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Agenda item 3  
**Study and advice on the impact of militarization  
on the rights of Indigenous Peoples**

## **Impact of militarization on the rights of Indigenous Peoples**

### **Draft study by the Expert Mechanism on the Rights of Indigenous Peoples\***

#### *Summary*

The Expert Mechanism on the Rights of Indigenous Peoples has prepared the present draft study pursuant to Human Rights Council resolution 33/25.

The study concludes with Expert Mechanism Advice No. 16 (2023) on the impact of militarization on the rights of Indigenous Peoples.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. Pursuant to Human Rights Council resolution 33/25, the Expert Mechanism on the Rights of Indigenous Peoples decided, at its fourteenth session, to prepare a report on the militarization of Indigenous lands, territories and resources. A call for contributions was opened in late 2021 and an expert seminar was held by the University of British Columbia in February 2022. A decision to postpone was made, and at its fifteenth session, the Expert Mechanism decided that its next annual study, pursuant to paragraph 2 (a) of Council resolution 33/25, would focus on the impact of militarization on the rights of Indigenous Peoples. To that end, the Expert Mechanism held an expert meeting in December 2022 to inform the study. The study has benefited from the presentations made at both seminars and from more than 120 submissions from States, Indigenous Peoples, national human rights institutions, academics and others.<sup>1</sup>

2. For the purposes of the present study, militarization should be understood as any type of military strategy or activity that impacts on the rights of Indigenous Peoples as articulated in the United Nations Declaration on the Rights of Indigenous Peoples. This refers, for instance, to any strategy or activity of a military nature, including supply facilities, infrastructure, bases or any other actions necessary for the development of military strategies or activities with an aim to maintain control over Indigenous land and territories for national security reasons, for insurgency and counter-insurgency operations, for border control, for accessing natural resources, for conservation purposes, for development projects or for the protection of the interests of transnational corporations. This list is not intended to be exhaustive.

3. It is necessary to highlight the historical militarization of Indigenous territories and its linkages with colonization, and the long history of Indigenous struggles for demilitarization and decolonization. The Alta conference outcome document recommended that States cease current, and refrain from any further, militarization and initiate processes to demilitarize the lands, territories, waters and oceans of Indigenous Peoples, including through the repeal and/or discontinuance of “anti-terrorist”, national security, immigration, border control and other special laws, regulations, operations and executive orders that violate the rights of Indigenous Peoples.<sup>2</sup>

4. The militarization of Indigenous Peoples’ territories, lands and resources has been one of the major challenges to the realization of their rights. Harm associated with historical injustices continues today, and many of the contemporary challenges faced by Indigenous Peoples are rooted in this history.<sup>3</sup> Its impact on Indigenous Peoples’ rights has been frequently discussed in the international sphere, going back at least as far as the 1980s, when the General Assembly highlighted the need to ensure that Indigenous Peoples in Non-Self-Governing Territories were not exploited for political, military and other purposes.<sup>4</sup>

## II. Legal framework

5. The purpose of demilitarization and the principle of restriction of military activities in Indigenous territories must be interpreted in conjunction with the first paragraph of the Preamble, which refers to the purposes and principles of the Charter of the United Nations and its ideal of peace and the eradication of war. Moreover, this principle of Indigenous Peoples’ territories free from military activities connects with several rights enshrined in the Declaration, such as the right to security as distinct peoples (art. 7), the prohibition of acts of genocide and forcible transfer (arts. 7, 8 and 10), the right to maintain control over their lands,

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<sup>1</sup> The presentations and the submissions are available from <https://www.ohchr.org/en/events/sessions/2023/16th-session-expert-mechanism-rights-indigenous-peoples>.

<sup>2</sup> Global Indigenous Preparatory Conference for the high-level plenary meeting of the General Assembly, held in Alta, Norway, from 10 to 12 June 2013, in preparation for the World Conference on Indigenous Peoples. See [A/67/994](#), para. 7.

<sup>3</sup> [A/HRC/24/50](#) and [A/HRC/24/50/Corr.1](#), para. 7.

<sup>4</sup> General Assembly resolution 38/50, para. 21.

territories and resources (arts. 26, 29 and 31) and the right to participate in decisions affecting their lands and territories (arts. 3, 18, 19 and 33).

6. In the same way, article 30 of the American Declaration on the Rights of Indigenous Peoples establishes that Indigenous Peoples have the right to peace and security and to protection and security in situations or periods of internal or international armed conflict, in accordance with international humanitarian law.

7. The militarization of territories is not a new phenomenon for Indigenous Peoples; there is a close link between militarization and colonization processes. In turn, there is a long history of Indigenous struggles for demilitarization as part of decolonization processes. Paragraph 12 of the preamble to the United Nations Declaration on the Rights of Indigenous Peoples emphasizes that demilitarization of the lands and territories of Indigenous Peoples has contributed to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world.<sup>5</sup> As a key purpose of the Declaration, demilitarization should be read into the operative articles, including article 7 (2), which establishes that Indigenous Peoples have the collective right to live in freedom, peace and security as distinct peoples. As the Declaration is meant to be read as a whole, the right to security applies to many other provisions – such as those on food security, land security and language security.

8. The direct reference to proscribe the effects of militarization on Indigenous Peoples is set forth in article 30 of the Declaration.<sup>6</sup> Article 30 (1) states: “Military activities shall not take place in the lands or territories of Indigenous Peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the Indigenous Peoples concerned.” Article 30 (2) affirms: “States shall undertake effective consultations with the Indigenous Peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.”

9. Article 30 precludes militarization on the land of Indigenous Peoples, except in the exceptional circumstance where the State both has established a public interest, or Indigenous Peoples have requested such military presence, and the State has undertaken effective consultations with the Indigenous Peoples concerned. The “public interest” component provides an exceedingly narrow exception to the general prohibition<sup>7</sup> on military activities in Indigenous Peoples’ lands and territories.

10. “Public interest” does not constitute by itself a determinative factor. Any stated public interest must comply with the principles of necessity and proportionality as defined within an overall framework of respect for human rights.<sup>8</sup> The principle of necessity requires the action to be appropriate to achieve its protective function. The principle of proportionality is at the heart of many human rights claims, as any restrictions must be a proportionate means of achieving a legitimate aim.<sup>9</sup> It is not sufficient that the restrictions serve the permissible purposes; they must also be necessary in order to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument among those which might achieve the desired result; and they must be proportionate to the interest to be protected.<sup>10</sup> In practice, however, extractive industry projects, conservation initiatives and military operations in Indigenous territories continue to be authorized on the basis of “public need”, “public interest” or “public purpose” without any justification for the associated restrictions

<sup>5</sup> To be read in conjunction with articles 3, 7, 28, 29 and 30 of the Declaration.

<sup>6</sup> To be read in conjunction with articles 7, 10, 19, 23, 26, 29, 32, 36 and 46 of the Declaration.

<sup>7</sup> International Law Association Committee on the Rights of Indigenous Peoples, Interim Report, 74th Biennial Conference, The Hague, Kingdom of the Netherlands (2010).

<sup>8</sup> With regard to the African Court on Human and Peoples’ Rights, there are references to consultations with Indigenous Peoples in the ruling in the case brought by the Ogiek Indigenous people against Kenya. See African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Republic of Kenya*, application No. 006/212, judgment, 23 June 2022.

<sup>9</sup> Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.

<sup>10</sup> Human Rights Committee, general comment No. 27 (1999), para. 14.

on Indigenous Peoples' rights in terms of necessity or proportionality vis-à-vis the public need, interest or purpose.<sup>11</sup>

11. Article 46 (2) of the Declaration provides further guidance. Any limitations on the rights are to be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.<sup>12</sup>

12. Even where a public interest is found, States must conduct effective consultations with Indigenous Peoples prior to the use of their lands or territories for military activities. Consent will be a requirement if the proposed military activities involve removal from their lands or territories (art. 10), loss of cultural, intellectual, religious and spiritual property (art. 11), occupation of, confiscation of or damage to lands, territories or resources (art. 28) or storage or disposal of hazardous materials (art. 29), as required in the Declaration.

13. Despite this framework of enhanced protection of Indigenous Peoples' lands and territories from military activities, Indigenous Peoples are exposed to dramatic challenges in the face of contemporary militarization phenomena, linked to extractive industries, conservation, internal security, and organized crime, among other factors.

