raíz de la conflictividad social y hechos de violencia en contra de la comunidad por miembros de la fuerza pública que se dieron en el contexto de las demandas territoriales de esa comunidad y, por lo cual, el Sr. Díaz y su familia tuvieron que desplazarse a otra zona.

6. Según el Gobierno, se han realizado reuniones periódicas entre representantes del gobierno nacional, del gobierno provincial de Formosa y de la comunidad para abordar el tema de las medidas cautelares de la Comisión Interamericana. Asimismo, informó que también se han realizado reuniones entre las partes para crear espacios de diálogo para abordar las diversas problemáticas que enfrenta la comunidad y para "consensuar una agenda social común entre las partes involucradas".

7. Dentro de sus respuestas del 7 de febrero y del 26 de marzo de 2014, el Gobierno adjuntó una serie de documentos relacionados con las reuniones entre el Gobierno y la comunidad en el marco de la implementación de las medidas cautelares de la Comisión Interamericana, así como documentos relacionados con las investigaciones de los supuestos hechos de violencia en contra de los familiares del Sr. Félix Díaz. Sin embargo, de la extensa documentación que proporcionó el Gobierno sin nota explicativa, no resulta claro la etapa en que se encuentran esas investigaciones o si han habido conclusiones definitivas.

Observaciones

8. El Relator Especial quisiera agradecer al Gobierno de Argentina por la información brindada sobre las investigaciones que se han realizado en relación a los hechos denunciados. Si bien la información proporcionada por el Gobierno no deja claro si se ha determinado que los ataques sufridos por el hijo, la hija y la esposa, así como la muerte del sobrino del Sr. Félix Díaz, sean algún tipo de represalia en contra del Sr. Díaz por su trabajo como defensor de los derechos de su comunidad, la recurrencia de este tipo de incidentes que enfrentan sus familiares debe ser motivo de especial atención por parte de las autoridades nacionales y provinciales. El Relator Especial reitera su llamado al Gobierno a que adopte todas las medidas necesarias para investigar y sancionar a cualquier persona responsable de las violaciones alegadas y que tome las medidas efectivas para evitar que tales hechos, de haber ocurrido, se repitan.

9. A la vez, el Relator Especial quisiera recalcar la importancia de que las autoridades nacionales y provinciales correspondientes adopten medidas para resolver las demandas territoriales de la comunidad Qom de Potae Napocna Navagoh en consonancia con las obligaciones del Estado argentina en materia de derechos humanos. En su informe sobre la situación de los pueblos indígenas en Argentina, el Relator Especial había notado la

situación de la comunidad Qom de Potae Napocna Navagoh, la cual ha reclamado tierras ancestrales que fueron excluidas de su título y que actualmente forman parte del Parque Nacional Pilcomayo o que fueron otorgadas a intereses particulares (A/HRC/21/47/Add.2). El Relator Especial reitera su recomendación de que el Estado argentino revise su política relacionada con el establecimiento de parques nacionales y áreas protegidas "con el fin de asegurar que no se perjudiquen los derechos sobre sus tierras y recursos naturales dentro de esas áreas," y de que "debe remediar las situaciones en las que el establecimiento de parques nacionales o áreas protegidas haya impedido el goce de estos derechos" (A/HRC/21/47/Add.2, párr. 95).

2. Bangladesh

Case No. BGD 12/2013: Allegations of violence and other human rights abuses against tribal/indigenous peoples in the Chittagong Hill Tracts, Bangladesh

- Letter by Special Rapporteurs: 31/10/2013
- State reply acknowledging receipt: 01/11/2013
- State reply: 07/02/2014
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Allegations transmitted

10. In his letter of 31 October 2013, the Special Rapporteur, together with the Special Rapporteur on Violence against women, its causes and consequences, raised concerns regarding allegations received that members of indigenous peoples of the Chittagong Hill Tracts, including women and children, have experienced murders, harassment, intimidation, religious persecution and sexual violence. Allegedly, this violence is linked to land disputes that originate from Government policies that have promoted the migration of Bengali citizens to settle in the Chittagong Hill Tracts over the course of several decades in order to alter the demographic composition of the region. Further, the Special Rapporteurs noted that the Chittagong Hill Tracts Accord of 1997, which provided for the recognition of the Chittagong Hills Tracts as a "tribal inhabited region", the promotion of indigenous cultures, customary laws and rights to customary lands and natural resources, has allegedly not been implemented.

Reply of the Government

11. In its substantive reply of 7 February 2014, the Government of Bangladesh provided comments on the overall situation of minorities in Bangladesh, which included religious minorities but did not specifically reference indigenous peoples or people in the Chittagong Hill Tracts (CHT). With respect to the implementation of the CHT Accords, the Government provided a summary of major achievements in implementation of the CHT Accords, stating that 48 of the 72 agreements of the Accord have been implemented and affirming that it "remains firmly committed to further accelerate the implementation of the Accord". It noted that the CHT Regional Councils, District Councils and Development Boards work together to promote development in the CHT. With respect to allegations of violence and harassment, the Government emphasized that it takes action against military and police personnel who are found to be involved in criminal activities or negligence, and denied that military and police personnel assist Bengali settlers in any illegal activities. Finally, the Government stated that it has initiated legal proceedings in all the cases regarding violence against women and girls mentioned in the letter by the Special Rapporteurs. At the same time, the Government noted that these incidents of violence are not always linked to land disputes and are not unique to the Chittagong Hill Tracts.

Observations

12. The Special Rapporteur thanks the Government of Bangladesh for its reply. He takes note of the Government's information regarding the steps taken to implement the Chittagong Hill Tracts Accord of 1997 as well as the Government's statement that it "remains firmly committed to further accelerate the implementation of the Accord". In light of the reoccurring information received throughout his mandate on this issue, however, the Special Rapporteur reiterates his call upon the Government to take special efforts to resolve existing land disputes, as well as to prevent dispossession of indigenous/tribal peoples from their traditional lands within the CHT, where this is occurring. With respect to the allegations of acts of violence in the CHT, including violence against women and girls, the Special Rapporteur takes note of the information provided by the Government regarding the legal proceedings underway in the cases raised, and hopes that these will be processed swiftly and will result in prosecution and punishment of the perpetrators.

3. Bolivia, Estado Plurinacional de

Caso No. BOL 1/2014: La situación del Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ)

- Carta del Relator Especial: 20/01/2014
- Repuesta del Estado: 28/02/2014

Alegaciones transmitidas

13. El 20 de enero de 2014, el Relator Especial envió una carta transmitiendo las alegaciones de supuestos actos de agresión en contra de representantes del Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ). Según la información recibida, en diciembre de 2013 y enero de 2014 ocurrieron distintos sucesos de violencia en contra de representantes del CONAMAQ en la ciudad de La Paz. Según la información, los responsables de estos ataques formaban parte de un grupo afiliado con el Gobierno de Bolivia quienes afirmaban que ellos eran los verdaderos representantes del CONAMAQ. Según las alegaciones recibidas, estos sucesos de violencia y la supuesta disputa de liderazgo del CONAMAQ guardaban relación con el desacuerdo que desde varios años habían expresado autoridades del CONAMAQ con las políticas del Gobierno en materia de derechos de los pueblos indígenas. Asimismo, se había alegado que las personas responsables de estos hechos de violencia no eran autoridades indígenas elegidas de conformidad con las tradiciones y costumbres de los pueblos indígenas representados por CONAMAQ.

Repuesta del Gobierno

14. El Gobierno en su respuesta del 28 de febrero de 2014 sostuvo que los hechos alegados se relacionaban con un conflicto orgánico dentro del CONAMAQ en el cual el Gobierno mantenía uno postura de no injerencia. El Gobierno informó que había animado a ambas partes a dialogar para encontrar una solución. Por otro lado, el Gobierno manifestó que habrían iniciado las investigaciones en relación con los hechos denunciados por uno de los líderes de CONAMAQ que fue supuestamente agredido. El Gobierno recalcó que, conforme a la normativa legal boliviana, respeta la estructura orgánica, forma de elección de autoridades y otros aspectos de la organización interna de CONAMAQ.

Observaciones

15. El Relator Especial quisiera agradecer al Gobierno de Bolivia por su respuesta, y toma nota de sus apreciaciones sobre la naturaleza de la situación relativa a CONAMAQ.

El Relator Especial considera que los esfuerzos del Gobierno de promover el diálogo entre las dos facciones pudiera representar un paso positivo. A la vez, el Relator Especial recuerda la necesidad de respetar las decisiones de las autoridades representativas de los pueblos indígenas y los resultados de sus elecciones internas realizadas de acuerdo a sus propios procedimientos tradicionales sin interferir con las actuaciones de esas autoridades. En ese sentido, el Relator Especial quisiera hacer referencia a la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas que establece el derecho de los pueblos indígenas "a participar en la adopción de decisiones en las cuestiones que afecten a sus derechos, por conducto de representantes elegidos por ellos de conformidad con sus propios procedimientos, así como a mantener y desarrollar sus propias instituciones de adopción de decisiones" (art. 18).

4. Brazil

Case No. BRA 2/2013: Recent incidents of escalating violence against indigenous peoples in the states of Mato Grosso do Sul and Pará, including the alleged killing of an indigenous person by police authorities

- Letter by Special Rapporteurs: 03/06/2013
- State reply: 16/09/2013

Allegations transmitted

16. In his letter of 3 June 2013, the Special Rapporteur, together with the Special Rapporteurs on the Right to Freedom of Peaceful Assembly and of Association, the Special Rapporteur on the Situation of Human Rights Defenders, and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, raised concerns regarding the alleged incidents of excessive use of force against indigenous peoples in the states of Mato Grosso do Sul and Pará, including the alleged killing of an indigenous person by police authorities. According to the information received, on 30 May 2013, police in Mato Grosso do Sul engaged in a forcible eviction of approximately 1,000 indigenous Terena people who for two weeks had occupied a piece of land in the locality of Buriti officially titled to a private landowner. The land in question is located in an area that the Ministry of Justice had reportedly determined to be indigenous territory. A Terena man, Mr Oziel Gabriel, was allegedly killed by police gunfire, several others were wounded and ten indigenous persons were arrested. Allegations were also received about the imminent eviction of approximately 150-170 indigenous Kayapo, Arara, Munduruku and Xipaia persons who, since 27 May 2013, had been occupying one of the construction sites of the Belo Monte dam in the state of Pará.

Reply of the Government

17. In its reply of 16 September 2014, the Government of Brazil provided updates on action taken in relation to allegations of disproportionate use of force against indigenous peoples in the states of Mato Grosso do Sul and Pará, while noting that the situation is dynamic and changing and that further actions may continue to be taken.

18. With respect to the situation of Terena people in Mato Grosso do Sul, the Government provided detailed information surrounding the case. It stated that following the occupation of the land in question by the Terena people, various State officials attempted, but were not able to find a peaceful, mediated resolution to the conflict. Absent an agreement, a federal court ordered repossession of the land from the Terena people and conflict broke out. The Government confirmed that Mr Oziel Gabriel was shot and killed by a firearm during the conflict and stated that it was carrying out investigations to determine

those responsible. Subsequently, representatives of the Terena people have met with Government representatives to find a solution to the land claim, and a forum was created to deal with conflicts between indigenous groups and farmers in Mato Grosso do Sul. The Government noted that its goal is to negotiate solutions to land conflicts in the region, with one option being to offer financial compensation to farmers whose properties are within demarcated indigenous lands.

19. Regarding the alleged eviction of some 150 indigenous persons occupying one of the construction sites of the Belo Monte dam in the state of Pará, the Government informed that following the occupation of the construction site, Government representatives attempted to hold meetings to initiate a dialogue with the indigenous peoples concerned but these attempts were unsuccessful because of a lack of response from them. Following a request by the company in charge of the Belo Monte project, a federal court issued a repossession order. On 9 May 2013, the indigenous people vacated the construction site peacefully, only to return again on 27 May. At that time, the indigenous occupiers sent a list of their demands to the Government, which included implementation of the standard of free, prior and informed consent, the suspension of hydroelectric projects, and a meeting with the Minister of the General-Secretariat of the Presidency of the Republic. A meeting was arranged and the indigenous occupiers were permitted to remain at the construction site until the day of the meeting. In June 2013, 144 people were flown in a state aircraft to Brasilia for the meeting. The indigenous representatives reiterated their demand for consultation and free, prior and informed consent in relation to the future hydroelectric projects in the Tapajós basin, and the State of Brazil emphasized its willingness to "carry out a participatory and informed consultation process", in accordance with ILO Convention 169. The Government's response concluded by saying that in its view "an amicable agreement enabled the peaceful departure of the protesters".

Observations

20. The Special Rapporteur thanks the Government for its detailed response. With respect to the broader land situation in the state of Mato Grosso do Sul, the Special Rapporteur has on several occasions throughout the course of this mandate expressed to the Government deep concerns about the profound effects of historical Government policies of selling large tracts of traditional indigenous lands to non-indigenous individuals in the region. These policies resulted in indigenous peoples being dispossessed of large parts of their traditional territories and in the current patterns of violence against the indigenous peoples in association with their efforts to reclaim their lands. The Special Rapporteur would like to reiterate the observations and recommendations he made on the situation in Mato Grosso do Sul in his 2009 report following his mission to Brazil regarding steps to protect indigenous peoples from violence and provide redress for the taking of their lands (A/HRC/12/34/Add.2, paras. 32, 46 – 50, 83-85, 90). In this connection, the Special Rapporteur is encouraged by the Government's information that a forum has been created to deal with conflicts between indigenous groups and farmers in the state of Mato Grosso do Sul and he hopes that serious attention will be paid to ensuring the adequate functioning of this forum. Finally, the Special Rapporteur takes note of the information provided regarding investigations into the death of Mr Oziel Gabriel.

21. Regarding the situation of the eviction of some 150 indigenous persons occupying one of the construction sites of the Belo Monte dam in the state of Pará, the Special Rapporteur takes note of the information provided by the Government that a peaceful resolution to the situation was found following dialogue between the protestors and Government authorities. He is encouraged by the affirmations by the Government that it will carry out consultation processes, in accordance with ILO Convention No. 169 on Indigenous and Tribal Peoples, in relation to proposed future hydroelectric projects affecting indigenous peoples in the Tapajós basin. In this connection, he would like to draw

attention of the Government to the observations and recommendations made in his final thematic report to the Human Rights Council on the issue of extractive industries and indigenous peoples (A/HRC/24/41). The Special Rapporteur draws special attention to the paragraphs of that report dealing with the standard of free, prior and informed consent, the conditions for fair and adequate consultation and negotiation procedures (paragraphs 58-71) and the need for rights-centered, equitable agreements and partnership (paragraphs 72-78). He hopes that these observations and recommendations will help guide the Government as it moves forward with consultations surrounding any proposed hydroelectric projects.

5. Brazil

Case No. BRA 1/2014: Allegations of escalating violence against Tenharim indigenous people in the state of Amazonas

- Letter by Special Rapporteur: 02/01/2014
- State reply: None within period covered by report

Allegations transmitted

22. In his letter of 2 January 2011, the Special Rapporteur raised concerns regarding allegations of escalating violence against Tenharim indigenous people in the state of Amazonas, including alleged attacks against a Tenharim leader and villagers. According to the information received, longstanding tensions have existed between Tenharim indigenous people living on the reserve and non-indigenous people in the area over land issues. In early December 2013, a Tenharim village chief was reportedly killed. Subsequently, three area residents disappeared and local residents have alleged that the disappearances were an act of reprisal carried out by Tenharim community members in response to the death of their leader. Allegedly, on 25 December 2013, indigenous people from the Tenharim reserve and from other indigenous communities in the area were in the town center of Humaitá when a crowd of local residents began to harass them. The crowd grew to an estimated 3,000 people who reportedly set fire to the local headquarters of FUNAI (Fundação Nacional do Índio) and Funasa (Fundação Nacional de Saúde), two State agencies working with indigenous communities in the area.

Observations

23. The Special Rapporteur regrets that the files of the Office of the High Commissioner for Human Rights do not reflect a response from the Government of Brazil to his communication of 2 January 2011 within the period covered by this report. The Special Rapporteur is concerned about the patterns of violence against indigenous peoples in the state of Amazonas in association with their efforts to defend their lands. As noted in his above observations on the recent incidents in Mato Grosso do Sul, the Special Rapporteur considers the creation of a specific forum to deal with conflicts between indigenous groups and farmers in that state to be an encouraging positive step, which could be replicated in other conflict areas such as in the state of Amazonas.

24. The Special Rapporteur would like to reiterate his recommendations and observations made in his report on the situation of indigenous peoples in Brazil regarding the adoption of measures to protect indigenous peoples from violence and provide redress for the taking of their lands. In particular he will like to highlight the recommendations regarding the adoption of measures to improve the mediation capacity of FUNAI and other relevant institutions to deal with conflicting interests in relation to indigenous land claims, as well as for further coordinated measures to secure the safety of indigenous individuals and communities and protection of their lands in areas of high incidence of violence.

Finally, he reiterates the recommendation that authorities should ensure that persons who have committed crimes against indigenous individuals be swiftly brought to justice (A/HRC/12/34/ Add.2, paras. 84, 90).

