



**Statement of Ms Victoria Tauli-Corpuz
Special Rapporteur on the Rights of Indigenous Peoples
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Madame Chairperson of the Permanent Forum,

Madame Chairperson of EMRIP

*Distinguished Members of the Permanent Forum,
Excellencies, Indigenous representatives, ladies and gentlemen,*

It is an honour for me to address the Permanent Forum and all those attending the interactive discussion on the human rights situation of indigenous peoples. Let me congratulate you Madame Chair, for being elected to this post and offer my continuing cooperation with the Forum.

In my intervention today, I would like to provide an update on my work as Special Rapporteur since I reported last year, and to elaborate on some of the activities I have been involved in under four, interrelated areas of work: the preparation of thematic reports; the conduct of country visits; the response to cases of alleged human rights violations; and the technical assistance and promotion of best practices.

2018 Thematic Reports

As I mentioned to you in my intervention last year, in September 2018, I submitted to the Human Rights Council a thematic report on the issue of attacks and criminalization against indigenous peoples and the availability of prevention and protection measures.¹

The report documents a worrying escalation in the criminalisation and harassment suffered by indigenous peoples, in particular when they are defending and exercising their rights to their lands, territories and natural resources. In this report, I assessed the root causes and drivers of the current situation of criminalization and mapped global trends and provided some examples of particularly worrying situations. I called the situation of criminalization of and impunity against indigenous peoples as a “global crisis”.

Human rights violations often arise when indigenous leaders and community members voice their concerns over large-scale extractive, agribusiness, infrastructure, hydroelectric or logging projects affecting their lands and territories and undertaken without adequate consultations or their free, prior and informed consent. I have also considered the criminalization of indigenous peoples when exercising their rights to self-governance, including the exercise of their justice systems and some of their economic and cultural practices, such as shifting cultivation and hunting and gathering, among others, as described in this year’s report of the Permanent Forum.²

¹ A/HRC/39/17

² E/C.19/2019/5. Para. 38 and following

It is urgent to adopt a zero-tolerance approach to violence and killings of indigenous human rights defenders. Prompt and impartial investigations of attacks must be undertaken. Accountability for those responsible for these human rights violations is crucial. Widespread impunity is a key factor for the perpetuation of this situation and increases exponentially the vulnerability of the victims.

Combatting criminalisation requires a comprehensive review of national laws and the revocation of legislation and criminal procedures that violate the principle of legality and contradict international human rights obligations. This should include the review of antiterrorist and national security laws and legislation which are used to declare certain economic activities as of 'public interest', 'general interest' or "national priority" which justify the violation of indigenous peoples' human rights. Provisions that, in practice, criminalise the freedom of expression and assembly, should be repealed. Criminalization is often preceded by campaigns of stigmatization and villification of key indigenous leaders, human rights defenders and even indigenous organizations. These acts are underpinned by racism and discrimination and are generally aimed at indigenous peoples who are defending their rights to their lands, territories and resources and their ways of life. I should like to underline the responsibility the media have in this regard.

Actors other than States have to also assume their responsibilities to reverse this serious situation. Private companies have a responsibility to exert human rights due diligence in all operations, adopt clear policy commitments to that effect and perform ongoing human rights impact assessments with the full participation of affected indigenous communities in their operations. They should also carefully consider the human rights implications and responsibilities involved in their claims against States in cases of non compliance with contracts or licences due to human rights concerns. On their part, international donors and financial institutions need to adopt safeguards consistent with international human rights standards in all the projects they fund or support, and consistently monitor their effective implementation, notably by requiring human rights impact assessments and demanding specific protections for indigenous peoples and accessible procedures to pursue remedies if needed.

Regarding prevention and protection measures for indigenous human rights defenders, I have stressed the need to consider the collective nature of the impacts of violence and criminalization in the case of indigenous peoples. Such measures should be culturally appropriate, gender sensitive and developed jointly with the communities concerned. Support for community led protection measures should be prioritised.

I would like to stress that my view, that the situation of violence and criminalization suffered by indigenous peoples globally requires urgent and concerted efforts by all those involved in the promotion and protection of human rights. On my part, I will continue to give special attention to this issue in my country visits, communications and engagement with indigenous peoples and State representatives.

