

Concept Note

Report by the Special Rapporteur on the rights of indigenous peoples, Ms. Victoria Tauli-Corpuz on the Criminalisation and attacks indigenous peoples defending their rights: proposals for action to prevent and protect

Introduction

The Special Rapporteur on the rights of indigenous peoples Victoria Tauli-Corpuz is convening a consultation to address the issue of criminalisation and attacks faced by indigenous peoples who seek to defend and assert their rights. The consultation will provide a space for dialogue between representatives of indigenous peoples, civil society organisation, States and human rights mechanisms to address the particular risks faced by indigenous peoples and their causes and consequences. This dialogue will aim to devise specific courses of action for the protection of indigenous peoples and for the realisation of their rights.

The consultation will contribute to the elaboration of the Special Rapporteur's thematic report to the Human Rights Council in 2018, which will analyse the distinctive characteristics of the criminalisation of and attacks against indigenous peoples defending their rights under the United Nations Declaration on the rights of indigenous peoples and under human rights treaties. The report will also consider the collective and individual impact on indigenous peoples and assess the effectiveness of national protective measures, including the identification of good practices and prevailing challenges with regards to protective measures for indigenous peoples.

Background

The situation of criminalisation, acts of violence and other risks faced by indigenous peoples is a matter that is consistently brought to the attention of the mandate of Special Rapporteur on the rights of indigenous peoples. In accordance with her mandate, the Special Rapporteur has expressed concerns in numerous country reports, communications to Governments, press releases and other public statements, that indigenous leaders and members of indigenous communities, and those who seek to defend their rights, are subject to undue criminal prosecution and other acts, such as direct attacks, killings, threats, intimidation, harassment, and other forms of violence.

Concerns have also been raised by other UN human rights mechanisms, including other special procedures and human rights treaty bodies. The Special Rapporteur on the situation of human rights defenders has noted acts of violence, stigmatisation and criminalisation against persons engaged in the defense of environmental and land rights, which in many cases include indigenous leaders and activists.¹ Intensified competition over natural resources led by private companies, at times with Government complicity, has placed indigenous communities seeking to protect their traditional lands at the forefront as targets of persecution.

¹ Report of the Special Rapporteur on the situation of human rights defenders, A/71/281 (2016)

The Special Rapporteur considers that the specific causes and consequences of these acts of criminalisation and violence on indigenous peoples need to be examined. Various States have adopted special legislation, policies and programs to provide protection mechanisms for human rights defenders, including for indigenous leaders and activists. There is a need to address how such protection measures can better consider collective aspects and be developed in consultation with the affected communities. The Inter-American Commission on Human Rights has issued precautionary measures for the protection of indigenous peoples and individuals facing grave risks and imminent dangers due to their work in defense of their rights, yet the response to these by States is often insufficient and not adapted to the collective protection of indigenous communities. It is therefore necessary to review existing protective measures at the national level in order to assess their effectiveness in addressing the underlying causes and the differentiated risks and impacts indigenous peoples face due to criminalisation and acts of violence.

As documented by the mandate of the Special Rapporteur on the rights of indigenous peoples, instances of criminalisation and violence arise, in most cases, in the context of indigenous leaders and community members voicing opposition to extractive and investment projects, such as hydroelectric dam projects. These projects are all too often developed without the prior consultation and informed consent of their peoples whose lands, territories and natural resources are affected.² In other instances, indigenous peoples' own traditional ways of life and subsistence are deemed illegal or incompatible with conservation policies, leading to the prohibition of indigenous traditional activities and the arrest, detention and other human rights violations against indigenous peoples engaged in those practices.³ Projects which may be funded as climate change mitigation measures, notably hydroprojects, also have resulted in violations of indigenous peoples' rights.⁴ The targeting of particular indigenous individuals in these types of scenarios have collective impacts on indigenous peoples and communities. This is particularly so in the case of indigenous traditional, cultural or spiritual leaders who play a pivotal role in the continuation of their peoples' traditions and their social, political and cultural institutions.

The causes and impacts of the criminalisation and violence against indigenous peoples must be understood and addressed from the particular framework of the UN Declaration on the rights of indigenous peoples and international and regional human rights instruments. These international legal sources recognize indigenous peoples' rights to their traditional lands, territories, natural resources, self-government, self-determination, cultures and ways of life. For indigenous peoples, these and other human rights are mostly enjoyed collectively and reflect the special relationship with their traditional lands, territories and natural resources which form the basis of their collective identity and their physical, economic and cultural survival. The above understanding of the nature of indigenous peoples' rights is necessary in the discussion of the measures necessary to provide access to justice and reparations and other human rights guarantees in the context of indigenous peoples facing criminalisation, violence and other actions as a consequence of their efforts to assert and defend their rights.

² Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras, A/HRC/33/42/Add.2 (21 July 2016), Annex: *Comments on the situation in Río Blanco*.

³ Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, (Thematic Report on Conservation and indigenous peoples' rights), A/71/229 (2016)

⁴ Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, (Thematic Report on Climate change and climate change funds), A/HRC/36/46 (2017)