6. Cameroon

Case No. CMR 4/2012: Allegations conerning human rights violations against the Mbororo people

- Letter by Special Rapporteur: 04/04/2013
- State reply: 19/11/2013

Allegations transmitted

25. On 4 April 2013, the Special Rapporteur sent a letter to the Government regarding alleged threats and reprisals against members of the Mbororo indigenous people. In particular, the Special Rapporteur expressed his concerns about allegations received that threats and reprisals have been perpetrated against Mbororo individuals as a result of his 25 October 2012 communication and of their ongoing work in defense and promotion of the human rights of Mbororo indigenous people. In that earlier communication the Special Rapporteur had brought to the attention of the Government of Cameroon allegations received regarding persistent human rights violations against the Mbororo indigenous people in the Northwest region of the country at the hands of a local landowner. According to the information received, the Mbororo had allegedly endured dispossession of their land; illegal and unjust imprisonment; loss of cattle; the calling into question their leadership structures and institutions; and sexual exploitation of Mbororo women. Serious concerns had been expressed that the government did not take sufficient measures to investigate, punish and prevent the alleged human rights violations committed by the landowner against members of the Mbororo indigenous people.

Reply of the Government

26. In its response of 19 November 2013, the Government informed that in 2008 it initiated a study regarding the definition of “indigenous peoples” within the national context. This study has identified six criteria that, taken together, should be used to understand whether a group may be considered “indigenous” in Cameroon. It noted that the preliminary results of this indicate that only “the Pygmies” meet all the criteria identified, and that that Mbororo meet only some of these criteria. However, the Government noted that self-identification is still an important factor in determining whether a group is “indigenous”.

27. Further, the Government denied that the landowner has broken Cameroon law in acquiring property under his name. It stated that adequate legal mechanisms exist for the Mbororo to object to the establishment of title by that landowner; however they have not pursued those legal avenues. At the same time, it informed that investigations initiated in 2003 on the alleged encroachment on Mbororo lands by that landowner are still ongoing. The Government provided information denying the allegations of false imprisonment, racist attacks against the Mbororo in the media, and disruption of Mbororo leadership structures allegedly committed by the landowner. It also stated that no legal complaints have been made against the landowner for the alleged sexual exploitation of Mbororo women.

Observations

28. The Special Rapporteur would like to thank the Government of Cameroon for its response of 19 November 2013. He takes note of the information provided by the

Government that it is carrying out a study to determine which groups in the country may be considered indigenous. However, he is concerned that the development of a definition for "indigenous peoples" or the use of restrictive criteria to determine a group's indigenous status could be problematic. In particular, the Special Rapporteur fears that this could lead to the failure to apply international standards that are most appropriate to address the kinds of human rights concerns that certain groups face in common with groups that are generally identified as indigenous. He urges the Government to not be restrictive in its approach on this matter.

29. Further, the Special Rapporteur acknowledges the information provided regarding the allegations concerning human rights abuses against indigenous peoples at the hands of a landowner. He is interested to hear that the Government initiated investigations into possible encroachments into Mbororo lands, but notes that there seems to be significant delays in finalizing that investigation. Finally, the Special Rapporteur notes that the Government did not provide information on measures taken to investigate the incidents described in the communication of 4 April 2013 related to threats and reprisals against Mbororo individuals. He again urges the Government to investigate the matters raised in the that communication and to take all necessary measures to protect the Mbororo human rights defenders against possible risks to their life and personal integrity as a result of their human rights work.

7. Cameroon

Caso No. CMR 4/2013: Allegations of threats against MBOSCUDA members

- Letter by Special Rapporteur: 04/09/2013
- State reply: None within period covered by report

Allegations transmitted

30. In a joint allegation letter dated 4 September 2013, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the rights of indigenous peoples brought to the attention of the Government of Cameroon information received concerning allegations of attempted murder and acts of harassment against human rights defenders affiliated with the organisation Mbororo Social and Cultural Development Association – MBOSCUDA (Association pour le dévelopment social et culturel Mbororo).

31. According to the information received, on 1 July 2012, there was an attempted murder of Mr. Jeidoh Duni, a lawyer within the organization MBOSCUDA. It is alleged that, following their participation as witnesses in an investigation, Messrs. Jeidoh Duni, Adamou Isa Sali Haman, Dahiru Beloumi and Njawga Duni were summoned to appear before a military court in Bafoussam on 23 April 2013 for possession of illegal firearms. On 10 May 2013, Mr. Musa Usman Ndamba, Vice-President of the organization MBOSCUDA appeared before the court of First Instance in Bamenda under chargers for spreading false information. The trial was adjourned to 27 May 2013 and 19 August 2013. It is alleged that these measures are linked to the report submitted by the organization MBOSCUDA at the second Universal Periodic Review of Cameroon.

Observations

32. The Special Rapporteur regrets that there is no response from the Government of Cameroon to the communication of 4 September 2013 in the records of the Office of the

High Commissioner for Human Rights within the period covered by the present report. The Special Rapporteur is concerned about information he continues to receive about persistent threats, harassment and attacks against members of MBOSCUDA. As stated in the communication, the information received raises serious concerns about the risks to the rights to life, freedom of expression and assembly and other fundamental rights of members of MBOSCUDA as a result of their advocacy for the rights of the Mbororo people and for their participation and cooperation with United Nations human rights mechanisms and institutions.

33. The Special Rapporteur would like to again urge the Government of Cameroon to adopt all necessary measures to ensure the protection of the human rights of the individuals mentioned and investigate and sanction those responsible for the alleged actions against these individuals. Additionally, he again urges the Government to adopt appropriate measures to prevent the repetition of these types of acts.

8. Canada

Case No. CAN 4/2013: Allegations of discrimination in funding and retaliation acts against Ms. Cindy Blackstock, Executive Director of the First Nations Child and Family Caring Society of Canada

- Letter by Special Rapporteurs: 07/11/2013
- State reply: 10/01/2014

Allegations transmitted

34. In his letter of 7 November 2012, the Special Rapporteur, together with the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, and the Special Rapporteur on the Situation of Human Rights Defenders, raised concerns regarding allegations of discrimination in funding and retaliation acts against Ms. Cindy Blackstock, Executive Director of the First Nations Child and Family Caring Society of Canada. According to the information received, in 2007 the First Nations Child and Family Caring Society of Canada filed a complaint against the Government of Canada under the Canadian Human Rights Act, before the Canadian Human Rights Tribunal, alleging discrimination in the funding provided to First Nations for child welfare. Reportedly, after the case was filed in 2007, Ms Blackstock and the First Nations Child and Family Caring Society of Canada experienced what they perceived as several forms of retaliation by the Government of Canada. This allegedly included the monitoring of Ms Blackstock's personal Facebook page, her professional meetings and presentations, and her Indian Status registry.

Reply of the Government

35. In its response of 9 January 2014, the Government of Canada provided general information on the protections in Canadian law to ensure that public officials respect and protect individuals' privacy and freedom of association. In relation to the specific allegations raised, the Government asserted that 1) funding levels for the provision of child and family services on reserve have increased subsequent to the filing of the 2007 Canadian Human Rights Act complaint; 2) funding of the Caring Society has not changed as a result of the 2007 Canadian Human Rights Act complaint; 3) that public officials conducted themselves with reasonable prudence in light of the 2007 Canadian Human Rights Act complaint, and that there was no retaliation against Ms Blackstock; and 4) that the allegations relating to the collection and use of Ms Blackstock's personal information have been investigated and appropriately addressed. The Government noted that in May 2013, the Office of the Privacy Commissioner issued a report on the case in response to a

complaint filed by Ms Blackstock, which determined that some of the allegations made were well-founded while others were not. The Government stated that it has accepted and is taking steps to implement the Privacy Commissioner's recommendations. In conclusion, the Government stated that it has acted in full accordance with domestic legal obligations and the treaties to which it is a party, in relation to the situation of Ms Blackstock.

Observations of the Special Rapporteur

36. The Special Rapporteur thanks the Government of Canada for its reply. He notes that there still appears to be divergent perspectives regarding the facts of the case. Nonetheless, the Special Rapporteur is encouraged by the information provided by Canada that it accepts and is complying with the recommendations of the Privacy Commissioner, and he hopes that this will assist in addressing any outstanding concerns relating to Ms Blackstock . With respect to the broader issue of allegations of discrimination in the funding provided to First Nations for child welfare, the Special Rapporteur would like to draw attention to the observations and recommendations made in this regard in his report on the Situation of indigenous peoples in Canada (A/HRC/27/52.Add.2).

9. Chile

Caso No. CHL 1/2013: Presuntas amenazas contra el líder indígena mapuche Francisco Millaquén y su familia con motivo de su trabajo en defensa de los derechos del pueblo indígena mapuche

- Carta de Relatores Especiales: 03/09/2013
- Repuesta del Estado: 01/10/2013

Alegaciones transmitidas

37. En una comunicación enviada conjuntamente con la Relatora Especial sobre la situación de los defensores de derechos humanos el 3 de septiembre de 2013, el Relator Especial transmitió las alegaciones en relación con las presuntas amenazas en contra del líder indígena mapuche Francisco Vera Millaquén y su familia con motivo de su trabajo en defensa de los derechos del pueblo indígena mapuche. Según la información recibida, Francisco Vera Millaquén es un werken, o dirigente, de la comunidad indígena mapuche huilliche de Pepiukelen, en el sector Pargua, región de Los Lagos. Durante varios años, el Sr. Vera Millaquén ha trabajado en contra de la presencia de empresas salmoneras en el territorio tradicional de la comunidad de Pepiukelen, y él es reconocido como un defensor de los derechos territoriales del pueblo mapuche a nivel nacional. Desde abril de 2012, el Sr. Vera Millaquén ha denunciado una serie de actos de amenaza de muerte en su contra.

Respuesta del Gobierno

38. En su respuesta del 1 de octubre de 2013, el Gobierno de Chile informó que existen tres investigaciones criminales vigentes en donde el Sr. Vera Millaquén ostenta la calidad de víctima y/o denunciante. Según informa el Gobierno, dos de las investigaciones se refieren al delito de amenazas en la cual el Sr. Vera Millaquén es la víctima. La tercera investigación corresponde a una querella interpuesta por el Sr. Vera Millaquén en contra de un tercero por incumplimiento de una norma que protegía su propiedad. De acuerdo al Gobierno, existen diversas diligencias pendientes de realización con respecto a esas investigaciones, sin embargo no es posible divulgar sus resultados debido a que la normativa penal dispone el carácter secreto de las investigaciones para terceros ajenos al procedimiento. El Gobierno afirmó que esas investigaciones son permanentemente monitoreadas por la Fiscalía Regional de Los Lagos, y tanto el Sr. Vera Millaquén como

sus hijas son beneficiarios de programas de protección de la Unidad Regional de Atención a Víctimas y testigos de esa Fiscalía Regional.

Observaciones del Relator Especial

39. El Relator Especial agradece al Gobierno de Chile por su respuesta y valora la información proporcionada en relación a las investigaciones y medidas de protección adoptadas en beneficio del Sr. Francisco Vera Millaquén y sus hijas. El Relator Especial espera que estas medidas sean efectivas para prevenir futuros actos de amenazas y posibles violaciones de los derechos humanos del Sr. Vera Millaquén y su familia. A la vez, espera que las personas que pudieran ser responsables de los actos de amenaza denunciados sean sancionadas en conformidad con la ley.

10. Chile

Caso No. CHL 2/2013: Intercambio de información relacionado al proyecto minero El Morro y el deber de la consulta

- Carta del Relator Especial: 07/11/2013
- Repuesta del Estado: 06/01/2014

Alegaciones transmitidas

40. En su comunicación del 7 de noviembre de 2013, el Relator Especial trasmitió al Gobierno de Chile alegaciones sobre la aprobación del estudio de impacto ambiental para el proyecto minero El Morro por parte del Servicio de Evaluación Ambiental de Chile. Según la información recibida, el proyecto afectaría a la Comunidad Agrícola Diaguita de los Huascoaltinos. Se informó de que luego de varios intentos de iniciar un proceso de consulta con la comunidad con respecto al proyecto, el Gobierno habría decidido desistir de sus intentos de consultar a la comunidad supuestamente por la negativa de la comunidad de participar en un proceso de consulta.

41. El Relator Especial expresó su preocupación sobre una nota emitida en octubre de 2013 por el Director Nacional de la Corporación Nacional de Desarrollo Indígena (CONADI) relativa al proyecto y que hace referencia de manera incompleta a unas declaraciones que el Relator Especial previamente había hecho sobre el tema del deber estatal de consultar a los pueblos indígenas. El Relator Especial brindó al Gobierno una clarificación de los puntos que él previamente había expuesto sobre el deber de la consulta y, asimismo, solicitó al Gobierno información sobre la forma en que se ha cumplido con ese deber en relación con los pueblos indígenas afectados por el proyecto El Morro.

Respuesta del Gobierno

42. En su respuesta con fecha de 6 de enero de 2014, el Gobierno expresó su compromiso de cumplir con el deber de consultar a los pueblos indígenas conforme a los estándares internacionales aplicables. En su respuesta, el Gobierno brindó información detallada sobre los esfuerzos que el Servicio de Evaluación Ambiental habría realizado por más de un año para solicitar reuniones con la comunidad de Los Huascoaltinos con el fin de determinar el inicio de un proceso de consulta y sobre una respuesta por parte de la comunidad a las propuestas hechas por el Gobierno con respecto al procedimiento de consulta previa. Según el Gobierno, dada la supuesta negativa de la comunidad de responder de manera concreta a sus propuestas relacionadas con la consulta previa, el Gobierno decidió proceder con la evaluación ambiental del proyecto lo cual dio lugar a su aprobación final. A la vez, el Gobierno informó que tras la aprobación del proyecto, la comunidad de Los Huascoaltinos interpuso un recurso legal ante la Corte de Apelaciones de

Copiapó y un recurso administrativo ante el Comité de Ministros del Ministerio del Medio Ambiente en contra de la resolución que dio la certificación ambiental a favor del proyecto.

43. El Gobierno mantiene que si bien el consentimiento por la parte indígena es el objeto de la consulta, no es un requisito en este caso, al no presentarse la posibilidad de que la comunidad sea reasentada como consecuencia del proyecto. Por tanto, según el Gobierno, al haber cumplido de buena fe con sus esfuerzos de desarrollar un proceso de consulta con el fin de alcanzar acuerdos, y al no lograrse un acuerdo, el Estado puede tomar una decisión sobre la medida en cuestión lo cual en este caso fue proceder con la aprobación del proyecto. Finalmente, el Gobierno afirma que en el marco del proceso de evaluación ambiental realizado para el proyecto El Morro, se han previsto las medidas de mitigación y compensación adecuadas por cualquier impacto ambiental que tuviese el proyecto sobre las comunidades indígenas aledañas.

Observaciones

44. El Relator Especial quisiera agradecer al Gobierno de Chile por su respuesta y toma nota de los pasos que ha dado el Gobierno para concertar con la comunidad Diaguita de Los Huascoaltinos un proceso de consulta previa en relación con el proyecto El Morro. Asimismo, toma nota de los motivos expuestos por el Gobierno por los cuales habría considerado que los esfuerzos para iniciar un proceso de consulta previa no dieron resultados. No obstante lo expuesto por el Gobierno, el Relator Especial no puede valorar si en efecto la comunidad Diaguita había rehusado claramente ser consultado y así renunciado su derecho a la consulta previa. Por otro lado, debe tenerse en cuenta, tal como informa el Gobierno, que la comunidad de Los Huascoaltinos interpuso acciones legales y administrativas en contra de la resolución ambiental a favor del proyecto. Independientemente de los resultados de las acciones legales referidas, el Relator Especial quisiera reiterar sus apreciaciones sobre el deber de la consulta previa y los casos en que el Estado debe obtener el consentimiento de la parte indígena en relación con proyectos de aprovechamiento de recursos naturales que les afectan.

45. Como había expuesto el Relator Especial en su comunicación anterior al Gobierno, al presentarse un caso en que los pueblos indígenas se oponen a ser consultados (lo que la CONADI afirma haya sido la postura de la comunidad de Los Huascoaltinos y de otras comunidades indígenas posiblemente afectadas por el proyecto), estos pueblos estarían negando su consentimiento al igual que si hubiesen entrado en un proceso de consulta y hubiesen rehusado otorgar su consentimiento o entrar en acuerdos dentro de ese proceso. Si, en ausencia del consentimiento, el Estado decide proceder con una medida o actividad que resulte en una restricción de los derechos de los pueblos indígenas, debe cumplir con los criterios internacionales relacionados con las limitaciones permisibles a los derechos humanos, tal como ha explicado el Relator Especial anteriormente (A/HRC/21/41, paras. 31-36). Es decir, las limitaciones a los derechos humanos deben cumplir con los criterios de necesidad y proporcionalidad en relación con una finalidad pública válida dentro del marco de la protección a los derechos humanos.

