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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

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

## Rights of indigenous peoples

### Report of the United Nations High Commissioner for Human Rights

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 45/12. It contains information on relevant developments relating to human rights bodies and mechanisms and outlines the activities undertaken by the Office of the United Nations High Commissioner for Human Rights at headquarters and in the field that contribute to the promotion, follow-up and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples and of the provisions in relevant international human rights treaties. The report covers the period from 1 May 2020 to 31 May 2021.



## **I. Introduction**

1. In its resolution 45/12 concerning human rights and indigenous peoples, the Human Rights Council requested the High Commissioner for Human Rights to continue to submit to it an annual report on the rights of indigenous peoples containing information on relevant developments in human rights bodies and mechanisms and the activities undertaken by the Office of the United Nations High Commissioner for Human Rights (OHCHR) at headquarters and in the field that contribute to the promotion of, respect for and full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.
2. The present report focuses on illustrative examples of OHCHR activities and initiatives undertaken at country, regional and global levels that contribute to the realization of the rights of indigenous peoples. It also outlines recent developments within United Nations human rights bodies and mechanisms pertaining to indigenous peoples.

## **II. Activities on indigenous peoples undertaken by the Office of the United Nations High Commissioner for Human Rights and recent developments in human rights bodies and mechanisms, including in the context of the coronavirus disease (COVID-19) pandemic**

3. During the period under review, the coronavirus disease (COVID-19) pandemic particularly affected indigenous peoples, thereby deepening pre-existing social inequalities. As evidenced in the reports of United Nations human rights mechanisms, the pandemic exacerbated the marginalization of indigenous communities in many countries.<sup>1</sup> It has also shown that indigenous peoples play a fundamental role in the conservation and transmission of knowledge and culture, as well as of traditional indigenous practices that can contribute to increased food security, health, well-being and recovery from COVID-19, both within and outside their communities.
4. In that context, OHCHR has provided technical assistance and guidance to Member States, indigenous peoples, civil society organizations and United Nations bodies to strengthen their efforts to involve indigenous peoples in all national and international initiatives that affect them.

### **A. Economic, social and cultural rights of indigenous peoples, including the right to health**

5. The 2030 Agenda for Sustainable Development and its commitment to leaving no one behind offer opportunities for strengthening the global efforts to tackle the socioeconomic vulnerabilities confronting indigenous peoples. During the reporting period, OHCHR contributed to a guidance note for the United Nations system by the Inter-Agency Support Group on Indigenous Issues, which emphasizes the specific risks, needs and vulnerabilities faced by indigenous peoples and outlines entry points for action by the United Nations system.<sup>2</sup>
6. At the beginning of the COVID-19 pandemic, through its Human Rights Group led by OHCHR, the United Nations country team in the Plurinational State of Bolivia supported State institutions in developing the national health response plan for indigenous peoples, which was released in June 2020. The country office facilitated the participation of indigenous representatives in the elaboration of the plan and its dissemination in indigenous languages. In October 2020, the office prepared an assessment of the human rights impact of COVID-19 on indigenous peoples in the department of El Beni. Specific recommendations

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<sup>1</sup> See *Compilation of Statements by Human Rights Treaty Bodies in the Context of COVID-19* (September 2020).

<sup>2</sup> Available from [www.ohchr.org/Documents/Issues/IPeoples/IP\\_COVID-19.pdf](http://www.ohchr.org/Documents/Issues/IPeoples/IP_COVID-19.pdf).

on how to ensure an intercultural approach in responding to the crisis were presented to State institutions. OHCHR also participated in United Nations clusters highlighting the need to prioritize indigenous peoples in humanitarian assistance, which were set up to address the pandemic.

7. Indigenous midwives in Guatemala were at the forefront of the COVID-19 response in their communities. The OHCHR office in Guatemala worked with indigenous midwives' organizations to promote their inclusion in and collaboration with the public health system. The Ministry of Public Health and Social Assistance recognized the role of indigenous midwives as health service providers and issued an exemption to curfew regulations that allowed them to assist patients. With the technical assistance of the country office, in October 2020 the Ministry published a sociocultural guide on the prevention and management of the COVID-19 situation in indigenous communities.<sup>3</sup> In coordination with the Pan American Health Organization, the country office also facilitated a dialogue between the Minister of Health and representatives of indigenous peoples on the differentiated impact of COVID-19 on their rights.

8. As part of the OHCHR response strategy to the COVID-19 crisis, in partnership with the Government of Honduras the OHCHR country office launched a plan to strengthen the human rights approach in the State's response to COVID-19 and the effects of hurricanes Eta and Iota. Within this framework, in April 2020 the country office established a high-level articulation mechanism whereby, based on information collected through the OHCHR monitoring system, it provides technical assistance and proposes measures for the State to adopt to better respect, protect and fulfil the economic and social rights of the most vulnerable people. In that context, along with State institutions, the Office trained 85 government officials on international standards on the rights of indigenous peoples to assist in preparing an assessment of the impact of COVID-19 and of hurricanes Eta and Iota on those rights.

9. In July and August 2020, the OHCHR presence in Kenya prepared a detailed report on the impact of COVID-19 on indigenous peoples. The report is part of a project aimed at empowering indigenous human rights defenders, including women human rights defenders, to scope and document the impact of the COVID-19 crisis on their communities, and participate in efforts to tailor the COVID-19 and socioeconomic responses to address the inequalities faced by indigenous communities. The project also documented and collected data in targeted indigenous communities to strengthen gender-specific interventions and protection responses by the United Nations country team, in an effort to support the Government in ensuring that COVID-19 and socioeconomic responses addressed the inequalities faced by indigenous communities and responded to their needs. The project focused on seven counties in Kenya inhabited by indigenous peoples and which have historically suffered marginalization. The report on the project included targeted recommendations to the Government on addressing the impact of COVID-19 on indigenous people.<sup>4</sup>

10. The OHCHR office in Mexico recorded a podcast on the impact of COVID-19 on indigenous peoples and on initiatives to tackle it, with the participation of the Mayan leader Leydy Pech, who received the 2020 Goldman Award for her environmental protection work against pesticides. This effort foresees greater public knowledge and awareness of the differentiated impacts of COVID-19 on indigenous peoples, as well as the importance of tailored and inclusive response and recovery strategies.

