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Discussion on the theme "Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16"

International expert group meeting on the theme "Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16"

Note by the Secretariat

Summary

The international expert group meeting on the theme "Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16" was held in Chiang Mai, Thailand, from 19 to 21 November 2019. The present note contains the report of the meeting.

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Report of the international expert group meeting on the theme “Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16”

I. Introduction

1. The 2030 Agenda on Sustainable Development, adopted in 2015, refers to indigenous peoples six times: three times in the political declaration, two in the targets under Sustainable Development Goal 2, on ending hunger, and Goal 4, on education, and one in the section on follow-up and review, in which Member States called for participation by indigenous peoples. This is a step forward from the earlier Millennium Development Goals, which did not include any reference to indigenous peoples. The inclusion of specific references to indigenous peoples is a direct result of the close cooperation between indigenous peoples and Member States, as well as other partners, in the preparatory process for the 2030 Agenda and it provides the basis for continued cooperation in the Agenda’s implementation.

2. In the preamble of the 2030 Agenda on Sustainable Development, it is stated that there can be no sustainable development without peace and no peace without sustainable development. To achieve truly lasting peace, marginalization of and discrimination against indigenous peoples, as well as the expropriation of their lands, must end; their own conflict-resolution systems must be recognized and applied to their specific situations; and national laws and peace accords must guarantee their rights as laid out in the United Nations Declaration on the Rights of Indigenous Peoples.

3. Sustainable Development Goal 16, on peace, justice and strong institutions, is aimed at promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. Goal 16 and its targets, while diverse, are interlinked and are therefore also central to the attainment of all the other Goals. The targets of Goal 16 cover issues ranging from abuse and violence to corruption and bribery, and also vary in scope. The targets are based on the underlying principles of the 2030 Agenda and constitute the foundations for sustainable development. For instance, the promotion of the rule of law (target 16.3) encompasses basic principles of legality, such as the equal and systematic application of legal rules. In contrast, birth registration (target 16.9), although a very specific action, has an outsized role in ensuring individual rights and access to justice and social services, which are critical to ensuring that no one is left behind. Similarly, the principles of inclusive participation and representation in decision-making (target 16.7) are also central to ensuring that public institutions are responsive and effective. These are critical outcomes, in and of themselves, and they are also essential for the achievement of progress across other Sustainable Development Goals.

4. As described in the United Nations Development Programme *2016 Annual Report on the Global Programme on Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development*, Sustainable Development Goal 16 ushers in a new kind of development: one in which people can better influence the decisions that affect their lives and create communities that thrive. Sustainable Development Goal 16 articulates the key role that governance and the rule of law play in promoting peaceful, just and inclusive societies and in ensuring sustainable development.

5. All of the targets of Sustainable Development Goal 16 are crucial for the well-being of indigenous peoples worldwide who, even today, suffer from grave human rights violations. These stem from historical injustices, without redress or reconciliation, and a lack of legal recognition of indigenous institutions and of their most basic rights.

6. For indigenous peoples, the largest number of recommendations emanating from United Nations human rights treaty bodies pertain to issues related to Goal 16, such as access to non-discriminatory and inclusive justice, recognition of indigenous institutions, the principle of free, prior and informed consent, and the right to lands, territories and resources.

7. To achieve peace, the exclusion and marginalization of indigenous peoples through forced relocation, expropriation of lands, assimilationist policies and the criminalization of indigenous rights defenders must end and be replaced by dialogue and respect for indigenous institutions and systems. The United Nations Declaration on the Rights of Indigenous Peoples provides a clear human rights framework for the inclusion of indigenous peoples with respect for both individual and collective rights.

8. Several articles in the United Nations Declaration on the Rights of Indigenous Peoples are central to the attainment of Goal 16, addressing issues of self-determination and self-governance, participation in decision-making and access to justice.

9. For example, article 4 states that indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

10. Article 5 states that indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

11. Article 18 states that indigenous peoples have the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

12. Article 19 sets out that States are to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

13. Article 27 addresses the obligation of States, in conjunction with indigenous peoples, to establish and implement an impartial and transparent process to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources.

14. Each year, the United Nations organizes an international expert group meeting on an issue of concern for indigenous peoples, proposed by the Permanent Forum on Indigenous Issues. The present report is on the 2019 meeting, which was on the theme “Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16”.

15. The main aim of the meeting was to discuss the issues affecting indigenous peoples in the context of peace and justice and the role that indigenous institutions and entities can play in securing a sustainable and durable peace. To this end, the meeting was focused on the following:

(a) Taking stock of the impacts of conflicts on indigenous peoples and of challenges regarding their participation in peacebuilding and in conflict-resolution processes;

(b) Evaluating the recognition of indigenous institutions and participation in local and national decision-making mechanisms;

(c) Sharing good practices in various areas, including cooperation with indigenous peoples in peacebuilding and conflict resolution, protection of indigenous human rights defenders, provision of access to justice to remote communities, establishment of truth and reconciliation commissions, and inclusion of indigenous peoples' representatives and institutions at different levels;

(d) Assessing the situation of indigenous women in the context of conflicts and participation in decision-making;

(e) Identifying further areas and targets of Sustainable Development Goal 16 that indigenous peoples can contribute to implementing;

(f) Analysing gaps in the implementation of the United Nations Declaration on the Rights of Indigenous Peoples;

(g) Proposing recommendations and next steps to ensure the recognition of indigenous peoples' rights and institutions.