46. De esa manera, si el impacto de una actividad propuesta tuviese un impacto profundo y significativo sobre los derechos de los pueblos indígenas - tal como suele ser el caso de una mina en un territorio indígena – ello haría difícil que en tales situaciones se pudiera demostrar una necesidad y proporcionalidad sin el consentimiento de la parte indígena, aunque hubiera un propósito estatal válido. Por lo tanto, en tales circunstancias de impactos significativos se debe considerar que, por lo general, el consentimiento es exigible, más allá de ser un objetivo de la consulta (A/HRC/21/41, párr. 65). Si bien, como señala el Gobierno, el reasentamiento es uno de los supuestos señalados en los instrumentos internacionales sobre derechos de los pueblos indígenas en donde el consentimiento es exigible, existan otras posibles afectaciones significativas a los derechos de los pueblos

indígenas que solo deberían realizarse con el consentimiento de la parte indígena (A/HRC/12/34, párr. 47). Por otro lado, el Relator Especial también considera que es necesario que toda decisión del Estado de permitir una actividad extractiva sin el consentimiento de la parte indígena afectada sea susceptible de una revisión judicial independiente con el fin de garantizar el cumplimiento de las normas internacionales aplicables a los derechos de los pueblos indígenas, y determinar de manera independiente si el Estado ha cumplido o no con su obligación de justificar toda limitación de derechos y de cumplir con las otras salvaguardas aplicables (A/HRC/21/41, párrs. 39, 87).

11. Colombia

Caso No. COL 7/2013: Alegaciones relacionadas con varios temas en seguimiento al informe del Relator Especial sobre la situación de los pueblos indígenas en Colombia

- Carta del Relator Especial: 08/07/2013
- Repuesta del Estado: 11/09/2013

Alegaciones transmitidas

47. En su comunicación del 8 de julio de 2013, el Relator Especial transmitió las alegaciones relacionadas con varios temas en seguimiento a su informe sobre la situación de los pueblos indígenas en Colombia (A/HRC/15/37.Add.3) del 2010. Según la información recibida desde la publicación del informe del Relator Especial, los pueblos indígenas en Colombia han continuado enfrentando una serie de problemas, incluyendo casos de asesinatos, amenazas, desaparición, desplazamientos y confinamientos de miembros de pueblos indígenas; de retrasos en la implementación de planes de salvaguarda y otras medidas de protección a favor de pueblos indígenas en riesgo de extinción; de los riesgos generados por la presencia y actuación de los actores del conflicto armado y la presencia del crimen organizado en los territorios indígenas; de retrasos en los procesos de reconocimiento, ampliación y restitución de territorios indígenas; y de la implementación del deber de la consulta en el contexto de proyectos de industrias extractivas propuestos en o alrededor de territorios indígenas.

Respuesta del Gobierno

48. El Gobierno de Colombia en su respuesta del 11 de septiembre de 2013 proporcionó información sobre medidas que se habrían adoptado en seguimiento a las observaciones y recomendaciones que hizo el Relator Especial en su informe de 2010. Éstas incluyen una serie de medidas de protección desarrolladas por la Unidad Nacional de Protección (adscrita al Ministerio del Interior) a favor de personas y pueblos indígenas en situaciones de riesgo o amenaza a sus derechos humanos.

49. Con respecto al tema de la consulta previa, el Gobierno informó que se ha trabajado en un proyecto de ley estatutaria para reglamentar la consulta el cual se encuentra en etapa de socialización “con cada uno de los sectores que pueden verse involucrados en el desarrollo de la Consulta”. Asimismo, informó sobre la atención que se ha dado al tema por parte de la Dirección de Consulta Previa del Ministerio del Interior, la entidad estatal encargada de coordinar los procesos de consulta previa. Señaló como etapa fundamental para procesos de consulta previa relacionados con obras o proyectos de aprovechamiento de recursos naturales, la protocolización de acuerdos entre las partes interesadas en realizar la obra o proyecto y los pueblos indígenas afectados.

50. El Gobierno informó que se habría formulado, en consulta con representantes indígenas, el Programa Nacional de Garantía de los Derechos de los Pueblos Indígenas en Colombia. Según el Gobierno, en este proceso se llegaron a acuerdos que incluyeron líneas

de acción en áreas tales como territorio, autonomía y autogobierno, adecuación institucional, participación indígena y políticas de Estado, consulta previa, fortalecimiento de la identidad cultural, salud, y derechos humanos. Sin embargo, no informó sobre el nivel de implementación de las líneas de acción acordadas en el marco de este programa.

51. También afirmó que se habrían consultado con los pueblos indígenas concernidos los planes de salvaguarda étnica y planes de atención de urgencia ordenados por la Corte Constitucional de Colombia en sus Autos 004/09, 382/10 y 174/11. Según el Gobierno, entre 2009 y 2011 se adelantó el proceso de diseño de planes de salvaguarda étnica con nueve pueblos indígenas y un plan de atención de urgencia con el pueblo Awá.

52. Por otro lado, el Gobierno informó que se ha avanzado en el diseño de un programa de sensibilización y educación de miembros de las fuerzas armadas en materia de derechos humanos de los pueblos indígenas. Según el Gobierno, ello contribuiría a mejorar el conocimiento y relacionamiento que tuvieran las fuerzas armadas con los pueblos indígenas.

53. En relación con los procesos de reparación a favor de pueblos indígenas que habrían perdido sus tierras por causa del conflicto armado, el Gobierno informó sobre las medidas iniciales que se han adoptado para implementar el Decreto 4633 de 2011, "Por medio del cual se dictan medidas de asistencia, atención, reparación integral y de restitución de derechos territoriales a las víctimas pertenecientes a los pueblos y comunidades indígenas". Estas medidas incluyen la recabación de información sobre la población beneficiaria, la socialización del contenido del Decreto 4633 a miembros de pueblos indígenas y funcionarios de Estado, el fortalecimiento organizativo de los pueblos indígenas, la provisión de ayuda humanitaria para pueblos indígenas en situación de emergencia, y la realización de procesos de concertación con determinados pueblos indígenas con el fin de facilitar su retorno a las tierras de donde fueron desplazados. Asimismo, el Gobierno informó que la Unidad de Restitución de Tierras habría realizado un estudio inicial de la situación particular de 14 comunidades indígenas cuyas tierras habrían sido afectadas por el conflicto armado, con el fin de facilitar la restitución de sus tierras.

Observaciones

54. El Relator Especial quisiera agradecer al Gobierno de Colombia por su respuesta informando sobre las distintas iniciativas que ha realizado a favor de los pueblos indígenas. El Relator Especial toma nota de las medidas de protección de carácter individual y colectivo a favor de personas y pueblos en situación de riesgo. Espera que estas medidas realmente sean efectivas para atender las distintas situaciones de violencia que continúan enfrentando líderes, autoridades y comunidades indígenas, tal como fue reflejado en la comunicación del Relator Especial del 8 de julio de 2013. Es necesario continuar con el fortalecimiento de los esfuerzos para prevenir la ocurrencia de violencia contra pueblos indígenas así como de investigar y sancionar las personas responsables de esos hechos de violencia.

55. El Relator Especial toma nota de lo informado por el Gobierno sobre el desarrollo de un proyecto de ley estatutaria para reglamentar la consulta previa. El Relator Especial quisiera reiterar su recomendación de que la definición y adopción de políticas públicas y leyes relacionadas con los pueblos indígenas deben contar con la participación plena y efectiva de las autoridades y representantes indígenas (A/HRC/15/37/Add. 3, párr. 57). Asimismo enfatiza que en todo caso los procesos de consulta en relación con medidas legislativas o administrativas, o actividades de aprovechamiento de recursos naturales que afecten a los pueblos indígenas sean realizados conforme a la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, el Convenio No. 169 de la Organización Internacional del Trabajo sobre pueblos indígenas y tribales, y los

lineamientos sentados por la jurisprudencia de la Corte Constitucional de Colombia sobre el tema.

56. El Relator Especial agradece la información recibida sobre la realización de acuerdos entre representantes de Gobierno y de los pueblos indígenas en el marco del Programa Nacional de Garantía de los Derechos de los Pueblos Indígenas en Colombia. El Relator Especial espera que los distintos acuerdos que resultaron de este proceso sean implementados eficazmente y en coordinación y consulta con los pueblos indígenas concernidos.

57. Con respecto al diseño e implementación de los planes de salvaguardia étnica y de atención de urgencia ordenados por la Corte Constitucional, el Relator Especial reconoce que el diseño de nueve planes de salvaguardia étnica y un plan de atención de urgencia que menciona el Gobierno representan avances importantes. La situación grave y urgente que enfrentan los pueblos indígenas en situación de riesgo de extinción requiere de acciones prontas y decididas para proteger a estos pueblos según lo dispuesto por la Corte Constitucional.

58. El Relator Especial también agradece la información recibida sobre los esfuerzos para capacitar a miembros de las fuerzas armadas en materia de derechos humanos y concuerda con el Gobierno que ello ayudaría mejorar su relacionamiento con los pueblos indígenas. El Relator Especial reitera su recomendación sobre la necesidad de que cualquier presencia necesaria de la fuerza pública en territorios indígenas sea concertada con las autoridades indígenas correspondientes (A/HRC/15/37/Add. 3, párr. 67). Ello representaría un importante principio para el mantenimiento de confianza y buenas relaciones entre la fuerza pública y los pueblos indígenas.

59. Con respecto a las medidas adoptadas por el Gobierno para implementar el Decreto 4633 de 2011 sobre la restitución de tierras a los pueblos indígenas desplazados en el contexto del conflicto armado, el Relator Especial reitera que estas medidas deben ser implementadas con la participación efectiva de los pueblos indígenas y con la debida diligencia y celeridad que amerita la situación. El Relator Especial espera que el Gobierno atienda cualquier preocupación expresada por los pueblos indígenas sobre las reparaciones que requieren teniendo en cuenta sus visiones y propuestas de largo plazo en los aspectos sociales, culturales y ambientales.

60. El Relator Especial observa que la respuesta del Gobierno no incluyó información sobre otros temas relacionados con la constitución, ampliación y saneamiento de territorios indígenas señalados en su comunicación del 8 de julio de 2013. El Relator Especial reitera su recomendación de que el Gobierno tome las medidas necesarias para acelerar los procesos de constitución, ampliación y saneamiento de resguardos indígenas, estableciendo plazos determinados para atender las solicitudes de los pueblos indígenas al respecto (A/HRC/15/37/Add. 3, párr. 73). Tal como notó el Relator Especial en su informe de 2010, “el reconocimiento y protección de los derechos territoriales de los pueblos indígenas es fundamental para establecer condiciones sostenibles de paz y asegurar la supervivencia de los pueblos indígenas (A/HRC/15/37/Add. 3, párr. 74). Asimismo, reitera la necesidad de armonizar la política pública de desarrollo económico del país, en especial en lo que respecta a proyectos extractivos o de infraestructura, con los derechos colectivos e individuales de los pueblos indígenas (A/HRC/15/37/Add. 3, párr. 76).

61. Finalmente, el Relator Especial quisiera reiterar su recomendación de que el Estado busque una salida negociada al conflicto armado teniendo en cuenta las iniciativas de diálogo y de construcción de la paz propuestas por las autoridades indígenas y sus organizaciones (A/HRC/15/37/Add. 3, párr. 59).

12. Colombia

Caso No. COL 1/2014: Alegaciones sobre el peligro de asesinato de lideres del pueblo indígena Embera Chamí

- Carta de Relatores Especiales: 23/01/2014
- Repuesta del Estado: 22/04/2014

Alegaciones transmitidas

62. En una comunicación conjunta del 23 de enero de 2014, el Relator Especial sobre los derechos de los pueblos indígenas y los Relatores Especiales sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, y sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, transmitieron las alegaciones sobre el riesgo de ejecución de un líder del pueblo indígena Embera Chamí, y sobre el asesinato de dos líderes Embera Chamí por miembros de los "grupos armados ilegales post desmovilización". Según la información recibida, el 1 de enero de 2014, el Sr. Berlain Saigama Javari y el Sr. Jhon Braulio Saigama, sobrinos del líder de la comunidad Embera Chamí de La Esperanza, Sr. Flaminio Onogama Gutiérrez, habrían sido asesinados por supuestos miembros de los "grupos armados ilegales post desmovilización", en el municipio de El Dovio, Departamento del Valle de Cauca. Según la información, con anterioridad a estos hechos, miembros de los mencionados grupos armados habrían entrado a la comunidad de La Esperanza para cuestionar a los sobrinos del Sr. Flaminio Onogama Gutierrez sobre su paradero. Según la información, el Sr. Flaminio Onogama Gutierrez, se había opuesto abiertamente a la presencia de los "grupos armados ilegales post desmovilización" en su comunidad.

Respuesta del Gobierno

63. En su respuesta del 22 de abril de 2014, el Gobierno informó que la Policía Nacional ha realizado medidas de protección para mitigar el riesgo contra la vida del Sr. Flaminio Onogama que consisten principalmente de rondas policiales en su lugar de residencia y trabajo. Informa que para la protección de los familiares de las víctimas, la Policía Nacional y la Oficina de Derechos Humanos del Departamento de Policía Valle han mantenido contacto con el gobernador del resguardo indígena más cercando de donde ocurrieron los hechos, con el fin de atender cualquier requerimiento en materia de seguridad. El Gobierno agregó que se han realizado reuniones con los habitantes de ese resguardo para capacitarles en materia de derechos de las víctimas en el contexto del conflicto armado. Por otro lado, informó que los hechos referidos ocurrieron fuera de territorio indígena, y que los Srs. Berlain Saigama Javari y Jhon Braulio Saigama no eran parte del resguardo indígena sino que eran personas desplazadas del departamento de Meta. El Gobierno afirmó que la Policía Nacional ha tenido un constante diálogo con las autoridades y organizaciones indígenas regionales para atender a cuestiones de orden público.

Observaciones

64. El Relator Especial quisiera agradecer al Gobierno de Colombia por su respuesta del 22 de abril de 2014. Valora la información proporcionada sobre las medidas de protección implementadas a favor del Sr. Flaminio Onogama. A la vez, espera que el Gobierno asegure que las investigaciones respecto a la muerte de los Srs. Berlain Saigama Javari y Jhon Braulio Saigama se realicen con la debida diligencia con el fin de sancionar a las personas responsables. El Relator Especial valora los esfuerzos mencionados para mantener la comunicación entre la Policía Nacional y comunidades indígenas a fin de atender cuestiones de seguridad. El Relator Especial espera que estas iniciativas sean fortalecidas para asegurar el cumplimiento de estándares internacionales de derechos de los pueblos indígenas, en particular en lo que concierne la realización de consultas con pueblos

indígenas sobre la presencia de la fuerza pública en sus territorios (Ver, A/HRC/15/37/Add. 2, párr. 67).

65. No obstante las medidas de protección mencionadas por el Gobierno en su respuesta, el Relator Especial mantiene su preocupación sobre la vulnerabilidad que enfrentan los pueblos indígenas debido a las actividades de grupos armados irregulares como los denominados "grupos armados ilegales post desmovilización". Por tanto, el Relator Especial reitera su recomendación de que se adopten de forma urgente, y de manera consultada con los mismos pueblos, las medidas presupuestarias y operativas para fortalecer los esquemas de protección a favor de los pueblos indígenas, sus líderes y autoridades. Asimismo, reitera su recomendación de que las autoridades del Estado, especialmente la Fiscalía, adopten todas las medidas necesarias para investigar seriamente las violaciones a los derechos humanos de los pueblos indígenas, y llevar a la justicia a los responsables, así como asegurar la no repetición de hechos similares. De acuerdo a lo expuesto en su informe de 2010, el Relator Especial reitera su llamado a la Fiscalía para que de forma urgente disponga la constitución de comisiones especiales de investigadores para los casos de violencia contra los pueblos indígenas (A/HRC/15/37/Add. 3, párrs. 61-63).

13. Colombia

Caso No. COL 4/2014: Los supuestos efectos nocivos de la reanudación de los riegos químicos aéreos (fumigaciones) de cultivos ilícitos en Colombia

- Carta de Relatores Especiales: 31/03/2014
- Repuesta del Estado: Ninguna dentro del periodo del presente informe

Alegaciones transmitidas

66. En su comunicación del 31 de marzo de 2014, el Relator Especial sobre los derechos de los pueblos indígenas junto con el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental transmitieron las alegaciones relacionada con los efectos nocivos de la reanudación de los riegos químicos aéreos (fumigaciones) de cultivos ilícitos en Colombia. En febrero de 2014, el Gobierno anunció que iba reanudar las campañas de riegos de cultivos de coca. Se informa que varios expertos habían expresado su preocupación sobre esta práctica, alegando que ha causado impactos perjudiciales significativos en la salud y seguridad alimenticia de comunidades rurales y de pueblos indígenas. Se alega que dicha fumigación ocasiona efectos graves en la salud y no cumple con los fines previstos, que es la destrucción de plantas narcóticas, y contribuye a la destrucción de la vegetación sobre la cual no va dirigida.