11. In Paraguay, OHCHR participated in seminars, dialogues and virtual meetings related to COVID-19 and the rights of indigenous peoples. During the reporting period, in close collaboration with the United Nations Children's Fund, OHCHR provided technical assistance to the General Directorate of Indigenous Education, situated within the Ministry of Education and Culture, for the return to classes at indigenous schools.

<sup>3</sup> See [www.mspas.gob.gt/index.php/component/jdownloads/send/483-documentos-tecnicos/4539-guia-sociocultural?option=com\\_jdownloads](http://www.mspas.gob.gt/index.php/component/jdownloads/send/483-documentos-tecnicos/4539-guia-sociocultural?option=com_jdownloads).

<sup>4</sup> OHCHR, "Kenya: leaving no one behind in the COVID-19 crisis. Human rights impacts in indigenous communities" (December 2020).

12. In January 2021, the OHCHR Regional Office for the Pacific in Fiji supported the Pacific regional dialogues organized by the Permanent Forum on Indigenous Issues. It also conducted consultations with the Special Rapporteurs on the human rights to safe drinking water and sanitation and on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, highlighting the concerns of indigenous peoples in the Pacific.

13. In March 2021, the OHCHR Regional Office for South-East Asia observed the fact-finding mission of the Standing Committee on Land Issues of the House of Representatives of Thailand to Kaeng Krachan National Park, where a Karen indigenous community was forcibly evicted on 5 March 2021 from Upper Bang Kloy. The Karen community had expressed concern about the land they had been given in compensation for their eviction and about the scarcity of water.

14. Indigenous senior fellows under the supervision of the Regional Office for South America and the Indigenous Peoples and Minorities Sections of the OHCHR offices in Brazil, Chile, Ecuador and Paraguay organized a regional webinar in December 2020 which resulted in specific recommendations for States and the United Nations system for the effective incorporation of indigenous peoples in socioeconomic and health recovery plans in a post-COVID-19 context. The event was attended by the Special Rapporteur on the rights of indigenous peoples, together with representatives of the Permanent Forum on Indigenous Issues and other experts from the region.

15. In relation to the right to health, the Committee on Economic, Social and Cultural Rights expressed concern about the impact of the measures taken to protect indigenous people from the health and economic crises arising from the COVID-19 pandemic.

16. The Special Rapporteur on the rights of indigenous peoples stated that indigenous peoples were especially vulnerable to the pandemic owing to pre-existing health conditions and called for collaborative efforts between indigenous and State institutions for effective responses to the pandemic and recovery measures.<sup>5</sup>

17. At the ninth United Nations Forum on Business and Human Rights in 2020, it was noted that the impact of COVID-19 on indigenous peoples had been wide-ranging and that both States and businesses worldwide had often opportunistically used COVID-19 to sidestep environmental and human rights responsibilities, including obtaining the free, prior and informed consent of indigenous peoples in matters affecting them.<sup>6</sup>

18. The Special Rapporteur on the rights of persons with disabilities recommended ensuring access to language and culturally sensitive services for indigenous persons with disabilities and that adequate resources be allocated to support indigenous peoples developing their own disability services.<sup>7</sup> The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes expressed concern about how the exposure to toxic substances contributed to intergenerational cycles of poverty among indigenous peoples, stressing that measures to address the impact of exposure to toxic chemicals must take into account the connection that indigenous peoples had with their land and water.<sup>8</sup>

## **B. Free prior and informed consent and the consultative mechanisms, including in the context of business and the extractive industries**

19. In the context of the COVID-19 pandemic, response and recovery measures that can impact the rights of indigenous peoples must first obtain their free, prior and informed consent. Such measures must be respectful of the rights of indigenous peoples and their representatives and leaders need to be included and consulted in any related process. In many instances, the rights of indigenous peoples to their lands, territories and resources continue

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<sup>5</sup> See A/75/185.

<sup>6</sup> See, for example, [www.youtube.com/watch?v=Ow9cZED-gSs](https://www.youtube.com/watch?v=Ow9cZED-gSs).

<sup>7</sup> A/HRC/43/41/Add.3, para. 82 (b).

<sup>8</sup> See A/HRC/45/12/Add.1.

to be denied, while businesses have been granted access to their lands, often without their full and effective participation in matters that concern them and without obtaining their free, prior and informed consent.

20. To strengthen legislation on business and human rights, during the period under review the OHCHR presence in the Plurinational State of Bolivia has been developing a capacity-building process for parliamentarians on international human rights standards in coordination with the Commission on Indigenous Peasant Nations and Peoples and Interculturality of the Bolivian legislative assembly.

21. In February 2021, the OHCHR presence in the Bolivarian Republic of Venezuela trained 46 representatives of the Office of the Ombudsperson on the international legal framework relevant to indigenous peoples, focusing on informed consent and self-determination.

22. During the reporting period, the implementation of protocols for relations with third parties for indigenous peoples, developed with support from the OHCHR office in Colombia, contributed to (a) ensuring that the indigenous authorities of the Nasa and Arhuaco peoples exercised social control over their territory; and (b) facilitating an agreement on the criteria to be considered by third parties when pursuing decisions that impact indigenous peoples.

23. The OHCHR office in Guatemala provided technical assistance and capacity development on international standards to the country's Constitutional Court. In the cases of the CGN-Fénix nickel mine and the Progreso VII La Puya gold and silver mine, the Constitutional Court recognized the rights of the Kaqchikel and Q'eqchi' peoples to be consulted on large-scale projects. The Constitutional Court has suspended those projects until proper consultations and environmental impact studies have been conducted.

24. During the reporting period, the OHCHR office in Mexico advocated for the inclusion of an indigenous peoples' rights perspective in the context of the constitutional reform process and in the draft bill on a general law on water. In the context of COVID-19, the office monitored its impact on the rights of indigenous peoples, as well as government responses and regularly met with civil society organizations and the authorities on the matter. The office also trained State and national officials on the principle of free, prior and informed consent and on the rights of indigenous women.