In my report to the 73rd session of the UNGA³, I provided some preliminary comments on the topic of the self-governance systems indigenous peoples are implementing all over the world. Indigenous governance systems have proven resilient for centuries despite colonisation and the attempts to undermine them in the name of

³ A/73/176



nation building, cultural and religious homogeneity or economic growth. These indigenous governance systems are closely linked to the generation, transmission and protection of traditional knowledge. They remain essential in ensuring the well-being of indigenous peoples, and thus are part of the exercise of their right to self-determination and to decide their own paths of development.

My report provides an initial overview of the international legal framework on the right to autonomy and self-government of indigenous peoples, and reviews some examples of the broad diversity of indigenous governance systems that exist across the world. The report stresses that sustainable development can only be achieved by guaranteeing the full and effective participation of indigenous peoples in the implementation of the 2030 Sustainable Development Goals.

I also submitted a report to the Human Rights Council summarizing the discussions of a meeting held in Lima, in coordination with the Inter-American Commission on Human Rights, regarding indigenous peoples in isolation and initial contact.⁴ The particular situation of these indigenous peoples has received the attention of both the United Nations system, including the Special Rapporteurs and the Permanent Forum itself, and of the Inter-American human rights system. I am glad that we have been able to cooperate in advancing discussions on how to ensure that the fundamental rights of these indigenous peoples are guaranteed, including their right not to be contacted. The conclusions highlight the need to redouble efforts to improve protection for the territories and natural resources of indigenous peoples in isolation and initial contact, in line with international standards. There is also a need to develop and adequately implement differentiated policies directed to indigenous peoples in initial contact, notably in the area of health.

I would like to encourage Member States and the international human rights system to pay attention to this question, and fully cooperate with governments concerned, indigenous peoples' organizations, and experts to implement the specific human rights standards on the issue, particularly considering recent worrying developments in some Amazonian countries.

Ongoing Thematic Work

I would like now to briefly comment on the thematic issues I am currently working on.

My next report to the Human Rights Council will focus on indigenous justice systems. Indigenous peoples' own systems of justice is a subject which has recurrently been addressed by the mandate-holders, including through country visits, communications, and in seminars and conferences. The maintenance of indigenous peoples' own customary legal institutions and norms is an essential aspect of their right to self-determination. Although indigenous jurisdictional functions have been recognized in legislation and practice at the national level in several countries, operation of indigenous jurisdiction is still contested and legal pluralism is still not a reality. In-depth intercultural dialogue and understanding between State and indigenous justice authorities is vital, taking into account indigenous good practices and building on existing positive experiences.

⁴ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/17/Add.1 A/73/39/17/Add.1

The main concerns raised by indigenous peoples in this regard are: the lack of effective recognition of, and support for, their systems of justice by State authorities; ongoing discriminatory and prejudicial attitudes against their justice systems; and the lack of effective methods of coordination and cooperation between their justice systems and the State ordinary justice authorities. Linked to this topic is the question of the obstacles faced by indigenous peoples when trying to access the ordinary justice system, which include among others, the lack of interpretation for those who only speak their mother tongue during hearings. Lack of access to justice is directly connected to impunity in the cases of violence and criminalization which I mentioned above.

The United Nations Declaration on the Rights of Indigenous Peoples (2007) contains clear and relevant provisions on these two aspects of indigenous peoples and justice. Articles 5 and 34 assert the right of indigenous peoples to maintain and strengthen their political, legal, economic, social and cultural institutions and to promote, develop and maintain their institutional structures, including their juridical systems or customs in accordance with international human rights standards. The Declaration furthermore affirms the right of indigenous peoples 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' which should give due consideration 'to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights' (Article 40).

As you may be aware, I have requested views and contributions on this issue from Member States, indigenous peoples and other actors. I entreat you all to provide me with useful information that can contribute to the elaboration of the report.

Finally, I will submit next October my last report to the General Assembly. I intend to provide further views on indigenous self-governance and autonomy, and comment on the main topics that have recurrently appear in the course of my work for the mandate. For the preparation of the report, I had the honour to co-organize an International Seminar on Indigenous peoples' rights to autonomy and self-government as a manifestation of the right to self determination (March 11-13, 2019) , together with the Permanent Forum, the Expert Mechanism on the Rights of Indigenous Peoples and the Inter-American Commission on Human Rights. The Seminar was coordinated by the International Work Group on Indigenous Affairs (IWGIA) and supported by the National Institute of Indigenous Peoples of Mexico, the Danish Ministry of Foreign Affairs and Tebtebba Foundation, all of whom I would like to thank.

