



**Statement by Victoria Tauli-Corpuz  
Special Rapporteur on the rights of indigenous peoples  
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Madame Chairperson of the Permanent Forum, Distinguished Members of the Permanent Forum, Chairperson of the Expert Mechanism on the Rights of Indigenous Peoples, Excellencies, indigenous representatives, ladies and gentlemen,

I am grateful for the opportunity to address the Permanent Forum and all those attending this session to celebrate and share some views on this year's Permanent Forum's topic on the "Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration". As I already shared some of my views during the General Assembly High Level event earlier this week, I will not dwell very much on this. I will just highlight a few points which I think are important to reiterate. I will report on how I have implemented my mandate in the past year and during my third year as Special Rapporteur on the rights of indigenous people.

**10<sup>th</sup> Anniversary of United Nations Declaration on the rights odigenous people**

Having been involved in the drafting and negotiations of the Declaration, from 1985 until its adoption in September 2007, I have a strong attachment and sense of ownership of this historic human rights instrument. When negotiations for its final adoption were taking place, I was the Chair of the UN Permanent Forum on Indigenous Issues and this gave me the opportunity to visit various Permanent Representatives here in New York to seek their support for the adoption of the Declaration. It was a great honor for me to speak before the General Assembly in September 13, 2007 to express, on behalf of myself and other members of the Forum, our thanks to the States who voted in favour of the adoption of the Declaration.

In my earlier report the two challenges I which I highlighted regarding inadequate implementation of the Declaration is the lack of awareness and understanding of the Declaration and the difficulties for States to translate the various articles into practical steps for implementation.

My predecessors and I have underlined the remedial nature of the Declaration. In our view, the Declaration recognizes and strives to repair the ongoing consequences of the historical denial of the fundamental human rights of indigenous peoples, including their right to self-determination. I regard the Declaration as an essential tool for reconciliation, a much needed process in countries where indigenous peoples continue to suffer gross human rights violations.

Although I have noted that the legal status and aims of the Declaration are now better understood and accepted by many States, I have also noted that problems still remain in the



different interpretations in relation to rights to lands and resources; the application of the duty of States to consult with and seek the free, prior and informed consent of indigenous peoples in matters that affect them; and the harmonization of State and customary indigenous governance and justice systems. In this context, the work of the mandate has been directed to clarifying the standards contained in the Declaration, and other relevant existing human rights instruments, both in general and in specific contexts. The communication and exchanges with other UN human rights bodies and the increasing reference to the Declaration in court cases related to the rights of indigenous peoples at both the country and the regional levels have also been instrumental in this interpretative work.

Nevertheless, challenging and recurring cases of competing interpretations of the rights of indigenous peoples and corresponding duties and responsibilities remain. A good example of this can be found in the implementation of the State duty to consult and obtain consent from indigenous peoples before the adoption of measures that affect them. The mandate tried to provide a better understanding of the meaning of consultation and consent in the context of ILO 169 and the Declaration through dialogue with Governments, communications sent to multilateral financial institutions like the World Bank, technical assistance and working country visits to discuss legal developments and concrete cases.

Last week I was in Honduras where I did a working visit, upon the invitation of the government, to observe the processes around the development of a draft law on consultation in that country. Before I went there I made a commentary on the processes undertaken so far and the contents of the first Draft. The mandate has tried to help clarify and implement these standards contained in the Declaration through participation in meetings and seminars, and through communications, visits and reports on concrete cases, such as the hydrocarbons exploitation projects in the Peruvian Amazon, among others.

Undoubtedly, there has been progress in the implementation of the Declaration, especially in terms of the emergence of national laws, policies and decisions protecting indigenous peoples rights in several countries and institutions. Many indigenous peoples in all parts of the world have and continue to use the Declaration as a tool for asserting their inherent rights and empowering themselves. The progress within the UN System can be seen in the adoption of policies on indigenous peoples and development of programmes and projects dedicated to indigenous peoples. References to the norms established in the Declaration are seen in several decisions reached in Supreme Courts and regional courts such as the Inter-American Court on Human Rights and the African Court on Human and Peoples' Rights. Several Treaty bodies, e.g. the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, among others, referred to the Declaration in their general comments and recommendations to States. Guidelines, such as UN Guidelines on Business and Human Rights, and decisions of the Conference of Parties of the UN Framework Convention on Climate Change and the Convention on Biological Diversity, also referred to the norms contained in the Declaration. The 2030 Development Agenda and the Sustainable Development Goals came out with a few targets and indicators relevant for indigenous peoples.



