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Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Special Rapporteur on the rights of indigenous peoples, submitted in accordance with Human Rights Council resolution [33/12](#).

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* [A/74/50](#).



Report of the Special Rapporteur on the rights of indigenous peoples

Summary

The present report is submitted pursuant to Human Rights Council resolution [33/12](#). In the first part of the report, the Special Rapporteur on the rights of indigenous peoples describes her activities during the past year and comments on her work on the rights of indigenous women and children. In the second part, she discusses the right of indigenous peoples to autonomy or self-government as an exercise of their right to self-determination, with a focus on identifying positive elements in existing arrangements, as well as limitations and challenges, and provides recommendations on ways to move forward in the adequate implementation of that right.

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I. Introduction

1. The present report is the last to be submitted to the General Assembly by the current holder of the mandate of Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz. In the first part of the report, the Special Rapporteur briefly describes her activities since her previous report (A/73/176) and her work on the rights of indigenous women and children. In the second part, she discusses some aspects of the right of indigenous peoples to autonomy or self-government as an exercise of their right to self-determination, with a focus on identifying positive elements in existing arrangements, as well as limitations and challenges, and provides recommendations on ways to move forward in the adequate implementation of that right.

II. Activities of the mandate holder in 2018 and 2019

2. In 2018 and 2019, since she last reported to the General Assembly, the Special Rapporteur continued to work on her main mandated tasks, namely, to develop thematic studies, conduct country assessments, respond to specific cases of alleged human rights violations and promote good practices.

3. From 19 to 29 November 2018, she conducted an official visit to Ecuador to assess the commitments made in the 2008 Constitution, which enshrined Ecuador as a plurinational country, to protecting the rights of indigenous peoples. The Special Rapporteur concluded that the Constitution provided a good basis upon which to build a more inclusive and intercultural country. While welcoming the steps taken by the Government through dialogue with indigenous peoples on intercultural bilingual education, she underlined that much more had to be done in terms of recognizing the fundamental human rights of the indigenous nationalities, peoples and communities of the country, in particular with regard to their rights to self-determination, lands, territories and resources. She also stressed her concern regarding the impacts of the prioritization of extractive activities on the rights of indigenous peoples, including indigenous peoples in isolation and recent contact, and regarding the lack of adequate progress in the harmonization of the ordinary and the indigenous justice systems.¹

4. From 8 to 16 April 2019, the Special Rapporteur visited Timor-Leste, where she assessed a number of issues affecting indigenous peoples, including customary justice systems, community lands, education and measures related to conservation and climate change adaptation and mitigation. While appreciating the attention provided by the Government to customary justice systems and indigenous languages and education, she expressed her concern about the impacts of State-sponsored extractive activities, forced displacement, the lack of an adequate regulatory framework regarding indigenous traditional lands and the high rate of chronic malnutrition in the country.²

5. In September 2019, the Special Rapporteur will submit a thematic report on the issue of indigenous justice systems to the Human Rights Council.³

6. Between 30 June 2018 and 1 July 2019, the Special Rapporteur issued 117 communications to more than 30 countries and to other entities, such as private

¹ A/HRC/42/37/Add.1.

² End of mission statement available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24492&LangID=E.

³ A/HRC/42/37. See also A/HRC/42/37/Add.2.

corporations and intergovernmental organizations.⁴ She also issued press releases on cases of urgency or special concern.⁵ She continued her collaboration with the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, in particular on the matter of indigenous peoples' right to autonomy or self-government.

7. The Special Rapporteur carried out numerous academic visits, including to Australia, Cambodia, Colombia and Mexico, and provided technical advice at the request of Member States. She continued to follow up on international conferences and meetings of relevance to the rights of indigenous peoples, such as the sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change and the high-level political forum on sustainable development. In addition, she continued to engage with United Nations entities to promote indigenous peoples' rights within the work of those entities. In January 2019, she was invited by the United Nations Educational, Scientific and Cultural Organization to participate as a keynote speaker in the launch of 2019 as the International Year of Indigenous Languages.

III. Indigenous women and children

8. The mandate of the Special Rapporteur requires that she pay special attention to the human rights and fundamental freedoms of indigenous children and women and that she take into account a gender perspective in the performance of her mandate.⁶

9. The current mandate holder and her predecessors have considered the human rights situation of indigenous women in particular, including by inserting specific sections into their country visit reports and focusing on situations of particular concern.⁷

10. The Special Rapporteur devoted a thematic report to the topic of indigenous women and girls, which she submitted to the Human Rights Council in 2015.⁸ She has also continued to pay particular attention to the human rights situation of indigenous women in all her country visits, holding separate meetings with them to address their specific concerns and provide recommendations, as reflected in her reports. With regard to children's rights, she has addressed concerns in the areas of education, health, out-of-home care and juvenile justice. She has visited schools and detention facilities for women and for minors.

11. The Special Rapporteur has attended meetings focused on matters related to the rights of indigenous women, including access to justice,⁹ violence against indigenous women and femicide, and the Sustainable Development Goals,¹⁰ and was a panellist at the sixty-first session of the Commission on the Status of Women. She took part in discussions on missing and murdered indigenous women in Canada and monitored

⁴ For details of all communications sent and information received under the mandate, see <https://spcommreports.ohchr.org/>.

⁵ See www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Indigenous_People.

⁶ Human Rights Council resolution 33/12, para. 1 (h).

⁷ See, for example, the report of the previous mandate holder in which he addressed the issue of murdered and missing indigenous women in Canada (A/HRC/27/52/Add.2).

⁸ A/HRC/30/41.

⁹ Namely, an expert seminar in 2016 on experiences in the litigation of cases of violence against women and access for women to justice in Central America, organized by the Canadian branch of Lawyers without Borders and Women Transforming the World, a non-governmental organization based in Guatemala, and a symposium in 2016 on the theme "Planning for change: towards a national inquiry and an effective national action plan", organized by the Feminist Alliance for International Action of Canada and the Native Women's Association of Canada.