### III. Indigenous Peoples, and types of militarization and their causes

14. In 2006, the Working Group on Indigenous Populations identified several types of militarization, including: the use of Indigenous lands for military bases and training camps, often by declaring them to be "public lands"; use of Indigenous lands by armed groups where Indigenous Peoples may suffer violence from both sides involved, without being a belligerent party themselves; use of military forces to control Indigenous Peoples' land for geopolitical interest on the basis of counter-insurgency acts or national security acts; and the use of armed forces and private security companies for the protection of development projects and the exploitation of natural resources.<sup>13</sup> Further types of militarization identified in the present study include militarization as justified by counter-terrorism, militarized force to protect conservation projects, and militarized violence as a result of investment agreements.

15. Globally, militarization inflicts environmental damage on Indigenous Peoples' lands. Military bases are constructed on Indigenous Peoples' lands without consultation, and often force their displacement. Once abandoned, these military sites leave a tragic remnant of contamination, filling these lands with hazardous and nuclear wastes affecting Indigenous Peoples for generations.<sup>14</sup>

16. Militarization in the context of wars and armed conflicts is also a major concern for Indigenous Peoples. In many cases, Indigenous Peoples' lands become battlefields for internal wars and conflicts, and Indigenous Peoples are targeted by non-State armed groups such as paramilitaries and/or threatened by military forces. It has been reported that the militarization in Indigenous territories in Nicaragua can be carried out by non-State armed groups or criminal gangs. The latter are linked to drug trafficking or natural resource extraction companies in Indigenous territories.<sup>15</sup>

17. Low-level protracted conflict has persisted for decades in some countries and continues to affect Indigenous Peoples. In other countries, even where conflict has formally ended, military presence in Indigenous areas continues. The Chittagong Hill Tracts region of

<sup>11</sup> Oxfam, International Land Coalition and Rights and Resources Initiative, *Common Ground: Securing Land Rights and Safeguarding the Earth* (Oxford, 2016), p. 31.

<sup>12</sup> Also contained in [A/HRC/24/41](#), para. 32.

<sup>13</sup> See [E/CN.4/Sub.2/AC.4/2006/2](#).

<sup>14</sup> [A/77/183](#), para. 6.

<sup>15</sup> Maria Luisa Acosta, coordinator of the Centro de Asistencia Legal a Pueblos Indígenas, presentation (in Spanish) at the Expert Seminar of the Expert Mechanism on the Rights of Indigenous Peoples on "The impact of militarization on the rights of Indigenous Peoples", Geneva, 5 and 6 December 2022. Presentations made during the seminar are available at <https://www.ohchr.org/en/events/events/2022/impact-militarisation-rights-indigenous-peoples-study>.

Bangladesh continues to be one of the most militarized areas in the world.<sup>16</sup> Similarly, militarization in north-east India with the imposition of the Armed Forces (Special Powers) Act 1958 and in the Cordillera and Mindanao regions of the Philippines has caused migration and displacement of Indigenous Peoples within and across national borders.<sup>17</sup>

18. Militarization of Indigenous lands is often justified by national security or counter-insurgency operations. Indigenous Peoples' right to self-determination is often perceived as a threat to the national security and territorial integrity of the State and as being against national developmental interests, rather than as a potential means of ensuring rights.<sup>18</sup> For this reason, the term "Indigenous" or "tribal" has become synonymous with separatist movements among security forces and the police in some States.<sup>19</sup> In the Philippines, there is reportedly a trend of characterizing Indigenous areas as "red areas", justifying the need for counter-insurgency operations.<sup>20</sup> In Bangladesh, it has been reported that the Government similarly tries to portray Indigenous Peoples as secessionists to justify militarization.<sup>21</sup>

19. Militarization also occurs through the application of counter-terrorism laws to Indigenous Peoples, particularly in the context of human rights defenders. Allegations have been received that counter-terrorism has frequently been used as a justification for military activities on Indigenous Peoples' lands.<sup>22</sup> The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted instances of terrorism offences being applied to Indigenous individuals engaging in social protest in defence of their lands in Peru, the Philippines and Chile.<sup>23</sup> He has further articulated that "impermissible action by Governments may be driven by the persistence of the Government in practices that exploit the respective lands and resources without the consent of, or consultation with, the Indigenous communities".<sup>24</sup> It has also been alleged that counter-terrorism laws may be utilized to delegitimize Indigenous Peoples' advocacy efforts.<sup>25</sup>

20. Indigenous Peoples have frequently identified a link between development projects and militarization. Violations related to militarization that are associated with foreign business have long been highlighted.<sup>26</sup> In some regions, Indigenous Peoples are confronted with the increasing presence of paramilitaries and private security companies, which often have close relationships with formal State militaries. For example, there are allegations of how, in 2017, at Standing Rock in the United States of America, the TigerSwan private security company worked in close conjunction with paramilitary forces, military forces and the local police, against the Indigenous individuals who protested the Dakota Access Pipeline.<sup>27</sup> Guatemala reports more than 250,000 private security staff hired by landowners, mining companies, private conservation park owners, plantations and industrial companies.<sup>28</sup> United Nations human rights experts have shown their concern about the increasing use of the military for the construction of large civilian public works in Indigenous territories, such as the Mayan Train and the Isthmus of Tehuantepec Railroad in Mexico, which implies risks of militarization of Indigenous territories and violations of their human rights.<sup>29</sup> The Special

<sup>16</sup> Submission from Minority Rights Group International.

<sup>17</sup> [A/HRC/EMRIP/2019/2/Rev.1](#), para. 39; see also the submission from the Centre for Research and Advocacy, Manipur.

<sup>18</sup> See [A/HRC/48/75](#).

<sup>19</sup> See [A/HRC/24/41/Add.3](#).

<sup>20</sup> Submissions from the Panaghiusa Philippine Network and the Legal Rights and Natural Resources Center.

<sup>21</sup> Submission from the International Work Group for Indigenous Affairs.

<sup>22</sup> [E/CN.4/Sub.2/AC.4/2006/2](#), para. 8.

<sup>23</sup> See [A/HRC/16/51/Add.3](#) and [A/HRC/16/51/Add.3/Corr.1](#), [A/HRC/6/17](#) and [A/HRC/6/17/Corr.1](#), and [A/HRC/25/59/Add.2](#).

<sup>24</sup> See [A/HRC/6/17](#) and [A/HRC/6/17/Corr.1](#).

<sup>25</sup> See [A/HRC/25/59/Add.2](#).

<sup>26</sup> General Assembly resolution 38/50, para. 21.

<sup>27</sup> Andrea Carmen, presentation at the virtual Expert Seminar hosted by the University of British Columbia, Vancouver, Canada, 2 and 3 February 2022.

<sup>28</sup> *Ibid.*

<sup>29</sup> See communication MEX 11/2020. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments/>.

Rapporteur on the rights of Indigenous Peoples has recommended that major development projects should never be handled primarily as a problem of national security or law and order, as that often leads to military or police action that may violate the human rights of Indigenous Peoples.<sup>30</sup>

21. Related to the use of military force for development and for private enterprises, international investment agreements applying to Indigenous territories are often accompanied by the deployment of military and private security services in violation of article 30 of the Declaration which prohibits activities not justified by a relevant public interest or otherwise freely agreed to or requested by the Indigenous Peoples concerned. Such security presences are effectively mandated under certain existing interpretations of the provisions of such agreements on full protection and security, leading to a direct conflict between international investment law and international human rights law.<sup>31</sup>

22. The Expert Mechanism has received information on the significant rise in militarized approaches to conservation<sup>32</sup> with the expansion of protected areas<sup>33</sup> and the increased focus on biodiversity conservation<sup>34</sup> and addressing climate change. Indigenous territories may become increasingly militarized in response to the 30 by 30 target, under the Convention on Biological Diversity, to protect 30 per cent of the planet by 2030. Protected areas often feature heavy policing, with national wildlife services and local government rangers patrolling the protected areas, including those in Indigenous territories.<sup>35</sup> The militarization of conservation has been documented in the Central African Republic, the Democratic Republic of the Congo, Guatemala, India and South Africa. Park guards and rangers receive a military-type training and funding has increased for arming guards.<sup>36</sup> For example, protected areas in the 10 countries in Central Africa have doubled in the past 20 years to more than 200 protected areas, covering a total of 800,000 km<sup>2</sup>, or twice the size of Cameroon.<sup>37</sup>

## IV. The impact of militarization on the rights of Indigenous Peoples

### A. Rights to life, integrity, liberty and security

23. Article 7 of the Declaration refers to Indigenous individuals' rights to life, integrity, liberty and security of person. Articles 6 and 9 of the International Covenant on Civil and Political Rights recognize the rights to life and to physical integrity, respectively. The militarization of Indigenous territories often places members of Indigenous Peoples at a grave risk of violence threatening the rights to life and to personal integrity, and their physical and cultural survival.<sup>38</sup>

<sup>30</sup> E/CN.4/2003/90 and E/CN.4/Sub.2/AC.4/2006/2.