25. In the framework of the Mayan train project, the Mexico country office provided technical assistance to government institutions on the requirements of the participation of indigenous peoples and met with United Nations agencies involved in the project to ensure that there is a human rights perspective to the project. It also facilitated communication between stakeholders, including indigenous leaders, civil society organizations, the relevant authorities and the United Nations country team.

26. During the reporting period, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on freedom of religion or belief and the Working Group on the issue of human rights and transnational corporations and other business enterprises all stressed the need to strengthen legal and procedural guarantees for indigenous peoples to obtain free, prior and informed consent in line with international standards.<sup>9</sup>

27. The Committee on Economic, Social and Cultural Rights specifically recommended to several States parties that they strengthen the mechanisms for the meaningful participation of indigenous peoples in the decision-making process in relation to development and infrastructure projects, as well as extractive activities, which have an impact on their lands or territories.<sup>10</sup>

28. In recommendations adopted during the sessions of the universal periodic review held in the reporting period, participants consistently called for respect for and measures to protect the rights of indigenous peoples to participate in and be consulted on measures that affect them, particularly in relation to projects with a potential impact on indigenous territories and

<sup>9</sup> See for example, E/C.12/FIN/CO/7, CCPR/C/FIN/CO/7, and CCPR/C/KEN/CO/4.

<sup>10</sup> See, for example, E/C.12/GTM/Q/4, para. 5, E/C.12/PAN/Q/3, para. 5, and E/C.12/SLV/Q/6, para. 5.

traditional ways of life.<sup>11</sup> In the recommendations, the need to ensure the meaningful political participation of indigenous peoples, particularly indigenous women, in decision-making processes in all matters affecting them was stressed.<sup>12</sup>

### **C. Protection of indigenous human rights defenders**

29. In 2020, OHCHR led a system-wide initiative to develop the United Nations guidance note on the protection and promotion of civic space. That work was given further emphasis under the Secretary-General's "call to action for human rights", which emphasized participation and civic space as a priority area. The guidance note was developed through extensive consultations and was adopted by the Secretary-General in August 2020. Given the risks that indigenous human rights defenders and leaders continue to experience across the globe, the guidance note and call to action foresee their greater inclusive and meaningful participation in matters that impact them, as well as better protection of their lives and integrity.

30. During the reporting period, the Human Rights Committee issued its general comment No. 37 (2020), in which it stated the need for States to ensure that their laws and the interpretation and application thereof effectively protect the right to peaceful assembly of individuals, and that they do not discriminate against indigenous peoples in the enjoyment of that right.

31. The Committee on Economic, Social and Cultural Rights, the Working Group on the issue of human rights and transnational corporations, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on violence against women, its causes and consequences raised concerns about the protection of human rights defenders and leaders of indigenous peoples, including women defenders and defenders of environmental rights. They called on States to take measures to investigate and prosecute the perpetrators of killings of and attacks on such individuals, including when perpetrated by private entities.<sup>13</sup>

32. During the reporting period, the OHCHR presence in Brazil organized training to strengthen the capacity of indigenous organizations to engage with the international human rights system. It provided training to women indigenous leaders of the State of Rondonia, 130 indigenous leaders and organizations and 100 federal public defenders.

33. In 2020 in Colombia, OHCHR registered 133 cases of killings of human rights defenders. However, due to COVID-19-related restrictions, the office was only able to document 94 of those cases. Of the documented cases, 19 per cent were human rights defenders from indigenous peoples. Violence by non-State armed groups and criminal groups has affected indigenous peoples, especially in Cauca, Chocó, Putumayo, Nariño and Valle del Cauca. OHCHR observed with concern the killings and forced displacement of Nasa peoples in Cauca and of indigenous peoples in voluntary isolation in the Amazonas and neighbouring departments, who are at high risk due to violence caused by the presence of illegal miners and drug traffickers in their territory.

34. The OHCHR office in Guatemala followed emblematic cases of criminalization of indigenous human rights defenders, including the Maya Q'eqchi' leaders Bernardo Caal and María Choc and the Maya Mam defender Lorenzo Ramirez. During the reporting period, the office followed 19 cases of indigenous persons facing charges for defending the right to water and to their land. It also supported civil society organizations and accompanied lawyers in presenting their cases to international human rights mechanisms, and monitored the right to due process and access to justice during judicial hearings.

35. In 2020, the OHCHR Regional Office for South America organized webinars on the work of indigenous environmental defenders that resulted in an assessment of the challenges they face in the region. It also monitored alleged threats to and killings of indigenous leaders

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<sup>11</sup> See, for example, A/HRC/46/8 and A/HRC/46/15.

<sup>12</sup> See, for example, A/HRC/46/12 and A/HRC/46/8.

<sup>13</sup> See, for example, A/HRC/44/43/Add.2, A/HRC/46/28 and A/HRC/44/52/Add.2.

and supported their engagement with the relevant authorities and United Nations human rights mechanisms. In April 2021, the Regional Office together with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) called on the authorities to ensure the protection of Munduruku women in Brazil.<sup>14</sup> In May 2021, the Regional Office issued a joint statement with the Inter-American Commission on Human Rights on the situation of the Yanomami and Munduruku peoples.<sup>15</sup>

36. During the reporting period, the OHCHR office in Cambodia monitored and documented cases of attacks on indigenous environmental rights defenders, including those advocating for environmental and land rights. It provided legal support to an indigenous leader convicted in January 2021 by the Mondulkiri court of first instance on charges of defamation. The indigenous leader appealed the ruling.

37. The OHCHR presence in the Plurinational State of Bolivia supported indigenous communities in seeking justice in cases where indigenous leaders and defenders were criminally prosecuted in the context of large-scale projects in Gran Chaco, Oruro, El Beni and Santa Cruz.