¹⁰ Namely, a meeting organized by the United Nations Children's Fund in Manila in 2017.

progress made in the national inquiry. She is involved in the activities related to the celebration of the twenty-fifth anniversary of the Fourth World Conference on Women: Action for Equality, Development and Peace, which will culminate in a high-level meeting in 2020 on the theme of the realization of gender equality and empowerment of all women and girls.

IV. Implementing the right of indigenous peoples to self-determination through autonomy and self-government

12. In her previous report to the General Assembly, the Special Rapporteur provided an overview of the matter of the right of indigenous peoples to self-determination and self-government, in which she considered its internal and external aspects. She discussed the relevant international human rights framework and focused on the importance of its realization for the achievement of sustainable development and other international goals. She also stressed the need for further engagement on the topic by examining good practices and solutions to overcome the obstacles related to the implementation of the rights of indigenous peoples to self-determination and autonomy or self-government.¹¹

13. In the present report, the Special Rapporteur points to existing legal and other arrangements and processes that are reflective of or conducive to the recognition and realization of the right of indigenous peoples to autonomy or self-government, with a view to identifying positive elements, as well as limitations and challenges, in those practices, and provides recommendations on ways to move forward in the adequate implementation of indigenous peoples' right to build more inclusive and just societies.

14. The report is based on independent research, submissions from Member States following a call in 2018 for information on indigenous self-governance systems and the relevant reports of the mandate holder and United Nations human rights bodies. In order to receive additional views, the Special Rapporteur co-organized a meeting to discuss the autonomy arrangements put into practice and the self-governing systems that indigenous peoples are developing in different contexts. The meeting was hosted by the National Institute of Indigenous Peoples of the Government of Mexico.¹²

A. Positive and transformative nature of the right to self-determination of indigenous peoples

15. The Special Rapporteur reiterates that the right to self-determination of indigenous peoples is, fundamentally, a human right. Its realization is indispensable for indigenous peoples to enjoy all the collective and individual human rights pertaining to them. The right has an external and an internal dimension, expressed through the exercise of control over their lives and through the participation in all

¹¹ See also the note by the Secretariat transmitting the report of the international expert group meeting on the theme "Sustainable development in the territories of indigenous peoples" (E/C.19/2018/7, para. 27).

¹² The international seminar on the right to autonomy and self-government as a manifestation of the right to self-determination of indigenous peoples was hosted by the Ministry of Foreign Affairs of Mexico in Mexico City from 11 to 13 March 2019. It was organized by the Special Rapporteur, the Inter-American Commission on Human Rights, the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the International Work Group for Indigenous Affairs (IWGIA) and the Tebtebba Foundation, in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR).

decision-making that may affect them, in accordance with their own cultural patterns and structures of authority.¹³

16. The right of indigenous peoples to self-determination can be realized through autonomy or self-government, as reflected in article 4 of the United Nations Declaration on the Rights of Indigenous Peoples. The recognition and implementation of the right entail obligations for States, including the adequate incorporation of the right into national law, as well as the assumption of responsibilities by indigenous peoples themselves.¹⁴

17. The recognition of the right of indigenous peoples to self-determination has had a positive and transformative impact in international law. Moreover, recognizing that right can be transformative when implemented at the national level. The Special Rapporteur stresses that the adequate implementation of the right implies changes in the general governance of States, which will have a constructive impact on human rights compliance, the remedying of discrimination and inequality, the building of more democratic and inclusive societies and the enhancement of the legitimacy of the State itself.¹⁵

B. Need for an intercultural understanding to implement the right to autonomy or self-government

18. Notwithstanding the progress in the affirmation of the rights of indigenous peoples to self-determination and autonomy or self-government in the legal and academic discourse, the Special Rapporteur is of the opinion that insufficient attention has been devoted to the interpretation by indigenous peoples themselves of those rights and to their own initiatives to realize them. In her view, indigenous peoples' interpretation should be the starting point for the development and adoption of the legal, policy and administrative measures required for implementation.

19. The right to autonomy or self-government, just as the rights to lands and resources, is not only a legal concept for indigenous peoples but also a matter linked to the main aspects of their existence as differentiated societies.¹⁶ The right to self-determination is understood as a right to control their past, present and future: control of the past, in the sense of developing their own narrative of their histories; control of the present, implying the power to maintain the elements that characterize them as distinct societies; and control of the future, referring to the security of knowing that they will be able to survive as diverse peoples on their own terms.

20. In most cases, options for the enjoyment of those rights have been unilaterally defined by States. The proposals of indigenous peoples have had to be adapted to existing legal, policy and administrative frameworks. The imposition of State frameworks in the implementation of arrangements for autonomy or self-government

¹³ S. James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (New York, Oxford University Press, 2004); S. James Anaya, "The right of indigenous peoples to self-determination in the post-Declaration era", in *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*, Claire Charters and Rodolfo Stavenhagen, eds. (Copenhagen, IWGIA, 2009); and [A/HRC/9/9](#). For further references, see [A/73/176](#) and [A/HRC/15/35](#).

¹⁴ Catherine J. Iorns Magallanes, "International Law Association interim report on a commentary on the Declaration of the Rights of Indigenous Peoples", Victoria University of Wellington Legal Research Paper, No. 50/2012 (2012).

¹⁵ Anaya, "The right of indigenous peoples to self-determination"; Mattias Åhrén, *Indigenous Peoples' Status in the International Legal System* (Oxford, Oxford University Press, 2016); Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (Abingdon, United Kingdom of Great Britain and Northern Ireland, Routledge, 2016); Magallanes, "International Law Association interim report".

¹⁶ [E/C.19/2018/7](#), para. 28.

has often resulted in what could be termed “fragmented autonomies”. A comprehensive approach is needed that includes the indigenous conceptions of territory, control, power and relations. The nation-building processes that must be undertaken can progress only through mutual understanding and agreement between States and indigenous peoples.¹⁷

21. The Special Rapporteur has consistently highlighted the need for intercultural dialogue to develop common interpretations of the content and scope of and ways to realize indigenous peoples’ rights. For such dialogue to be fruitful, mutual trust must be built. The approach of States to indigenous claims needs to change. Such claims should be considered justice and human rights issues that, if adequately solved, would result in benefits for the country as a whole. The fulfilment of indigenous peoples’ rights should not be portrayed as a cost. That position creates unnecessary tensions between indigenous peoples and the State and dominant populations in the country, because of the promotion of the notion that indigenous peoples are demanding unwarranted privileges. Moreover, it is not conducive to the necessary partnership emphasized in the United Nations Declaration on the Rights of Indigenous Peoples. It is the Declaration itself, which is a consensus framework adopted by the General Assembly, that provides the best basis from which to launch or continue an intercultural dialogue on how to implement indigenous peoples’ rights in an environment of reciprocal cooperation.