16. The expert group meeting on Sustainable Development Goal 16 was held at Chiang Mai University, Chiang Mai, Thailand, and was organized in close cooperation with the University and other partners. It was the second expert group meeting organized outside United Nations Headquarters, as encouraged by the Permanent Forum. The aim of holding meetings in different regions is to better engage with indigenous peoples in that region and to bring the United Nations and its work with indigenous peoples closer to the people concerned.

17. The expert group meeting was attended by members of the three United Nations indigenous-specific mechanisms: the Permanent Forum on Indigenous Issues (Chair, Anne Nuorgam; Brian Keane and Xiaoan Zhang); the Special Rapporteur on the rights of indigenous peoples (Victoria Tauli-Corpuz); and the Expert Mechanism on the Rights of Indigenous Peoples (Edtami Mansayagan). The following experts also participated in the meeting: Madeline Anak Berma, Joan Carling, Medarda Castro, Sakda Saenmi, Eric Descheenie, Tuenjai Deetes, Kittisak Rattanakrajangsri, Famark Hlawnching, Silvia Museiya, Naw Ei Ei Min, Ramiro Ávila Santamaría, Raja Devasish Roy, Joseph Ole Simel, Prasert Trakansuphakon, Yon Fernández de Larrinoa, Edna Kaptoyo, Suraporn Suriyamonton and Jagat Bahadur Baram.

18. The meeting was also attended by other experts from civil society, the United Nations system and indigenous peoples' organizations that are involved in work related to Sustainable Development Goal 16 and indigenous peoples. The participants had before them a programme of work and background documents. The documents for the expert group meeting are available at: www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/peace-justice.html.

19. Opening the meeting, Ms. Nuorgam noted that the United Nations Declaration on the Rights of Indigenous Peoples was fully in line with the aim of Sustainable Development 16 to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Nevertheless, the impact on indigenous peoples from historical injustices, often without redress or reconciliation, was a major reason for their continued marginalization. In too many instances, the lack of recognition of their identity and their existence challenged their ability to live in dignity and peace. Incidence of rights violations and attacks against indigenous rights defenders were

unfortunately on the rise, which was antithetical to target 16.1 of the Sustainable Development Goals, to significantly reduce all forms of violence and related death rates everywhere. Further, continuing and emerging conflicts around the world were often a result of gross inequalities and inequities between and within countries, communities and regions. A number of peace accords had been agreed between Governments and indigenous peoples. However, implementation often lagged behind and many issues remained unresolved.

20. Ms. Nuorgam said that, for Sustainable Development Goal 16 to be achieved for indigenous peoples, it was critical that their rights were recognized, particularly the right to self-determination, which had various manifestations, including autonomy and self-government. That right could be exercised through indigenous peoples' own authorities and institutions and governance systems that had been developed and shaped to respond to the needs and priorities of the peoples themselves. She reiterated that, although the meeting was focused on Goal 16, all the Sustainable Development Goals were interlinked and relevant to indigenous peoples.

21. Ms. Nuorgam explained that the Permanent Forum on Indigenous Issues had decided at its eighteenth session, in 2019, that the annual expert group meeting should be aligned to the theme of the subsequent session of the Permanent Forum in order to build on findings and to inform the work of the session. For that reason, it had requested the Department of Economic and Social Affairs of the Secretariat to organize a meeting on the theme "Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16", which was also to be the theme of the 2020 session of the Permanent Forum, to be held in New York from 13 to 24 April 2020.

22. In his opening statement, Chayan Vaddhanaphuti, representing the Regional Center for Social Science and Sustainable Development at Chiang Mai University, used the case of Thailand to illustrate the common issues affecting indigenous peoples, which were centred around non-recognition, land conflicts, conservation policies that negatively affected the lives of indigenous peoples, rights violations, internal displacement, migration and refugee status and social exclusion. Thailand did not recognize the term "indigenous peoples" within its territory and used the terms "ethnic minorities" and "hill tribes" instead.

23. Mr. Chayan pointed out that indigenous organizations were focused on demonstrating that their traditional knowledge and way of life were a benefit to the environment and the economy of the country. Shifting cultivation and rotational agriculture were based on traditional knowledge and had been scientifically proven to be environmentally sound. However, the land rights of ethnic minorities and hill tribes were being undermined with the current practice of demarcating national parks, often on lands historically used by the hill tribes. As an example, he cited the case of Porlajee "Billy" Rakchongcharoen, a Karen environmental and community activist, who had allegedly been killed in Kaeng Krachan National Park. That was being followed up by the authorities, which was a positive step in terms of strengthening accountability, in line with target 16.6 of the Sustainable Development Goals. Chiang Mai University conducted research and analysis and provided capacity-building support to indigenous communities to strengthen their skills in conducting dialogues and negotiations.