38. In May 2021, the OHCHR office in Mexico monitored the demonstration by and arrest of 93 indigenous students from the rural school Mactumactzá in Chiapas by security forces. The students were protesting against virtual examinations, given that most lacked electricity and/or the necessary technological devices. The country office issued a media statement and the students were released shortly thereafter.

39. In January 2021, the OHCHR presence in Peru met with representatives of indigenous organizations, who reported on continued threats against and attacks on indigenous human rights defenders by drug traffickers and illegal loggers, as well as through persons involved in economic activities that had been authorized on the lands and territories of indigenous communities. They stressed that during the COVID-19 crisis their livelihoods and access to natural resources had been at risk.

40. In November 2020, the first virtual regional forum of environmental defenders in South America gathered over 60 human rights and environmental defenders from Argentina, Brazil, the Plurinational State of Bolivia, Chile, Ecuador, Paraguay, Peru and Uruguay to analyse environmental protection in the region and exchange experiences, good practices and recommendations on how to defend the environment safely. The meeting was co-chaired by representatives of the OHCHR Regional Office for South America, the Economic Commission for Latin America and the Caribbean and the United Nations Environment Programme. Key conclusions included emphasizing the importance of cooperation between networks of environmental defenders; the need to strengthen the capacities of communities to defend their rights; and the need to implement effective frameworks to protect the life and integrity of persons defending the environment.

41. In the context of the additional information submitted to it by Colombia under article 29 (4) of the Convention,<sup>16</sup> the Committee on Enforced Disappearances called for a strengthening of efforts by the State to prevent and investigate all acts committed by armed groups, including against indigenous peoples and indigenous human rights defenders, and to sanction those responsible.

42. Recommendations adopted during the thirty-sixth session of the universal periodic review included the need to ensure that attacks and crimes against indigenous activists and human rights defenders are properly investigated and to prevent the criminalization of indigenous activists and human rights defenders to ensure that they can operate in a safe environment.<sup>17</sup>

<sup>14</sup> See <https://lac.unwomen.org/es/noticias-y-eventos/articulos/2021/04/press-release---ataque-asociacion-de-mujeres-munduruku-brasil>.

<sup>15</sup> <https://www.oas.org/en/IACHR/jsForm/?File=/es/cidh/prensa/comunicados/2021/129.asp>.

<sup>16</sup> CED/C/COL/AI/1.

<sup>17</sup> See, for example, A/HRC/46/12.

## **D. Early warning mechanisms and monitoring of human rights violations**

43. The OHCHR office in Guatemala continuously follows the territorial conflict between the Maya K'iche' peoples of Santa Catarina Ixtahuacan and Nahualá. In 2020, due to the COVID-19 pandemic, the Government of Guatemala declared 11 "states of exception", which allow for various security operations led by the police and the armed forces to take place. Reported human rights violations include actions that might amount to torture or ill-treatment and the misuse of criminal law against indigenous leaders. The office also follows the situation in the municipality of El Estor, where monoculture plantations and extractive companies converge with the territory of the Maya Q'eqchi' indigenous people and represent a source of conflict.

44. The OHCHR Regional Office for South America conducted a fact-finding mission in August 2020 to the Araucanía region of Chile in the context of social protest and alleged racist violence against Mapuche people. Based on its findings, OHCHR elaborated an internal mission report, publicly expressed the need for a thorough investigation of the alleged human rights violations and called for a transparent and constructive dialogue between the authorities and indigenous leaders and communities.

45. During the reporting period, the OHCHR presence in the Bolivarian Republic of Venezuela monitored the human rights situation of indigenous peoples in the States of Amazonas, Bolívar and Delta Amacuro, where most indigenous peoples live. In its report to the Human Rights Council at its forty-fourth session, OHCHR found that the establishment of the Orinoco Mining Arc and the expansion of mining had had considerable negative effects on the right to self-determination of indigenous peoples; their rights to their land, territories and resources; and their rights to the conservation and protection of the environment and to live in peace and security. In that context, OHCHR raised serious concerns about the lack of free, prior and informed consent of indigenous peoples.<sup>18</sup>

46. During the reporting period, the OHCHR presence in the Bolivarian Republic of Venezuela documented killings of indigenous peoples, particularly in the mining areas and/or areas controlled by non-State armed groups. On 28 April, in the mining sector El Silencio, in the Sucre municipality of Bolívar State, three people of the Jivi indigenous group were allegedly killed by armed groups operating around the mine.

47. On 30 June, the National Electoral Council of the Bolivarian Republic of Venezuela introduced new regulations concerning the election of indigenous representatives to the National Assembly. The changes reduced the proportion of seats held by indigenous peoples in the legislative body, replaced the direct vote with an indirect vote and failed to fully ensure the free and meaningful participation of indigenous peoples in the electoral process. While meetings were held with some indigenous organizations to validate the regulations, wide and inclusive consultations were not held. In protest, three out of six indigenous organizations approved by the National Electoral Council opted not to participate in the elections. That raises concerns regarding the minimum guarantees to ensure the free and meaningful participation of indigenous peoples in the electoral process.

## **E. Structural racial discrimination, racial justice, patterns of violence against indigenous peoples carried out by law enforcement agents**

48. The OHCHR office in Guatemala provided technical assistance to the University San Carlos of Guatemala to develop a technical training programme in strategic litigation on the rights of indigenous peoples with a gender focus. The programme attracted 65 participants and since May 2021, participants have supported seven cases of strategic litigation on the right to land, territories, water and a healthy environment. The office also provided capacity-building on strategic litigation to indigenous women and worked with 142 of them to support the implementation of three decisions of the Constitutional Court.

<sup>18</sup> See A/HRC/44/54.

49. The OHCHR office in Mexico addressed structural racial discrimination and racial justice, including by monitoring the situation in Nahuatzen Michoacán, an indigenous community seeking to exercise its rights to self-determination and autonomy. During the reporting period, the office also monitored the case of the disappeared students from Ayotzinapa, some of whom were indigenous.