<sup>31</sup> A/HRC/33/42, para. 37; see also the submission from the Special Rapporteur on the rights of Indigenous Peoples, Francisco Calí Tzay.

<sup>32</sup> Submission from Indigenous Peoples of Africa Coordinating Committee.

<sup>33</sup> Nigel Dudley, ed., *Guidelines for Applying Protected Area Management Categories Including IUCN WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types*, Best Practice Protected Area Guidelines Series, No. 21 (Gland, Switzerland, International Union for the Conservation of Nature and Natural Resources, 2013).

<sup>34</sup> See, for example, the discussion on the post-2020 global biodiversity framework at [https://www.iucn.org/sites/default/files/2022-11/iucn-issues-brief\\_post2020\\_final.pdf](https://www.iucn.org/sites/default/files/2022-11/iucn-issues-brief_post2020_final.pdf).

<sup>35</sup> Minority Rights Group International, "UN plan to protect 30 per cent of the planet by 2030 could displace hundreds of millions, NGOs and experts warn", 2 September 2020.

<sup>36</sup> Vicky Tauli-Corpuz and others, "Cornered by PAs: adopting rights-based approaches to enable cost-effective conservation and climate action", *World Development*, vol. 130 (June 2020).

<sup>37</sup> French Agricultural Research Centre for International Development, "Protected areas in Central Africa: a new report proposes avenues to improve their effectiveness", 29 June 2021.

<sup>38</sup> Inter-American Commission on Human Rights, "Indigenous women and their human rights in the Americas", 17 April 2017.

24. These rights may be directly threatened owing to militarization, conflict, and criminalization of human rights defenders.<sup>39</sup> Intimidation and fear of reprisal prevents Indigenous Peoples from taking legal action against the military for ongoing and historical abuses. Killings of Indigenous activists and human rights defenders continue in many places. In some jurisdictions, Indigenous Peoples regard the military as violently suppressing their movements for self-determination and autonomy.<sup>40</sup>

25. United Nations experts have expressed concern over a reported pattern of extrajudicial killings of Indigenous Peoples by the military that is occurring with impunity in coal-mining areas of India, namely Nagaland.<sup>41</sup> There are reports that massacres have been used as a form of collective punishment in Manipur for alleged attacks by insurgents.<sup>42</sup> In Myanmar, counter-insurgency operations have allegedly resulted in the military burning Indigenous Peoples' villages and fields, destroying places of worship, mass displacements, the use of Indigenous Peoples as human shields, violence, including sexual violence, and extrajudicial killings.<sup>43</sup> Similarly, there have been reports of threats and intimidation by the Nepalese police against Indigenous Peoples opposing the Government's construction of transmission lines and other infrastructure projects.<sup>44</sup>

26. In the Philippines, there are allegations of extrajudicial killings, torture, abduction and enforced disappearances of known Indigenous activists and human rights defenders, and of illegal surveillance, searches, arrests and detentions of activists being carried out by the military forces.<sup>45</sup> In the Chittagong Hill Tracts, there are allegations of arbitrary arrests by the military, raids, torture, and harassment at checkpoints.<sup>46</sup> In the Mayangna Sauni territory of Nicaragua, there are reports of killings and acts of torture against Indigenous Peoples committed by non-regular armed groups such as settlers or paramilitaries, with the acquiescence of military and police forces.<sup>47</sup> In Colombia, there is an increase of violence against Indigenous Peoples due to the expansion of different non-State armed groups and criminal organizations.<sup>48</sup>

27. Human rights violations associated with the use of private security and paramilitary groups to protect extractive projects have been reported in Papua New Guinea, where security guards and police at Barrick Gold's Porgera Joint Venture mine were involved in sexually assaulting and raping women and committing violence against men.<sup>49, 50</sup>

28. Similar issues have been reported in the conservation sector in Africa, as evidenced by the ongoing investigation initiated by the World Wildlife Fund for Nature (WWF) into allegations that guards at Salonga National Park and Kahuzi-Biega National Park in the Democratic Republic of the Congo were involved in rape, torture, arbitrary arrests and

<sup>39</sup> See [A/HRC/EMRIP/2019/2/Rev.1](#).

<sup>40</sup> See [A/HRC/24/41/Add.3](#).

<sup>41</sup> See communication IND 3/2022. See also the submissions from the Indigenous Rights Advocacy Centre, the Global Naga Forum, and the Special Rapporteur on the rights of Indigenous Peoples.

<sup>42</sup> Submission from United NGOs Mission Manipur, North-East Development Forum, Imphal, Manipur.

<sup>43</sup> Submission from the International Work Group for Indigenous Affairs.

<sup>44</sup> See communications NPL 2/2022, OTH 36/2022 and OTH 35/2022.

<sup>45</sup> Jill Cariño, Vice-Chairperson for External Affairs of the Cordillera Peoples Alliance, presentation at the Expert seminar, Geneva, December 2022. See also the submissions from the Legal Rights and Natural Resources Center and the Panaghiusa Philippine Network.

<sup>46</sup> Joint contribution by the International Chittagong Hill Tracts Commission, the Chittagong Hill Tracts Citizens Committee, the Bangladesh Indigenous Peoples' Network on Climate Change and Biodiversity, the CHT Headmen-Karbari Network, the Women Resource Network, the CHT Women Headmen-Karbari Network and the Movement for Protection of Forest and Land Rights in CHT.

<sup>47</sup> Maria Luisa Acosta, presentation at the Expert Seminar, Geneva, December 2022.

<sup>48</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR) in Colombia, *Territorial Violence in Colombia: Recommendations for the New Government* (2022), available at <https://www.hchr.org.co/wp/wp-content/uploads/2022/07/Territorial-Violence-in-Colombia.pdf>.

<sup>49</sup> Submission from Asia Justice and Rights.

<sup>50</sup> Division for Inclusive Social Development of the Department of Economic and Social Affairs, and Indigenous Peoples and Development Branch of the Secretariat of the Permanent Forum on Indigenous Issues, *State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources*, vol. 5 (2021).

killings.<sup>51</sup> Civil society organizations and Indigenous Peoples have communicated to WWF that similar practices are common in other countries – including in Cameroon, in Chitwan National Park and Bardiya National Park in Nepal, and in India.<sup>52</sup>

29. In the United Republic of Tanzania, it has been reported that paramilitary groups committed intimidation, harassment, injury, rape, forced eviction, denial of medical care, destruction of property, disappearances and arbitrary arrests in the Lolilondo region, which is the ancestral land of the Maasai pastoralists and has been turned into the Poleleti Game Reserve.<sup>53</sup>

30. In some regions, Indigenous Peoples have been associated with insurgent groups or terrorists, and suppression of opposition to development projects through force and intimidation has been conducted.<sup>54</sup> Where a counter-terrorism law is overly broad such that it encompasses social protest, it may contravene the principle of legality.<sup>55</sup> In Chile, the Committee on the Elimination of Racial Discrimination has noted the disproportionate application of counter-terrorism legislation to Mapuche individuals.<sup>56</sup>

31. In Crimea, the Mejlis of the Crimean Tatar People, the self-governing body of the Indigenous People of Crimea – the Crimean Tatars, continues to be declared an extremist organization and the ban on its activities has still not been repealed. In addition, the persecution of the leaders of the Mejlis of the Crimean Tatar People continues, which includes arbitrary detentions.<sup>57</sup> In Bangladesh, Jumma homes are reportedly raided frequently “in the name of flushing out so-called ‘terrorists’”.<sup>58</sup> In West Papua, Indonesia, arbitrary detentions, tortures and extrajudicial killings have been reported.<sup>59</sup> It has also been alleged that the land of the Pamiri people residing in the Pamir mountains of Gorno-Badakhshan Autonomous Oblast in Tajikistan is under high surveillance and is heavily militarized, with alleged cases of arbitrary arrest and detention, and torture of detainees.<sup>60</sup>

32. The Russian Federation notes that its legislation allow Indigenous Small-Numbered Peoples to engage in “alternative civilian service as an alternative to military service”.<sup>61</sup> A similar approach was applicable during the partial mobilization in 2022 in the context of the conflict in Ukraine: members of Indigenous Small-Numbered Peoples, involved in traditional occupations such as hunting, fishing and reindeer herding, in the Nenets Autonomous Region, the Yamalo-Nenets Autonomous Region, the Republic of Sakha (Yakutia) and Murmansk Region, were exempted from military service. At the same time, those living in cities, volunteers from among Indigenous Peoples, as well as Indigenous people from regions whose authorities had not taken proper and timely measures, were called for mobilization.