24. The Resident Coordinator a.i. and Resident Representative of the United Nations Development Programme in Thailand noted that, since the principle "leave no one behind" was at the centre of the 2030 Agenda for Sustainable Development, indigenous peoples should no longer be excluded. However, there was a focus on nationhood and "oneness", with high rates of discrimination and exclusion. In many instances, diversity was perceived as a source of potential fragility. However, progress

was being made. In 2017, the Government of Thailand had prepared a voluntary national review for presentation to the high-level political forum on sustainable development, on the implementation of the Sustainable Development Goals, that contained a reference to ethnic minorities. It was also the first country in Asia to have adopted a national action plan on business and human rights with specific reference to the employment of members of ethnic minority groups. Sustainable Development Goal 16 was fundamental for good governance. With reference to promoting peaceful and inclusive societies, Thailand was reported to be one of the most unequal countries in the world, with 1 per cent of the population owning 67 per cent of the assets of the country.[1] On promoting justice for all, legal aid was available, but not accessible, to all. With reference to inclusive institutions, Thailand followed a centralized system, whereas the principle of subsidiarity might facilitate greater access at all levels and allow local communities and indigenous peoples to have a greater voice in local government. It was important for the United Nations, particularly the country teams, to make use of the opportunity offered by the Sustainable Development Goals to leave no one behind and provide support to Governments in attaining that objective. In that context, the role and contribution of indigenous peoples, particularly those of indigenous women, in implementing the Goals should not be ignored.

25. The Chief of the Indigenous Peoples and Development Branch of the Division for Inclusive Social Development of the Department of Economic and Social Affairs noted the progress made on advancing the rights of indigenous peoples. She noted that the United Nations Declaration on the Rights of Indigenous Peoples, the three mechanisms specific to indigenous issues (the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples), the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, 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 and the 2030 Agenda for Sustainable Development were all interlinked and played a central role within the United Nations to promote the rights of indigenous peoples. The 2030 Agenda offered new opportunities for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples and the system-wide action plan on the rights of indigenous peoples. Further, the Permanent Forum on Indigenous Issues, as an advisory body to the Economic and Social Council, played a central role in ensuring that indigenous issues were included in the high-level political forum on sustainable development. Challenges remained in ensuring that the rights of indigenous peoples were incorporated fully into the 2030 Agenda, if the Goals were to be achieved. It was important for indigenous peoples' rights and priorities at the country level to be incorporated into that process

II. Overview of the discussions

26. The following is an overview of the discussions, presentations and interactive debate that took place at the international expert group meeting. Panellists provided introductory remarks, followed by interactive discussions on the specific themes. The present report does not attempt to capture the full range and depth of the discussions, which were rich and wide-ranging. The main issues that were raised are highlighted to provide insights and examples to inform the ongoing discourse on this complex issue from the perspective of indigenous peoples.

[1] Online Reporters, "Report: Thailand most unequal country in 2018", *Bangkok Post*, 6 December 2018.

A. Effective, accountable and inclusive institutions at all levels

27. It was noted that article 5 of the United Nations Declaration on the Rights of Indigenous Peoples asserted the right of indigenous peoples to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, and that article 34 stressed the right of indigenous peoples to promote, develop and maintain their institutional structures and their juridical systems or customs, in accordance with international human rights standards.

28. It was expressed that, for indigenous peoples, effective, accountable and inclusive institutions meant not only the opportunity to participate in State institutional mechanisms that made decisions and ran decision-making processes on issues that affected them, but also the opportunity to have their own indigenous institutions and systems recognized. Inclusive societies allowed for legal pluralism, whereby indigenous institutions using customary laws and justice could coexist with national institutions. Harmonization between State and indigenous institutions and systems was central to indigenous peoples' well-being, to ensure equal access and opportunities to basic services and government institutions, if desired, while accounting for the specific ways of life of indigenous peoples.

29. It was mentioned that land was the basis of indigenous peoples' culture and identity. Their governance systems and institutions were centred on lands, territories and resources, with clear rules and procedures for ownership, use and transmission, as well as mechanisms for conflict resolution. In many cases, traditional institutions had been undermined and weakened by colonialism and the pressures of State models and structures. An example of the Navajo people in Arizona, United States of America, who were governed by a tribal leadership system, was described to reiterate that indigenous peoples related to their lands and territories on the basis of protecting the land rather than owning it. That meant that, while indigenous peoples might legally own land, according either to the State or to indigenous institutions, the philosophy was that peoples were protectors and users of the land as a collective. Children were taught that you could not give that which you did not have. Mr. Descheenie emphasized that indigenous peoples were not transferable and described the United States as a nation of immigrants.