50. In May 2020, in the context of the pandemic, the OHCHR Regional Office for South America followed a case involving violence and racial discrimination perpetrated by the police in Chaco, Argentina, against a family from the Qom indigenous community. The victims reported injuries resulting from the actions of the police, during which the police allegedly uttered insults and threats related to the ethnicity and socioeconomic situation of the family. Together with the United Nations Resident Coordinator in Argentina, OHCHR issued a press release calling on the authorities to determine the role played by racial discrimination in the case and to identify the persistence of such patterns in the institutional culture of the security forces.<sup>19</sup>

51. In the context of an extensive hunger strike held by several Mapuche prisoners in Chile, the OHCHR country office provided technical assistance to the Ministry of Justice and Human Rights and to the Gendarmerie to interpret the Penitentiary Code in line with the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169). As a result, the National Director of Gendarmerie adopted resolution No. 3925, which removed two important obstacles that affected Mapuche prisoners in a discriminatory manner.

52. On August 2020, the Committee on the Elimination of Racial Discrimination issued a public statement on the COVID-19 pandemic and its implications under the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee stated that the pandemic had disproportionately affected indigenous peoples and that it had exacerbated the specific vulnerability of women and girls, leading to multiple or intersecting forms of discrimination and other human rights violations.

53. Recommendations adopted during the reporting period under the universal periodic review included the need to take effective measures to address persistent stereotypes and prejudices against indigenous peoples, combat racism and multiple and intersectional discrimination, and achieve full inclusion for indigenous peoples.<sup>20</sup>

## **F. Access to justice and legal protection of the rights of indigenous peoples**

54. OHCHR continued to support the integration of the rights of indigenous peoples into legislation and policies through technical advice to State authorities. In cooperation with the Department of Economic and Social Affairs and UN-Women, it provided guidance to the development of the affirmative action programme on indigenous peoples led by the Ministry of Gender, Labour and Social Development in Uganda. Following the establishment in 2019 of a National Reference Committee comprised of representatives of indigenous communities and relevant ministries, OHCHR participated in consultative meetings held in July 2020. The meetings focused on issues such as access to justice, culturally appropriate education, participation and the right of indigenous peoples to lands, and have informed the preparation of the action programme. OHCHR also continued to advocate for the adoption of a bill on the protection of the rights of indigenous peoples in the Democratic Republic of the Congo. The bill, which was adopted by the National Assembly on 7 April 2021, still has to go through the Senate for a second reading before being enacted.

55. In August 2020, the OHCHR presence in the Plurinational State of Bolivia issued a report on the human rights violations committed after the elections in 2019, which highlighted the particular impact on indigenous peoples. The country office supported national institutions to include international human rights standards pertaining to the rights

<sup>19</sup> See: <https://acnudh.org/argentina-onu-advierte-discriminacion-y-violencia-policial-en-el-chaco/>.

<sup>20</sup> See, for example, A/HRC/46/12, A/HRC/46/8 and A/HRC/46/9.

of indigenous peoples in their work and facilitated the participation of indigenous peoples in judicial proceedings.

56. During the COVID-19 pandemic, the capacity of judicial institutions in Guatemala to ensure access to justice, particularly for indigenous peoples, has been hindered. Although the Supreme Court of Justice adopted regulations for virtual hearings, the OHCHR country office has documented a significant decrease in the access to justice of indigenous communities living in rural areas, given their limited access to computers and Internet services. In that context, the country office supported virtual training on the rights of indigenous peoples for over 40 prosecutors, public defenders and judges.

57. As part of its strategy to ensure access to justice for indigenous peoples during the COVID-19 crisis, the OHCHR office in Honduras continued to follow emblematic cases, monitored effective access to justice and ensured visibility, due process and judicial guarantees for victims of human rights violations. On 20 August 2020, the office held a bilateral meeting with the President of the Supreme Court of Justice to advocate for increased visibility of emblematic hearings, including in the case of David Castillo, the president of a company allegedly involved in the planning and murder of the indigenous environmental defender Berta Cáceres in 2016.

58. The OHCHR presence in Kenya continued to monitor the implementation of the decision on the Ogiek community by the African Court on Human and Peoples' Rights, which in 2017 delivered a historic judgment on the expulsion of the Ogiek people from their ancestral lands in the Mau Forest. It also provided information to the Special Rapporteur on the rights of indigenous people during her testimony as an expert witness on reparations at the Court in June 2020.

59. In the context of the constitutional process in Chile, the OHCHR Regional Office for South America closely monitored the legislative procedures for the drafting of a constitutional amendment to establish reserved seats (*escaños reservados*) for indigenous peoples in the Constitutional Convention. The work included attendance at all parliamentary sessions, sending a letter to the National Congress on international standards, meetings with parliamentarians and a joint statement with the Inter-American Commission on Human Rights.

## **G. Violence against indigenous women and girls**

60. In 2021, the OHCHR presence in the Plurinational State of Bolivia, together with civil society organizations and the Office of the Ombudsperson, began to monitor the abuse and sexual exploitation of children and adolescents, mostly indigenous, and their recruitment for drug trafficking in the Amazonian community of Bella Vista, Beni.

61. In May 2020, the OHCHR office in Guatemala purchased and distributed 3,000 masks manufactured by the indigenous weavers belonging to the National Movement of Indigenous Maya Weavers. The aim was to provide financial support to the weavers during the peak of the pandemic, while raising awareness of the need to protect their collective intellectual property rights. Additionally, in coordination with the Institute of Constitutional Studies, the office provided technical assistance on four decisions of the Constitutional Court, including the emblematic cases of indigenous weavers and indigenous midwives. As a result, in March 2021 user-friendly publications of these rulings were produced for dissemination.

62. In December 2020, the OHCHR office in Mexico launched a podcast on the participation of indigenous women in decision-making spaces, with the participation of Zenaída Pérez Gutiérrez, a member of the National Political Assembly of Indigenous Women, and Guadalupe Martínez Pérez, coordinator of the Indigenous and Afro-descendant Women's News agency.