Observaciones

67. El Relator Especial toma nota de que no consta en los archivos de la Oficina del Alto Comisionado para los Derechos Humanos una respuesta del Gobierno de Colombia a su comunicación del 31 de marzo de 2014 dentro del periodo del presente informe. En su informe de 2010 sobre la situación de los pueblos indígenas en Colombia (A/HRC/15/37/Add.3), el Relator Especial expresó su preocupación sobre la situación de la fumigación de cultivos de uso ilícito y los efectos particulares que ha tenido sobre los pueblos indígenas. El Relator Especial notó que a pesar de una sentencia de la Corte Constitucional ordenando la suspensión de fumigaciones aéreas de cultivos de uso ilícito hasta realizar consultas previas con los pueblos indígenas, y de los esfuerzos del Gobierno de emprender procesos de consulta al respecto, han persistido las actividades de erradicación de cultivos supuestamente ilícitos y de fumigación con glifosato sin haberse

consultado previamente a las comunidades indígenas afectadas, lo cual ha resultado en problemas de salud y de crisis alimentaria.

68. Por tanto, el Relator Especial reitera la recomendación incluida en su informe de 2010 de que "[a] menos que lo pida expresamente una comunidad indígena con previo conocimiento completo de sus implicaciones, no deberán practicarse fumigaciones aéreas en plantíos de cultivos ilícitos cercanas a poblados indígenas o zonas de abastecimiento de estos poblados" (A/HRC/15/37/Add. 3, párrs. 43, 77).

14. Costa Rica

Caso No. CRI 1/2014: Seguimiento al informe del Relator Especial de 2011 sobre la situación de los pueblos indígenas afectados por el proyecto hidroeléctrico el Diquís en Costa Rica

- Carta del Relator Especial: 25/02/2014
- Repuesta del Estado: Ninguna dentro del periodo del presente informe

Carta de seguimiento del Relator Especial

69. En su comunicación del 25 de febrero de 2014, el Relator Especial solicitó al Gobierno información sobre el proceso de consulta que había recomendado el Relator Especial en su informe de 2011 sobre "La situación de los pueblos indígenas afectados por el proyecto hidroeléctrico el Diquís en Costa Rica" (A/HRC/18/35/Add.8). Desde la publicación del informe, el Relator Especial ha continuado monitoreando esta situación, incluyendo durante una visita al país en marzo de 2012. En la carta, el Relator Especial hace una serie de preguntas sobre el estado actual del proyecto y asuntos relacionados. En particular, preguntó sobre los avances que se han dado desde el establecimiento en enero de 2013 de una mesa de diálogo entre representantes del Gobierno y los pueblos indígenas afectados para tratar asuntos relacionados con el proyecto El Diquís y otras cuestiones tal como la revisión de la ley de desarrollo autónomo. El Relator Especial también solicitó información sobre los mecanismos empleados para garantizar la legítima representación de los pueblos indígenas en la mesa de diálogo. Asimismo solicitó información adicional sobre el estado implementación de otras recomendaciones hechas en su informe de 2011 relacionadas con el saneamiento de tierras indígenas en el área de afectación del proyecto.

Observaciones

70. El Relator Especial lamenta que no consta en los archivos de la Oficina del Alto Comisionado para los Derechos Humanos una respuesta por parte del Gobierno de Costa Rica a su última comunicación del 25 de febrero de 2014. No obstante, valora el diálogo que ha mantenido con el Gobierno de Costa Rica desde la publicación de su informe de 2011 y los esfuerzos que ha dado el Gobierno en implementar las recomendaciones hechas por el Relator Especial. Tal como había manifestado en su último informe de comunicaciones con respecto al presente caso, el Relator Especial espera que la mesa de diálogo referida represente un espacio efectivo para la concertación entre el Estado y los pueblos indígenas para resolver las preocupaciones relacionadas con el proyecto El Diquís y los otros temas de interés para los pueblos indígenas de Costa Rica (A/HRC/24/41/Add. 4, párr. 76). Asimismo, espera que los esfuerzos que el Gobierno previamente había mencionado para resolver cuestiones relacionadas con la delimitación y demarcación de territorios indígenas continúen y que, a la vez sigan adoptándose medidas decididas para prevenir casos de violencia contra los pueblos indígenas en contextos de conflictos generados por las "invasiones" de tierras indígenas por no indígenas.

15. Ecuador

Caso No. ECU 4/2013: La disolución de la Fundación Pachamama y supuestos actos intimidatorios por desconocidos contras María Belén Páez, Directora de la Fundación Pachamama

- Carta de Relatores Especiales: 31/12/2013
- Repuesta del Estado: Ninguna dentro del periodo del presente informe

Alegaciones transmitidas

71. En una comunicación conjunta enviada el 31 de diciembre de 2013, el Relator Especial, junto con los Relatores Especiales sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; sobre el derecho a la libertad de reunión y de asociación pacífica; sobre la situación de los defensores de los derechos humanos, transmitieron las alegaciones relacionadas con el presunto cierre de la Fundación Pachamama, una organización que trabaja por derechos medioambientales y de los pueblos indígenas de la Amazonía. Según las informaciones recibidas, un fotógrafo y un reportero de la Fundación Pachamama habrían participado pacíficamente para fines de cobertura mediática en una manifestación contra la XI Ronda Petrolera en Quito el 28 de noviembre de 2013, durante la cual se alega que habrían tenido lugar actos de agresión contra representantes internacionales. El 1 de diciembre de 2013, se habría acusado públicamente a la Fundación de estar involucrada en dichos actos violentos. El 4 de diciembre de 2013, un operativo del Estado habría cerrado la sede de la Fundación Pachamama, citando la participación de ésta en la manifestación del 28 de noviembre como causal de su disolución. Se informa también, que el 26 de diciembre de 2013, la directora de Pachamama habría sido sujeta a actos intimidatorios por desconocidos.

Observaciones

72. El Relator Especial lamenta que no se haya registrado ninguna respuesta por parte del Gobierno del Ecuador a la comunicación conjunta del 31 de diciembre de 2012. El Relator Especial reitera la preocupación expresada en esa comunicación sobre el cierre de la Fundación Pachamama. Es particularmente preocupante la alegación de que el cierre de la organización fue motivada por el cuestionamiento que haya hecho esa organización a las políticas de desarrollo extractivo promovidas por el Gobierno y sus efectos sobre los derechos de los pueblos indígenas.

73. Por tanto, de acuerdo a lo expresado en la comunicación conjunta, el Relator Especial espera que el Gobierno garantice procedimientos legales y administrativos eficaces para que, conforme a los derechos de defensa y debido proceso legal, los miembros de esta organización tengan la oportunidad de cumplir con cualquier requisito legal necesario para poder volver a constituirse como organización, y por otro lado, para que también tengan la oportunidad de exponer sus argumentos y defensas en relación con los motivos por los cuales fue cerrada su organización. Asimismo, el Relator Especial reitera el llamado al Gobierno a que adopte las medidas necesarias para asegurar el derecho a la libertad de opinión y de expresión, y de reunión y de asociación de los pueblos indígenas y de las organizaciones que defienden los derechos de los pueblos indígenas.

16. Ethiopia

Case No. ETH 5/2012: The situation of the alleged resettlement of agro-pastoralist groups in the lower Omo valley in the context of large-scale agricultural development projects associated with the Gibe III hydroelectric dam

- Letter by Special Rapporteur: 21/06/2013
- State reply: 20/08/2013

Letter in follow up to allegations previously transmitted

74. On 21 June 2013, the Special Rapporteur sent a letter to the Government of Ethiopia, in follow up to an earlier communication of 22 October 2012 transmitting allegations regarding agricultural development in the lower Omo valley associated with the construction of the Gibe III hydroelectric project, as well as about the Government's "villagization" programme. According to the information received, resettlements of indigenous agro-pastoralist groups are underway in the lower Omo valley and the Southern Nations, Nationalities and Peoples Region to make way for the Government's proposed development plans for these areas. The resettlements are reportedly part of the Ethiopian Government's larger "villagization" program instituted in at least four other regions of the country. The program consists of the relocation of pastoralist, agro-pastoralist and shifting cultivators into sedentary villages where they are supposedly provided with improved social services, housing and infrastructure. Numerous concerns have been raised in relation to this programme, including that the Government has failed to obtain the consent of affected indigenous groups prior to resettlement and the lack of services provided at resettlement sites.

75. In his follow up letter of 21 June 2013, the Special Rapporteur urged, as a preliminary matter, the Government to immediately undertake an evaluation of the potential effects of any resettlement efforts on the rights of the Suri, Bodi, Mursi, Kwegu and other affected indigenous agro-pastoralist groups in the lower Omo valley. This evaluation should bear in mind relevant contemporary international human rights standards, including their rights to property, self-determination, and culture, as well as their rights to set their own priorities for development. The analysis should guide the Government of Ethiopia as it moves forward with development plans in the lower Omo valley area.

76. The Special Rapporteur noted that, based on the information received and other reliable sources, there are strong indications that the indigenous agro-pastoralist groups potentially affected by the resettlements have been living in the lower Omo valley area for many years, maintaining their culturally distinctive land tenure and way of life, including their traditional flood retreat agriculture practices. Under the United Nations Declaration on the Rights of Indigenous Peoples (article 26) and other international sources of authority, indigenous peoples such as these agro-pastoralist groups have rights over the lands they traditionally use and occupy.

77. Yet, the Special Rapporteur noted, it appears that, thus far the rights of the agro-pastoralist groups to their traditional lands in the area have not been adequately recognized and respected by the Government of Ethiopia, and are not being taken into account in the resettlement process. The lack of consideration of the potential land and resources rights of affected agro-pastoralist groups runs counter to contemporary human rights standards regarding indigenous peoples, as well as to relevant provisions of the Constitution of the Federal Democratic Republic of Ethiopia. The Special Rapporteur recalled that, while the Constitution vests all land and resources in the State and the people of Ethiopia (article 40.3), it also recognizes that pastoralists can use land for grazing and cultivation and that they have the "the right not to be displaced from their own lands" (article 40.5).

78. The Special Rapporteur stated that, like other property interests, the property rights of indigenous peoples based on their traditional land and resource tenure may be subject to limitations for legitimate, non-discriminatory public purposes in accordance with the law. He pointed out, however, that he had not received information from the Government regarding the purpose and design of the resettlement programs in the lower Omo valley despite his request for information in this regard. The Special Rapporteur indicated that he continued to welcome such information. However, he understood from the information available that the Government of Ethiopia considers the resettlement to be necessary to make land available for agricultural and other development projects deemed crucial for the national economy.

79. The Special Rapporteur declined to offer comments about the adequacy of this justificaiton under relevant human rights standards. However, even if, after careful analysis bearing in mind relevant human rights standards, a restriction of the rights to land and reosuces of these groups is considered a legitimate option, these restrictions should only take place with adequate mitigation measures and, in the case of any removals, with the agreement of the affected indigenous peoples within a participatory, consensus-building process, and the opportunity to return to their traditional lands.

80. In this regard, the Special Rapporteur expressed concerns about the allegations received that no monetary or other compensation has been provided to resettled groups, and that the living conditions in the resettlement areas are inadequate, especially with respect to access to sufficient water to graze livestock and plant crops. He recalled that under article 28 of the United Nations Declaration on the rights of indigenous peoples, indigenous peoples have the right “to redress, which can include restitution or, when this is not possible, 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 damanged without their free, prior and informed consent” and “[u]nless otherwise freely agreed upon by the indigneous peoples concerned, 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”.

81. The Special Rapportuer also expressed concern about the allgations that affected indigenous agro-pastoralist groups have been participating in the resettlement involuntarily, and that the Government is attempting to coerce specific groups to be relocated, including by preventing individuals from planting crops or grazing their cattle in the areas from which they are to be moved. In this connection, the Special Rapporteur noted that while, in general, removals of people from their traditional lands have serious implications for a wide range of human rights, these implcations are greater for indigenous peoples, who generally hold bonds of deep historical and cultural significance to the lands in which they live. Thus, he noted, consent is a precondition for any removal of indigenous peoples from their lands, according to article 10 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that “[i]ndigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigneous peoples concerned”.

82. The Special Rapporteur urged the Government to evaluate any resettlement efforts in the lower Omo valley to ensure consistency with international standards, as well as with the Ethiopian Constitution, especially article 40.5. He emphasized that unless and until any resettlements can take place in accordance with these standards and adequate safeguards are put in place to mitigate any unavoidable impacts on human rights, Ethiopia should cease the resettlement of agro-pastorialist individual groups in the lower Omo valley.

Reply of the Government

83. In its reply of 20 August 2013, the Government stated generally that the Constitution upholds fundamental rights and freedoms, including the right to property, to self-determination, and economic, social and cultural rights. The Government noted that the main source of economic growth in the country is agriculture by small-holder farming and therefore the Government's development policy has given priority to supporting smallholding farming. The Government stated that its development policy is aimed at improving the well-being of all Ethiopians. The letter identified the development initiatives in the lower Omo valley such as the Kuraz sugar development project and the Gilgel Gibe III hydroelectic project.

84. With respect to the Kuraz sugar development project, the Government highlighted that it is only being carried out in uncultivated land and that adequate environmental, cultural and socio-economic impact assessments have been carried out. Similarly, with respect to the Gilgel Gibe III hydroelectric project, the Government noted that the project is being implemented in an area that has not been utilized or inhabited and that environmental, socio-economic and other impact studies were developed and assessed by local and international experts. These studies concluded that the project will have significant positive social and environmental impacts, and will not negatively affect pastoralists or fishers in the area.The response also provided information on the consultations carried out in relation to both development projects. It stated that following these consultations, people living around the project area consented to voluntarily resettle. In terms of resettlement, the Government stated that in general, plots of land similar to previous holdings and proportional compensation will be given to those resettling.

Observations

85. The Special Rapporteur thanks the Government of Ethiopia for its reply. He takes note of the information provided by the Government arguing the benefits of the development projects in the lower Omo valley. He is perplexed however, about the radical differences between the perspectives expressed by the Government and those expressed by non-governmental sources, and he finds it difficult to reconcile such opposing views. In any event, he would like to reiterate the observations and recommendations he made in his follow up letter of 21 June 2013 regarding the land rights and resettlement of indigenous agro-pastoralist people living in the lower Omo Valley, above, which he considers are still valid.

17. France

Case number FRA 1/2014, OTH 1/2014 and OTH 2/2014: Concerns regarding the importaion and sale in France of cultural heritage items of indigenous peoples in the United States.

- Letter of Special Rapporteur: 18/03/2014
- State reply: None within period covered by report
- Letter to Société EVE: 18/03/2014
- Reply of Société EVE: None within period covered by report
- Letter to Néret-Minet Tessier & Sarrou: 18/03/2014
- Reply of Néret-Minet Tessier & Sarrou: 06/05/2014

Allegations transmitted

86. In separate letters each dated 18 March 2014, the Special Rapporteur on the rights of indigenous peoples brought to the attention of the Government of France, and the auction houses Société EVE and Néret-Minet Tessier & Sarrou, the human rights concerns related to the importation and sale in France of cultural heritage items considered sacred by indigenous peoples of the United States. According to the information received, on two separate occasions in 2013, the two art auction houses in Paris publicly sold objects considered to be sacred by Hopi and other indigenous peoples. Concerns over the observance of international human rights standards related to the rights to culture and religion have been raised by this matter due to the deeply offensive nature of the public display and sale of these sacred objects to the indigenous peoples concerned, and because the auction of these items was done without their the consent or authorization. In addition, information was received about the inability of members of the indigenous peoples concerned to successfully use the French legal system to prevent the importation into and sale of sacred cultural items in France.

Response of Néret-Minet Tessier & Sarrou

87. On 6 May 2014, Néret-Minet Tessier & Sarrou provided a response to the Special Rapporteur. In its letter, the Néret-Minet Tessier & Sarrou Company stated that it is not the owner of the objects it sold. It noted that the United States Embassy tried to intervene when it was auctioning the items; however a court judgment authorized the sale of those items. The Company mentioned how "international decisions" have not been complied with by Governments, citizens or its institutions, such as museums. The Company stated it was listening to the demands of those who want to reclaim their cultural property and has promised to inform one of the indigenous peoples affected, the Laguna Pueblo, in the event of future sales involving their sacred objects.

Observations

88. The Special Rapporteur notes that the files of the Office of the High Commissioner for Human Rights do not reflect responses from the Government of France or from Société EVE to his communication of 18 March 2014 during the period covered by this report. The Special Rapporteur hopes the Government will take measures to address the concerns raised in his letter, taking into account the international standards cited in the letter concerning the rights of indigenous peoples to the respect of and recovery of their traditional spiritual and ceremonial items.

89. The Special Rapporteur would like to thank Néret-Minet Tessier & Sarrou for its response of 6 May 2014. He takes note of the company's willingness to consider the demands of indigenous peoples concerning cultural property as part of its business practices, and to inform the Laguna Pueblo of future instances of cultural items being sold. However, the Special Rapporteur is concerned that the company's response implies that it proceeded with the sale of the items, despite knowing of the opposition by the indigenous peoples concerned, because a court judgment permitted the sale. The Special Rapporteur would like to point out that while the court judgment did not deem the sale of the sacred items to be illegal under French law, that judgment did not restrict the company's ability to act in ways more respectful of the rights of indigenous peoples.