30. Panellists stressed the importance of self-determined development in achieving inclusive and participatory societies. Target 16.7 of the Sustainable Development Goals, on ensuring responsive, inclusive, participatory and representative decision-making at all levels, was central to recognizing the specific conditions, needs and priorities of indigenous peoples. However, the rule of law was not applied in many countries around the world, and there were even some instances where fundamental rights had been suspended, with increasing criminalization of indigenous rights defenders. Although science had proved that indigenous customary systems preserved biodiversity and protected forests, shifting cultivation – which was often the only means of subsistence – was prohibited in some countries. Those factors contributed to the rising inequalities in the world. In the Asia-Pacific region, there had been a reversal in the aims of Sustainable Development Goal 16, with increased displacement and indigenous peoples not only being left behind, but in fact being pushed behind. When indigenous peoples were displaced, they lost the main basis for their production systems, which had an impact on their access to food and nutrition for their health and well-being. The Food and Agriculture Organization of the United Nations estimated that there were 820 million food-insecure people in the world; that number included indigenous peoples but, owing to a lack of data, it was difficult to know with any accuracy how many. In that regard, there was a need for national statistics offices to train indigenous peoples as data collectors. Panellists noted that indigenous peoples ran the risk of invisibility when categorized as vulnerable and/or

marginalized groups. It was important for indigenous peoples to be recognized as distinct peoples with rights, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

31. Participants underscored that indigenous justice systems that were effective, accountable, inclusive and based on customary law were often the main source for resolving land and family disputes. Customary laws were crafted in history but were also dynamic: they adapted and responded to changes in society. In that context, it was mentioned that the 1962 citizenship law in Myanmar required birth certificates to prove citizenship, yet oral history could be traced back for many generations prior to the issuance of birth certificates. It was also noted that, in practice, peace and justice were an expensive commodity, especially in the context of corruption within State institutions, particularly the police.

32. Participants noted that the production of adequate census and household data, including by gender, age and ethnicity, was key to ensuring that State institutions were representative and inclusive of indigenous peoples. In many countries, the number and location of indigenous peoples were unknown, or identification by ethnicity was lacking. That could also lead to data "misrepresentation", where ethnicities were misreported, which was cited as being the case in the 2012 Myanmar census. A suggestion was made to support capacity-building for indigenous peoples to collect quantitative or qualitative data through collaboration with the United Nations system, non-governmental organizations, universities and other partners to provide the necessary data and statistics to address that information gap.

33. In terms of participation in decision-making, the proportional representation system of State institutions in Nepal was discussed. Participants noted that it could be positive or negative, depending upon the situation: on the one hand, it could lead to the co-opting of indigenous representatives; on the other hand, it could be an opportunity for participation, particularly for traditional indigenous institutions.

B. Human rights-based approach to implementing Sustainable Development Goal 16

34. It was noted that land claim disputes were at the root of a large proportion of rights issues for most indigenous peoples, particularly in the Asia region. In Thailand, for example, more than 90 per cent of indigenous peoples faced challenges in asserting and claiming their land rights. As in other countries, some new laws designed to address environmental issues and conservation were the source of problems for indigenous peoples in Thailand. For instance, forestry and national park laws had been used to classify large areas where indigenous peoples lived as watershed areas, so that they were not issued with permits to use the land; that had led to conflict.

35. It was also noted that poverty was a major issue among the indigenous peoples of Malaysia, with many allegations of violations of customary land rights, including the construction of dams, that had devastating impacts on the lives and livelihoods of indigenous peoples. In response to allegations of violations of the customary land rights of the indigenous peoples, from December 2010 to June 2012, the National Human Rights Commission of Malaysia (SUHAKAM) had conducted its first-ever national inquiry into the land rights of indigenous peoples in Malaysia to examine, through a human rights lens, the root causes of the land issues facing indigenous peoples. SUHAKAM had carried out a series of public hearings in Peninsular Malaysia, Sabah and Sarawak. The findings of the study had been published in August 2013, along with key issues and recommendations. In follow-up, the Government had set up a national task force, in August 2014, which had endorsed most of the

recommendations contained in the SUHAKAM report. In 2015, a special cabinet committee for the land rights of indigenous peoples and access to customary lands had been established. The current Government had indicated its interest in continuing that work, which was aligned with target 16.3 of the Sustainable Development Goals, on promoting the rule of law at the national and international levels and ensuring equal access to justice for all.

36. Participants also noted the importance of indigenous land-mapping exercises in advancing negotiations. One example was of Navajo land-mapping through the collection of oral history from elders. Participants drew attention to the importance of the United Nations system facilitating communication and dialogue between indigenous peoples and Governments on those issues. Another point that was raised was that indigenous peoples were often the passive recipients of development and that their voicelessness was deafening, except when it was election time and candidates realized that their votes counted.

37. Participants stressed that, in the Asia region, the issue of statelessness and lack of identity cards had resulted in many human rights violations related to Sustainable Development Goal 16. It was noted that the issue disproportionately affected indigenous women, who had little or no access to basic health care, including maternity services, and children, who were often unable to attend school owing to a lack of registration documents.