63. The OHCHR Regional Office for South-East Asia, together with the Asia Indigenous Peoples Pact and other organizations of indigenous peoples, co-organized a side event on the theme of "Frontline heroes' New Normal with accelerated collective actions" at the 2020

high-level political forum on sustainable development.<sup>21</sup> The event focused on the knowledge and customary practices of Asian indigenous women, collective actions to achieve immediate and long-term food security and environmental justice for vulnerable populations.

64. During the reporting period, the Human Rights Committee adopted concluding observations that included the need for specific measures to promote and protect the rights of indigenous women and the need to enhance efforts to increase the participation of indigenous women in the public and private sectors and their representation at the highest level, as well as better data collection in that regard.<sup>22</sup>

65. At its seventy-eighth session, the Committee on the Elimination of Discrimination against Women decided to draft a general recommendation on the rights of indigenous women and girls and in June 2021, it organized a day of general discussion to launch the drafting process.

66. In its general comment No. 25 (2021), the Committee on the Rights of the Child called upon States parties to take specific measures to close the gender-related digital divide for girls, including indigenous girls, and to ensure access, digital literacy, privacy and online safety. The Committee also called for content beneficial for children to be accessible in languages that children understand so as to have a positive impact on equality.

67. In the recommendations outlined in the universal periodic review, emphasis was placed on effectively addressing the challenges of domestic and sexual violence against women and ensuring that victim support services are easily accessible by indigenous women, especially in rural areas. Other recommendations included the need to increase measures to reduce unemployment and create favourable working conditions for indigenous women.<sup>23</sup>

## H. Land rights

68. In a context where indigenous land rights are still not or are inadequately recognized in many States, the COVID-19 pandemic is having a direct impact on the enjoyment of indigenous peoples of their right to development, self-determination and control over their traditional lands, territories and resources.

69. In March 2021, the OHCHR presence in the Plurinational State of Bolivia assisted indigenous communities living in the Isiboro-Sécure Indigenous Territory and National Park, the Lomerio and the Territorio Indígena Multiétnico 1 to promote recognition of their rights over land, territory and natural resources, as well as their autonomy.

70. In a letter sent to the Ministry of Land Management, Urban Planning and Construction in July 2020, the OHCHR office in Cambodia requested detailed information about the implementation of the ongoing land titling process and raised concerns about the potentially negative impacts on indigenous communities seeking communal instead of individual land titles. This resulted in the Ministry suspending the first working group to be deployed to Mondulhiri province until further notice. On 10 August, as a result of the advocacy effort and mediation initiatives supported by the OHCHR country office since 2017, over 500 hectares of land were returned to Bunong indigenous communities. With the areas clearly marked on maps, the communities are now able to apply for a collective land title, thus securing their land tenure. In November, the country office also issued a discussion paper encouraging the Government to reform the collective land titling process by simplifying it and incorporating its human rights commitments and the Sustainable Development Goals principle of leaving no one behind.

71. The OHCHR office in Guatemala documented and followed two cases of evictions conducted by non-State actors: (a) the eviction of the Maya Poqomchi' "Washington" community in April 2020 and (b) the eviction of the Q'eqchi' community of Cubilgüitz in August 2020. On 21 October, the Inter-American Commission on Human Rights granted

<sup>21</sup> See <https://bangkok.ohchr.org/indigenous-women-in-covid-19-to-sdgs-achievement-frontline-heroes-new-normal-with-accelerated-collective-actions>.

<sup>22</sup> See CCPR/C/FIN/CO/7 and CCPR/C/KEN/CO/4.

<sup>23</sup> See, for example, A/HRC/46/8 and A/HRC/46/12.

precautionary measures to 76 families of the Washington and Dos Fuentes communities. The OHCHR office provided technical assistance and capacity development to the Constitutional Court on relevant international human rights standard in the context of recognizing the claims of indigenous peoples to their territorial rights.

72. During the reporting period, the OHCHR Regional Office for South-East Asia, together with the Special Rapporteur on the rights of indigenous peoples and the Asia Indigenous Peoples Pact, co-organized three webinars on strengthening the protection of the rights of indigenous peoples in Asia. The topics discussed included land rights, climate change and the environment, environmental human rights defenders, business and human rights, the 2030 Agenda and ways to advance implementation of the United Nations Declaration on the Rights of Indigenous Peoples in the region.

73. During the reporting period, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Working Group on the issue of human rights and transnational corporations raised the following issues relating to the land rights of indigenous peoples:

(a) Legal frameworks must be developed on resettlement and eviction that particularly take into account affected indigenous peoples;<sup>24</sup>

(b) Evictions must comply with national and international standards;<sup>25</sup>

(c) Land titling processes and administrative, financial and other barriers in accessing communal land titles prevent indigenous peoples from registering their collective lands and need to be tackled;<sup>26</sup>

(d) Indigenous peoples' traditional forms of land tenure and ownership must be recognized and their rights to their ancestral lands and territories protected;<sup>27</sup>

(e) Measures must be taken to prevent encroachment by third parties on indigenous peoples' lands.<sup>28</sup>

74. The majority of the 74 communications issued by the Special Rapporteur on the rights of indigenous peoples during the reporting period relate to violations of land rights.

75. Recommendations adopted at the sessions of the universal periodic review during the reporting period included the need to strengthen the protection of the rights of indigenous peoples in relation to their lands and territories.<sup>29</sup>

## I. Promotion of indigenous languages

76. OHCHR is supporting the preparation of the global action plan for the upcoming International Decade on Indigenous Languages (2022–2032) which is being coordinated by the United Nations Educational, Scientific and Cultural Organization, the lead agency for the organization of the Decade. In her opening statement to the first meeting of the Global Task Force for the preparation of the International Decade of Indigenous Languages in March 2021, the Deputy High Commissioner for Human Rights stated that “in proclaiming this Decade, the international community is recognizing that indigenous peoples represent a distinct group whose human right to language should be promoted and protected. This proclamation is also a call for action – the preservation of indigenous languages not only requires greater awareness but also concrete commitments”.