C. Cross-cutting elements for the exercise of autonomy or self-government

1. Control over lands, territories and natural resources

22. The Special Rapporteur considers the enjoyment by indigenous peoples of their rights to their lands, territories and natural resources as the most crucial condition to allow for the exercise of their autonomy or self-government. In fact, for many indigenous peoples, the main objective of autonomy or self-government is to be able to maintain their relationship to their lands, territories and resources, which defines their cultures and identities as distinct peoples. The pre-eminence of those rights has been consistently reiterated by the United Nations, regional human rights bodies, legal experts and indigenous peoples themselves and has been a constant focus of State practice, through the adoption of legislation and other measures to give effect to those rights. Such recognition is also an essential aspect of remedy and reconciliation.¹⁸

23. Accordingly, the effective guarantee of the right of indigenous peoples to autonomy or self-government cannot be achieved without the adequate implementation of their rights to the lands and territories that they have traditionally

¹⁷ Asier Martínez de Bringas, “Autonomías indígenas en América Latina: una mirada comparada a partir de las dificultades para la construcción de un derecho intercultural”, *Revista d’Estudis Autònomic i Federals-Journal of Self-Government*, vol. 28 (December 2018); Pedro García Hierro and Alexandre Surrallés, *Antropología de un Derecho: Libre Determinación de los Pueblos Indígenas como Derecho Humano* (Copenhagen, IWGIA, 2009).

¹⁸ A/72/186; Magallanes, “International Law Association interim report”, p. 10; *Study of the Problem of Discrimination against Indigenous Populations* (United Nations publication, Sales No. E.86.XIV.3); Inter-American Commission on Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Series C, No. 79, 31 August 2001; *Case of the Moiwana Community v. Suriname*, Series C, No. 124, 15 June 2005; *Case of the Yakye Axa Indigenous Community v. Paraguay*, Series C, No. 125, 17 June 2005; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Series C, No. 146, 29 March 2006; *Case of the Xakmók Kasék Indigenous Community v. Paraguay*, Series C, No. 214, 24 August 2010; A/HRC/9/9; A/HRC/27/52.

owned, occupied or otherwise used or acquired. Measures that result in territorial fragmentation and limited jurisdiction hinder the exercise of autonomy or self-government.

24. The mandate holder and her predecessors have analysed the implementation of indigenous peoples' territorial rights in all their country visits and through numerous communications. While acknowledging the advances made in some countries in the legal recognition of those rights and related regulation, they have observed that existing efforts still present serious limitations. Even in countries in which indigenous peoples' rights to lands and resources have been recognized, the measures necessary for their realization have not been developed or implemented. Lack of coherence in the overall national legal framework, inadequate recognition of the subject of those rights, limited jurisdiction and lack of adequate adjudication systems are just a few of the problems identified.

25. A central issue in this regard is the question of the natural resources found within their territories. Most of the violations of the collective and individual human rights of indigenous peoples, including to life and security, are associated with access to and exploitation of natural resources within their territories.¹⁹ It is of fundamental importance that States and indigenous peoples reach a common understanding and mutual agreement on the issue, including full respect for indigenous peoples' human rights.

2. Indigenous authorities and institutions

26. Indigenous peoples' right to autonomy or self-government, in its internal and external dimensions, is exercised through their own authorities and institutions, which may be traditional but also recently created. The relation of such institutions with the State as a whole has to be established as part of the intercultural arrangements to be developed by States and indigenous peoples for the implementation of the right to self-determination.

27. Good practices in terms of the recognition of indigenous authorities and institutions, including indigenous justice systems, can be found in a significant number of countries.²⁰ Nevertheless, in most countries, the decision-making power of indigenous authorities is subordinated under State bodies and decision-making processes. In many countries, the recognition of indigenous governing institutions is still dependent upon inadequate processes of State registration and recognition, which unduly interfere in indigenous political, social and cultural decision-making. Government intervention in the appointment of traditional leaders seriously erodes indigenous self-government.²¹

28. Moreover, owing to current or historic circumstances, indigenous institutions and self-government structures have weakened and may be in need of support in order to be able to function and exercise their responsibilities. The Special Rapporteur has repeatedly urged States to support the strengthening of indigenous authorities and institutions as a priority.

3. Ways and means for financing indigenous peoples' autonomous functions and achieving their right to their own development

29. As stipulated in articles 4 and 34 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to ways and means for financing their autonomous functions. How that right is to be fulfilled depends upon

¹⁹ A/HRC/39/17 paras. 27–39; A/HRC/24/41; A/HRC/21/47; A/HRC/18/35.

²⁰ A/HRC/42/37.

²¹ A/HRC/15/35, paras. 49–50.

many factors, considering that, in some cases, indigenous peoples have or may have the resources to fully or partially provide for their autonomous functions themselves, while, in others, dispossession has rendered them dependent upon external support until they can regain control over their lives. Special measures may be necessary in that regard.

30. Financial arrangements with formalized indigenous autonomies exist in several countries, but in most cases it is the State that decides upon the priorities for the use of State funding inside indigenous territories. Moreover, transfers are sometimes channelled through local State authorities who control and condition their use and take over the administration of the resources and use a good part of them for other purposes. Culturally inadequate and highly bureaucratic administrative procedures for gaining access to and making use of the funds are also a problem.²²

31. At the same time, it has been claimed that the State provision of necessary special measures and basic services has been used as a control and assimilation mechanism, weakening, instead of strengthening, the enjoyment by indigenous peoples of their autonomy or self-government. It is essential to fully integrate into those measure and services the goal of ultimately empowering indigenous peoples to take control of their own affairs in all spheres of life.²³

32. In that context, the Special Rapporteur reiterates that the ability of indigenous peoples to decide on and control their own paths of development is a key element for the functioning of autonomous societies. Indigenous peoples' own priorities, models and proposals should be respected and supported, taking into account that, in most cases, fulfilment of the right to autonomy or self-government depends upon indigenous peoples' capacity to control and use their lands, territories and natural resources.