This progress, however, is challenged mainly by the weak implementation of such decisions and by many obstacles particularly by the shrinking political space and the roll-backs in many countries in protecting rights of indigenous peoples to freely organize and strengthen their capacities to assert and claim these rights. Continuing violent evictions of indigenous peoples from their lands and encroachment of state, private corporations and even criminal syndicates in their territories are the most common allegations I continue to receive. The criminalization and harassment of indigenous activists, organizations and movements is happening in many countries to a point where indigenous leaders and activists spend a lot of time defending themselves in courts instead of strengthening their movements. The data from 2015 Global Witness report which showed that of the recorded 185 killings related to land and environmental defenders, 40% are indigenous persons. The lack of political will to enforce decisions of Regional courts and supreme courts favourable to indigenous peoples is another challenge. Many years and resources have been spent by indigenous peoples and their supporters to file cases before courts and yet when these cases are won it takes decades and sustained pressures before enforcement takes place.

The mandate of the Special Rapporteur on the rights of indigenous peoples plays an essential role in monitoring and advancing the effective implementation of international human rights standards related to indigenous peoples, particularly the UN Declaration on the rights of indigenous peoples. Besides dealing with allegations of human rights violations and country monitoring functions, the mandate has an enormous potential to provide advice and technical assistance and has an important role in promoting the Declaration through awareness-raising of the various actors whose actions impact on the rights of indigenous peoples, fostering dialogue and promoting best practices.

It is my hope that States, indigenous peoples, civil society and the UN bodies, programmes, agencies and funds use this mandate to help them implement more effectively the UN Declaration on the Rights of Indigenous Peoples.

For me, the most fitting way to celebrate the 10th anniversary of the Declaration is to honestly identify and confront the obstacles faced for its effective implementation at all levels. It is an imperative that the recommendations and decisions relevant for indigenous peoples which emerged from treaty bodies, multilateral processes and courts are monitored and effectively implemented.

In this present era where the world faces complex economic, environmental, political and social crises, it is about time that nation-states and the UN system join hands with indigenous peoples to solve these crises. Respect, protection and fulfilment of indigenous peoples rights enshrined in the UN Declaration on the Rights of Indigenous Peoples is one of the long-lasting solutions towards attaining a just and sustainable world.

### **Activities to promote indigenous peoples' rights in fulfillment of the mandate**

Madam Chairperson,

I would now like to add a few words on my work as Special Rapporteur since the last time I addressed the Permanent Forum in 2016 and to elaborate on some of the various activities



carried out by the Special Rapporteur which can be described as falling within four, interrelated areas of work. These are promoting good practices; thematic studies; country reports; and responding to cases of alleged human rights violations.

While seeking to cooperate as appropriate with relevant international mechanisms and institutions, I have engaged in a range of activities within the terms of my mandate to monitor the human rights conditions of indigenous peoples worldwide to and promote steps to improve those conditions. Earlier in my interventions, I mentioned my advocacy work during my recent working visit to Honduras, preceded by my commentary to guide their work on a draft legislation on consultation. Consultation was also explored further in my keynote speech at the Colloquium on International Standards of Free, Prior and Informed Consultation of Indigenous Peoples which was organized by OHCHR-Mexico in November 2016. This colloquium was streamed online and was also transmitted live in the offices of OHCHR Honduras, where the issue of prior consultation was being heavily debated.