38. Participants emphasized that target 16.9 of the Goals, namely, by 2030, to provide legal identity for all, including birth registration, was a key element, as birth registration and citizenship were basic human rights. In many developing countries, registration rates of indigenous peoples at birth (and registration of refugees and migrants) were very low. For example, participants noted that approximately 50 per cent of indigenous peoples in Cameroon did not have birth registration documents. A lack of registration documents had an impact on basic rights of citizenship and translated as no access to State services (such as education and health care), no voting rights and no legal documentation, resulting in no access to justice. Participants stressed that identity and citizenship documents were also required for work and freedom of movement.

39. It was noted that national human rights institutions in Malaysia, Myanmar and Thailand had been active in highlighting the need for birth registration and legal documentation in their work. For example, Thailand had had a high rate of undocumented migration and statelessness over many years owing to the length and porousness of its borders and as a result of periods of civil unrest in neighbouring countries. Since 2005, the Government of Thailand, civil society organizations and indigenous peoples had worked to address statelessness. The Government had introduced a series of legislative measures to increase household registration and documentation. In addition, Cambodia, the Lao People’s Democratic Republic, Myanmar and Thailand collaborated through a memorandum of understanding to address statelessness among their citizens and residents.

40. It was acknowledged that the establishment of national human rights institutions in some countries was relatively new and that trust between indigenous peoples and civil society organizations was a work in progress; such trust needed to be strengthened for rights issues to be effectively raised and addressed. The importance and potential of national human rights institutions as independent bodies that could play a key role in resolving conflicts, producing analytical reports and conducting investigations were stressed in the context of the implementation of Sustainable Development Goal 16.

41. The role of human rights advocates and institutions highlighting violence against women and human rights defenders and the growing issue of trafficking in

persons (including trafficking in domestic workers) was also emphasized. In addition, the need for the accountability of State institutions such as the army was raised, with participants pointing out that militarization undermined fundamental freedoms and human rights.

42. The recent and ongoing development of business and human rights national plans of action was also discussed as having the potential to support the land rights of indigenous peoples, provided they were fully involved in the process from the start. Such plans of action were in development in India (where a draft had been produced) Malaysia, Myanmar and Thailand.

C. Access to justice for all

43. It was recalled that the United Nations Declaration on the Rights of Indigenous Peoples affirmed that indigenous peoples had the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision was to give due consideration to the customs, traditional, rules and legal systems of the indigenous peoples concerned and international human rights (art. 40).

44. As had been stated by the Special Rapporteur on the rights of indigenous peoples, the customs, laws and judicial institutions of indigenous peoples were as diverse as the many distinct indigenous peoples, communities or nations and cultural groups that inhabited the globe. A general characteristic of indigenous justice systems that was fundamentally different from ordinary justice systems was that the sources of law applied did not derive from codified laws or tribunal decisions, but rather from oral histories, world views, spiritual and other cultural traditions, family or clan relations and obligations, and the close relationship of indigenous peoples with their traditional lands. Customary practices were an integral part of everyday life and played a key role in resolving disputes between indigenous individuals and communities, such as land disputes, conflicts between communities and disputes relating to management of natural resources and protection of the environment.[2]

45. It was expressed that accessing justice was an expensive commodity for all vulnerable and excluded groups, and particularly those living in poverty. Further, the concept of “access to justice for all” was predicated on the assumption that the justice system was for all, free from discrimination. Participants noted that there was a stark difference between the law in theory and the law in practice, with indigenous peoples and other groups facing historical injustices and institutional discrimination.

46. It was noted that State justice was generally built upon models from the global North and portrayed as scientific fact-based knowledge that was superior to other types of (indigenous) knowledge. It was also modelled upon a capitalist model of social and economic organization in which the buying and selling of resources, including natural resources and land, were valued, with a focus on individual and private rights through property and civil law. Indigenous customary law, on the other hand, was based on collective rights, the good of the community, the right to use and take care of the land, and different understandings of traditional knowledge and collective well-being. If those parallel realities existed in isolation with no attempt to work together, disagreements became the source of conflict and the ways of life of indigenous peoples could be criminalized and their indigenous justice systems ignored.

[2] A/HRC/42/37 (para. 24).

47. Ecuador was cited as an example of legal pluralism. The Constitution recognized 16 different legal systems – a recognition of individual and collective human rights and customary law and indigenous justice. However, even where such recognition existed, in practice, the creation and even survival of a restorative system of justice was still under pressure from a Western-centric based system. Indigenous peoples had experienced the administration of justice in several ways, the norms had not been established with their participation and reflected other values, their conflicts and needs had not been considered, and they had been criminalized.[3]

48. In that context, it was noted that, while indigenous justice systems were essential for the autonomy and collective and individual rights of indigenous peoples, it was also important to demonstrate how indigenous justice systems could contribute to the achievement of Sustainable Development Goal 16 for all. Many traditional indigenous justice systems accounted for a large portion of local adjudication and it had been demonstrated that where indigenous governance systems remained intact, they tended to result in good indicators on human rights, peace and environmental protection that should be documented.