D. Indigenous autonomy or self-government: a variety of contexts and arrangements

33. Indigenous peoples around the world are extraordinarily diverse. They have different histories of colonization and relations with surrounding societies, different world views and different social, political, economic and cultural structures. They occupy different ecosystems and thus have developed different livelihood systems best adapted to their lands and territories. Furthermore, they live in different legal and political contexts, in States that have undergone nation-building processes resulting in structures that are generally discriminatory towards certain sectors of society and less tolerant of diversity. Those diversities are dynamic and are constantly evolving and adapting to broad historical and social processes.

34. In this extremely varied context, indigenous peoples are exercising or seeking to exercise their right to autonomy or self-government, translating it from paper into reality. The Special Rapporteur is conscious that, in most cases, the existing formalized arrangements are ongoing processes and respond only partially to the full dimension of the right to self-determination. Nonetheless, there is value in examining and assessing existing realities to draw conclusions and recommendations that could be taken into account by both States and indigenous peoples for the realization of the right to autonomy or self-government and the implementation of related State duties.

35. The present section provides an overview of some existing practices, including legal and other measures, which enable progress in or may be conducive to the

²² A/HRC/27/52/Add.2, paras. 42–45; A/HRC/21/47/Add.1, para. 70; A/HRC/15/37/Add.3, para. 83.

²³ A/HRC/12/34/Add.2, paras. 25 and 61; A/HRC/15/37/Add.4, paras. 32–49 and 66–70; A/HRC/36/46/Add.2; CAN 2/2012; CAN 2/2016.

realization of the right to autonomy or self-government. The overview is not exhaustive, nor does it reflect an attempt to classify or constrain ongoing realities into fixed models. The general categories provided below are intended to reflect some ongoing processes.

1. De facto exercise of autonomy and self-government

36. In some areas, indigenous peoples freely exercise their right to autonomy or self-government independently of State recognition. For example, isolated indigenous peoples in the Amazon Basin and the Gran Chaco have decided to avoid contact with outsiders. That decision is their expression of self-determination. Several countries, including Bolivia (Plurinational State of), Brazil, Colombia and Ecuador, have adopted legislation or public policies to respect that principle and to provide for protective measures, in particular to safeguard traditional territories from intrusion.²⁴

37. Many indigenous peoples live in remote areas in which there is little or no State presence and have limited interaction with outside societies and population centres. In that situation, they continue to control their lands and resources and exercise their own government functions, even if there is no State recognition of their rights or even of their existence. That de facto exercise may be put at risk when, for economic, strategic or other reasons, their areas become valuable to the State or other interested parties.

38. The lack of State capacity, for financial and other reasons, allows indigenous peoples to continue to exercise all or part of their self-governing functions. For example, in some countries, the ordinary justice system is present only in limited areas of the national territory, and indigenous communities maintain their customary justice systems, with good results in terms of violence prevention.²⁵ Indigenous guards operate in the fields of community security and territorial protection in several indigenous territories in Colombia, Ecuador and Mexico, among others.²⁶

39. The Special Rapporteur considers that the lack of formalization of indigenous peoples' rights risks making them dependent upon the will of the State and outside interests. States have a duty to legitimize those rights through adequate legal and administrative measures developed in cooperation with indigenous peoples. Indigenous peoples in many countries are requesting such recognition,²⁷ although in certain circumstances some indigenous peoples, nations and communities prefer to remain unrecognized and forgo the protections that come with recognition in order to maintain control and independence over their structures.²⁸

40. Inadequate legal and administrative measures adopted for the formal recognition of indigenous rights, in particular with regard to lands, territories and resources, may

²⁴ A/HRC/39/17/Add.1; OHCHR, "Directrices de protección para los pueblos indígenas en aislamiento voluntario y en contacto inicial de la región amazónica, el Gran Chaco y la región oriental de Paraguay", Geneva, May 2012; Inter-American Commission on Human Rights, *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas* (OEA/Ser.L/V/II, Doc. 47/13, 2013).

²⁵ As shown in official statistics in Guatemala. See A/HRC/39/17/Add.3, paras. 78, 79; A/HRC/42/37/Add.1 and A/HRC/42/37/Add.2.

²⁶ A/HRC/15/37/Add.3, paras. 24 and 62; A/HRC/39/17/Add.2, para. 52; A/73/176, para. 74; A/HRC/42/37/Add.1.

²⁷ For example, in Australia (A/HRC/15/37/Add.4, para.14, and A/HRC/36/46/Add.2, para. 22) and New Zealand (A/HRC/18/35/Add.4, paras. 46–47). In Guatemala, indigenous organizations, together with the public prosecutor, and with the support of OHCHR, promoted a constitutional amendment for the recognition of indigenous customary justice. Unfortunately, it was rejected by Congress (see GTM 1/2017).

²⁸ A/HRC/15/35, para. 51; see also examples in Mexico (E/CN.4/2004/80/Add.2, paras. 54–55 and 68, and A/HRC/39/17/Add.2, para. 53) and the United States of America (E/C.19/2018/7, para. 25).

have resulted in overlapping jurisdictions and third-party occupation of indigenous territories, eroding indigenous peoples' control and use. To address that situation, some indigenous peoples have decided to assert their autonomy to regain control of their lives and territories. In Peru, the Autonomous Territorial Government of the Wampis Nation was self-declared in 2015, after the adoption of its statute of autonomy. The Wampis wish to enter into dialogue with the State for the recognition of their authorities within the State.²⁹ In many countries, indigenous peoples have developed autonomy initiatives, life plans or similar proposals to shape their future within their lands and territories, and they are requesting States to respect and support their implementation.

2. Treaties, agreements and other constructive arrangements

41. Several countries have formally recognized the right of indigenous peoples to autonomy or self-government, whether through the inclusion of provisions in constitutions or in ordinary law, or through a formal treaty, agreement or constructive arrangement between the States and indigenous peoples. The extent and levels of recognition vary, as does the implementation of the right.