77. During the reporting period the OHCHR presence in the Plurinational State of Bolivia conducted regular visits to detention centres to assess the conditions of indigenous persons deprived of their liberty and facilitated their access to effective remedies and due process in their own languages. In 2020, the country office also recommended that the Supreme

<sup>24</sup> See A/HRC/41/43/Add.2.

<sup>25</sup> See CCPR/C/KEN/CO/4.

<sup>26</sup> Ibid. and E/C.12/KHM/Q/2, para. 10.

<sup>27</sup> See E/C.12/GTM/Q/4, para. 6.

<sup>28</sup> See E/C.12/PAN/Q/3, para. 20.

<sup>29</sup> See A/HRC/46/12 and A/HRC/46/8.

Electoral Tribunal guarantee the registration and participation of indigenous organizations under equal conditions and enable the election of their representatives in accordance with their traditions and customs. As a result, the Tribunal facilitated the election of the Ayoreo representative to the Departmental Assembly of Santa Cruz de la Sierra and the dissemination of information about the electoral process in indigenous languages. In October 2020, the country office conducted a workshop to strengthen the capacities of indigenous experts to monitor human rights during elections with an intercultural and participatory approach.

78. From June to December 2020, the OHCHR office in Guatemala trained 33 indigenous leaders on human rights and communication techniques that resulted in five communications campaigns on the rights of indigenous peoples. In addition, 40 messages were produced in audio format, in three indigenous languages, which were broadcast by 19 community radio stations. The office also trained 14 spokespersons on how to make videos with cell phones, which resulted in two videos being published on social networks. During the reporting period, the office supported the creation and dissemination of multimedia materials produced in five indigenous languages to promote knowledge among indigenous youth of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

79. In concluding observations, the Committee on Economic, Social and Cultural Rights expressed concern about the insufficient teaching of and education in indigenous languages, and the lack of guarantees of the right for indigenous peoples to receive services in their languages.<sup>30</sup> The Committee also referred to the importance of the preservation, development, expression and dissemination of identity, history, culture, language, traditions, and customs of indigenous peoples;<sup>31</sup> intercultural education in indigenous languages;<sup>32</sup> and the repatriation of indigenous cultural objects.<sup>33</sup>

80. In May 2021, the Special Rapporteur on the rights of indigenous peoples submitted an expert testimony to the Inter-American Court of Human Rights at the request of the petitioners in the case of the *Maya Kaqchikel indigenous peoples of Sumpango and others v. Guatemala*. The case relates to the General Telecommunications Law in Guatemala which restricts the access of indigenous peoples to community radio frequencies in order to broadcast in indigenous languages.

81. In recommendations adopted during the sessions of the universal periodic review, participants expressed the need to strengthen intercultural and bilingual educational programmes to enhance the participation of indigenous children in education and protect the self-identity and native languages of indigenous peoples.<sup>34</sup>

### III. Participation of indigenous peoples in United Nations processes

82. OHCHR continued to support the implementation of the system-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted in 2015 as a follow-up to the outcome document of the World Conference on Indigenous Peoples.<sup>35</sup> As a member of the Inter-Agency Support Group on Indigenous Issues, OHCHR contributed to the development of a call to action on building an inclusive, sustainable and resilient future with indigenous peoples. The call to action was endorsed by the United Nations System Chief Executives

<sup>30</sup> See, for example, E/C.12/FIN/CO/7.

<sup>31</sup> See, for example, E/C.12/GTM/Q/4, para. 30, and E/C.12/PAN/Q/3, para. 26.

<sup>32</sup> See, for example, E/C.12/SLV/Q/6, para. 25.

<sup>33</sup> See, for example, E/C.12/SWE/QPR/7, para. 25.

<sup>34</sup> See A/HRC/46/8 and A/HRC/46/12.

<sup>35</sup> E/C.19/2016/5.

Board for Coordination (CEB) in November 2020 to strengthen collective and coherent United Nations system efforts at country level.<sup>36</sup>

83. OHCHR also enhanced its partnership with the African Commission on Human and Peoples' Rights following the establishment of a steering committee on indigenous peoples of Africa in October 2019. The committee consists of the African Commission Working Group on indigenous populations/communities and interested members of the Inter-Agency Support Group on Indigenous Issues. An important objective of this initiative is to support the mandate of the African Commission Working Group through increased programming by United Nations country teams for and with indigenous peoples in Africa.

84. Owing to COVID-19, the Expert Mechanism on the Rights of Indigenous Peoples conducted its thirteenth session virtually in 2020. It first held virtual meetings on 22–24 June, followed by four virtual regional meetings from 30 November–3 December on the impact of COVID-19 on the rights of indigenous peoples. That issue was the theme of the 2020 annual report of the Expert Mechanism, in which it highlighted the disproportionate impact of the pandemic on indigenous peoples and provided related advice, including on the essential elements of recovery efforts.<sup>37</sup>

85. During the reporting period, OHCHR continued to support the Expert Mechanism on the Rights of Indigenous Peoples. In April 2020, the Expert Mechanism completed its first virtual engagement on the protection of the rights of indigenous peoples in Brazil in the context of COVID-19. The engagement culminated in recommendations on the health and land rights of indigenous peoples in Brazil. The Expert Mechanism also continued to support the ongoing process of repatriation of the Yaqui *Maaso Kova* (ceremonial deer head) from the National Museum of World Culture in Sweden to the Yaqui people in Mexico.

86. In 2021, the OHCHR presence in the Plurinational State of Bolivia trained 75 indigenous leaders and members of civil society organizations on international human rights standards and the use of international human rights protection mechanisms for indigenous peoples and civil society organizations. In 2020, the office organized a series of training sessions on the Convention on the Elimination of All Forms of Racial Discrimination for over 200 participants, including indigenous peoples.

87. In April 2021, the OHCHR office in Guatemala facilitated a forum for indigenous authorities, leaders and organizations, on the theme of "Experiences in strategic litigation in Guatemala and the challenges for the implementation of reparation measures on the collective rights of indigenous peoples, in particular indigenous women". This event was held in the framework of the twentieth session of the Permanent Forum on Indigenous Issues on the theme of "Peace, justice and effective institutions: the role of indigenous peoples in the implementation of Sustainable Development Goal 16".