33. In regard to the Dakota Access Pipeline protests in the United States, United Nations experts issued a public statement calling on United States security forces, law enforcement officials and private security firms to address and take responsibility for the unjustified force

<sup>51</sup> See [https://wwf.panda.org/wwf\\_news/press\\_releases/?357073%2FWWF-statement-on-Salonga-National-Park-in-the-DRC](https://wwf.panda.org/wwf_news/press_releases/?357073%2FWWF-statement-on-Salonga-National-Park-in-the-DRC).

<sup>52</sup> Division for Inclusive Social Development of the Department of Economic and Social Affairs, and Indigenous Peoples and Development Branch of the Secretariat of the Permanent Forum on Indigenous Issues, *State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources*, vol. 5 (2021).

<sup>53</sup> Submissions from the International Work Group for Indigenous Affairs, the Elizka Relief Foundation and the Special Rapporteur on the rights of Indigenous Peoples.

<sup>54</sup> See [A/HRC/24/41/Add.3](#).

<sup>55</sup> See [A/HRC/25/59/Add.2](#).

<sup>56</sup> See [CERD/C/CHL/CO/22-23](#).

<sup>57</sup> General Assembly resolution 77/229, in which the Assembly recalled its resolution 68/262 on the territorial integrity of Ukraine.

<sup>58</sup> Submission from Minority Rights Group International; see also the submission from Parbatya Chattagram Jana Samhati Samiti.

<sup>59</sup> Submission from Franciscans International.

<sup>60</sup> Minority Rights Group International, “Military crackdown in Tajikistan: another step backwards for Pamiri minority rights and towards potential conflict”, statement, 20 May 2022. See also the submission from the Pamiri Indigenous Peoples Association.

<sup>61</sup> Submission from the Russian Federation.



that they have used to deal with opponents of the project.<sup>62</sup> Similarly, in Canada, an injunction requested by a pipeline corporation resulted in the dismantling of a protest camp of the Wet'suwet'en in January 2019 in north-west British Columbia and led to mass arrests.<sup>63</sup> It was alleged that the police in Canada had prepared to use excessive, and even lethal force.<sup>64</sup> It has been further reported that the State refused to release internal records relating to the Wet'suwet'en protests under an exemption typically related to gathering information on terrorism.<sup>65</sup>

## B. Right to land, territories and natural resources

34. The increased militarization of Indigenous lands, territories and resources in several regions, as recognized and elaborated upon by the Expert Mechanism, severely hampers Indigenous Peoples' enjoyment of their land and contributes to dispossession.<sup>66</sup> The legal security of Indigenous Peoples' right to land is fundamental to reduce conflict, including intercommunity conflict, as well as to strengthen Indigenous territorial governance.<sup>67</sup>

35. Article 29 of the Declaration establishes the right to the conservation and protection of the environment and the productive capacity of the lands, territories and resources. Effective measures have to be taken by States to ensure that no storage or disposal of hazardous materials, including related to military activities, takes place in the lands or territories of Indigenous Peoples without their free, prior and informed consent.

36. In some States, the presence of military forces in Indigenous areas has reportedly resulted in the forcible acquisition of Indigenous lands, increased settlement by non-Indigenous groups in those lands, the destruction of Indigenous Peoples' homes, and breakdowns in Indigenous Peoples' control over their territories.<sup>68</sup> In South and South-East Asia, States such as Bangladesh, India, Myanmar, Nepal, the Philippines and Thailand have allegedly used repressive strategies to control Indigenous Peoples by deploying their security forces (the military, paramilitary forces, border guards, intelligence agencies and the police). These States' violence has contributed to dispossession of land and forced displacement of Indigenous Peoples. In Cambodia, there are reports of arrests made by armed private military and security companies, police and rangers, of the hiring of military personnel to protect logging operations, and of banning of the forest patrols which is enforced by armed rangers and police, amounting to a militarization of ancestral Indigenous lands in the Prey Lang Wildlife Sanctuary.<sup>69</sup> In Colombia, Indigenous Peoples have allegedly been evicted from their lands, including with the assistance of military and paramilitary forces, due to the establishment of clean energy projects (in addition to oil, mining, coal and energy projects), including renewable energies such as hydroelectric, photovoltaic and wind power.<sup>70</sup>

37. Some Indigenous Peoples experience transfer from their lands in the hands of the military through enforced population transfer programmes. In Bangladesh, it has been reported that a population of more than 400,000 Bengali Muslims were provided settlement in the lands of the Jumma peoples of the Chittagong Hill Tracts from 1979 to 1985.<sup>71</sup> Similarly, between the 1970s and the early 2000s, Indonesia is reported to have implemented a transmigration policy that led to the decline of the Indigenous Papuan population in West

<sup>62</sup> OHCHR, "Native Americans facing excessive force in North Dakota pipeline protests – UN expert", 15 November 2016.

<sup>63</sup> Division for Inclusive Social Development of the Department of Economic and Social Affairs, and Indigenous Peoples and Development Branch of the Secretariat of the Permanent Forum on Indigenous Issues, *State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources*, vol. 5 (2021), p. 69.

<sup>64</sup> Submission from Gidimt'en Land Defenders, Wet'suwet'en Nation.

<sup>65</sup> Ibid.

<sup>66</sup> See [A/HRC/EMRIP/2019/2/Rev.1](#).

<sup>67</sup> Ibid.

<sup>68</sup> See [A/HRC/24/41/Add.3](#).

<sup>69</sup> Submission from the International Work Group for Indigenous Affairs.

<sup>70</sup> Leonardo González Paragón, presentation at the virtual Expert Seminar hosted by the University of British Columbia, February 2022.

<sup>71</sup> Submission from Parbatya Chattagram Jana Samhati Samiti.

Papua so that by 2007, 70 per cent of the population had migrated from other areas.<sup>72</sup> In the last four years, from 2018 to 2022, it has been reported that huge military deployments into West Papua have caused the mass displacement of civilians.<sup>73</sup> There has also reportedly been an increased number of paramilitary police units, known as the Brimob.<sup>74</sup>

38. The Committee on the Elimination of Racial Discrimination called upon Canada to halt work on the Coastal GasLink pipeline, the Trans Mountain Pipeline Expansion project and the Site C dam until free, prior and informed consent was obtained from Indigenous Peoples. The Committee stated that it was “disturbed by forced removal, disproportionate use of force, harassment, and intimidation by law enforcement officials against Indigenous Peoples who peacefully oppose large-scale development projects on their traditional territories”.<sup>75</sup>

39. Norway facilitates large-scale military exercises regularly with other North Atlantic Treaty Organization (NATO) forces in the southern part of the Sami area. The Ministry of Defence and its underlying agencies are required to consult the Sami Parliament and other representatives of Sami interests in cases where measures may affect Sami interests. This especially pertains to military training and exercises.<sup>76</sup> However, it has been reported that alongside the establishment of permanent bases and facilities, the armed forces have allegedly posed challenges in land use which have resulted in conflicts with Sami rights holders and interests.<sup>77</sup> In addition, a recently signed agreement between Finland, Norway and Sweden is reported to have caused an increasing military presence in the Sami region.<sup>78</sup>

40. Reports of forced evictions of the Karen people from Kaeng Krachan National Park in Thailand in 2011 have noted the destruction of homes and the burning of rice barns by park officials and the military.<sup>79</sup> In 2018, the Supreme Administrative Court affirmed that this use of force was in violation of the National Park Act.<sup>80</sup>

41. Armed conflict often leads to the displacement of Indigenous Peoples. For example, intensifying armed conflict has resulted in the mass displacement of Indigenous Peoples across Myanmar – it has been reported that in Mutraw District, over 90 per cent of the Indigenous Karen population has been displaced; in Karenni State, over 79,000 people have been displaced, equivalent to approximately 30 per cent of the population; and 10 per cent of the population in Chin State.<sup>81</sup> Displacement has also led to degradation of the environment and loss of biodiversity, further undermining the rights of Bedouin people.<sup>82</sup>

42. States have utilized Indigenous lands for military bases and exercises without the free, prior and informed consent of the Indigenous Peoples concerned. In Australia, the traditional lands of six Aboriginal groups<sup>83</sup> have reportedly been used without free, prior and informed consent for military tests, as well as for experimental space and military technologies.<sup>84</sup> There are reports that national and international military forces have set up bases and compounds and engaged in military exercises on Indigenous land, without free, prior and informed

<sup>72</sup> Submission from the Merdeka Secretariat, which coordinates the Merdeka West Papua Support Network.

<sup>73</sup> Kerry Rolihlahla Wendanak, Master of Philosophy student at the University of Waikato, New Zealand, presentation at the Expert Seminar, Geneva, December 2022.