42. Historical treaties were signed by the British Crown and other colonial Powers as part of the colonization process in the Americas, West Africa and Asia, and are a central feature of relations between States and indigenous peoples in Canada, New Zealand and the United States of America, among others. Post-colonial States have continued the practice, as in the case of the agreement of wills signed by Chile and the King of the Rapa Nui in 1888.³⁰ As stipulated in the preamble to and article 37 of the United Nations Declaration on the Rights of Indigenous Peoples, treaties are the basis for a strengthened partnership between indigenous peoples and States based on good faith and mutual recognition and consent, and should be enforced, honoured and respected. Treaties provide the foundation for the self-determination of indigenous peoples. Treaty enforcement should go together with the recognition of indigenous peoples as political entities with inherent powers of self-government.³¹

43. The implementation and settlement processes of historic treaties have been analysed in depth at several United Nations-sponsored expert meetings and in the work of the mandate holder through communications and country visits.³² The current and previous mandate holders have stressed the importance of interpreting and implementing treaties in accordance with their original spirit and intent and as understood by indigenous peoples, in the light of international human rights law pertaining to indigenous peoples, and in a way that strengthens their right to self-determination.³³ Other important factors include the need to address the power imbalance in the settlement negotiations, the existence of adequate grievance mechanisms, such as the Waitangi Tribunal in New Zealand, and the adequate incorporation of treaties into national legal frameworks.³⁴

44. Modern treaties are also being negotiated and implemented. In Canada, 25 new treaties with indigenous peoples have been enforced since 1975, 22 of which include

²⁹ A/73/176, para. 77; E/C.19/2018/7.

³⁰ IWGLA, "The human rights of the Rapa Nui people on Easter Island: report of the international observers' mission to Rapa Nui 2011", Report No. 15, 2012. For information on the current situation, see CHL 1/2010, CHL 4/2010, CHL 1/2011 and CHL 1/2016.

³¹ E/CN.4/2006/78/Add.3; A/HRC/27/52/Add.2, paras. 9 and 39; A/HRC/21/47/Add.1, para. 3.

³² A/HRC/EMRIP/2014/CRP.1.

³³ E/CN.4/2005/88/Add.3 and E/CN.4/2005/88/Add.3/Corr.1; A/HRC/27/52/Add.2; A/HRC/18/35/Add.4.

³⁴ For information on advances and challenges in New Zealand, see A/HRC/18/35/Add.4, paras. 7–45, E/CN.19/2013/18 and CERD/C/NZL/CO/21-22, para. 12.

self-government arrangements.³⁵ In the Inuit region, two of the four agreements concluded include provisions on self-government. The Nunavut Land Claims Agreement was concluded in 1993 and entered into force in 1999. As part of the settlement, a political accord reflected in the Nunavut Act established the Nunavut Territorial Government, under which all inhabitants of Nunavut have equal rights. Lack of representation of the Inuit in managerial positions of the Government administration and claims that it does not adequately incorporate and implement Inuit traditional knowledge have opened discussions among Nunavut Inuit on the establishment of an alternative self-government, at least for the Inuit-owned lands. Relations with industry in terms of natural resource development are also strained.³⁶

45. As underlined in the previous report, there is an exemplary negotiated process towards an agreement on self-determination between Denmark and Greenland.³⁷ Treaty discussions are also ongoing in Australia.³⁸ In the Nordic countries, a recent example of a joint effort between States and indigenous peoples to establish a binding legal instrument is the Nordic Saami Convention, with a transboundary approach to Sami rights in Finland, Norway and Sweden. The process began in 1986. In 2001, an expert drafting group composed of six members was established: three appointed by each of the States and three appointed by each of the Sami parliaments in those countries. The resulting draft, issued in 2005, contained provisions related to self-determination, non-discrimination, governance, language and culture, education and rights to land, water and livelihoods, in addition to provisions for the implementation of the Convention. In 2010, a model for negotiations to finalize the Convention was agreed upon. The negotiations began in 2011 and ended in January 2017. The proposal is currently under consideration by the Governments of the three countries.³⁹

46. Agreements and other constructive arrangements between States and indigenous peoples have also been signed as a result of peace processes, usually after decades-long conflicts arising from the lack of recognition of and respect for indigenous fundamental rights. Some of those accords formally acknowledge different aspects of indigenous peoples' right to autonomy or self-government.

47. The Chittagong Hill Tracts Peace Accord was signed in 1997 by the Government of Bangladesh and Parbatya Chattagram Jana Samhati Samiti. The parties acknowledged the need to provide for the rehabilitation of those affected by the conflict, to strengthen the self-government systems of the region and to provide for the equitable resolution of land-related disputes. Within the centralized structure of the country, the legal and administrative system in the Chittagong Hill Tracts stands apart. The semi-autonomous administrative authority of the region is shared by representatives of the central Government (through district and subdistrict officers), the traditional institutions of the chiefs, headmen and village heads and elected councils at the district and regional levels, mainly composed of indigenous members, all of whom are supervised by the Ministry of Chittagong Hill Tracts Affairs. Legislation has been enacted to implement the self-government provisions, but the lack of constitutional recognition of the Accord leaves its implementation and even its preservation dependent upon the political will of the central Government. Concern regarding the lack of adequate progress in implementation, in particular with regard

³⁵ E/CN.4/2005/88/Add.3, sect. G.

³⁶ IWGIA, "Indigenous peoples' rights to autonomy and self-government as a manifestation of the right to self-determination", paper prepared for the international seminar held in Mexico City from 11 to 13 March 2019, pp. 31–33.

³⁷ A/73/176, para. 80.

³⁸ A/HRC/36/46/Add.2, paras. 24, 25 and 107 (a).