Madam Chairperson,

In the thematic report which I presented to the General Assembly last year (A/71/229), I chose to explore how conservation measures affect indigenous people and recommended means to increase respect for indigenous peoples' rights. In my report, I charted the favourable legal developments as well as the commitments and resolutions taken to advance a human rights-based approach to conservation. However, I have found that practical implementation and advancement of this human rights-based approach remains sorely lacking. The report presents recommendations on how indigenous peoples' rights can be better protected in conservation policy and practice.

The United Nations Declaration on the Rights of Indigenous Peoples, which consolidates the rights of indigenous peoples already recognised in other human rights instruments and jurisprudence, affirms the right of indigenous peoples to own and control their lands and makes specific reference to conservation in Article 29, which states that indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources and that States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. The Declaration affirms in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.

In my first report to the 69<sup>th</sup> session of General Assembly in 2014, I provided some thoughts on this issue in the hopes of guiding Member States as they reflect further on development priorities. The overview of the human rights framework related to the development of indigenous peoples should be viewed in light of the cross cutting rights of indigenous peoples to non-discrimination and self-determination. In my report, I identified obstacles and advances in achieving the economic, social and cultural rights of indigenous

peoples and offered some recommendations for addressing these concerns in the context of policies and strategies to reach global Sustainable Development Goals.

I briefly wish to refer to the thematic report I presented to the Human Rights Council in September 2016, which was the second of three reports that I will dedicate to international investment agreements and their impacts on indigenous peoples' rights. In 2015, my report to the General Assembly (A/70/301) sought to address the impact of the international investment regime in the context of indigenous peoples' rights. My report to the Human Rights Council in 2016 further contextualised and analysed these impacts and presented a number of recommendations aimed at guiding Member States, the United Nations system and the actors involved in the international investments.

My report sought to promote coherence across international investment law and international human rights law and ensure that the responsibility of States pertaining to the rights of indigenous peoples will not be obstructed by protections afforded to investors. I believe it is possible to reform and develop a system of international investment law that reduces risk to indigenous peoples' rights and serves to benefit both them and the State, while providing investment security to foreign investors. This requires the establishment of regulatory frameworks and enforcement mechanisms to ensure that investors' practices are consistent with international human rights standards as they pertain to indigenous peoples' rights.

My third and final report relating to international investments will be presented to the Human Rights Council later this year. It will look into how climate investment funds are supporting indigenous peoples in their efforts to mitigate and adapt to climate change or how these have affected their rights. More money from donor governments and the private sector is being allocated to climate investment funds. I have received many communications alleging that some projects done in the name of climate change mitigation have been put in indigenous peoples territories without consulting them nor getting their consent. These include windmills and hydroelectric dam projects. I held an expert meeting last Saturday on the sidelines of the Permanent Forum to gather experiences related to climate funds and how these impact the rights of indigenous peoples. I have a set of questions which I am sending to governments, multilateral bodies and indigenous peoples to gather more information on this issue.

I would also like to refer to my most recent official country visit, which took place to Australia from 20 March to 3 April, upon invitation by the Government. At the end of my visit, after fifteen days of travelling across the country, I regret that I observed overall negative trends despite Australia's commitment to advancing UNDRIP and the rights of indigenous peoples. While the Government has adopted numerous policies to address the socio-economic disadvantage of Aboriginal and Torres Strait Islanders, these policies do not duly respect the rights to self-determination and to full and effective participation in society. Notably, Government policies have failed to reach targets in the key areas of health, education and employment and have led to a growing number of Aboriginal and Torres Strait Islanders being jailed, and have resulted in an escalation of children being removed from their homes.



The high rates of incarceration were described to me as a tsunami affecting indigenous peoples. It is a major human rights concern. The figures are simply astounding. While Aboriginal and Torres Strait Islanders make up only 3% of the total population, they constitute 27% of the prison population, and much more in some prisons. Unless urgent measures are taken as a national priority, the numbers of imprisoned Aboriginal and Torres Strait Islanders will continue to rise and is expected to reach 50% of the prison population by 2020.

The rate of incarceration of Aboriginal and Torres Strait Islander youth is particularly alarming as are the punitive conditions they are kept in. I visited Cleveland Youth Detention Centre in Townsville, Queensland, where Aboriginal and Torres Strait Islander children constitute 95% of the children detained.