49. It was recalled that indigenous justice systems varied in different parts of the world, and even in a specific country, where different indigenous peoples practised customary law based on their customs and traditions. Those had developed through practice and were generally based on oral history and clan relationships. Traditional justice was dynamic and should evolve to better align with international law, particularly in the area of gender issues and domestic violence. Indigenous customary law was generally not codified, and participants raised the dangers of doing so, as that would then make it more difficult to amend and adjust as needed. Participants urged that all and any changes to indigenous justice systems must come from within and must be made with the communities concerned to ensure ownership and application.

50. It was noted that indigenous justice systems were more accessible for indigenous peoples, not only in terms of physical accessibility but also culturally and linguistically. In many countries, a lack of resources to access justice systems was a key stumbling block. In the implementation of the Sustainable Development Goals, countries had tended to put resources into health and education but few into access to justice.

51. The Special Rapporteur on the rights of indigenous peoples encouraged States to explore the interrelationships between their justice systems and those of indigenous peoples and to recognize and facilitate their maintenance. She recommended that States seek to consult and understand indigenous justice and set up compulsory training on indigenous justice for lawyers and those working within the justice system. She also recommended that States consider integrated legal review bodies that might better offer redress and respect for indigenous rights on the basis of their justice systems.

52. In that context, participants highlighted that many countries had inherited colonial justice systems and, although there were some good examples, there were others where they were in contradiction to indigenous justice systems. For instance, many justice systems placed an emphasis on punishments and fines, whereas indigenous systems relied more on restoring harmony and reintegration into society. Participants pointed out that one of the main reasons for indigenous peoples' reluctance to utilize national justice systems was that they believed that they always

[3] Ramiro Ávila Santamaría, "Justice for all: The challenges of justice in the 21st century and the contributions of indigenous peoples", paper submitted to the international expert group meeting.

lost their cases, mainly as a result of non-recognition of their customary law and practice.

53. Some of the issues related to accessing justice raised during the meeting were illustrated through a case study presentation on cattle rustling among pastoralist indigenous communities in northern Kenya, where livestock was a traditional source of livelihood, wealth and status. A combination of climate change, land-grabbing, boundary disputes and internal migration had led to a violent situation through a combination of, among other things, domination by warlords, the illegal possession of firearms, extrajudicial killings and the involvement of the military, but with a complete lack of legal prosecution of perpetrators beyond fines for simple stock theft rather than prosecution for murder. In such situations, in which traditional indigenous justice systems had been overrun and State justice was remote and inadequate, lawlessness ensued. In that context, it was argued that it illustrated that, in implementing the Sustainable Development Goals, it was important to deal with not only the effects of lawlessness and lack of justice, but also the root causes of problems.

54. It was also pointed out that there were often cultural differences and perceptions of what justice really meant, and whose version defined what justice was. For example, it was noted that, in Kenya, pastoralists living in a rural area would have a different view on what justice was than someone living in Nairobi. It was also stressed that common and civil law had been influenced by ways of life; for example, a nomadic life with an emphasis on collective rights, compared with a sedentary life, with laws drafted by settled people with a focus on private property rights. Thus, many of the current laws did not address or include collective rights. Some examples existed of inclusion of indigenous customary law, such as the Indigenous Peoples' Rights Act of the Philippines and the native courts in Malaysia.

D. Peace accords: protecting indigenous peoples' social, cultural and political rights

55. The view was expressed that, when rights were not guaranteed in the constitution or when they were guaranteed but not effectively implemented through policy, people often engaged in civic struggles. That had been the case for indigenous peoples over the years. There were several conflicts involving indigenous peoples, both directly and indirectly. Cessation of armed conflict through bilateral agreements was not peace. For peace agreements or accords to be sustainable, the underlying issues that caused the conflict must be addressed and solved.

56. Participants discussed the status of various peace accords in Latin America and Asia, some of which had led to constitutional reforms and the recognition of collective land rights and some that had led to the handing down of sentences in cases of genocide, slavery and sexual violence. However, also discussed were those that had never been implemented at all or were only partly implemented, and the asymmetry in State and indigenous relations during negotiations, as well as lessons learned.

57. Participants raised several issues crucial in the negotiation of peace accords to ensure a better chance of implementation. For instance, keeping a focus on customary law, making sure the accord was written into the constitution, ensuring that all agreements were made in writing, as unwritten agreements were difficult to enforce, and establishing third-party mediation to ensure implementation. It was suggested that mutual commitments should be made in parallel as implementation advanced. It was important for peace negotiations to be owned by all, and for indigenous women and youth to also be engaged. In Myanmar, for example, a national dialogue had been undertaken to build ownership prior to starting any negotiations; the process was

ongoing. Participants noted the importance of generating and maintaining political will for peace accords to succeed, noting that, in practice, there was only a 40 per cent chance of peace accords succeeding.

58. There was also discussion regarding successful healing processes and transitional justice that had been carried out in tandem with peace accords, which also increased the chances of peacebuilding and implementation. It was suggested that there should be an international mechanism to register and monitor peace accord implementation in the context of what was described as “broken promises”.