³⁹ A/HRC/33/42/Add.3; A/HRC/18/35/Add.2; A/HRC/15/37/Add.6. The English text of the Convention is available at www.sametinget.se/105173.

to the key provisions related to lands and resources, has been reiterated by United Nations human rights mechanisms, including the Special Rapporteur.⁴⁰

48. In 1995, the Agreement on Identity and Rights of Indigenous People was signed as one of the 12 peace agreements that make up the Agreement on a Firm and Lasting Peace between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca. Under the chapter on civil, political, social and economic rights, the Agreement provided measures regarding the recognition of indigenous authorities, the need to develop a decentralized administrative structure and the need to attain higher levels of participation of indigenous peoples at all levels of decision-making, including through the adoption of mechanisms for consultation. The Agreement also included a call for the recognition of indigenous justice systems and addressed some issues related to the rights to land. In 2005, the agreements were converted into national law. The Peace Secretariat of Guatemala has assessed the implementation of the Agreement on a Firm and Lasting Peace as being slow, a concern reiterated by United Nations entities and regional human rights bodies.⁴¹ As observed by the Special Rapporteur, the adequate recognition of indigenous autonomy or self-government, including the respect for indigenous government institutions, is still pending, and it is being further eroded by institutions derived from the agrarian regime and the decentralization laws.⁴²

3. Constitutional recognition of indigenous autonomy or self-government

49. In several countries, aspects of the right of indigenous peoples to self-determination, including the exercise of autonomy or self-government, have been constitutionally recognized. The recognition ranges from the acknowledgement of advisory functions and certain indigenous institutions to the incorporation of a wide range of territorial and self-government rights. In terms of the incorporation of such rights, the more advanced frameworks of constitutional and legal recognition are in Latin America. Some constitutions in Asia contain autonomy arrangements and acknowledge indigenous customary law and customary land tenure, while some constitutions in Africa have included the recognition of certain aspects of self-government, such as traditional authorities. Finally, a few countries have embarked upon nation-building processes as the natural consequence of the recognition of the plurinational, multi-ethnic and multicultural nature of their societies.

50. Constitutional recognition of the rights of indigenous peoples in Latin America has allowed for the formalization of different models of indigenous autonomy and self-government at the territorial, regional and municipal levels. Most of the constitutions have had some indigenous rights incorporated into them, together with the recognition of the multi-ethnic and multicultural reality of the societies in the region, although gaps in the implementation of the constitutional commitments, in particular those arising from provisions related to lands, territories and natural

⁴⁰ E/C.19/2011/6; E/C.19/2014/4; Raja Devasish Roy, "Challenges for juridical pluralism and customary laws of indigenous peoples: the case of the Chittagong Hill Tracts, Bangladesh", *Arizona Journal of International and Comparative Law*, vol. 21, No. 1 (Spring 2004); A/HRC/9/9/Add.1, para 50; BGD 4/2014; CCPR/C/BGD/CO/1, para. 12.

⁴¹ Peace Secretariat of Guatemala, *Agenda Política de la Paz 2017–2026: Compromisos por Cumplir*, (Guatemala City, April 2017); A/HRC/39/17/Add.3, paras. 17–18, 35 and 102–103; Inter-American Commission on Human Rights, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion* (OEA/Ser.L/V/II, Doc. 43/15, 31 December 2015); see also E/CN.4/2003/90/Add.2 and CERD/C/GTM/CO/16–17, paras. 15–16.

⁴² A/HRC/39/17/Add.3, paras. 63, 73–75 and 103.

resources, have been observed and raised in the mandate holder's mission reports to the countries in the region.⁴³

51. Several constitutions in the region set the legal framework for advanced models of territorial autonomy, as they provide for the exercise of autonomy within the demarcated territories of the indigenous communities. Panama was the first Latin American country to acknowledge the rights to collective ownership of lands and the political and administrative autonomy of indigenous peoples through the creation of indigenous regions. Five indigenous regions have been recognized through corresponding laws since 1938. Within the regions, indigenous peoples enjoy their rights to collective property of their lands and high levels of self-government, including the election of their own authorities and control over their internal affairs. They also enjoy formal control over non-renewable natural resources, although not always to an effective degree.⁴⁴

52. In Colombia, the 1991 Constitution includes a recognition of the multicultural and multi-ethnic reality of the country, together with a set of rights of indigenous peoples, including the election of two indigenous representatives to the Senate and the exercise of self-government and indigenous justice inside their recognized territories. The Constitution provides that indigenous territorial entities may be established and will receive State resources in order to exercise their autonomous functions. Owing to the lack of development of the legal framework necessary to create such entities, reserves have remained the recognized indigenous autonomous territories. About 719 reserves have been constituted, although progress in land titling and title clearing is slow.⁴⁵ The channelling of national funds through municipalities also has a negative impact on the decision-making authority of the indigenous communities.⁴⁶

53. In Nicaragua, the 1987 Constitution includes a recognition of the ethnic communities and indigenous peoples of the Atlantic coast and their rights to their own ways of social organization and to the free election of their authorities and representatives. That same year, an autonomous administrative structure was established for the region through the adoption of the Autonomy Statute for the Atlantic Coast Regions (Act No. 28). A decade later, Act No. 445 (2008) provided for the development of aspects of collective land tenure and communal authorities.⁴⁷ Inside the autonomous regions, three layers of government exist: communal authorities, territorial councils (made up of communal authorities in the same territorial unit) and the autonomous regional governments. The autonomous regional governments receive funding through the regular national budget and coordinate their competencies with the central Government through the relevant institutions. Indigenous communities within the autonomous regions continue to face a lack of

⁴³ A/72/186, paras. 27–31; Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, *Derechos de los Pueblos Indígenas: Marcos Jurídicos e Institucionales en los Estados Miembros del FLAC* (La Paz, January 2019); José Aylwin, “Los derechos de los pueblos indígenas en América Latina: avances jurídicos y brechas de implementación”, in Jane Felipe Beltrão and others, *Derechos humanos de los grupos vulnerables* (Barcelona, Red de Derechos Humanos y Educación Superior, 2014).

⁴⁴ A/HRC/27/52/Add.1.

⁴⁵ See the website of the National Commission for Indigenous Territories, available at <http://cntindigena.org>.

⁴⁶ For information on the lack of progress made in the implementation of the constitutional and legal obligations, see A/HRC/15/37/Add.3, E/CN.4/2005/88/Add.2 and E/C.19/2011/3.