<sup>74</sup> Submission from Fadjjar Schouten-Korwa, human rights lawyer, on behalf of the Papuan People’s Petition (*Petisi Rakyat Papua*).

<sup>75</sup> Decision 1 (100) of 13 December 2019, taken in the framework of the Committee’s early warning and urgent action procedure.

<sup>76</sup> Submission from the Government of Norway.

<sup>77</sup> Rune Fjellheim, head of the Arctic and Environmental Unit in the Sami Council, presentation at the Expert Seminar, Geneva, December 2022.

<sup>78</sup> Ibid. See also Arctic Today, “Updated Nordic defense plans prioritize the North”, 25 November 2022.

<sup>79</sup> David Nathaniel Berger, ed., *The Indigenous World 2019* (Copenhagen, International Work Group for Indigenous Affairs, 2019), pp. 315 and 316. See also the submission from the International Indian Treaty Council.

<sup>80</sup> Berger, *The Indigenous World 2019*, pp. 315 and 316.

<sup>81</sup> Submission from the All Burma Indigenous Peoples’ Alliance.

<sup>82</sup> Submission from Justice House.

<sup>83</sup> Australia, Department of Defence, “History of the Woomera Prohibited Area”.

<sup>84</sup> Submission from the Medical Association for Prevention of War.

consent, in places such as Burkina Faso, Cameroon, Chad, Kenya, Mali, Morocco, the Niger, Senegal, Tunisia and Uganda.<sup>85</sup> In Bangladesh, Indigenous land has reportedly been expropriated in order to build military bases and cantonments, leading to the destruction of homes, crops and sacred sites, as well as an increased risk of landslides and flash floods due to related environmental degradation.<sup>86</sup>

43. Article 28 of the Declaration requires that Indigenous Peoples receive redress for violations of their land rights, including for the confiscation of lands, territories and resources and for the occupation, use or damage of lands, territories and resources without their free, prior and informed consent. In Ecuador, the Constitutional Court ruled in 2020 against Ministerial Agreement No. 080 issued by the Ministry of the Environment regarding the Cuembí Triangle Protected Forest for violating the constitutional right of Indigenous Peoples to be consulted prior to the adoption of any regulatory measure that may affect any of their rights; the right for military activities not to be carried out in their territories without their consent; and the right to the possession of their ancestral lands.<sup>87</sup> In Colombia, the Special Jurisdiction for Peace recognized Indigenous territories as victims of the armed conflict, identifying the socio-environmental damage and the vulnerability of human-nature relations that were systematically destroyed by the war.<sup>88</sup>

### C. Economic, social and cultural rights

44. The militarization of Indigenous Peoples' lands, territories and resources is detrimental to their economic, social and cultural rights because, in some instances, the protection of land, territories and natural resources is necessary to guarantee other rights, such as the rights to culture, health, water and food.<sup>89</sup> In other cases, the military activities themselves can lead to the disruption of vital services, including education and health services. As noted by the Special Rapporteur, responses based on a counter-terrorism framework may easily violate the economic, social and cultural rights of Indigenous Peoples.<sup>90</sup> Indigenous Peoples' economic, social and cultural rights, including their rights to health and education and to practise their livelihoods, should act as a constraint on any military programmes targeting their territories.<sup>91</sup>

45. The militarization of the Chittagong Hill Tracts in Bangladesh has had a significant impact on the economic rights of the Jumma. Many have lost their traditional livelihoods, because of the destruction of natural habitats and forced displacement.<sup>92</sup> In Iraq, militarization has reportedly impacted the Assyrians' livelihoods and prevented their access to health services.<sup>93</sup>

46. In some militarized Indigenous territories, the army or paramilitary personnel have occupied schools, which are therefore required to close down.<sup>94</sup> The Expert Mechanism has received information about the closing down of Indigenous community-initiated schools because they are perceived as training grounds for rebels, such as the Lumad schools in Mindanao, Philippines.<sup>95</sup> In Panay, Philippines, there are reports of the military utilizing schools and civilian facilities as military posts or barracks.<sup>96</sup> In Myanmar, schools have

<sup>85</sup> Submission from the Indigenous Peoples of Africa Coordinating Committee.

<sup>86</sup> Submission from Minority Rights Group International.

<sup>87</sup> See <https://portal.corteconstitucional.gob.ec/FichaRelatoria.aspx?numdocumento=20-12-IN/20>.

<sup>88</sup> See <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Las-particularidades-de-los-macrocasos-territoriales-de-la-JEP.aspx> (in Spanish).

<sup>89</sup> A/HRC/45/38, para. 11.

<sup>90</sup> See A/HRC/6/17 and A/HRC/6/17/Corr.1.

<sup>91</sup> See A/HRC/24/41/Add.3.

<sup>92</sup> Submission from Minority Rights Group International. See also the submission from Parbatya Chattagram Jana Samhati Samiti.

<sup>93</sup> Submission from Mikhael Benjamin Dawoud.

<sup>94</sup> A/HRC/30/41, para. 26.

<sup>95</sup> Jill Cariño, presentation at the Expert Seminar, Geneva, December 2022, and the submission from the Legal Rights and Natural Resources Center; see also the submission from the Panaghiusa Philippine Network.

<sup>96</sup> Submission from the Defend Panay Network.

closed as a result of the military coup and intensifying conflict, leaving Indigenous Peoples with no access to education.<sup>97</sup>

47. Militarization impacts on health services, as reported in West Papua, Indonesia.<sup>98</sup> Data indicates that health centres have their lowest coverage in conflict areas. It has been alleged that security forces have overtaken health centres, “disrupting their ability to deliver health services”. In Manipur, north-east India, civil society organizations have conducted clinical assessments identifying a significance prevalence of mental health problems attributed to militarization.<sup>99</sup>

48. Dumping of hazardous wastes, particularly at military sites, leaves intergenerational scars on Indigenous Peoples. Exposure to toxics presents short- and long-term effects on their life and health. Decades of waste disposal on or near Indigenous land impacts on interconnected waterways and food sources. Abandoned military facilities leave materials including fuels, polychlorinated biphenyls, metals from heavy equipment, energy generators, oil containers and even radioactive waste buried on site.<sup>100</sup>

49. In the Arctic, Indigenous Peoples face compounding threats from the thawing of permafrost encapsulating layers of toxics underneath. Tons of toxic waste at Camp Century, including polychlorinated biphenyls and radioactive material, beneath the north-western Greenland ice sheet, could be exposed owing to climate change and thawing ice.<sup>101</sup> Equally concerning are the accidents, leaks, training and disposal that led to per- and polyfluoroalkyl substance contamination from United States and Japanese bases on the Ryukyu Islands in Japan.<sup>102</sup>

50. Militarization has occurred in the name of protecting economic, social and cultural rights. In response to the coronavirus disease (COVID-19) pandemic, States introduced or increased the presence of the military and the police in rural areas, treating the crisis as a security issue instead of a public health one. Military and private security personnel in Indigenous territories during the COVID-19 pandemic have prevented livelihood practices and the harvesting of food.<sup>103</sup> In Brazil, the National Health-care Policy for Indigenous Peoples and the entire management process of the Indigenous Health-care Subsystem is under the coordination of the Special Secretariat for Indigenous Health (SESAI). In the past years, including during the pandemic, the direction of this body has been under the leadership of the military.<sup>104</sup>

#### **D. The rights of Indigenous Peoples divided by cross-border armed conflict and militarization**

51. As borders can often be sites of heavy militarization, article 36 of the Declaration recognizes that Indigenous Peoples, especially those divided by international borders, have “the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes” and that States are to take the measures necessary “to facilitate the exercise and ensure implementation of this right”. That right includes Indigenous Peoples’ right to trade in goods and services across borders.<sup>105</sup> Realizing that right to cross-border cooperation presupposes the right to freedom of movement, an intrinsic part of the lives and cultures of some Indigenous Peoples.

<sup>97</sup> Submission from the All Burma Indigenous Peoples Alliance.

<sup>98</sup> Submission from Asia Justice and Rights.

<sup>99</sup> Submission from United NGOs Mission Manipur, North East Development Forum, Imphal, Manipur.

<sup>100</sup> [A/77/183](#), para. 47.

<sup>101</sup> *Ibid.*, para. 50.

<sup>102</sup> *Ibid.*, para. 49. See also the submissions from the All Okinawa Council for Human Rights and the Naha Association to Protect Citizens’ Lives.

<sup>103</sup> [A/75/185](#), para. 84; see also the submission from the Special Rapporteur on the rights of Indigenous Peoples.

<sup>104</sup> Submission from the Federal Public Defender’s Office of Brazil.

<sup>105</sup> [E/C.19/2015/9](#), para. 3.