90. The Special Rapporteur would like to again highlight the relevance here of the United Nations Guiding Principles on Business and Human Rights, which affirm the responsibility of business enterprises to respect human rights and avoid infringing on the human rights of others. This is a responsibility which "exists independently of States' abilities and/or willingness to fulfill their own human rights obligations…And it exists over and above compliance with national laws and regulations protecting human rights"

(A/HRC/17/31, Principle 11). In addition, businesses should seek to "prevent or mitigate adverse human rights impacts that are directly linked to their operations… even if they have not contributed to those impacts" (Principle 13).

91. The Special Rapporteur hopes that the companies involved base their future business practices on the respect of and special attention to the concerns of indigenous peoples whose sacred items and other cultural property it might have in its possession. To that end, it is important that the development of its future business practices and policies be informed by the particular international human rights standards applicable to specific groups such as indigenous peoples, as suggested in the Guiding Principles on Business and Human Rights (Principle 12). In that regard, the Special Rapporteur reiterates the applicable standards under the United Nations Declaration on the Rights of Indigenous Peoples, including the rights of indigenous peoples to the protection of the past, present and future manifestations of their culture (art. 11); their right to restitution of their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs (art. 11(2)); and the right to the repatriation of their ceremonial objects through fair, transparent and effective mechanisms (art. 12(2)).

92. In addition, the Special Rapporteur hopes that the companies' policies and practices will conform to international standards and conventions related to cultural property mentioned in his communication of 18 March 2014, even if the companies themselves may not be legally mandated to do so by domestic law. These include the provisions of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995.

93. The Special Rapporteur hopes that, with these international standards in mind, the companies will make efforts to investigate the origin of items under their possession and cooperate with indigenous peoples, as well as with French and other State Government authorities, in order to prevent future instances of importation and sale of items of cultural heritage of indigenous peoples undertaken without their consent or authorization.

18. Guatemala

Caso no. GTM 4/2013: El proceso de reparación de los daños sufridos por 33 comunidades indígenas mayas por causa de la construcción de la represa hidroeléctrica Chixoy

- Carta del Relator Especial: 17/04/2013
- Repuesta del Estado: 06/01/2014
- Carta de seguimiento del Relator Especial: 17/03/2014

Alegaciones transmitidas

94. En su carta con fecha del 14 de marzo de 2014, el Relator Especial solicitó información actualizada sobre el proceso de reparación de los daños sufridos por 33 comunidades indígenas mayas por causa de la construcción de la represa hidroeléctrica Chixoy entre 1975 y 1983. Este asunto fue objeto de un anterior intercambio de información entre el Relator Especial y el Gobierno. (Ver A/HRC/18/51, pág. 89). El Relator Especial tomó nota de la respuesta del Gobierno del 6 de enero de 2014, en la cual informó sobre la provisión de viviendas, puestos de salud y otros servicios sociales en beneficio de algunas de las familias afectadas, y de su intención de proponer un acuerdo gobernativo para brindar servicios sociales adicionales a dichas familias. Sin embargo, se ha informado que las víctimas de la represa Chixoy continúan viviendo en condiciones de

vivienda y salud precarias y exigen el cumplimiento del plan de reparación acordado con el Gobierno en 2010. El plan de reparación comprende indemnizaciones de carácter individual y colectivo para las víctimas, además del otorgamiento de tierras, vivienda y servicios sociales entre otras cuestiones. Por otro lado, el Gobierno informó que no existe un marco legal para presupuestar los recursos destinados para indemnizar a las víctimas, y según lo indicado, descartó cualquier reconocimiento de una "deuda por concepto de daños y perjuicios ya que el período de prescripción ha concluido".

95. La comunicación tomó nota de las disposiciones de una ley de asignaciones del Gobierno de Estados Unidos en la cual la provisión de fondos de asistencia para el ejército de Guatemala estaba condicionada a que el Gobierno de Guatemala diera pasos creíbles para implementar el "Plan de Reparación de daños y perjuicios sufridos por las comunidades afectadas por la construcción de la hidroeléctrica Chixoy". En vista de ello, el Relator Especial solicitó al Gobierno información actualizada sobre las medidas que ha adoptado para implementar el plan de reparación referido.

Observaciones

96. El Relator Especial lamenta que no consta en los archivos de la Oficina del Alto Comisionado para los Derechos Humanos una respuesta por parte del Gobierno de Guatemala a su última comunicación del 14 de marzo de 2014. No obstante, valora el diálogo que anteriormente ha tenido con el Gobierno de Guatemala sobre el presente caso. El Relator Especial quisiera reiterar que el plan de reparación negociado entre el Gobierno y las víctimas de la represa Chixoy, en el cual el Gobierno reconoció su responsabilidad en relación con las violaciones a los derechos humanos que se dieron por motivo de la represa y en el que se comprometió a reparar esas violaciones, representa un importante precedente a nivel internacional en cuanto a las medidas necesarias para reparar las violaciones de los derechos humanos sufridas por los pueblos indígenas en el contexto de proyectos de inversión a gran escala.

97. Con respecto a lo aducido por el Gobierno de que ha prescrito la obligación de reparar cualquier deuda por concepto de daños o perjuicios, el Relator Especial reitera que las violaciones de los derechos humanos no tienen prescripción y la obligación de repararlas deviene de los compromisos internacionales en materia de derechos humanos que ha asumido el Gobierno de Guatemala. En ese sentido, el Relator Especial señala que las condiciones impuestas por el Gobierno estadounidense en la ley de asignaciones anteriormente referida recalca la seriedad e importancia del proceso negociado entre el Gobierno y las víctimas de la represa Chixoy, y de la necesidad de reparar a las víctimas. Por tanto, el Relator Especial espera que el Gobierno tome las medidas necesarias para agilizar la reparación de las víctimas de la represa Chixoy.

19. Guatemala

Caso no. GTM 10/2013: Supuestos ataques a través de diferentes medios de comunicaciones dirigidos en contra de los magistrados de la Sala Tercera de la Corte de Apelaciones de ramo Civil y Mercantil

- Carta de Relatores Especiales: 06/12/2013
- Repuesta del Estado: Ninguna dentro del periodo del presente informe

Alegaciones transmitidas

98. En una comunicación conjunta del 6 de diciembre de 2013, se transmitieron las alegaciones sobre supuestos actos de intimidación en contra de tres magistrados. Según la información recibida, los magistrados María Cristina Fernández García, Herberth Arturo

Valencia Aquino y Érick Gustavo Santiago de León, integrantes de la Sala Tercera de la Corte de Apelaciones del ramo Civil y Mercantil, habrían sido atacados en distintos medios de comunicación por haber dictado sentencias en las cuales se amparó a comunidades indígenas que denunciaron la violación a sus derechos a la propiedad ancestral sobre la tierra y el territorio. Estos actos de intimidación vendrían de particulares y de funcionarios públicos, y se enmarcarían en un clima creciente de actos de intimidación y desprestigio contra defensores y defensoras de los derechos humanos, incluyendo a operadores de justicia. Se alega además que debido a la presión a la que estarían siendo sometidos estos magistrados, otros jueces no estarían dispuestos a defender los derechos de los pueblos indígenas.

Observaciones

99. El Relator Especial lamenta que no consta en los archivos de la Oficina del Alto Comisionado para los Derechos Humanos una respuesta del Gobierno de Guatemala a la comunicación del 6 de diciembre de 2013. El Relator Especial reitera a su preocupación, expresada en su comunicación al Gobierno, de que los hechos alegados indican una situación de injerencia en el funcionamiento del sistema judicial y de la independencia de los jueces encargados de impartir justicia en casos relacionados con los derechos de los pueblos indígenas. El Relator Especial considera que tal situación representaría un obstáculo al cumplimiento de las obligaciones internacionales asumidas por el Gobierno de Guatemala en materia de derechos humanos de los pueblos indígenas, particularmente con respecto al reconocimiento y protección de los derechos sobre sus tierras y recursos naturales tradicionales.

100. En ese orden de ideas, el Relator Especial hace recordar que, conforme a la Declaración sobre los derechos de los pueblos indígenas, los pueblos indígenas tienen derechos a obtener la reparación por violaciones a sus derechos sobre sus tierras y recursos naturales tradicionales (arts. 27 y 28). Para tal fin, como dispone el Convenio No. 169, los pueblos indígenas deben poder participar en procesos legales para asegurar el respeto efectivo de sus derechos (art. 12) y deben instituirse “procedimientos adecuados en el marco del sistema jurídico nacional para solucionar las reivindicaciones de tierras formuladas por los pueblos interesados” (art. 14.3).

20. Honduras

Caso no. HND 4/2013: Alegaciones de continuas amenazas, actos de intimidación y asesinatos de defensores de derechos humanos en Honduras

- Carta de Relatores Especiales: 27/08/2013
- Repuesta del Estado: 20/09/2013
- Carta de seguimiento de Relatores Especiales: 11/04/2014

Alegaciones transmitidas

101. La comunicación conjunta del 27 de agosto de 2013 transmitió las alegaciones sobre presuntos asesinatos, amenazas y otros actos intimidatorios en contra de defensores de derechos medio-ambientales, derechos a la tierra y derechos de los pueblos indígenas. Según la información recibida, el 24 de mayo de 2013, Berta Cáceres y Tomás Gómez Membreño, integrantes del Consejo Cívico de Organizaciones Populares e Indígenas (COPINH), habrían sido detenidos en una operación militar por la supuesta posesión ilegal de un arma. Sin embargo, se alegó que esta detención se dio como consecuencia de sus labores en oposición al proyecto hidroeléctrico Agua Zarca que afectaría a comunidades indígenas lencas. Se ha alegado además que en represalia por las labores de dicha

organización en contra de la represa Agua Zarca, la Sra. Cáceres y los Sres. Tomás Gómez Membreño y Aureliano Molina, también dirigentes de COPINH, fueron acusados judicialmente por presuntos actos de incitación a causar daños a los bienes de la empresa constructora de la represa hidroeléctrica durante actos de protesta realizados por miembros de las comunidades indígenas afectadas por la represa. Asimismo, se alegó que el dirigente indígena lenca Tomás García habría sido asesinado por el Ejército Hondureño durante una manifestación en contra de la represa Agua Zarca que tuvo lugar el 15 de julio de 2013.

Respuesta del Estado

102. En su respuesta del 20 de septiembre de 2013, el Gobierno de Honduras brindó información sobre las circunstancias en que fue detenida la Sra. Bertha Cáceres por la supuesta posesión ilegal de un arma, los procesos judiciales que se habían realizado en su contra, y las garantías procesales que le fueron ofrecidas. Asimismo, proporcionó información sobre los procesos legales en contra de la Sra. Cáceres y los Sres. Gómez y Molina, por el supuesto delito de incitación a causar daños en perjuicio de la empresa Desarrollos Energéticos S.A. y la naturaleza de los delitos de los que se les acusaba. El Gobierno afirmó que no se ha dado un uso indebido del sistema de justicia con el propósito de restringir las actividades de las tres personas referidas en su condición de miembros de la organización indígena COPINH. En relación con el asesinato del Sr. Tomás García, el Gobierno informó que habrían iniciado las investigaciones sobre los hechos ocurridos en donde también resulto herido el hijo del Sr. García. Según informó el Gobierno, se habría dictaminado de manera preliminar un auto de prisión al oficial militar presuntamente responsable de la muerte del Sr. García.

Observaciones del Relator Especial

103. El Relator Especial quisiera agradecer al Gobierno por su respuesta. Toma nota de la información sobre las investigaciones en torno a la muerte del Sr. Tomás García y las medidas judiciales adoptadas en contra del presunto responsable de ese hecho. El Relator Especial espera que las investigaciones, procesos judiciales y la imposición de las penas correspondientes se lleven a cabo con la debida diligencia. Asimismo, el Relator Especial quisiera señalar la importancia de que las investigaciones referidas también comprendan las responsabilidades en la cadena de mando en relación con las actuaciones del ejército durante los sucesos que resultaron en la muerte del Sr. García.

104. El Relator Especial toma nota de la información respecto a los procesos judiciales emprendidos contra la Sra. Cáceres y los Sres. Gómez y Molina, y las afirmaciones de que no se ha buscado penalizar a estas personas por su participación en actos de protesta contra la represa Agua Zarca. Al respecto, el Relator Especial toma nota de la información que fue reflejada en la comunicación que envió posteriormente al Gobierno de Honduras el 11 de abril de 2014, la cual indicaba que en febrero de 2014 un tribunal habría dictado el sobreseimiento definitivo de la Sra. Cáceres en relación con los cargos de posesión ilegal de armas de fuego, lo cual resultó en la revocación de las acciones penales impuestas en contra de la Sra. Cáceres. Asimismo, también se había informado que otro tribunal habría dictado el sobreseimiento provisional con respecto a los cargos de incitación y daños a la propiedad que enfrentaban la Sra. Cáceres, el Sr. Gómez y el Sr. Molina.

105. El Relator Especial recalca la necesidad de garantizar la existencia de medidas efectivas para asegurar el cumplimiento de normas internacionales relativas al debido proceso en los procesos legales contra personas indígenas que se hayan dado en contextos de protesta social en reivindicación de los derechos de los pueblos indígenas. Asimismo, en relación con el presente caso resulta necesario atender la problemática subyacente relacionada con los temas de derechos de tierras y consulta previa que reclaman los pueblos indígenas presuntamente afectados por la represa Agua Zarca.

21. Honduras

Caso no. HND 3/2014: La situación de las comunidades indígenas lencas afectadas por la construcción del proyecto hidroeléctrico Agua Zarca en la región de Rio Blanco, Intibucá.

- Carta de Relatores Especiales: 11/04/2014
- Repuesta del Estado: Ninguna dentro del periodo del presente informe

Alegaciones transmitidas

106. En su comunicación conjunta del 11 de abril de 2014, el Relator Especial, junto con la Relatora Especial sobre la situación de los defensores de los derechos humanos, dieron seguimiento al llamamiento conjunto urgente del 27 de agosto de 2013 que trataba sobre la situación de la Sra. Bertha Cáceres y otros dirigentes indígenas del Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH) quienes supuestamente fueron objeto de procesos legales por su trabajo en oposición al proyecto hidroeléctrico Agua Zarca. La comunicación del 11 de 2014 transmitió al Gobierno las alegaciones específicas relacionadas con los supuestos efectos del proyecto Agua Zarca sobre los derechos de las comunidades lencas de la región de Río Blanco a sus tierras y recursos naturales. Las alegaciones transmitidas versaban sobre las vulneraciones a los derechos de las comunidades indígenas de Río Blanco sobre sus tierras y recursos naturales tradicionales por causa del proyecto Agua Zarca, la falta de una consulta adecuada de manera previa a la aprobación del proyecto, y los actos de violencia y persecución penal en contra de dirigentes indígenas y miembros de las comunidades de Río Blanco que se han opuesto al proyecto. La carta también hizo mención de sucesos recientes en relación con las acciones penales que se habían iniciado en contra de la Sra. Cáceres y los Sres. Tomás Gómez Membreño y Aureliano Molina.

Observaciones

107. El Relator Especial lamenta que no consta en los archivos de la Oficina del Alto Comisionado para los Derechos Humanos una respuesta por parte del Gobierno de Honduras en relación con las alegaciones sobre violaciones a los derechos territoriales de las comunidades de Río Blanco a raíz de la aprobación del proyecto Río Blanco. Con base en la información recibida por el Relator Especial que formó parte de las comunicaciones conjuntas del 25 de agosto de 2013 y del 11 de abril de 2014, considera que existen fuertes indicios de una situación de conflictividad social en el contexto del proyecto Agua Zarca. El Relator Especial espera que el Gobierno adopte las medidas necesarias para resolver esta situación tomando en cuenta los compromisos internacionales en materia de derechos humanos adquiridos bajo el Convenio No. 169 de la Organización Internacional del Trabajo sobre pueblos indígenas, ratificado por el Estado de Honduras, y la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, aprobada por la Asamblea General con el voto afirmativo de Honduras.

108. A la vez, el Relator Especial quisiera hacer referencia a sus informes anuales de 2012 y 2013 al Consejo de Derechos Humanos sobre la aplicación de estándares internacionales sobre derechos de los pueblos indígenas en el contexto de actividades de industrias extractivas, lo cual es de relevancia en los casos de otras actividades de aprovechamiento de recursos naturales, como ser proyectos hidroeléctricos, que afectan a los pueblos indígenas. En particular, considera necesario señalar la necesidad de evaluar el impacto sobre los derechos sustantivos de los pueblos indígenas en cuestión, y garantizar procesos de consulta previa adecuados con los pueblos indígenas, estudios de impactos, así como medidas de mitigación y de compensación, como mecanismos de salvaguardia de los derechos de los pueblos indígenas (A/HRC/21/47, párrs. 47-53). También deben tenerse en

cuenta los criterios para determinar la exigibilidad de obtener el consentimiento libre, previo e informado de los pueblos indígenas concernidos en el marco de una evaluación sobre si la actividad en cuestión representaría una limitación permisible de los derechos de los pueblos indígenas de acuerdo a la doctrina internacional aplicable (A/HRC/24/41, párrs. 27-40). Por otro lado, cabe señalar el derecho de los pueblos indígenas, en conformidad con sus derechos a la libertad de expresión y a la participación, consagrados en el derecho internacional, de oponerse a proyectos que pudieran afectarles sin estar sujetos a represalias o a la violencia (A/HRC/24/41, párrs. 19-23).