⁴⁷ Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, *Derechos de los Pueblos Indígenas*, pp. 42 and 59.

progress in the demarcation and title clearing of their traditional lands and territories, which hinders their land security and thus the exercise of their authority.⁴⁸

54. Outside of Latin America, the Constitution of the Russian Federation includes a recognition of local self-government as a constitutional right that is not limited to indigenous peoples. Federal legislation that specifically addresses the implementation of that right by indigenous peoples has been developed.⁴⁹ In the Nordic countries, the Constitution of Norway stipulates that it is the responsibility of the State to create conditions enabling the indigenous Sami people to preserve and develop their language, culture and way of life. The Constitution of Sweden, as amended in 2011, includes a recognition of the Sami as a people and provides for the promotion of Sami cultural and social life and their right to practise reindeer herding, while article 121 of the Constitution of Finland includes a recognition of the Sami as an indigenous people, with the right to linguistic and cultural self-government in their native region.⁵⁰

55. In several Asian countries, some indigenous peoples were given special legal status during the colonial period, as was the case in Bangladesh, India, Indonesia and Malaysia. That status was later reflected in certain constitutions and laws, such as in the constitutional stipulations concerning the States in north-eastern India and the States of Sabah and Sarawak in Malaysia.⁵¹

56. The Federal Constitution of Malaysia divides constitutional authority among the federal Government and the governments and legislatures of its 13 States. After the States of Sabah and Sarawak, with a majority indigenous population, joined the federation, special provisions were incorporated into the Constitution for the “natives” or indigenous peoples in those States (but not for indigenous peoples in Peninsular Malaysia). The States of Sabah and Sarawak have autonomous authority with regard to land-related legislation, and laws introduced during the colonial period on customary land rights are still in place.⁵² Legal pluralism is an important feature of the Malaysian legal system, with the constitutional recognition of statutory law, common law and customary law.

57. The sixth schedule of the 1950 Constitution of India provides for the rights of “scheduled tribes” in several States in north-eastern India. Autonomous district and regional councils in those States may legislate on a number of subjects and have jurisdiction over the administration of justice and land. Through articles 371A and 371G of the Constitution, indigenous peoples in the States of Nagaland and Mizoram, respectively, are granted constitutional guarantees, including regarding their customary law and traditional justice systems, their cultures and their lands and resources. No acts of Parliament can be made applicable that affect religious and social practices, customary law and ownership and transfer of land and resources without the agreement of the legislative assemblies of those States.⁵³ The fifth schedule provides for the establishment of tribal advisory councils composed of

⁴⁸ For information on concerns over the situation in the autonomous regions, see NIC 2/2018, NIC 5/2015 and NIC 1/2013.

⁴⁹ A/HRC/15/37/Add.5, p. 58.

⁵⁰ For information on additional legislation and the implementation thereof, see A/HRC/33/42/Add.3 and A/HRC/18/35/Add.2; see also E/C.19/2013/18.

⁵¹ Stefania Errico, *The Rights of Indigenous Peoples in Asia: A Human Rights-based Overview of National Legal and Policy Frameworks against the Backdrop of Country Strategies for Development and Poverty Reduction* (Geneva, International Labour Organization (ILO), 2017).

⁵² For information on the implementation of such laws, see the 2013 report of the national inquiry into the land rights of indigenous peoples of the National Human Rights Commission of Malaysia.

⁵³ Article 371A (incorporated via the Constitution (13th Amendment) Act, 1962) for Nagaland, and Article 371G (incorporated via the Constitution (53rd Amendment) Act, 1986) for Mizoram, both following accords to end long conflicts in the areas.

indigenous members of the federal and state legislative assemblies in declared scheduled areas, in addition to certain protections regarding land rights.⁵⁴

58. The 1987 Constitution of the Philippines is one of the most progressive constitutions in Asia with regard to the recognition of indigenous peoples' rights. Article XII, section 5, provides that the State is to protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being, subject to national development policies and programmes. Article XIV, section 17, sets out that the State is to recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions and institutions, while article X, sections 1 and 15 to 19, provide for the establishment of autonomous regions in the Cordilleras and in Muslim Mindanao. The draft law to create the autonomous Cordillera region has been rejected twice in referendums (in 1990 and 1998), as indigenous peoples considered that their aspirations could be better realized through the adequate implementation of the Indigenous Peoples' Rights Act of 1997 (Republic Act No. 8371), which codifies a wide range of indigenous rights, including the rights to ancestral domains, self-government and self-determination, cultural integrity and free, prior and informed consent.⁵⁵

59. Generally speaking, federal or autonomy arrangements imposed on indigenous peoples' lands and territories that are not the result of joint agreements to ensure indigenous peoples' self-determination do not necessarily enhance indigenous autonomy or self-government.⁵⁶ Constitutional provisions, as well as legislation developed in some Asian countries with regard to the rights of indigenous peoples, in particular land laws, should be revisited in the light of international human rights laws on the rights of indigenous peoples, in particular the United Nations Declaration on the Rights of Indigenous Peoples.⁵⁷

60. At the regional level, the recognition of indigenous peoples and their rights is moving forward in Africa, as shown by the work of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. The Endorois and the Ogiek cases provide essential guidance on the implementation of the rights of indigenous peoples.⁵⁸

61. The Special Rapporteur notes that commitments in this area have been made by African countries under the universal periodic review mechanism of the Human

⁵⁴ E/C.19/2013/18; Raja Devasish Roy and John B. Henriksen, "Relevant constitutional provisions in other countries and safeguards on indigenous peoples' rights in other laws", addendum to the study on the theme "The constitutional reform in Nepal: indigenous peoples' rights" (Geneva, ILO, 2010); Raja Devasish Roy, "Traditional customary laws and indigenous peoples in Asia", Minority Rights Group International, March 2005.

⁵⁵ E/CN.4/2003/90/Add.3.

⁵⁶ A/HRC/12/34/Add.3, paras. 59–62.

⁵⁷ A/HRC/24/41/Add.3.