88. The country office in Guatemala trained 29 indigenous weavers and midwives on the special procedures system of the Human Rights Council and how to refer information to them. It also trained 34 indigenous women lawyers on international human rights mechanisms, strategic litigation processes and human rights instruments and tools in the United Nations system.

89. Owing to COVID-19, in 2020 OHCHR was unable to implement its regular annual indigenous fellowship programmes in Geneva. The programme was redesigned into a country-based one by selecting 20 of its most successful former indigenous fellows as senior fellows and deploying them in OHCHR country and regional offices, peacekeeping missions or country teams in Brazil, Cambodia, Cameroon, Chad, Chile, Colombia, the Democratic Republic of the Congo, Ecuador, Ethiopia, Fiji, Indonesia, Kenya, Malaysia, Mali, Mauritania, Mexico, New Zealand and Paraguay.

90. The main objectives of the redesigned senior fellowship programme are: (a) on-the-job training and capacity-building; (b) experience in the context of United Nations work and activities; (c) benefits accruing to OHCHR and the United Nations more generally from the

<sup>36</sup> CEB, "Building an inclusive, sustainable and resilient future with indigenous peoples: a call to action".

<sup>37</sup> A/HRC/46/72.

expertise, knowledge and experience of the senior fellows; and (d) an opportunity for the senior fellows to continue to strengthen their advocacy and leadership skills, including in the context of COVID-19. Of the 20 senior indigenous fellows who were initially appointed in 2020, 16 had their fellowships extended for up to a maximum cumulative amount of 12 months during 2021.

91. In 2020, the United Nations Voluntary Fund for Indigenous Peoples allocated 165 travel grants to enable indigenous representatives to participate in the Permanent Forum on Indigenous Issues in New York (46) and in meetings of the Expert Mechanism on the Rights of Indigenous Peoples in Geneva (40), the Human Rights Council, the Universal Periodic Review Working Group and the human rights treaty bodies in Geneva (30). In addition, 7 indigenous representatives were allocated travel grants by the Fund to attend a General Assembly consultative process, 21 were allocated grants for attending the Forum on Business and Human Rights and 21 for meetings of the United Nations Framework Convention on Climate Change.

92. Owing to travel restrictions caused by COVID-19, at the beginning of 2020 the Voluntary Fund supported the participation of three indigenous representatives from Tuvalu and one from the Cook Islands in the eighty-fourth extraordinary session of the Committee on the Rights of the Child, held in Samoa.

93. During the reporting period and in collaboration with the Expert Mechanism on the Rights of Indigenous Peoples, the Voluntary Fund supported the development by OHCHR of an e-learning tool on the United Nations Declaration on the Rights of Indigenous Persons and other United Nations mechanisms specific or most relevant to indigenous peoples.

94. In April 2021, the OHCHR presence in the Bolivarian Republic of Venezuela provided guidance to civil society indigenous organizations on their written submissions to the universal periodic review and provided capacity-building to civil society organizations and the leaders of six indigenous groups on international protection mechanisms.

## IV. Conclusions

95. **As highlighted by United Nations human rights mechanisms and OHCHR field offices, the global COVID-19 pandemic has exacerbated the challenges that indigenous peoples across the world continue to face when claiming their human rights. In that context, OHCHR has conducted an array of country, regional and international efforts to protect and promote the rights of indigenous peoples worldwide, and to advocate for their effective and meaningful participation and leadership in COVID-19 response and mitigation strategies.**

96. **OHCHR has supported assessments on the human rights impact of COVID-19 on indigenous peoples, provided recommendations for action and facilitated spaces for dialogue to address the crisis. Concerns were raised that the differentiated impact of COVID-19 on indigenous peoples remained, including limited access to quality health care, exclusion from State responses, greater discrimination, violence, poverty and malnutrition, and human rights violations perpetrated by those sidestepping international law and standards.**

97. **OHCHR has continued to support States in strengthening their capacity to ensure that the free, prior and informed consent of indigenous peoples is obtained on all matters that can potentially impact them. Nonetheless, guarantees of this principle must be strengthened, particularly those adopted in the context of the pandemic.**

98. **Indigenous human rights defenders continue to face high risks when conducting their work, particularly those whose efforts involve protecting lands and territories and those cooperating with the United Nations. Further strengthening of State measures to effectively prevent, investigate and prosecute attacks against indigenous defenders remains a priority. OHCHR has supported States, indigenous human rights defenders and their communities, national human rights institutions and civil society to enhance the protection of defenders, prevent violations of their rights and follow cases where they are at risk.**

99. OHCHR has followed and provided visibility to cases of racial discrimination against indigenous peoples, while calling on States to take effective action to address persisting multiple and intersectional discrimination.

100. Indigenous peoples continue to face barriers to accessing State legal systems maintaining and strengthening their indigenous legal institutions and applying their own customs and laws. To advance the access to justice of indigenous peoples, OHCHR has supported efforts to strengthen strategic litigation and the capacity of national institutions to include international human rights law and standards pertaining to the rights of indigenous peoples in their work.

101. Indigenous women and girls face a disproportionately high risk of violations of their human rights. Their exclusion from decision-making spaces, vulnerability to different forms of gender-based violence, the adverse impacts of the gender digital divide and the limited exercise of their land rights continue to impact indigenous women and girls. OHCHR has continued to monitor related human rights abuses and supported efforts to promote and protect their political, economic and cultural rights.

102. The land rights of indigenous peoples are still not or are inadequately recognized in many countries and barriers to land titling persist. OHCHR has supported efforts to promote the recognition of the rights of indigenous peoples over land, territory and natural resources, as well as of their autonomy. Technical assistance has been provided to State institutions to strengthen land titling processes and to protect the rights of those seeking communal land titles.

103. OHCHR has strengthened the capacities of indigenous leaders to engage with international human rights mechanisms and facilitated their participation in United Nations meetings and forums so that they can directly express their priorities and concerns and impact the decision-making processes of the international community.

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