52. Sometimes, where Indigenous Peoples live along international borders, State interest in controlling migration causes increased police and military presence on Indigenous lands. Alternatively, Indigenous land can play a significant role in “protecting” national territories on the border, particularly where State authorities are lacking: this burden is often overlooked by the State and others.<sup>106</sup>

53. The rights of Indigenous Peoples whose territories lie on the United States-Mexico border have been affected by the increased militarization of the United States border. United States policies implemented under the premise of ensuring national security run directly counter to article 36 of the Declaration, and could have the effect of criminalizing the cultural, social and economic ties of Indigenous groups whose territories cross the border.<sup>107</sup> The Tohono O’odham reservation currently houses three “forward operating bases/law enforcement centers” for the United States Border Patrol and United States Customs and Border Protection.<sup>108</sup> This increasingly militarized approach is a significant impediment to maintaining social, cultural, spiritual and economic ties with members across the border.<sup>109</sup> The imposition of border patrols, militarized personnel, virtual surveillance and border walls makes cross-border ceremonies, pilgrimages, hunting, gathering plants and medicines, trade, commerce, and other cross-border religious practices difficult.<sup>110</sup>

54. In instances where Indigenous Peoples live in the territory of several neighbouring States and where States do not maintain friendly relations or States are in conflict, there is a risk of being portrayed as taking different sides of a conflict, creating an atmosphere of distrust both within and outside of the community. The closure of international borders exacerbates problems, including the work of Indigenous organizations working across borders.<sup>111</sup>

55. Since the beginning of the armed conflict in Ukraine,<sup>112</sup> cross-border Sami cooperation has been seriously affected. Unilateral coercive measures and response measures have allegedly resulted in travel restrictions, and overall communication challenges, and have blocked bank services, limiting the ability to pay Sami employees across borders. Tensions within the Sami people have created mistrust between those living in different countries,<sup>113</sup> which resulted in suspension of the cooperation by the Sami organizations in the Nordic countries. Moreover, the prospective NATO membership of Finland and Sweden has the potential for significant militarization of Indigenous Peoples’ lands in these two States and reciprocally in the north-west of the Russian Federation.

## E. Rights of Indigenous women

56. Article 22 (2) of the Declaration reminds States of their obligation to take measures to ensure Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination, at both the individual level and the collective level. The collective dimension to the violence that Indigenous women and girls face is often overlooked and forms an important part of their experience of violence.<sup>114</sup>

<sup>106</sup> See [A/HRC/EMRIP/2019/2/Rev.1](#).

<sup>107</sup> Angelique EagleWoman, “Fencing off the eagle and the condor, border politics, and Indigenous Peoples”, *ABA Section of Environment, Energy and Resources: National Resources and Environment*, vol. 23, No. 2 (Fall 2008), pp. 33–36.

<sup>108</sup> Submission from the International Indian Treaty Council.

<sup>109</sup> Shin Imai and Kathryn Gunn, “Chapter 8: Indigenous belonging: membership and identity in the UNDRIP: articles 9, 33, 35 and 36”, in *The UN Declaration on the Rights of Indigenous Peoples: A Commentary*, Jessie Hohmann and Marc Weller, eds. (Oxford, United Kingdom, Oxford University Press, 2018).

<sup>110</sup> Felicity Schaeffer, University of California, Santa Cruz, presentation at the Expert Seminar, Geneva, December 2022.

<sup>111</sup> Alexey Tsykarev, member of the United Nations Permanent Forum on Indigenous Issues, presentation at the Expert Seminar, Geneva, December 2022.

<sup>112</sup> See <https://www.ohchr.org/en/countries/ukraine>.

<sup>113</sup> Rune Fjellheim, presentation at the Expert Seminar, Geneva, December 2022.

<sup>114</sup> [A/HRC/50/26](#), para. 71.

57. During armed conflict, sexual and gender-based violence, including rape and forced pregnancy, is used as a weapon to weaken the resolve of Indigenous Peoples in militarized disputes over land and resources.<sup>115</sup> In Bangladesh, there are reported cases of women and girls being subjected to sexual violence in front of family and community members, often aimed at creating a psychosocial impact on the community.<sup>116</sup> The Special Rapporteur on the rights of Indigenous Peoples has received allegations of sexual harassment and abuse by military personnel against women and girls peacefully demonstrating. He has issued many press releases to address discrimination, violence and attacks against, and killings of, Indigenous women and girls, including in Guatemala,<sup>117</sup> Honduras,<sup>118</sup> Colombia,<sup>119</sup> Brazil<sup>120</sup> and the Philippines.<sup>121</sup>

58. The militarization of and conflict over Indigenous land has led to the sexual assault, gang rape, sexual enslavement and killing of Indigenous women and girls in India, Kenya, Myanmar, Nepal, the Philippines, Thailand and Timor-Leste.<sup>122</sup> In Panama, Indigenous women fear sexual assault from military members stationed in their territory to prevent drug trafficking from neighbouring Colombia.<sup>123</sup> The Special Rapporteur on the rights of Indigenous Peoples has noted that because women and girls are primarily responsible for gathering food, fuel, water and medicine, they are exposed to risks of sexual violence by militarized security forces, park rangers and law enforcement officers.<sup>124</sup>

59. In the highly militarized islands of Okinawa in Japan – once the Kingdom of Ryukyu – there is a profound gender-based impact on Ryukyuan/Okinawan women and girls, who reportedly face high rates of sexual violence and domestic violence, and impunity due to the lack of effective remedies for these human rights violations.<sup>125</sup>

60. Likewise, the Special Rapporteur on violence against women and girls, its causes and consequences has reported that the increase in armed clashes since late 2018 between Indonesian security forces and pro-Papua armed independence groups are examples of conflict that has an impact on Indigenous women.<sup>126</sup>

61. Indigenous women and girls worldwide who leave their families and communities fleeing difficult socioeconomic conditions or armed conflicts are highly vulnerable to trafficking, including severe economic and sexual exploitation and sexual violence. In Nepal, Indigenous women and girls allegedly account for almost 80 per cent of trafficked persons.<sup>127</sup> Trafficking has similarly been reported to have a significant impact on Indigenous Peoples in north-east India.<sup>128</sup> Indigenous and Mexican women forced to migrate are instructed to

<sup>115</sup> See [A/HRC/EMRIP/2019/2/Rev.1](#). See also [A/HRC/50/26](#); and Felicity Schaeffer, presentation at the Expert Seminar, Geneva, December 2022.

<sup>116</sup> Submission from Minority Rights Group International.

<sup>117</sup> See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23125&LangID=E> and <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23746&LangID=E>.

<sup>118</sup> See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23994&LangID=E>, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19805> and <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17153&LangID=E>.

<sup>119</sup> See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25240&LangID=E>.

<sup>120</sup> See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=27134&LangID=E>.

<sup>121</sup> See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22783&LangID=E>.

<sup>122</sup> See [A/HRC/30/41](#). See also the submissions from United NGOs Mission Manipur, North East Development Forum, Imphal, Manipur, from the International Work Group for Indigenous Affairs and from the Centre for Research and Advocacy, Manipur.

<sup>123</sup> Submission from Arnold Groh, Structural Analysis of Cultural Systems.

<sup>124</sup> [A/77/238](#), para. 18. See also the submission from the Special Rapporteur on the rights of Indigenous Peoples.

<sup>125</sup> [A/HRC/50/26](#), para. 27; and Ai Abe, visiting researcher at the University of the Ryukyus and member of the All Okinawa Council for Human Rights, presentation at the Expert Seminar, Geneva, December 2022. See also the submission from the Association of Comprehensive Studies for Independence of the Lew Chewans.

<sup>126</sup> [A/HRC/50/26](#), para. 27.

<sup>127</sup> Submission from the International Work Group for Indigenous Affairs.

<sup>128</sup> Submission from United NGOs Mission Manipur, North East Development Forum, Imphal, Manipur.

start birth control before leaving, due to the risk of sexual assault, including in exchange for safe transfer.<sup>129</sup>

62. Indigenous women are often left without a voice in local representational and decision-making bodies.<sup>130</sup> However, a number of initiatives have succeeded in encouraging women to participate in consultation processes, a necessary step given that women are especially vulnerable to militarization on Indigenous lands. In Myanmar, a women's organization has set up vouching systems, whereby women who have taken part in consultations reach out to women who hesitate to take part and vouch for the consultations.<sup>131</sup>

## V. Prevention mechanisms and right to effective remedies

63. The Declaration's numerous relevant provisions include rights to effective mechanisms for prevention and redress, such as article 8 (2), article 11 (2), article 20, article 27 and article 40.