22. India

Case No. IND 9/2013: Alleged recent removal of indigenous consent requirements in the context of infrastructure development projects affecting indigenous forestlands and resources

- Letter by Special Rapporteur: 08/07/2013
- State reply confirming receipt: 09/07/2013

Allegations transmitted

109. In his letter of 8 July 2013, the Special Rapporteur raised concerns regarding the alleged recent removal of indigenous consent requirements in the context of infrastructure development projects affecting indigenous forestlands and resources. According to the information received, in February 2013, the Ministry of Environment and Forests allegedly revised previous policy directives that made consent by Gram Sabhas (local village councils) mandatory for projects that involve using forest lands for non-forest purposes such as commercial and development projects and activities. The Ministry of Environment and Forests reportedly created an exemption for consent requirements in the case of modifications to the use of forest lands for the development of what are termed “linear projects”. It is alleged that this consent exemption provision will negatively affect the rights of many indigenous peoples in India who are not “pre-agricultural communities” or “primitive tribal groups” but rather fall under the category of “Forest Dwelling Scheduled Tribes” or “other traditional forest dwellers”. It is feared that the removal of the consent requirement will facilitate the development of potentially damaging projects in traditional forestlands without prior consultation or consent of indigenous peoples.

Observations

110. The Special Rapporteur regrets that no substantive response by the Government of India to his communication of 8 July 2013 appears in the files of the Office of the High Commissioner for Human Rights. As noted in his communication to the Government, earlier policy statements issued by the Ministry of Environment and Forests requiring the consent of Gram Sabhas for projects involving use of indigenous forest lands constituted a Government practice that appeared generally consistent with international human rights standards on land and natural resource rights and consultation and consent requirements.

111. The Special Rapporteur notes the concerns expressed over the possible social, cultural and environmental impacts of projects under the category of “linear projects” which include roads, canal systems, optical fiber transmission lines, pipelines, and other similar projects. The allegations raised indicate that the types of projects contemplated may include activities that are sufficiently large in scope to affect the lands, forest resources, health and well being of forest-dwelling indigenous peoples. In this respect the Special Rapporteur draws attention to the relevant international standards, including those articulated in the United Nations Declaration on the Rights of Indigenous Peoples

pertaining to their rights participate in decision-making in matters affecting them (art. 18); to the respect of their own traditional political, economic and social institutions and means of subsistence (art. 20); and to be consulted, in order to obtain their free, prior and informed consent, prior to adopting or implementing legislative or administrative measures or development project or other activities affecting them (arts. 19, 32). In addition, the Special Rapporteur would also like to refer to article 28 of the Declaration which provides for the right of indigenous peoples to redress "by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned … and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent."

23. Israel

Case No. ISR 6/2013: Alleged plans to enact the "Law for the Regulation of Bedouin Settlement in the Negev-2013", also known as the Prawer-Begin bill

- Letter by Special Rapporteurs: 11/06/2013
- State reply: None within period covered by report

Allegations transmitted

112. In his letter of 11 June 2013, the Special Rapporteur, together with the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination in this Context, and the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, raised concerns regarding the alleged risk of eviction and forced displacement of a large number of Arab Bedouins in the Naqab (Negev) desert in the south of Israel. According to the information received, the proposed "Law for the Regulation of Bedouin Settlement in the Negev- 2013", a bill also known as the Prawer-Begin Bill, would lead to the eviction and forced displacement of more than 70,000 Arab Bedouins in the Naqab (Negev) desert in the south of Israel. Allegedly this would mean the destruction of most of the remaining unrecognized Arab Bedouin villages in this region. Concerns also include severance of the historical ties to land of the Bedouin community, strict limits and conditions to access and receive adequate compensation whether in money or land, and the use of force in the form of the deployment of additional police officers in charge of the implementation of this Plan.

Observations

113. The Special Rapporteur regrets that there is no response to his communication of 11 June 2013 by the Government of Israel in the files of the Office of the High Commissioner of Human Rights as of the time of writing this report. However, the Special Rapporteur was pleased to learn that the Prawer-Begin Bill was withdrawn from consideration in December 2013, which he notes is a welcome development. The Special Rapporteur again brings the attention of the Government to his observations and recommendations previously made in this case (A/HRC/18/35.Add.1), which he considers are still relevant. In particular, he would like to reiterate his recommendation that the Government "embrace a long-term vision for social and economic development of the Negev, including in the unrecognized Bedouin villages, bearing in mind the historical and cultural importance of these villages to the Bedouin and to the society at large. This long-term vision for development of the Negev should enable the Bedouin to become active participants in and direct beneficiaries of any development initiatives affecting the lands they traditionally use and occupy within the Negev."

24. Kenya

Case No. KEN 7/2013: Alleged burning of Maasai houses and property in the community of Narasha and alleged expansion of the KenGen geothermal project operating in the area

- Letter by Special Rapporteur: 01/11/2013
- State reply: None within period covered by report

Allegations transmitted

114. In his letter of 1 November 2013, the Special Rapporteur raised concerns regarding the alleged burning of Maasai houses and property and the alleged failure of the Government to provide compensation. According to the information received, on 26 July 2013, a convoy of vehicles arrived in the community of Narasha, Naivsha, in the Great Rift Valley, which is located on the traditional lands of the Maasai people. Throughout that day, the group burned numerous Maasai homes destroying items within the houses. It is reported that, while State authorities have promised Narasha community members that they will be compensated for their loss, over two months since the incident no compensation has been provided to the victims. In the meantime, numerous Maasai families have had to endure bouts of rain without any adequate shelter following the destruction of their houses. The letter also raised related concerns regarding the alleged proposed expansion of the KenGen geothermal project operating in the area within the traditional, but as of yet, untitled lands of the surrounding Maasai communities.

Observations

115. The Special Rapporteur notes there is no record of a reply from the Government to his communication of 1 November 2013 in the files of the Office of the High Commissioner for Human Rights at the time of finalization of this report.

116. Regarding the allegations of burned Maasai houses, the Special Rapporteur again calls upon the Government to provide compensation to those who had their homes and possessions burned, if it has not already done so. With respect to allegations concerning the proposed expansion of the KenGen geothermal project, the Special Rapporteur draws the attention of the Government to the observations and recommendations made in his final thematic report to the Human Rights Council on the issue of extractive industries and indigenous peoples (A/HRC/24/41). The Special Rapporteur notes in particular the paragraphs of that report dealing with rights-centered, equitable agreements and partnership (paragraphs 72-78). In this connection, he would like to highlight his recommendation that "Agreements with indigenous peoples allowing for extractive projects within their territories must be crafted on the basis of full respect for their rights in relation to the affected lands and resources and, in particular, should include provisions providing for impact mitigation, for equitable distribution of the benefits of the projects within a framework of genuine partnership, and grievance mechanisms" (paragraph 92). The Special Rapporteur hopes that these observations and recommendations will help guide the Government as it moves forward with any expansion of the geothermal project.

25. Kenya

Case No. KEN 1/2014: Alleged imminent threats of eviction faced by the Sengwer indigenous people

- Letter by Special Rapporteur: 10/01/2014

- Press release by Special Rapporteur: 13/01/2014
- State reply: None within period covered by report

Allegations transmitted

117. In his letter of 10 January 2014, the Special Rapporteur raised concerns regarding the alleged imminent threat of eviction faced by the Sengwer indigenous people. According to the information received, police were poised to forcibly evict Sengwer indigenous people from their homes in the Embobut Forest area. For centuries, the Sengwer indigenous people, also known as the Cherangany indigenous people, have lived, hunted and gathered in the Embobut Forest area in the Rift Valley of Kenya. Sengwer continue to live n or near the Embobut Forest and to engage in cultural and subsistence practices in the area. According to reports, police forces had been gathering in the Embobut Forest area in preparation of evictions ordered by the Government in pursuit of forest and water conservation objectives. Sources reported that since the 1970s, Kenyan authorities had made repeated efforts to forcibly evict the Sengwer from the forest for resettlement in other areas. In light of the information received, the Special Rapporteur urged the Government to take all necessary measures to ensure that the human rights of Sengwer people are fully respected, in strict compliance with international standards protecting the rights of indigenous peoples.

Observations by the Special Rapporteur

118. The Special Rapporteur notes that there is no record of a reply by the Government of Kenya to his communication of 10 January 2014 in the files of the Office of the High Commissioner for Human Rights at the time of finalization of this report. Nevertheless, the Special Rapporteur would like to reiterate the call to the Government, which he made in his public statement of 31 January 2014 on this issue, that it "ensure that the human rights of the Sengwer indigenous peoples are fully respected, in strict compliance with international standards protecting the rights of indigenous peoples." The Special Rapporteur also reminded Kenya that, in accordance with article 10 of the United Nations Declaration on the rights of indigenous peoples, "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

119. The Special Rapporteur also notes the apparent similarities between this case and a case upon which he has previously provided detailed observations and recommendations, the case of the Ogiek indigenous peoples in the Mau Forest Complex, which involved the alleged removal of members of this indigenous group purportedly for purposes of environmental rehabilitation of that forest. He would like to refer the Government, the Sengwer people and others involved to the observations and recommends he made previously in that case (A/HRC/15/37.Add.1, paragraphs 240-271).

26. Papua New Guinea

Case No. PNG 1/2014: Impact of large-scale land acquisitions under the Special Agricultural and Business Leases scheme on the rights of indigenous communities in Papua New Guinea

- Letter by Special Rapporteurs: 18/02/2014
- State reply: None within period covered by report

Allegations transmitted

120. In a letter of 18 February 2014, the Special Rapporteur, together with the Special Rapporteur on the Right to Food, the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, and the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, raised concerns regarding the alleged negative impact on several human rights of large-scale land acquisitions under the State's Special Agricultural and Business Leases (SABLs) scheme. According to the information received, large-scale land acquisitions have been granted without due respect for legal procedures and safeguards and have negatively affected the ability of indigenous communities to maintain customary land use patterns, sustain their traditional way of living, access land or secure their right to food and right to water. Reportedly, concessions for the development of customary land have been granted without consultation and consent and there have been incidents of violence or intimidation against landowners that expressed opposition to the SABLs.

121. According to the information received, a Commission of Inquiry on SABLs, was formed by the Government in 2011 which issued a final report in June 2013 critical of the overall SABL scheme and finding that a significant loss of customary land ownership occurred through illegal conversion of customary lands into agricultural leasehold lands. The Commission of Inquiry reportedly recommended that the current SABL structure be eliminated, that steps be taken to ensure that the land that was irregularly or illegally alienated under this scheme be returned to local landowners, and that all persons and entities implicated in unlawful activities under this scheme be prosecuted. Following the publication of this report, the Prime Minister reportedly expressed his support of the Commission of Inquiry's conclusions, declared that the SABL scheme was a failure, and appointed a task force to develop a new legislative framework to provide for the conversion of customary land into lease hold land in a manner more respectful of the rights of landowners.

Observations of the Special Rapporteur

122. The Special Rapporteur regrets that there is no response from the Government of Papua New Guinea in the files of the Office of the High Commissioner for Human Rights received during period covered by this report.

123. As is indicated in the communication of 18 February 2014, violations of the customary land rights of indigenous populations were confirmed by the Government-appointed Commission of Inquiry on SABLs. The Special Rapporteur is encouraged by the Prime Minister's public statements indicating that he will follow the Commissions of Inquiry's conclusions and considers that said conclusions provide an important framework by which to redress the violations allegedly experienced by indigenous peoples as a result of the SABL scheme. The Special Rapporteur would like to encourage the Government to develop an action plan and timeline to promptly implement the recommendations of the Commission of Inquiry dealing with the return of irregularly or illegally obtained customary land and for the prosecution of those responsible for the illegal alienation of customary land.

124. The Special Rapporteur understands that the Government will undertake a process of reform of the legislative framework related to agricultural leasehold lands. He hopes that the reform process institutes measures to prevent a repetition of the problems identified with the SABL scheme which contravene the rights of local indigenous communities, particularly in relation to the unauthorized alienation of customary lands, the social, cultural and environmental effects alleged to have occurred as a result of SABL- related projects, and cases of fraud, threats and intimidation associated with the process of land alienation.

125. To that end, the Special Rapporteur would like to point out provisions of the Declaration on the Rights of Indigenous Peoples related to indigenous peoples' rights to lands, territories and resources they have traditionally owned, occupied or otherwise used or acquired, and to the requirement that States to give legal recognition to those lands, territories and resources with due respect to their customs, traditional and land tenure systems (art. 26). The Special Rapporteur would also like to refer to the duty of States to consult with indigenous peoples, through their own representative institutions, in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resource s (art. 32). In addition, the Special Rapporteur would like to point out article 28 providing for the right of indigenous peoples to redress, including restitution, or if not possible, just, fair and equitable compensation for the traditional lands and resources of indigenous peoples that have been "confiscated, taken, occupied, used or damaged without their free, prior and informed consent". That compensation may include "lands, territories and resources equal in quality, size and legal status or of monetary compensation or of other appropriate redress".

27. Philippines

Case No. PHL 1/2013: Alleged harassment and displacement of B'laan indigenous communities in Davao del Sur by members of the Philippine Army

- Letter by Special Rapporteur: 08/07/2013
- State reply: None within period covered by report

Allegations transmitted

126. In his letter of 8 July 2013, the Special Rapporteur raised concerns regarding the alleged harassment and displacement of B'laan indigenous communities in Davao del Sur by members of the Philippine Army. According to the information received, in April 2013, a unit of the Philippine Army landed by helicopter at Sitio Tah Canten, Malawanit, Magsaysay, Davao del Sur, Philippines. Armed confrontations between the New People's Army (NPA), a Maoist guerrilla organization, and the army battalion ensued. It is alleged that the conflict resulted in the temporary displacement of B'laan indigenous villagers from their houses. In addition, members of the military allegedly harassed and conducted interrogations of B'laan indigenous villagers based on the unsubstantiated suspicion that they were either supporters or members of the NPA.

Observations

127. The Special Rapporteur regrets that there is no response from the Government of the Philippines to his communication of 8 July 2013 in the files of the Office of the High Commissioner for Human Rights. As the Special Rapporteur indicated in his communication, a previous joint communication sent on 28 December 2012 to the Government of the Philippines concerned alleged reports of killing, harassment, threats and stigmatization of indigenous rights defenders. That communication included reported incidents of B'laan indigenous persons in Santa Cruz, Davao del Sur and Mindanao who were allegedly killed by members of the Philippine Army due to their work in defense of indigenous rights. Consequently, the Special Rapporteur expressed concern that the information contained in his communication of 8 July 2013 indicated a possible pattern of human rights violations committed by military officials against B'laan and other indigenous peoples in the Philippines that needs to be thoroughly addressed and investigated by the Government.

128. The Special Rapporteur notes that the information received in this case is consistent with concerns expressed by indigenous peoples in the Asian region due to the presence of military forces in their territories in the context of counterinsurgency campaigns, as evidenced in the Special Rapporteur's report that resulted from a consultation he held in March 2013 regarding the situation of indigenous peoples in Asia, which included the participation of indigenous representatives from the Philippines. As that report recommended to Asian States in general, the presence of military forces in indigenous territories should be guided by article 30 of the United Nations Declaration on the rights of indigenous peoples, which provides that military activities shall not take place on indigenous lands or territories unless justified by a relevant public interest or otherwise freely agreed to or requested by the indigenous peoples concerned (A/HRC/24/41/Add. 3, para. 50). In addition, the Special Rapporteur would like to make reference to other recommendations calling for the identification and abandonment of counter-insurgency programmes that result in violation of indigenous peoples' rights and prompt investigations and, where alleged abuses of indigenous rights are confirmed, prosecutions of those responsible, including military officers (A/HRC/24/41/Add. 3, paras. 51, 52). In addition, the recommendations also called for a stop to the categorical labeling of indigenous peoples as insurgent groups due to their efforts to advocate for their rights (A/HRC/24/41/Add. 3, para. 53).

129. The Special Rapporteur hopes that the observations and recommendations made in his 2013 report on the situation of indigenous peoples in Asia, help provide useful parameters to the Government of the Philippines in addressing the concerns brought forth in the Special Rapporteur's communication concerning B'laan indigenous communities and the presence of military forces in their territory.