Aboriginal children are essentially being punished for being poor and in most cases, prison will only aggravate the cycle of violence, poverty and crime. I found meeting young children, some only 12 years old, in detention the most disturbing element of my visit. As already recommended by the UN Committee on the Rights of the Child, I urge Australia to increase the age of criminal responsibility, which is currently only ten years throughout the country.

Much more must be done to ensure that the detention of children remains the exception and measure of last resort, rather than the norm. If Aboriginal and Torres Strait Islander children are detained, they should be treated with respect and dignity. As demonstrated by the ongoing work of the Royal Commission into youth detention in the Northern Territory, there have been serious human rights abuses committed against Aboriginal children in custody.

As long as issues such as the over-representation of Aboriginal and Torres Strait Islanders in custody and out-of home care are not addressed in practice, there will only be limited progress in closing the gap in the areas of health, education and employment. I therefore strongly recommend the inclusion of targets on justice, child removal incidence and violence against women in the national Closing the Gap strategy and the development and implementation of a national plan of action to address these issues.

The non-recognition of the impacts of socio-economic exclusion and inter-generational trauma of indigenous peoples continues to undermine reconciliation efforts. Aboriginal and Torres Strait Islander people continue to die 10 years younger than other Australians, with no major health indicator improvements being recorded.

During my visit, I observed first-hand the Government's attempts to amend and water down provisions in the Racial Discrimination Act. This was done seemingly without consideration of the huge damage it causes to indigenous peoples' trust in the Government and the signals it sends to the public and the media that racial vilification is permissible.

On a positive note, though, I want to emphasise that I was impressed and inspired by the strength of spirit and commitment of Aboriginal and Torres Strait Islanders to develop innovative measures to support their own communities. I observed effective community led initiatives in a range of areas including public health, housing, education, child protection,



conservation and administration of justice, which all have the potential of making immediate significant positive changes in the lives of Aboriginal and Torres Strait Islanders. My end of mission statement which elaborates further on my preliminary observations and recommendations can be found in my website.

I also carried out a visit to the United States of America from 22 February to 3 March 2017 to study the human rights situation of indigenous peoples, in particular with regard to energy development projects and to follow up on key recommendations made in 2012 by my predecessor James Anaya.

The United States' commitment to a process of consultation with tribal governments presents opportunities for a more positive future and meaningful engagement. But challenges remain. The contemporary executive action that provides the most direct guidance on consultation with tribes, Executive Order 13175, is well intentioned but has developed into a confusing and disjointed framework that suffers from loopholes, ambiguity, and a general lack of accountability. As the United States indicated at the time it supported the Declaration, meaningful consultation with tribes, without the need for the tribes' agreement, is the preferred process of the United States in lieu of obtaining "free, prior, and informed consent" as set forth in the Declaration. Therefore, at a minimum, meaningful engagement and effective participation of tribal governments in assessing and reviewing extractive industry projects is a key element to the United States' meeting its human rights obligations as a signatory to the Declaration.

Many indigenous peoples in the United States perceive a general lack of consideration of the future impacts on their lands in approving extractive industry projects in particular. In the context of the Dakota Access Pipeline, the potentially affected tribes were denied access to information and excluded from consultations at the planning stage of the project. Furthermore, in a show of disregard for treaties and the federal trust responsibility, the Army Corps approved a draft environmental assessment regarding the pipeline that ignored the interests of the tribe. Maps in the draft environmental assessment omitted the reservation, and the draft made no mention of proximity to the reservation or the fact that the pipeline would cross historic treaty lands of a number of tribal nations. Although the final environmental assessment recognized the presence of the Standing Rock Sioux Tribe five hundred meters away, it dismissed the risks to the reservation and failed to mention any of the other tribes that traditionally used the territory. Without an adequate social, cultural or environmental assessment, and the absence of meaningful consultation with or participation by the tribes, the Corps gave multiple domestic authorizations permitting the construction of DAPL.