### A. Prevention mechanisms

64. States must incorporate into their constitutional and legal systems the norms and principles that protect the territories of Indigenous Peoples as zones of peace, free from militarization, and guarantee consultation processes. In this regard, article 57.20 of the Constitution of Ecuador recognizes and guarantees the right of Indigenous Peoples to "the limitation of military activities in their territories, in accordance with the law".

65. Some States have created mechanisms to prevent violations stemming from militarization. In Colombia, early warning mechanisms have been established at the national level to prevent human rights violations against Indigenous Peoples. For instance, the Ombudsman's Office in the department of Amazonas issued an early warning alert about the risk of Indigenous children and teenagers being recruited by illegal armed groups, which could result in violations as well as confrontations with State armed forces, militarization of the territories and stigmatization of the communities.<sup>132</sup>

66. There is a need to ensure Indigenous participation in peace negotiations affecting Indigenous Peoples, and to recognize the potential role of customary practices in such negotiations. In the Asian region, Indigenous representatives have recommended the application of customary law to military units and the recognition of Indigenous guards by local government and law enforcement agencies. National human rights institutions could play a role in facilitating dialogue between the military, communities and other independent human rights organizations. Some Indigenous Peoples have implemented a proactive monitoring approach using communication technologies to alert relevant actors when human rights violations occur in remote areas.<sup>133</sup>

### B. Effective remedies

67. Indigenous Peoples must have access, individually and collectively, to justice externally, from States, and internally, through Indigenous customary and traditional systems. Transitional justice processes and mechanisms should account for the root causes of conflict and address related rights violations. For Indigenous Peoples, this includes human rights violations arising in situations of conflict and grievances associated with their loss of

<sup>129</sup> Felicity Schaeffer, presentation at the Expert Seminar, Geneva, December 2022.

<sup>130</sup> Ibid.

<sup>131</sup> Judy A. Pasimio, "Mining and violence against rural and Indigenous women in the Philippines" (Quezon City, Philippines, Purple Action for Indigenous Women's Rights (LILAK), 2013).

<sup>132</sup> Submissions from Instituto Latinoamericano para una Sociedad y un Derecho Alternativos, Centro de Pensamiento Amazonía and Universidad Nacional de Colombia.

<sup>133</sup> A/HRC/24/41/Add.3, para. 25.

sovereignty, lands, territories and resources and with breaches of treaties, agreements and other constructive arrangements between Indigenous Peoples and States.<sup>134</sup>

68. The Declaration should be the main framework for recognition, reparation and reconciliation. Indigenous Peoples view recognition, reparation and reconciliation as a means of addressing colonization and its long-term effects and of overcoming challenges with deep historical roots. Although a truth and reconciliation commission may address a particular series of violations or an event at a particular time, it is crucial to recognize that in the case of Indigenous Peoples, these violations and events are inseparable from a long history of colonialism.<sup>135</sup>

69. Prosecutions and compensation for violations of Indigenous Peoples' rights in the context of militarization remain inadequate. A particular dimension of access to justice relates to overcoming long-standing historical injustices and discrimination, including in relation to colonization and dispossession of Indigenous Peoples' lands, territories and resources.<sup>136</sup>

70. Levels of impunity remain high. Examples of this are the delays in investigating extrajudicial executions that occurred between 1979 and 2012 in the State of Manipur and the continued application of the Armed Forces Special Powers Act including in Nagaland and Manipur, in India.<sup>137</sup> The Egyptian authorities, allegedly, have not opened an investigation into human rights violations against Bedouins in Sinai and have not held accountable any of the officials who committed or participated in these crimes.<sup>138</sup> In Bangladesh, police stations and courts reportedly do not accept cases against members of the military, and the National Human Rights Commission "cannot take any action or make recommendations against the army if the army personnel are involved in human rights violations in the Chittagong Hill Tracts".<sup>139</sup> In Nicaragua, in spite of friendly settlements related to a case before the Inter-American Commission on Human Rights on alleged genocide on the Caribbean Coast, amnesty laws have resulted in impunity.<sup>140</sup> In the Bolivarian Republic of Venezuela, the investigations into the incident that took place in March 2022 at the border military base in Parima B, Amazonas State, in which members of the armed forces opened fire against Yanomami protesters killing four persons and injuring a minor, are still ongoing.<sup>141</sup>

71. In West Papua, Indonesia, while initiatives or legislation exist for the provision of remedies, they fail to be implemented.<sup>142</sup> In Indonesia, military personnel can only be tried in military courts, making it harder for Indigenous Peoples to access effective remedies, due to a lack of transparency.<sup>143</sup> In Nicaragua, filing a complaint for sexual assault by military forces has led to a responsive charge of slander.<sup>144</sup>

72. Impunity perpetuates violence against Indigenous Peoples. In Brazil, there is a lack of trust in state and border police and, in some cases, the federal police, arising from officer involvement in incidents of violence against Indigenous Peoples. In most cases, impunity allows violent practices by private security forces, armed mercenaries and State forces to continue unabated.<sup>145</sup>

<sup>134</sup> [A/HRC/24/50](#) and [A/HRC/24/50/Corr.1](#), para. 79.

<sup>135</sup> [A/HRC/EMRIP/2019/3/Rev.1](#), para. 71.

<sup>136</sup> [A/HRC/24/50](#) and [A/HRC/24/50/Corr.1](#), para. 6.

<sup>137</sup> See communication IND 3/2022; see also the submission from the Centre for Research and Advocacy, Manipur.

<sup>138</sup> Submission from Justice House.

<sup>139</sup> Submission from Parbatya Chattagram Jana Samhati Samiti.

<sup>140</sup> Submission from Maria Luisa Acosta, coordinator of the Centro de Asistencia Legal a Pueblos Indígenas.

<sup>141</sup> OHCHR sources.

<sup>142</sup> Submission from Asia Justice and Rights.

<sup>143</sup> Submission from Franciscans International.

<sup>144</sup> Submission from Maria Luisa Acosta, coordinator of the Centro de Asistencia Legal a Pueblos Indígenas.

<sup>145</sup> See [A/HRC/33/42/Add.1](#).



73. The effective implementation of collective reparations programmes and the full recognition of Indigenous Peoples, particularly women, as victims of violence constitute the cornerstone of the reconciliation process and an important element in fighting discrimination and marginalization.<sup>146</sup> “Peace agreements, truth commissions and other constructive arrangements that recognize and protect Indigenous Peoples’ land tenure are required to put an end to internal conflicts.”<sup>147</sup> For inclusive responses to militarization, Indigenous Peoples, including Indigenous women, must be included.<sup>148</sup> It has been noted that Indigenous Peoples play an important role in sustaining conflict agreements.<sup>149</sup>

74. Ways to ensure that grievance mechanisms are accessible to women include community-based reporting, telephone hotlines, and official legal complaints. Grievance mechanisms must ensure that plaintiffs are protected to avoid retaliation by individual workers or the corporation at large. Assurance of anonymity may be a prerequisite to participation by many women.<sup>150</sup>

75. Positive examples of national jurisprudence include reparations for violations of Indigenous Peoples’ rights in the context of armed conflict. In February 2016, the Guatemalan Court for High-Risk Crimes convicted two former military officers of crimes against humanity and approved reparations for 11 Indigenous Q’eqchi’ women who had been subjected to sexual violence during the country’s 30-year conflict. The Sepur Zarco case was the first case of conflict-related sexual violence challenged under the Guatemalan penal code. It was the first time that a national court had considered charges of sexual slavery during an armed conflict – a crime under international law.<sup>151</sup>

76. In January 2018, a federal court in the State of Amazonas in Brazil demanded compliance with free, prior and informed consent for the Waimiri Atroari people regarding any law or development plan affecting them and regarding military activities on their lands.<sup>152</sup>

77. In Mexico, through a process of consultation and dialogue, the Federal Government and the Traditional Authorities of the Yaqui People reached agreement in 2021 on a justice plan to address their historical claims to land and territory, and water, and in relation to the environment, and for their well-being, security and full development. At the presentation of the Yaqui Justice Plan, the President of Mexico apologized to the Yaqui people for the historical injustices.<sup>153</sup>

78. In terms of corporate accountability across borders, the Ontario Superior Court of Justice decision in *Choc v. Hudbay Minerals Inc.* and the Court of Appeal for British Columbia decision in *Garcia v. Tahoe Resources Inc.* suggest that Canadian courts are, for the first time, ready to play a regulatory role in preventing and remedying human rights violations committed abroad by private security personnel of Canadian corporations. The Guiding Principles on Business and Human Rights advocate for corporations and States to be considered part of the human rights law framework. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. The Guiding Principles rest on three pillars, the third of which is victims’ access to effective remedies. This is reflected in principle 25, which stipulates that a State’s duty to protect against business-related human rights abuse includes sufficient judicial, administrative and legislative measures to provide an effective remedy. The commentary for principle 23 of the Guiding Principles is an important consideration for the *Hudbay* case. When extractive industry operations occur in conflict areas, there may be a higher risk of human rights abuse by the security personnel of the business or its subsidiaries.