28. Russia

Case no. RUS 1/2014: The situation of the Evenki "Dylacha" community

- Letter by Special Rapporteurs: 28/01/2014
- State reply: None within period covered by report

Allegations transmitted

130. In his letter of 28 January 2014, the Special Rapporteur, together with the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, raised concerns regarding allegations of economic discrimination against the indigenous Evenki "Dylacha" community. According to the information received, "Dylacha" is an indigenous Evenki obshchina (clan community) founded in 1992 and located in Bauntovski Evenkiisky District, Baikal region, Republic of Buryatia. Dylacha holds a license to carry out mining and related processing of nephrite, a type of jade. The mining and processing of nephrite has been a traditional livelihood of the indigenous peoples of the Baikal region dating back hundreds of years. Reportedly, Dylacha has complied with relevant Russian legislation and regulations in carrying out its activities, including its mining operations. It is alleged that despite this, government authorities have dissolved Dylacha on the basis that its activities were in violation of current Russian legislation. Specifically, it was alleged that the community is not permitted to carry out "non-traditional activities". Rather, the community is only permitted to generate earnings from fishing, hunting and reindeer husbandry. These actions against Dylacha have allegedly caused it to experience significant economic hardship.

Reply of the Government

131. In its reply of 14 May 2014, the Government of the Russian Federation provided a detailed description of the legal proceeding in the case. It noted that the Dylacha enterprise was closed because nephrite mining is not listed in the federal inventory of traditional economic activities of indigenous small numbered peoples of the North, Siberia and the Far East. The Government further notes that the Dylacha enterprise acted for profit, which contravenes the federal act on organization of "obschinas" that requires them to be non-profits. It also confirmed that a "Federal Agency for Resource Use" suspended Dylacha's license to the Kavoktinskoye nephrite deposit effective 13 December 2013. The letter noted that a corporation named Zabaikalskoye gornorudnoye predpreyatie (transbaikal metal mining corporation) has obtained a short-term license for exploration and mining.

132. Further, the Government noted that the court determined that the Dylacha had violated environmental legislation during its mining activities by using heavy machinery and explosives, and thus, according to the Government, the operations were in fact an obstacle to the sustainable development of the Evenks. The letter also noted that there has been evidence of illegal extraction in the area. Regarding the kidnapping of two staff members of Dylacha by the police, the Government states that the matters has been investigated and it was decided not to pursue criminal charges against the police. Finally, the Russian Federation expressed its view that the mandate of the Working Group on Business and Human Rights does not include the authorization to consider individual complaints.

Observations

133. The Special Rapporteur thanks the Government for its reply to his letter of 28 January 2014. The Special Rapporteur notes that in his 2010 report on the situation of indigenous peoples in Russia (A/HRC/15/37/Add.5, paras. 60-65), he provided observations and recommendations that are relevant to the present case, which he would like to reiterate now.

134. Specifically, he noted that Government's principal policy with regard to indigenous peoples is to ensure the preservation of their unique cultures by supporting their traditional economic activities. In this connection, the Special Rapporteur noted that he had observed that many Government officials with whom he met seemed to operate under the assumption that if indigenous people carry out non-traditional, mainstream economic activities, their cultures and identities, and, consequently, their status as protected small-numbered indigenous peoples will be threatened.

135. However, the Special Rapporteur noted that examples in Russia and other parts of the world have shown that indigenous communities are able to enter into successful entrepreneurship that extends beyond activities characterized as "traditional", without having to sacrifice their unique cultures, and often are able to do so in a way that strengthens their capacity to maintain the integrity of the cultures. In this connection, articles 3, 20 and 23 of the Declaration on the Rights of Indigenous Peoples state that indigenous peoples have the right to "freely pursue their economic, social and cultural development", to maintain and develop their economic systems, and "to determine and develop priorities for exercising their right to development". The right to development includes the right to preserve and continue traditional economic activities and the right to choose to develop those activities in the modern world and participate in broader spheres of economic life.

136. In his report the Special Rapporteur noted that indigenous communities in Russia with whom he spoke expressed a strong desire to participate much more actively in economic activities that are not considered traditional, such as oil development or other

commercial and industrial enterprises, or development of tourist destinations around historic sites. They view this as a way to ensure the economic viability of their communities without a long-term dependence on Government subsidies.

137. The Special Rapporteur expressed his hope that Government officials will develop a long-term vision of economic development in indigenous areas, and strive to support and encourage various models of economic exchange and enterprises, including support for and development of non-traditional economic activities. The Special Rapporteur also recommended that the federal and regional governments should consider providing encouragement and support for indigenous entrepreneurship in economic activities not necessarily limited to smaller-scale traditional activities, as a way of strengthening communities and enabling self-governance, job creation and self-sufficiency (A/HRC/15/37/Add.5, para. 91).

29. Tanzania

Case No. TZA 3/2013: Alleged forcible evictions and other human rights issues affecting indigenous Maasai pastoralists in the area of Sukenya Farm, Arusha Region

- Letter by Special Rapporteurs: 14/11/2013
- State reply: None within period covered by report

Allegations transmitted

138. In his letter of 14 November 2013, the Special Rapporteur, together with the Working Group on the use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, raised concerns regarding the alleged forcible eviction and other alleged human rights violations affecting indigenous Maasai pastoralists. According to the information received, Sukenya Farm is a locality in the Loliondo Division, Ngorongoro District, in the Arusha Region of Kenya. Reportedly, Sukenya Farm is a large grazing area that constitutes part of the ancestral territories of Maasai pastoralists. Maasai groups have used this territory to carry out their traditional activities including grazing cattle and accessing important water sources. In 1984, the Government of Tanzania in conjunction with the Ngorongoro District Council allocated 10,000 acres within the Soitsambu village to the company Tanzanian Breweries Limited (TBL). Subsequently, in 2006, TBL sold its leasehold to a tourism company known as Tanzania Conservation Limited (TCL). It is reported that since the 2006 evictions, private security guards connected to TCL and local police have continually subjected Maasai pastoralists to acts of intimidation, harassment, and beatings when they have attempted to graze their cattle or access water points in the disputed land area.

Observations

139. The Special Rapporteur notes that the files of the Office of the High Commissioner for Human Rights do not reflect a response from the Government of Tanzania to his communication of 14 November 2013 within the period covered by this report. The Special Rapporteur is concerned by the Government's lack of response to this and all previous communications, which were sent on 23 March 2009, 23 September 2009, 12 April 2010, and 8 May 2013, regarding the forced removal of and incidents of violence against various indigenous pastoralist groups throughout the Ngorongoro and Kilosa Districts, and ongoing threats to their use of traditional lands and natural resources of. He cannot help but harbor deep concern over the information received regarding continuing cases of conflict due to conservation or tourist initiatives affecting traditional Maasai pastoralists in Sukenya Farm as well as in other areas of Tanzania.

140. As noted in his last communication to Tanzania on 14 November 2013, the Special Rapporteur provided specific recommendations to the Government regarding the alleged eviction of Maasai pastoralists in the Kilosa and Ngorongoro Districts, which are also be applicable in the present case. These recommendations included the adoption of measures to cease and desist from further removals of indigenous pastoralist groups from their traditional lands; to establish effective mechanisms to identify and protect indigenous land rights in accordance with their customary laws and practices; to establish an adequate mechanism by which affected pastoralist groups can obtain redress and reparations for any restrictions to their lands and resources, including evictions; to carry out independent and impartial investigations into forced removal of indigenous groups; and to provide for active participation of and direct benefits to indigenous pastoralist groups with respect to natural wildlife conservation and other economic development plans (A/HRC/15/37/Add. 1, para. 455).

141. Further, as the Special Rapporteur also noted in his 14 November 2014 communication, the Committee on the Elimination of Racial Discrimination has expressed concern about the forced eviction of Maasai pastoralists from Sukenya Farm. In March 2009, within its early warning and urgent action procedure, the Committee requested the Government of Tanzania to take various interim measures to safeguard the land and natural resource rights of the Maasai in Soitsambu village until their rights were officially determined by the Government of through national legal processes.

142. The Special Rapporteur hopes the Government of Tanzania takes decided measures to safeguard the rights of indigenous pastoralist groups in Sukenya Farm and other areas of Tanzania in order to prevent further social conflicts, evictions and incidents of violence faced by these groups. To that end, he hopes the Government seriously considers implementing his previous recommendations on this issue as well as the interim measures requested by the Committee on the Elimination of Racial Discrimination in the case of Sukenya Farm.

30. Tanzania

Case No. TZA 1/2014: Alleged beatings of three Maasai pastoralists from Sukenya village, an area subject to ongoing dispute regarding access to land

- Letter by Special Rapporteurs: 02/04/2014
- State reply: None within period covered by report

Allegations transmitted

143. In his letter of 2 April 2014, the Special Rapporteur, together with the Working Group on the use of Mercenaries as a means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, raised concerns regarding the alleged beatings of three Maasai pastoralists, Munjaa son of Musa, Kendo son of Maiwa, and Naboye Ngukwo, of Sukenya Village, an area subject to ongoing dispute regarding access by Maasai pastoralists. According to information received, Sukenya Farm constitutes the ancestral territory of Maasai pastoralists from both Sukenya and Mondorosi villages. Since 2006, the Maasai have no longer been able to access their traditionally held lands and its resources freely as Sukenya Farm's leasehold was sold by Tanzania Breweries Limited (TBL) to Tanzania Conservation Limited (TCL) for tourism purposes. Due to the land dispute, it is alleged that in the past years, agents and employees including private security guards of Thomson Safaris have been exerting pressure on Maasai pastoralists to leave the Sukenya Farm area. Maasai pastoralists are alleged to have been subjected to forcible

evictions, beatings, arrests and detentions when they have attempted to access Sukenya Farm.

Observations

144. The Special Rapporteur notes that the files of the Office of the High Commissioner for Human Rights to not reflect a response from the Government of Tanzania to his letter of 2 April 2014 within the time period covered by this report. The Special Rapporteur again expresses his concern over the allegations of acts of violence against Maasai individuals particularly in light of the information he has previously received about the alleged conflict situation in the Sukenya Farm area, which was the subject of a previous communication on 14 November 2013. The Special Rapporteur hopes the Government of Tanzania conducts prompt investigations of the specific alleged incidents of violence and that it sanction the responsible parties. In addition, adequate compensation should be provided to the alleged victims for the harms they suffered. Furthermore, measures need to be taken to ensure police and private security personnel are provided with adequate human rights training, particularly with regards to the rights of indigenous peoples.

31. United States of America

Case No. USA 7/2013: Increasing number of state-level regulations that restrict the religious freedoms of Native American prisoners, including their participation in religious ceremonies and possession of religious items

- Letter by Special Rapporteurs: 05/06/2013
- State reply acknowledging receipt: 05/05/2014

Allegations transmitted

145. In his letter of 5 June 2013, the Special Rapporteur, together with the Special Rapporteur on Freedom of Religion or Belief, raised concerns regarding the alleged increasing number of state-level regulations that restrict the religious freedoms of Native American prisoners. According to the information received, indigenous peoples in the United States face high rates of imprisonment with an approximate 29,700 Native Americans incarcerated in prisons across the country as of 2011. Reportedly, while in prison, a significant number of Native Americans rely upon their freedom to carry out traditional religious practices for rehabilitation purposes and as a means to maintain their identity as members of indigenous peoples. However, numerous recent regulations in state correctional facilities have allegedly restricted Native American prisoners from engaging in traditional religious practices and possessing religious items. It is further alleged that the majority of these regulations are modified or created without meaningful consultation with Native Americans beyond processes for general public comment.

Observations by the Special Rapporteur

146. The Special Rapporteur notes that the files of the Office of the High Commissioner for Human Rights do not reflect a reply by the Government to his communication of 5 June 2013 within the time period covered by this report. However, he would like to again call the Government's attention to article 12 of the Declaration on the Rights of Indigenous Peoples, which states that indigenous peoples "have the rights to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies". He hopes that the Government will take into account the centrality of traditional religious practices for maintaining the prisoners' identity as indigenous peoples and also for their rehabilitation. The Special Rapporteur would welcome any information by the Government regarding the

reasons behind the restriction of the prisoners' traditional medicinal practices, but in absence of any such information, he questions whether these limitations are permissible under international human rights standards.

32. United States of America

Case No. USA 16/2013: The situation of "Veronica", an indigenous child who was the subject of a custody dispute

- Letter by Special Rapporteur: 09/09/2013
- Press release by Special Rapporteur: 10/09/2013
- State reply: 15/11/2013

Allegations transmitted

147. In his letter of 9 September 2013, the Special Rapporteur raised concerns regarding the situation of "Veronica", an indigenous child who was the subject of a custody dispute. According to the information received, Veronica, a Cherokee child who is the daughter of a citizen of the Cherokee Nation, faced judicially ordered removal from her indigenous family and community to the custody of a non-indigenous couple. Reportedly, a court in the state of South Carolina awarded custody to the non-indigenous couple without allowing for a hearing or full determination about the best interests of Veronica, as ordinarily is done when custody or adoption is contested by a biological parent.

Reply of the Government of the United States of America

148. In its response of 15 November 2014, the Government of the United States of America stated that the custody dispute case over Veronica came to a close on 23 September 2013, when the Oklahoma Supreme Court granted custody of Veronica to her adoptive parents. The Government noted that Veronica's biological father returned the child to her adoptive parents and on 10 October 2013 and stated his intention to cease any further legal action in the custody dispute. The letter reaffirmed the purpose of the Indian Child Welfare Act and stated that the United States remains committed to examining ways to promote compliance with the Act.

Observations

149. The Special Rapporteur thanks the Government of the United States for its response to his letter of 9 September 2013. The situation of baby Veronica relates to concerns raised in his 2012 report on the situation of indigenous peoples in the United States (A/HRC/21/47/Add.1, paras. 45-47). In that report the Special Rapporteur noted that the pattern of placing indigenous children in non-indigenous care under state custody proceedings, which continued in the United States until well into the 1970s, had devastating effects on indigenous individuals and communities. He further noted that, while past practices of removal of Indian children from their families and communities have been partially blunted by passage of the Indian Child Welfare Act in 1978, which advances a strong presumption of indigenous custody for indigenous children, this law continues to face barriers to its implementation. The Special Rapporteur again urges the United States to *work with indigenous peoples, state authorities and other interested parties to investigate the current state of affairs relating to the practices of foster care and adoption of indigenous children, and to develop procedures for ensuring that the rights of these children are adequately protected in adoption cases, fully taking into account their rights to maintain their cultural identity and to maintain relations with their indigenous family and people.*

33. United States of America

Case No. USA 2/2014: The situation of the Jemez Pueblo and its efforts to recover traditional lands located within the Valles Caldera National Preserve in New Mexico

- Letter by Special Rapporteur: 31/01/2014
- State reply: 29/04/2014

Letter by the Special Rapporteur

150. In his letter of 31 January 2014, the Special Rapporteur raised concerns regarding the efforts of the Jemez Pueblo, an indigenous people, to recover traditional lands located within the Valles Caldera National Preserve in the state of New Mexico. According to the information received, the area currently known as the Valles Caldera National Preserve and surrounding areas in the Jemez Mountains of New Mexico are part of the traditional territory of the Jemez Pueblo by virtue of the Pueblo's historical land use and occupancy. The Jemez Pueblo has continued to access the area and carry out traditional cultural and religious activities, despite the area having been conveyed by the United States to private parties in the latter half of the 19th century and despite the subsequent reacquisition of this area by the United States and the creation of the Valles Caldera National Preserve in 2000. It is reported that the Jemez Pueblo did not agree or consent to the granting of these lands to private parties or their taking by the United States. The Jemez Pueblo currently seeks the return of the area encompassing the Valles Caldera National Preserve. The Special Rapportuer also raised concerns about a proposal to increase public access to the preserve for unstructured hiking, which would allegedly threaten Jemez sacred sites and religious practices within the preserve.

Reply of the Government of the United States of America

151. In its response of 29 April 2014, the Government of the United States noted, with respect to access of the Jemez Pueblo to sacred sites within the Valles Caldera National Preserve, that there is a policy and process to allow for tribal access within the national preserve for religious and cultural uses, which it states is consistent with the American Indian Religious Freedom Act and other statutes. In this connection, regarding the possible impacts of the plan to increase public access within the national preserve on these religious and cultural practices and sites, the Government stated that the governing authority is developing measures, in consultation with neighboring tribes including the Jemez Pueblo, to address this concern, and that it has considered limiting public access within certain areas. The Government affirmed that the plan to increase public access to the national preserve is on hold until an adequate solution can be found. Finally, with respect the request of the Jemez Pueblo for the return of lands within the national preserve, the Government noted that the Jemez Pueblo has filed a lawsuit in this regard, which is currently pending before the United States Court of Appeals for the Tenth Circuit. The Government stated that it would not comment on matters currently in litigation.

Observations

152. The Special Rapporteur thanks the Government of the United States for its response of 29 April 2014. From the information provided, it appears that the Valles Caldera Trust, which administers the Valles Caldera National Preserve on behalf of the Government, is taking steps to address the concerns of the Pueblo of Jemez regarding access to and protection of sites of cultural and religious significance within the preserve. In particular, the Special Rapporteur takes note of the information provided that there is a policy and process in place to allow for tribal access to the national preserve for religious and cultural purposes. Regarding the plan to increase public access to the national preserve for

unstructured hiking, the Special Rapporteur notes the information provided that the Valles Caldera Trust is developing measures, in consultation with neighboring tribes including the Pueblo of Jemez, to address their concerns over the possible impacts of the plan's implementation on the religious and cultural practices and sites. He encourages the Government to ensure that the plan for increased public access for hiking within the national preserve continues on hold until an agreed-upon solution is found.