The Seminar provided valuable reflections on the advances and the challenges in the consolidation of indigenous self-determination and autonomy in many regions of the world. I will take into account the rich inputs and discussions that took place during the meeting in the elaboration of my report.

Country Visits

Madame Chair,

Just after the 2018 session of the UNPFII, I conducted a country visit to Guatemala.⁵ During my mission, I observed that indigenous peoples in the country, despite constituting the majority of the population, continue to face structural racism

⁵ A/HRC/39/17/Add.3, see http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/17/Add.3

and discrimination, reflected in their lack of access to justice, to political participation, and to the enjoyment of their economic, social and cultural rights. The country report examines the root causes of this situation, including impunity, corruption, institutional weakness and the legacy of violence from the long internal armed conflict. The failure to adequately implement the Peace Accords, particularly the 1995 Accord on Indigenous Peoples' Rights and Identity, has undermined progress in many areas. I noted as a particular concern the lack of protection for the rights of indigenous peoples to their lands, territories and natural resources, and I expressed my deep concern over the violence, attacks, forced evictions and criminalisation faced by indigenous peoples who defend their rights, particularly in the context of infrastructure and extractive industries development.

I submitted my report on the Guatemala visit to the 39th session of the Human Rights Council in September 2018. Since then, I have been following up with concern the situation regarding the rights of indigenous peoples in the country, which I have addressed through a number of communications and public releases.

My visit to Ecuador in November last year took place in the tenth anniversary of the adoption of the 2008 Montecristi Constitution. Therefore, I thought it would be timely to assess the progress in the implementation of the Constitutional commitments regarding the building of a plurinational and intercultural State, and the effective implementation of the collective rights of indigenous communes, communities, peoples and nationalities in the light of Ecuador's international human rights obligations in this regard. I also wanted to follow up the outstanding observations and recommendations made by my predecessors, Rodolfo Stavenhagen in 2006 and James Anaya in 2009. In my end-of-mission statement,⁶ I highlighted the dialogue that the new Government has initiated with indigenous peoples and its encouraging results, particularly with regards to intercultural, bilingual education, and the commitments expressed by Ecuador with indigenous peoples' rights at the international level.

My statement also reflected the main concerns expressed by indigenous peoples during my mission regarding the current situation. There has been little progress in adopting concrete measures to address the key issues affecting their fundamental rights, particularly with regards to their lands and resources, the respect for their own authorities, including indigenous justice systems or the implementation of consultation and free prior and informed consent. I stressed my concern about measures announced by the Government regarding the activation of former mining and oil concessions, as well as the granting of new concessions, taking into account these extractive activities undertaken without adequate consultation or consent were denounced by indigenous peoples as the main source of gross violations of their human rights.

The mission report, which will be presented to the 42nd session of the HRC next September, also assesses the specific situation of indigenous peoples with small populations; indigenous peoples near the Northern border, indigenous peoples in isolation and initial contact, and indigenous women. I hope to maintain an open and fruitful dialogue with the Government of Ecuador for the implementation of the recommendations contained therein.

⁶ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23864&LangID=E>

As I commented last year, I have been making special efforts to seek invitations to conduct country visits in the regions of Africa and Asia, and I will continue to do so for the rest of my mandate. I would like to respectfully request Member States in those regions to engage in dialogue with the mandate and consider the possibility of extending me official invitations.

I am grateful to the Government of Timor Leste for its invitation which has allowed to me to conduct my first official mission in an Asian country from April 7-16, 2019. My end of mission statement addresses a range of issues including customary and formal justice systems, lands and territories, conservation, climate change, education, poverty and malnutrition.

I am impressed by the pride the Timorese take in their cultural heritage and how indigenous practices have translated into important gains in environmental protection and biodiversity. These can serve as inspiring examples for other countries. For most Timorese, customary practices are an integral part of everyday life and play a central role in resolving disputes between individuals and communities, such as land disputes, conflict between communities and natural resources management. These practices focus on maintaining community and environmental harmony, in contrast to the formal justice system, which is perpetrator focused. Ensuring justice for all is a key objective of Sustainable Development Goal 16 and Timor-Leste could provide important lessons for other countries.

There are however customary justice practices that need to be amended to comply with human rights standards, such as physical punishments and public communal hearings which are clearly unsuitable for crimes relating to vulnerable victims of domestic violence and child abuse. I wish to recall that the United Nations Declaration on the Rights of Indigenous Peoples affirms the right to maintain and strengthen indigenous legal institutions and juridical systems or customs, with the caveat that these should be in accordance with international human rights standards.