59. Participants discussed war-related drug economies that often developed from long-standing indigenous land rights disputes and that made peace and security more difficult to attain. It was emphasized that traditional peacebuilding institutions needed to be revitalized and structures put in place to ensure that policies were implemented and resourced. However, without peace and security, it was difficult for Governments to attract foreign investment.

60. Participants noted that problems could arise from differing interpretations within peace accords of what was “beneficial development”. Without free, prior and informed consent, Governments sometimes imposed projects described as “development for peace” that had no benefit to indigenous peoples and might, in fact, contradict their development aims. An example was provided of the military being engaged in development and tourism programmes in Bangladesh, which had not contributed to confidence-building or strengthening trust in the Government. It was important for development and peace to go hand in hand, with indigenous peoples being fully involved, informed and engaged, to ensure self-determined development towards a sustainable peace agenda.

61. The growing problem of the criminalization of indigenous human rights defenders was raised, along with their classification as “terrorists”, which participants described as an effort to deter their work.

62. With land being the main cause for most, if not all conflicts, participants cited the establishment of land claims tribunals, for instance in Bangladesh, Canada, New Zealand and Norway, as a good practice.

63. Participants emphasized the importance of assessing the benefits of and lessons learned from the outcomes of previous peace accords between Governments and indigenous peoples. Lessons learned from those processes could provide guidance for solving current and potential conflicts involving indigenous peoples and could serve as a toolkit for good governance.

E. Identifying best practices and ways forward

64. The key themes that evolved from the discussions at the expert group meeting were that Sustainable Development Goal 16 and its targets were of pivotal concern to indigenous peoples because they formed the basis of the right to autonomy, self-governance and indigenous culture and identity; that support for and maintenance of indigenous justice systems benefited not only indigenous peoples, but all of society, but more work was needed to demonstrate that; that national human rights institutions played a crucial role in opening dialogues with Government and providing possible solutions to rights issues, as demonstrated by national campaigns to increase citizen and resident registration and by those advocating on land rights; and, finally, that the drafting and implementation of peace accords, although not always fully successful in practice, had the potential to offer peace, security and development for all.

65. It was expressed that, with the adoption and ongoing implementation of the 2030 Agenda, the United Nations system and Member States were making concerted efforts

to expand data analysis to ensure achievement of the Agenda's central promise to leave no one behind. A central issue that was repeated throughout the meeting was the need for more disaggregated data on self-identified ethnicity. In support of that, the Economic Commission for Asia and the Pacific (ESCAP) had developed a statistical tool based on household survey data on ethnicity, language and religion. The Economic Commission for Latin America and the Caribbean would be pairing with ESCAP to produce the same data. The tool used data that went beyond presenting averages (as was the case for the Millennium Development Goals) to identifying those left behind with more precision and at different points in time.

66. It was noted that there were opportunities for joint work on Sustainable Development Goal 16 on indigenous issues in connection with the Asia-Pacific Forum on Sustainable Development, to be held in March 2020. It was also suggested that a joint event could be held with ESCAP and United Nations agencies to hold interactive dialogues with the indigenous peoples major group. The need for the United Nations at the country level to facilitate the establishment of indigenous stakeholder platforms to engage with Governments was also raised.

67. Participants felt that, in many countries, there were opportunities to deliver on the targets under Sustainable Development Goal 16. For example, there were often constitutional or other frameworks that recognized indigenous justice systems and traditional lands, but the challenge was implementing them and changing the mindsets of Governments to see the positive outcomes that would be made possible by supporting strong indigenous institutions and justice systems.

68. Participants saw the value of the production of a study or a workshop on land acquisition and land requisition and resettlement of indigenous peoples, as well as of documenting indigenous justice systems and judgments and their interpretation in national courts.

69. Several participants called for the study of impacts of national security laws, including anti-terrorism laws, and the criminalization of indigenous peoples. That would be aligned with Sustainable Development Goal 16 in terms of strengthening relevant national institutions, including through international cooperation, for building capacity at all levels, in particular, in developing countries, to prevent violence and combat terrorism and crime. It was further noted that bilateral donors should have safeguards in place before they funded projects to ensure that the human rights of indigenous peoples would be respected.

70. There was a recommendation to promote courses on the United Nations Declaration on the Rights of Indigenous Peoples and indigenous justice in law schools and it was noted that the Food and Agriculture Organization of the United Nations had started to support that initiative in India. The representative of the Food and Agriculture Organization of the United Nations also informed participants about the existence of a group of friends of indigenous peoples in Rome, which held thematic discussions, inspired by the Group of Friends of Indigenous Peoples at United Nations Headquarters. More participation by Asian Member States would be welcome, particularly in the lead-up to the 2021 Food Systems Summit, at which the issue of lands, territories and resources would be central.