Sadly, I found the situation faced by the Standing Rock Sioux Tribe is shared by many other indigenous communities in the United States. The goal of tribal consultation is not simply to check a box, or to merely give tribes a chance to be heard. Rather, the core objective is to provide federal decision makers with context, information, and perspectives needed to support informed decisions that actually protect tribal interests.

I also received reports during this mission regarding the criminalization of indigenous peoples asserting their right to protest in the now-world famous struggle of several tribes in



opposition to the Dakota Access Pipeline. As is well-documented, the controversy surrounding the Dakota Access Pipeline has drawn thousands of people to the boundaries of the Standing Rock Sioux Reservation as they sought to protect the land and the water and uphold tribal sovereignty. While the actions taking place have been almost completely non-violent and peaceful, there has been a militarized, at times violent, escalation of force by local law enforcement and private security forces. As noted in my predecessor James Anaya's previous reports, indigenous peoples have the right to oppose extractive activities that impact their land and resources free from reprisals, acts of violence, or undue pressures to accept or enter into consultations about extractive projects.

In order to fully realize the rights of indigenous peoples as enshrined in the Declaration, I recommend that the United States government must, at a minimum, adhere to its own consultation policy as set forth in Executive Order 13175. The federal, state, and local governments should adopt consistent practices in consulting with tribes on projects that could affect indigenous rights. The federal government should take steps to consider fully and implement the suggestions from its own 2017 report, "Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions."

To ensure that native communities are not further plagued by violence, measures that have the potential to create positive impacts on tribal communities, such as the 2013 reauthorization of the Violence Against Women Act, the United States must take measures to ensure that tribal governments are able to implement them, including by providing adequate resources. The United States should take appropriate measures to ensure the United Nations Guiding Principles on Business and Human Rights are properly considered by all accountable actors in any projects that have impacts on indigenous peoples in the United States.

Finally, I recommend that for any extractive industry project affecting indigenous peoples, regardless of the status of the land, the United States should require a full environmental impact assessment of the project in consideration of the impact on indigenous peoples' rights.

I am currently reviewing the materials collected during both visits and preparing official country visit reports, which will be presented to the Human Rights Council in September this year.

As mentioned earlier, Madam Chairperson, an ongoing aspect of my work involves receiving and in appropriate cases acting upon information of alleged violations of the rights of indigenous peoples in specific situations. This aspect of my work relies to an important extent on the written information provided to me by indigenous peoples and their organizations, NGOs and other sources. I would like to acknowledge the many individuals and groups that have provided information over the past year, often in relation to very difficult and sensitive situations. During this time, I have received information about situations of alleged human rights violations in countries in every continent and, in response have sent numerous communications to governments about these situations. These cases involve infringements of rights of consultation and consent especially in relation to natural resource extraction and displacement or removal of indigenous communities; denial





of the rights of indigenous peoples to lands and resources; indigenous peoples in voluntary isolation; incidents of threats or violence against indigenous peoples and individuals, among other situations.

I have made a concerted effort to engage with governments about credible information of alleged human rights violations in specific cases in which I believe my intervention may be of some use. I would like to acknowledge the several governments that have responded to my communications regarding specific cases. I note, however, that over the past year a number of governments did not respond to communications from me requesting information on alleged human rights violations, and I urge them to do so in the future.

I have prioritised and significantly increased the number of communications addressed to Governments in relation to allegations of violations of indigenous peoples' rights. Since the beginning of this year, I have sent over fifty communications to more than thirty States in relation to violations of a wide range of economic, social and cultural as well as civil and political rights. The failure to ensure the free, prior and informed consent of indigenous peoples before undertaking measures and projects affecting their lands, territories and other resources remains a key recurring concern. I would like to thank all the States that have responded to my communications.

As I work to carry out this mandate, I continue to do so with optimism for a better future for indigenous peoples, encouraged by positive developments in many places, and yet concerned by the reality of ongoing struggles and violations of indigenous peoples throughout the world. I continue to reaffirm my strong commitment to my role as Special Rapporteur, while I acknowledge with humility the responsibility it represents.

I thank you all for your kind attention.

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