153. Relevant in this regard is the United Nations Declaration on the Rights of Indigenous Peoples, which the United States has endorsed and declared will inform United States policy toward the indigenous peoples of the country. Article 25 of the Declaration affirms that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard." The Special Rapporteur hopes that, in addition to relevant domestic laws like the American Indian Religious Freedom Act, this provision guides the development of measures to ensure access to and protection of areas of cultural and religious significance to the Jemez Pueblo and other indigenous peoples within the Valles Calderas National Preserve.

154. With respect to Jemez Pueblo's claim of ownership of lands within the national preserve on the basis of traditional use and occupancy, the Government noted that the pueblo has filed a lawsuit on this issue, which is currently pending before the United States Court of Appeals for the Tenth Circuit, and stated that the Government cannot comment on cases under litigation. However, the Special Rapporteur notes that it is a matter of public record that during litigation in this case, the United States has opposed the Jemez Pueblo's request for a judicial declaration that the pueblo has "exclusive right to use, occupy and possess the lands of the Valles Caldera National Preserve pursuant to its continuing aboriginal Indian title to such lands."1 In its motion to dismiss before the United States District Court for the District of New Mexico, the Government set forth a number of jurisdictional, procedural and substantive challenges to the Jemez Pueblo's claim and argued that any aboriginal title the pueblo may have had in the area was extinguished by the United States Congress, under its "superior" authority, when it established the Valles Calderas National Preserve.2

155. Without providing specific views on the arguments presented by the United States in this case and notwithstanding the eventual decision by the Court of Appeals for the Tenth Circuit, the Special Rapporteur again draws attention to the United State's international human rights obligations as informed by the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration affirms that indigenous peoples have the right to lands that they have traditionally owned, occupied or otherwise used (article 26), reflecting a standard that is implicit in human rights treaties to which the United States is a party and that are binding upon it, in particular the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. The United Nations Committee on the Elimination of Discrimination (CERD), in authoritatively interpreting the obligations of States parties under the convention against discrimination, has called upon States parties to the convention to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources" (CERD General Recommendation 23, article 5). In a similar vein, the United Nations Human Rights Committee has instructed that the right to culture that

[1] United States' Motion to Dismiss Plaintiff's Complaint and Memorandum of Points and Authorities, Pueblo of Jemez v. United States of America, Case No. 1:12-cv-00800(RCB)(RHS), Feb. 14, 2013, p. 1.

[2] Ibid., pp. 23-26.

States are to protect under article 27 of the Covenant on Civil and Political Rights includes the right of indigenous peoples to maintain all the aspects of their distinctive cultural identities, including their historical and ongoing connections with land resources (Human Rights Committee, General Comment 23, para. 7).

156. It bears emphasizing that theories of extinguishment of indigenous rights in lands and resources that have persisted since colonial times in the United States and other countries are at odds with the contemporary international standards grounded in universal human rights of equality, cultural integrity and property. As affirmed by the Committee on the Elimination of Racial Discrimination in relation to States' obligations to refrain from discrimination in relation to property, "where [indigenous peoples] have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent," the State has an obligation to "take steps to return those lands and territories" (CERD, General Recommendation 23, para. 5).

157. Further, "Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories" (Ibid.). This standard is reiterated by the Declaration on the rights of indigenous peoples in the following terms: "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, 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" (article 28). As stated in the Special Rapporteur's 2012 report on the situation of indigenous peoples in the United States, executive, legislative and judicial authorities of the United States should endeavor to act in a manner consistent with the United States' international human rights obligations and policy commitments, and in doing so should interpret and apply the relevant federal law in light of those commitments (A/HRC/21/47.Add.1, paras. 94-105).

158. The Special Rapporteur observes that, whether or not United States domestic law compels return of lands within the Valles Calderas National Preserve to the Jemez Pueblo or other tribes that can demonstrate traditional use and occupancy within the preserve, there is nothing in domestic law that impedes the United States from doing so, through appropriate executive or legislative action, in compliance with the international standards to which it has committed. In fact, as the Special Rapporteur pointed out in his 2012 report, there are already important precedents in this regard, including the return of the sacred Blue Lake to Taos Pueblo and the restoration of land to the Timbisha Shoshone Tribe ((A/HRC/21/47.Add.1, para. 90). Similar to what could be the case with regard to the Valles Caldera National Preserve, both land areas were restored from land under federal administration, with no consequence for any individual property interests.

159. Finally, the Special Rapporteur stresses that a position that promotes indigenous peoples' rights and interests in lands to which they maintain a cultural or religious attachment, rather than opposes them, could go a long way in promoting the much-needed reconciliation and healing. As he noted in his 2012 report, "What is now needed is a resolve to take action to address the pending, deep-seated concerns of indigenous peoples, but within current notions of justice and the human rights of indigenous peoples" (A/HRC/21/47.Add.1, para.78).

34. United States of America

Case No. USA 5/2014: Allegations and follow-up on various issues examined in the report of the Special Rapporteur on the situation of indigenous peoples in the United States of America

- Letter by Special Rapporteur: 20/02/2014
- State reply: None within period covered by report

Allegations transmitted

160. In his letter of 20 February 2014, the Special Rapporteur transmitted to the Government information in follow up to the observations and recommendations made in the Special Rapporteur's report, "The situation of indigenous peoples in the United States of America" (A/HRC/21/47/Add.1) of 30 August 2012. Subsequent to the publication of the report, the Special Rapporteur has continued to monitor the situation of indigenous peoples in the United States. The allegations received indicate that many Native American tribes and other indigenous communities still face persistent barriers to the realization of their human rights as indigenous peoples, including with respect to lands and sacred places, preservation of their languages and cultural artifacts, and the welfare of their children and communities. In addition, the Special Rapporteur has received information regarding ongoing grievances with special legal and policy regimes that affect indigenous peoples in Maine, Alaska, Hawaii and Guam.

Reply of the Government of the United States

161. The Special Rapporteur notes that the files of the Office of the High Commissioner for Human Rights do not reflect a reply by the Government to his communication of 20 February 2014 within the time period covered by this report. He hopes that his successor will continue to monitor the issues raised in this communication, with a view towards providing future observations and recommendations about the specific issues raised.

35. Other letters

Case No. OTH 4/2013 and OTH 8/2013: Alleged authorization of mining rights and a related hydroelectric project in the traditional territory of the Saramaka Maroon people (Suriname)

- Joint follow-up letter to IAMGOLD Corporation: 11/11/2013
- IAMGOLD reply: 11/02/2014

Follow up to previous exchange of information

162. In a letter of 11 November 2013, the Special Rapporteur and the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises followed up to their previous exchange of information with IAMGOLD Corporation regarding allegations of violations of the rights of the Saramaka people resulting from a mineral extraction concession granted to the company. In its response to the initial communication from the experts, IAMGOLD had disputed the allegations transmitted. In their follow-up letter, the Working Group and Special Rapporteur thanked IAMGOD for its willingness to engage with them on the issue and addressed concerns raised by the company about the communications procedure. The Special Rapporteur on the rights of indigenous peoples also referred to his earlier comments on this case. In those earlier comments he had stated that he cannot but help notice the significant differences between

the company's assessment of the facts and the allegations received with respect to the extent of current and planned mining activities, and the extent of their potential impact on the lands and resources of the Saramaka people. He also noted the divergent views with regards to the adequacy of consultation processes that have or would be undertaken in connection with any mining exploration or exploitation, whether future mining will require the relocation of Saramaka communities, and whether the current and possible new mining activities contravene the judgment of the Inter-American Court of Human Rights concerning the Saramaka people.

Response by IAMGOLD

163. In a response of 11 February 2014, IAMGOLD thanked the experts for the clarification in their letter about the nature of communications from Special Procedures mandate holders. It stated that companies working in the extractive sector are often subject to various claims on the nature of the impacts on indigenous peoples, noting that some such claims are based on reliable evidence but many are sensationalized and not based in fact. The company referred to the Special Rapporteur's observations regarding the "significant differences between the company's assessment of the facts and allegations received" and agreed with this observation, asserting that the source of the information had misrepresented the scope of the alleged violations. IAMGOLD again referred the experts to its initial response of 5 June 2013 regarding the Rosebel project.

Observations

164. The Special Rapporteur would like to thank the IAMGOLD Corporation for its continued interest in maintaining a dialogue regarding the present case. At the same time, he notes with concern the Government of Suriname's lack of response to his previous communications to the Government on this matter.

165. The mining concession granted to IAMGOLD is a matter of central concern in relation to the Government's compliance with the judgment of the Inter-American Court of Human Rights in the case of the *Saramaka People v. Suriname*. The Special Rapporteur notes that the Inter-American Court, in a resolution of September 2013, called upon Suriname to present to the Court detailed information on the concession awarded to IAMGOLD, including information on the concession's scope and content; whether the Saramaka people were consulted and measures taken to that end; whether environmental and social assessment studies were undertaken prior to the concession; and any benefits for the Saramaka people.[3]

166. The Special Rapporteur considers that the Inter-American Court's mechanism for monitoring compliance with its judgment in *Saramaka* represents the most appropriate avenue by which to resolve the significant factual disputes presented in this case and encourages the Government and Saramaka representatives to cooperate with and participate effectively in this monitoring process.

167. The Special Rapporteur hopes that improved relations and mutual understanding can be reached between the Government of Suriname, IAMGOLD Corporation and the Saramaka people. He encourages all parties concerned to give consideration, within the framework of steps being taken to implement the Inter-American Court's decision in the *Saramaka*, to the Special Rapporteur's earlier report on *Measures needed to secure indigenous and tribal peoples' land and related rights in Suriname* (A/HRC/18/35/Add. 7),

[3] IA Court, *Case of the Saramaka People v. Suriname*, Monitoring Compliance with Judgment (4 September 2013), para. 25.

as well as to his 2012 and 2013 annual thematic reports to the Human Rights Council concerning the application of international human rights standards on indigenous peoples in the context of extractive industries (A/HRC/21/47 and A/HRC/24/41).

36. Other letters

Case No. OTH 3/2014: The advocacy campaign to raise awareness regarding the use of the term "Redskins" as a team mascot by the Washington football team (United States)

- Letter by Special Rapporteur to majority owner of team: 10/04/2014
- Press release by Special Rapporteur: 11/04/2014
- Reply: None within period covered by report

Allegations transmitted

168. In his letter of 10 April 2014 to the majority owner of the Washington Redskins football team, the Special Rapporteur raised concerns regarding the alleged pejorative connotations of the team mascot. The letter pointed out that the Oneida Indian Nation had initiated a campaign to change the mascot of this team and to call attention to the fact that for many, the term "redskins" was a hurtful reminder of the long history of mistreatment of Native American people in the United States. The campaign has highlighted the particular effects of the term´s usage on American Indian youth, who already face serious challenges in terms of image and self-esteem.

Observations

169. The Special Rapporteur notes there is no record of a reply from the majority owner of the Washington Redskins football team to his communication of 10 April 2014 in the files of the Office of the High Commissioner for Human Rights within the period covered by this report.

170. While the Special Rapporteur is aware that there are some divergent views on this issue, he urges the team owners to consider that the term "redskin" for many is inextricably linked to a history of suffering and dispossession, and that it is understood to be a pejorative and disparaging term that fails to respect and honour the historical and cultural legacy of Native Americans in the United States. In this connection, the Special Rapporteur notes that recently, the United States Patent and Trademark office denied protection for the use of the term name "redskins" under trademark laws because it is a "derogatory slang word".

171. Further, in reference to the negative consequences that continual use of American Indian mascots perpetrates, the Special Rapporteur calls attention to research performed by the American Psychological Association and the American Sociological Association. Both professional organizations have identified the following effects, among others, of using these types of mascots in sports: undermining educational experiences of those who have had little or no contact with indigenous peoples; creating an hostile learning environment for American Indians; undermining the ability of the American Indian Nations themselves to accurately self-identify and self-portray images of their cultures and traditions; creating incorrect stereotypes of American Indians that lead to prejudice of the dominant society against racial/ethnic minorities; and perpetuating negative relations between groups (American Psychological Association, Summary of the APA Resolution Recommending Retirement of American Indian Mascots (2005); American Sociological Association, Statement by the Council of the American Sociological Association on Discontinuing the Use of Native American Nicknames, Logos an Mascots in Sport (6 March 2007)).

172. It is worth noting also that, recognizing these harmful effects, the National Collegiate Athletic Association placed restrictions on universities use of tribal mascots, nicknames or imagery, stating that "mascots, nicknames or images deemed hostile or abusive in terms of race, ethnicity or national origin should not be visible at championship events hosted by the association" (NCAA News Release, NCAA Executive Committee Issues Guidelines for use of Native American Mascots at Championship Events, (5 August 2005)). The association also encouraged member institutions "to educate their internal and external constituents on the understanding and awareness of the negative impact of hostile or abusive symbols, names and imagery, and to create a greater level of knowledge of Native American culture" (Ibid.).

173. The Special Rapporteur notes that he has examined this issue previously. In his report on the situation of indigenous peoples in the United States of 2012, he observted that "[w]ithin the United States stereotypes persist that tend to render Native Americans relics of the past, perpetuated by the use of Indian names by professional and other high-profile sports teams, caricatures in the popular media and even mainstream education on history and social studies". He further highlighted complaints heard during his official visit to the United States about how these stereotypes "obscure understanding of the reality of Native Americans today and instead help to keep alive racially discriminatory attitudes." (A/HRC/21/47.Add.1, para. 9).

174. In this connection, the Special Rapporteur highlights that the United Nations Declaration on the Rights of Indigenous Peoples states in its article 15 that "Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information." It further affirms in that article that States must take measures "to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society."

175. Independent of the responsibilities of States with respect to the promotion and protection of human rights, private actors also have responsibilities within the international human rights framework. These responsibilities have been outlined most comprehensively in the Guiding Principles on Business and Human Rights, which were adopted by the Human Rights Council in June 2011 (Human Rights Council Resolution 17/4). Under the Guiding Principles, business enterprises, such as the Washington football team, have a responsibility to respect human rights, which means that "they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."

176. In light of the above, the Special Rapporteur again urges the team owners to consider a name change to the Washington football team and to initiate a genuine dialogue with the concerned indigenous nations, organizations and leaders on this issue.

37. Other letters

Case No. OTH 10/2013: Letter concerning recent developments regarding the nomination and declaration of world heritage sites by the World Heritage Committee

- Letter by Special Rapporteur to UNESCO World Heritage Committee: 18/11/2013
- Response by the World Heritage Centre: 04/12/2013

Letter by the Special Rapporteur

177. In his letter of 18 November 2013, the Special Rapporteur raised concerns about recent developments regarding the nomination and declaration of world heritage sites by

the World Heritage Committee of the United Nations Educational, Scientific and Cultural Organization (UNESCO). In this letter, the Special Rapporteur noted that the World Heritage Committee would hold a discussion on potential reforms to site nomination criteria and the Advisory Bodies' evaluation process at its annual session. According to the information received, reform efforts had arisen in part due to the difficulties in the nomination process of the Pimachiowin Aki site in Canada, an indigenous-led nomination developed through a collaborative process between the Government of Canada and First Nations. The site was nominated as "mixed property" for both its cultural and natural significance under the Operational Guidelines for the Implementation of the World Heritage Convention. However, the World Heritage Committee reportedly deferred the Pimachiowin Aki nomination in large part because the Advisory Bodies were unable to concurrently consider natural and cultural values under the present criteria and evaluation processes.

Reply by the World Heritage Centre

178. In its reply of 4 December 2014, the World Heritage Centre emphasized that UNESCO aligns itself fully with the United Nations Declaration on the Rights of Indigenous Peoples. It further stated that in accordance with the Operational Guidelines for the Implementation of the World Heritage Convention, States are called upon to ensure the participation of local communities, including indigenous peoples, in the world heritage site nomination process. The World Heritage Centre described efforts to address indigenous peoples' rights, interests and concerns in the nomination process of world heritage sites, including recommendations made during a workshop on the issue. It noted that the issues would be taken up again during the next session of the World Heritage Committee in 2015, where potential revisions to the Operational Guidelines would also be discussed. The World Heritage Centre concluded by saying that it would transmit the Special Rapporteur's letter to the Advisory Bodies and to the World Heritage Committee.

Observations by the Special Rapporteur

179. The Special Rapporteur thanks the World Heritage Centre for its response to his letter of 4 December 2014. He is pleased that issues concerning indigenous peoples relating to the world heritage site nomination process will be discussed during the next session of the World Heritage Committee in 2015. He hopes that these discussions will lead to the development of measures to facilitate the nomination and designation of "mixed property" sites that have both cultural and natural significance. Further, the Special Rapporteur hopes that discussions surrounding reforms to the Operational Guidelines for Implementation of the World Heritage Convention include reforms that specifically require States to provide information on the indigenous peoples living in or around a site nominated for world heritage designation and to review the kind of impact a site might have on the rights of these peoples, as well as to ensure that indigenous peoples are able to participate in the nomination of world heritage sites and share in the benefits derived from world heritage site designation.