III. Recommendations

71. **The following recommendations were made:**

(a) **The United Nations should establish a regional inter-agency working group on indigenous issues in Asia, as has been done in Latin America and, most recently, in Africa. ESCAP should cooperate with United Nations funds and**

programmes and undertake specific work on indigenous issues. The Department of Political and Peacebuilding Affairs should have a role in monitoring the implementation of peace accords involving indigenous peoples;

(b) **Members of the Permanent Forum on Indigenous Issues should undertake outreach with interested Member States to explore the potential for the Security Council to address conflicts on indigenous lands and territories under the peace and security agenda. Member States and the United Nations need to recognize and address land rights as central to most, if not all, conflicts. In addition, Member States and the United Nations system should recognize the untapped potential in the role of indigenous peoples in peace processes as a means of development;**

(c) **Academia and other interested parties should further study the interrelationships between customary law and other, formal systems of law and identify good practices in intercultural dialogue. More attention should be paid at the international level to how to build justice systems and the benefits of legal pluralism. It would be useful to undertake comparative analysis of peace accords to identify what has worked and what has not and prepare a toolkit as guidance.**

Annex I

Programme of work

Date/time	*Programme*
Tuesday, 19 November 2019	
9 a.m.–12 p.m.	**Opening remarks**
	Anne Nuorgam, Chair of the Permanent Forum on Indigenous Issues
	Chayan Vaddhanaphuti, Regional Center for Social Science and Sustainable Development, Chiang Mai University, Thailand
	Renaud Meyer, Resident Coordinator a.i. and Resident Representative of the United Nations Development Programme, Thailand
	Chandra Roy-Henriksen, Chief of the Indigenous Peoples and Development Branch of the Division for Inclusive Social Development of the Department of Economic and Social Affairs of the Secretariat
	Effective, accountable and inclusive institutions at all levels
	Moderator: Xiaoan Zhang, member of the Permanent Forum on Indigenous Issues
	Presentations:
	Eric Descheenie, former state representative, Navajo Peoples
	Joan Carling, Co-Chair of the indigenous peoples major group
	General discussion
2 p.m.–5 p.m.	**Human rights-based approach to implementing Sustainable Development Goal 16**
	Moderator: Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples
	Presentations:
	Tuenjai Deetes, former National Human Rights Commissioner, Thailand
	Madeline Anak Berma, Commissioner, Human Rights Commission of Malaysia
	Edtami Mansayagan, Vice-Chair of the Expert Mechanism on the Rights of Indigenous Peoples
	Naw Ei Ei Min, Director of Promotion of Indigenous Nature Together, Myanmar
	General discussion

Date/time	*Programme*
Wednesday, 20 November 2019	
9 a.m.–12 p.m.	**Access to justice for all**
	Moderator: Renaud Meyer, Resident Coordinator a.i. and Resident Representative of the United Nations Development Programme, Thailand
	Presentations:
	Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples
	Ramiro Ávila Santamaría, Judge at the Constitutional Court of Ecuador and Professor of Law at the Andean University Simon Bolivar
	Silvia Museiya, Chair of the Indigenous Peoples National Steering Committee on Climate Change, Kenya
	General discussion
2 p.m.–5 p.m.	**Peace accords: protecting indigenous peoples' social, cultural and political rights**
	Moderator: Anne Nuorgam, Chair of the Permanent Forum on Indigenous Issues
	Presentations:
	Raja Devasish Roy, Traditional Chief of the Chittagong Hill Tracts, Bangladesh
	Medarda Castro, Pawanka Fund and the Naleb Organization, Guatemala
	Famark Hlawnching, Chin Human Rights Organization, Myanmar
	General discussion
Thursday, 21 November 2019	
9 a.m.–12 p.m.	**Identifying best practices and ways forward**
	Moderator: Brian Keane, Member of the Permanent Forum on Indigenous Issues
	Presentation:
	Costanza Landini, Economic and Social Commission for Asia and the Pacific
	Discussants:
	Gam Shimray, Secretary-General of the Asia Indigenous Peoples Pact

Date/time	*Programme*
	Joseph Ole Simel, Executive Director of the Mainyoito Pastoralists Integrated Development Organization
	Sakda Saenmi, Director of Inter-Mountain Peoples Education and Culture, General Secretary of the Council of Indigenous Peoples in Thailand and Coordinator of the Network of Indigenous Peoples in Thailand
	General discussion
	Closing remarks
	Kitisak Rattanakajangsri, Chair of the Asia Indigenous Peoples Pact
	Chandra Roy-Henriksen, Chief of the Indigenous Peoples and Development Branch of the Division for Inclusive Social Development of the Department of Economic and Social Affairs

Annex II

List of participants

Members of the Permanent Forum on Indigenous Issues

Anne Nuorgam, Chair
Brian Keane
Xiaoan Zhang

Members of United Nations mechanisms relevant to the rights of indigenous peoples

Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples
Edtami Mansayagan, Vice-Chair, Expert Mechanism on the Rights of Indigenous Peoples

Experts

Madeline Anak Berma
Ramiro Ávila Santamaría
Jagat Bahadur Baram
Joan Carling
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