<sup>146</sup> A/HRC/16/51/Add.3 and A/HRC/16/51/Add.3/Corr.1.

<sup>147</sup> Submission from the Special Rapporteur on the rights of Indigenous Peoples.

<sup>148</sup> Aboi Paul Ngole, Matheniko Development Forum, presentation at the Expert Seminar, Geneva, December 2022.

<sup>149</sup> Ibid.

<sup>150</sup> Nora Götzmann, Linnea Kristiansson and Julia Hillenbrand, *Towards Gender-Responsive Implementation of Extractive Projects* (Danish Institute for Human Rights, 2019).

<sup>151</sup> See <https://www.unwomen.org/es/news/stories/2017/10/feature-guatemala-sepur-zarco-in-pursuit-of-truth-justice-and-now-reparations> (in Spanish).

<sup>152</sup> See A/HRC/39/62.

<sup>153</sup> See <https://www.inpi.gob.mx/gobmx-2021/Plan-de-Justicia-del-Pueblo-Yaqui.pdf> (in Spanish).

This is an important and necessary step in the direction of real corporate responsibility across borders.<sup>154</sup>

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<sup>154</sup> Susana C. Mijares Peña, “Human rights violations by Canadian companies abroad: *Choc v. Hudbay Minerals Inc.*”, *Western Journal of Legal Studies*, vol. 5, No. 1 (2014).

## Annex

### **Expert Mechanism Advice No. 16 (2023): Impact of militarization on the rights of Indigenous Peoples**

1. The Expert Mechanism provides the following advice regarding the causes and consequences of militarization and its impact on the rights of Indigenous Peoples within the context of States' human rights obligations and responsibilities. In this context, Indigenous Peoples are rights holders and States are the duty bearers, bound to uphold the human rights of Indigenous Peoples.
2. States should promote demilitarization of the lands, territories and resources of Indigenous Peoples, as a contribution to the realization of the collective right to live in freedom, peace and security as distinct peoples as well as to economic and social progress and development, understanding and friendly relations among nations and peoples of the world.
3. With respect to the presence of military forces in Indigenous lands and territories, States should be guided by article 30 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirms that military activities shall not take place in the lands or territories of Indigenous Peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the Indigenous Peoples concerned. "Public interest" does not constitute by itself a determinative factor and must comply with the principles of suitability, necessity and proportionality as defined within an overall framework of respect for human rights.
4. States should not undertake any militarization on the basis of public interest, without any legal and justifiable ground in terms of the associated restrictions on the rights of Indigenous Peoples. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument among those which might achieve the desired result; and they must be proportionate to the interest to be protected and defined within an overall framework of respect for human rights.
5. States should undertake consultation processes with the Indigenous Peoples concerned, even where sufficient public interest can be found. Furthermore, States should ensure that consultations are free from interference from government actors, companies or the military, and facilitate Indigenous Peoples' internal consensus-building and decision-making practices, respecting their time frames, customary laws and representative structures. Free, prior and informed consent is required in cases where military activities may have significant impacts, as required by the Declaration.
6. States should ensure that Indigenous Peoples' territories are free of State military interventions and that military bases, camps and training centres established in Indigenous territories without Indigenous Peoples' free, prior and informed consent are removed immediately, consistent with articles 19 and 30 of the Declaration.
7. States should respect internationally recognized human rights standards on the use of force when using law enforcement officials in Indigenous lands and territories. When applicable, States should also respect international humanitarian law in situations of armed conflict taking place in Indigenous Peoples' lands. International human rights law continues to apply in situations of armed conflict.
8. States should protect Indigenous Peoples, especially Indigenous rights defenders, ensuring that they are not subject to intimidation, harassment, acts of violence, killings, enforced disappearances or criminal prosecution when asserting the rights of their peoples in situations where Indigenous lands are militarized and/or in situations of armed conflict.
9. Indigenous Peoples have the right to oppose and actively express opposition to development projects promoted by the State or third-party business interests. Indigenous Peoples should be able to oppose or withhold consent to development

projects free from reprisals or acts of violence, or from undue pressures to accept or enter into consultations about them.

10. Companies should conduct due diligence to ensure that their actions will not violate or be complicit in violating Indigenous Peoples' rights, identifying and assessing any actual or potential adverse human rights impacts of a development project.

11. States should ensure that contentious issues between Indigenous Peoples, States and business enterprises arising in the implementation of major development projects are never handled primarily as a problem of national security or law and order, as that often leads to military or police action that may violate Indigenous Peoples' human rights. When a State determines that it is permissible to proceed with a development project that affects Indigenous Peoples without their consent, and chooses to do so, that decision should be subject to independent judicial review. States and corporations should adhere to the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

12. States should ensure that Indigenous Peoples' rights are respected when expanding protected areas, mitigating climate change and carrying out conservation projects, which often feature high levels of militarization. Indigenous Peoples should be part of any decision-making in such situations.

13. Indigenous Peoples' rights, including their rights to health, to education and to practise their livelihoods, should act as a constraint on any military programmes targeting their territories. States should implement effectively the international human rights obligations to prevent, protect from and remedy the effects of exposure of Indigenous Peoples to toxics in the context of militarization.

14. States should protect the rights of women and girls to be free from violence resulting from militarization and should ensure effective remedies for women who have been victims of such violence.

15. States should ensure that Indigenous women are included in any consultation processes under article 30 of the Declaration. Indigenous women's role in protecting their communities from the impact of militarization should be recognized.

16. States should, acting in compliance with international human rights principles, take all steps necessary to properly investigate all allegations of violations of Indigenous Peoples' rights, particularly by government officials, such as border guards, the military and the police, in situations of conflict or militarization. Furthermore, States should ensure that perpetrators are prosecuted and brought to justice to ensure that such human rights violations do not recur.

17. In upholding their duty to protect, States must ensure that non-State armed groups and private military and security companies do not violate Indigenous Peoples' rights, including those under domestic and international law. States should refrain from cooperating with such groups in the militarization of Indigenous territories.

18. States should identify and abandon counter-insurgency programmes and counter-terrorism and national security laws that result in the violation of Indigenous Peoples' rights. Further, States should refrain from utilizing such laws to punish Indigenous human rights defenders. States should not use counter-terrorism or counter-insurgency programmes as a justification for military activities on Indigenous Peoples' lands.

19. States should establish effective and credible safeguard mechanisms to address human rights abuses against Indigenous Peoples in the context of militarization and conflict, particularly in Indigenous peoples' attempts to safeguard and use their homelands and territories, including those that transcend national borders and in the transition from conflict to post-conflict situations. Those mechanisms should be developed in cooperation with Indigenous Peoples, civil society actors and national human rights institutions.

20. States are encouraged to establish an independent commission of enquiry to investigate allegations of human rights violations against Indigenous Peoples

perpetrated in the context of military operations into land and territories of Indigenous Peoples.

21. States are encouraged to enter into bilateral and regional agreements, including in situations of cross-border conflict or where international borders have been closed, to address cross-border issues, and to take effective measures to facilitate the implementation of the provisions contained in article 36 of the Declaration.

22. States should refrain from contaminating Indigenous territories with military waste, and should remedy the damage already caused to Indigenous lands and territories, to Indigenous Peoples' health and to their right to a healthy, clean and sustainable environment, from past polluting activities.

23. Indigenous Peoples should continue to build their own capacity on their rights affirmed in the Declaration and on how to enforce them at the national, regional and international levels, including in situations of contention between Indigenous Peoples, States and business companies, by – for example – making use of international human rights mechanisms such as the universal periodic review, the treaty bodies, including the complaint procedures, and the Working Group on business and human rights.

24. Indigenous Peoples should make full use of regional instruments such as the American Declaration on the Rights of Indigenous Peoples and regional mechanisms such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights in addressing human rights violations related to militarization on their lands.

25. States should consider Indigenous Peoples as partners and allies in conflict prevention, peacebuilding and peacekeeping, as well as maintaining a human rights agenda in any peace and security discussions. Indigenous Peoples should be involved in deliberations about peace and security at all levels.

26. Finally, in all situations where militarism affects Indigenous Peoples' lands and territories, the Expert Mechanism encourages States to engage with Indigenous Peoples in the spirit of the United Nations Declaration on the Rights of Indigenous Peoples, based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith.

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