Customary justice practices by indigenous peoples are not static and in my experience, indigenous communities are generally open to incorporating human rights guarantees in their practices. This change needs to come from within indigenous communities, but can be encouraged by increased awareness raising of international and national legal standards through culturally appropriate dialogue. In this regard, I wish to note that such dialogue needs to aim at mutual exchange of how both systems can address their shortcomings and increase knowledge of procedures and best practices in the respective systems.

Another concern raised during my visit is that Timor Leste continues to confront the highest rate of chronic malnutrition in South East Asia and among the highest in the world. Statistics indicate that nearly half of all children under 5 years of age suffer from chronic malnutrition. I urge the Government to assign adequate resources to the Strategic Development Plan 2011-2030 and the 2017 SDG Roadmap and to increase the production of indigenous crops to address the incidence of malnutrition.

Education is intrinsically linked to achieving developments related to poverty reduction and health. In this regard, I call on the Government to take further measures to revitalize and promote the more than 30 indigenous languages in Timor-Leste and to expand education in mother tongue in order to improve educational results.

The full report from my mission will be presented to the Human Rights Council in September 2019.

Promotion of Good Practices and Technical Assistance

All throughout 2018 April to the present, I have produced several technical comments, at the request of Government institutions or indigenous peoples, particularly on the issue of the rights to consultation and free, prior and informed consent, and indigenous peoples' access to justice. I have also conducted several academic visits at the invitation of national human rights institutions, academic institutions, indigenous and civil society organizations and governmental bodies, including to Australia, Canada, Colombia, Mexico, Norway, and Malaysia. These visits have allowed me to better engage in dialogue on particular issues affecting the rights of indigenous peoples, and exchange information on best practices to advance in the implementation of the rights enshrined in the United Nations Declaration on the Rights of indigenous peoples and other relevant human rights instruments. I want to thank all those that have made these fruitful visits possible and the OHCHR country offices for their support to make the best of them.

Communications

I continued examining cases of alleged violations of the human rights of indigenous peoples and addressed the concerned countries and other actors through the communications procedure, either independently or jointly with other special procedures. Cases addressed are included in the special procedures' joint communications report, which is submitted to each session of the Human Rights Council.⁷ In 2018, the mandate issued 55 communications to more than 20 different countries as well as to other entities, such as private corporations and inter-governmental organisations.

I also issued several public press releases⁸ on a range of different topics, including the degrading treatment of indigenous Papuans by the Indonesian police and army in West Papua; the collapse of a tailing dam in Minas Gerais, Brazil; the amendments to the Guatemalan National Reconciliation Law; indigenous migrant children in detention in the United States of America; the adoption of the Escazu Agreement; a court ruling recognising the Ixil Mayans as victims of genocide in Guatemala; the conviction of seven persons involved in the murder of Berta Cáceres in Honduras; the Local Communities and Indigenous Peoples' Platform in the implementation of the Paris Agreement on climate change; and several specific cases of killings, violence and criminalisation of indigenous individuals and communities defending their rights.

Some of the communications and press releases have had immediate impact. In January 2018, together with other special procedures, I issued a press release to draw attention to violations against the Sengwer in relation to a major climate change project in the Embobut Forest in Kenya. Within 48 hours, the European Commission, which was funding the project, decided to suspend the project pending a human rights impact assessment. I will continue monitoring the situation of the Sengwer. In my recent visit

⁷ <https://spcommreports.ohchr.org/>

⁸ https://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Indigenous_People



to Mexico, I was visited by two ex-detainees who are indigenous leaders who expressed their thanks to my communications which resulted into their release from detention.

Madame Chair,

I would like to conclude recalling the International Year of Indigenous Languages we are celebrating. Last January, I had the honour to participate in the launching of this celebration invited by UNESCO. On the occasion, I remarked the importance of our indigenous mother tongues, which reflect the wonderful variety and richness of our cultures. Indigenous languages are part of indigenous knowledge, our precious collective heritage. Allow me to stress that the only way to ensure that they are protected and transmitted is by ensuring the survival and well-being of the indigenous peoples who created them and use them everyday. This will only be achieved through the full implementation of indigenous peoples' human rights.

I thank you all for your kind attention and I look forward to a rich discussion on these topics during our interactive dialogue.