⁵⁸ African Commission on Human and Peoples' Rights and IWGIA, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* (Copenhagen, 2005); African Commission on Human and Peoples' Rights, 276/03 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v. Kenya*, decision of 2 February 2010; African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, judgment of 26 May 2017.

Rights Council,⁵⁹ that new relevant legislation is being developed⁶⁰ and that courts are playing an important role with regard to the rights of indigenous peoples in some countries.⁶¹ Spaces for the recognition of some autonomy and self-government functions are being incorporated into legal and policy frameworks, as assessed by the current and previous mandate holders in their visits to African countries, although progress in the crucial issue of securing indigenous peoples' rights to their lands and territories is still slow.⁶²

62. Although the term "indigenous peoples" is not used therein, several national constitutions in Africa provide for the recognition of rights and principles relevant to the indigenous communities within the respective countries, such as cultural and ethnic diversity (Central African Republic,⁶³ South Africa and Uganda), the right to culture (Congo, Uganda), non-discrimination (Cameroon, Democratic Republic of the Congo, Namibia and United Republic of Tanzania), measures for an enhanced participation of indigenous peoples in the political life of the country (Burundi) and special measures for "marginalized groups" (Democratic Republic of the Congo, Zambia). The Constitution of Cameroon provides for the protection of the "rights of indigenous populations", and the Constitution of the Democratic Republic of the Congo includes a commitment to ensuring the protection and promotion of vulnerable groups. The Constitution of Ethiopia includes a recognition of the right to self-determination of nations, nationalities and people, and article 40, paragraph 5, thereof provides for special protections for pastoralists.

63. Several national constitutions in Africa include a recognition of customary law and traditional authorities. Chapter 12 of the 1996 Constitution of South Africa includes a recognition of the status, functions and role of traditional chiefs according to customary law and provides for their protection. It allows for traditional authorities to function within the framework of the country's legal system and stipulates that the courts must apply customary law when applicable, subject to the Constitution and relevant national legislation. The right to self-determination of communities is also recognized under section 235. Moreover, the Constitution provides for restitution or redress for communities dispossessed of property after 19 June 1913.⁶⁴ The National House of Traditional Leaders advises the national Government on the role of traditional leaders and on customary law.

64. Similarly, the Constitution of Namibia includes a recognition of customary law and provides for the establishment of an advisory council of traditional leaders. Under the Traditional Authorities Act (25 of 2000), aspects of self-government for State-

⁵⁹ See the universal periodic review reports of Botswana (A/HRC/10/69 and A/HRC/38/8), Cameroon (A/HRC/11/21), Kenya (A/HRC/15/8), Rwanda (A/HRC/17/4 and A/HRC/31/8), Uganda (A/HRC/19/16) and the United Republic of Tanzania (A/HRC/19/4).

⁶⁰ For example, Act No. 5-2011 on the promotion and protection of the rights of indigenous populations of the Congo (see A/HRC/18/35/Add.5) and the Community Land Act (No. 27 of 2016) in Kenya.

⁶¹ Albert Kwokwo Barume, *Land Rights of Indigenous Peoples in Africa*, 2nd ed., Document 128 (Copenhagen, IWGIA, 2014); African Commission on Human and Peoples' Rights and IWGIA, *Report of the African Commission's Working Group of Experts*; ILO and African Commission on Human and Peoples' Rights, *Overview Report of the Research Project by the ILO and the African Commission on Human and Peoples' Rights on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries* (Geneva and Banjul, 2009).

⁶² See the reports on the missions to South Africa (E/CN.4/2006/78/Add.2), Kenya (A/HRC/4/32/Add.3), Botswana (A/HRC/15/37/Add.2), the Congo (A/HRC/18/35/Add.5) and Namibia (A/HRC/24/41/Add.1).

⁶³ The Central African Republic ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of ILO in 2010.

⁶⁴ A previous mandate holder recommended the adoption of similar measures for communities dispossessed before that date (E/CN.4/2006/78/Add.2, para. 87).

recognized traditional communities are acknowledged. Pursuant to section 3, subsection 1, of the Act, traditional authorities administer and execute customary laws and are responsible for protecting and promoting the culture, language, tradition and traditional values of the community and preserving cultural sites, works of art and traditional ceremonies. Recognized traditional authorities receive funding from the Government to carry out their functions.⁶⁵

65. The Constitution of Botswana provides for a house of chiefs with an advisory role to the National Assembly and executive authority on issues related to the tribes in the country. Under section 14, subsection 3 (c), the Constitution provides for a restriction in the freedom of movement to ensure the protection or well-being of Bushmen. Governance at the community level is through the system of chief and ward meetings, recognized and regulated by the Bogosi Act, a system that originated in Tswana custom, although not necessarily adequate for non-Tswana peoples.⁶⁶

66. The 2010 Constitution of Kenya includes several provisions related to vulnerable and marginalized communities, who are defined in a way consistent with the language of the United Nations Declaration on the Rights of Indigenous Peoples.⁶⁷ It promotes and protects indigenous languages, includes a recognition of the cultural and intellectual rights of those communities and their right to dual citizenship, important for indigenous peoples living across national borders, and includes provisions for affirmative measures. In terms of autonomy and self-government, the Constitution refers to devolution, meaning the transfer of decision-making powers to authorities at the subnational level, which will increase the participation of indigenous communities in overall governance. Measures to increase participation in the political life of the State are also included, as is a chapter on land and environment, which provides for the recognition of community lands, a fundamental issue further developed in the recent Community Land Act (No. 27 of 2016) and through the establishment of a national land commission.

67. The Special Rapporteur considers that the above-mentioned legal and policy measures and commitments, as well as the growing regional jurisprudence on the rights of indigenous peoples, may provide a platform for States and indigenous peoples to launch or continue a discussion on how to advance the harmonization of such commitments and measures with international human rights laws on the rights of indigenous peoples. She stresses the constructive role that engagement with her, as mandate holder, the regional human rights systems and organizations and the national human rights institutions can play in that regard.

4. Recognition of plurinationality and nation-building processes

68. As previously mentioned, the full recognition of the right of indigenous peoples to self-determination calls for a reconceptualization of the State. A new generation of constitutions and subsequent legislation has emerged as a result of the assumption of the plurinational nature of the States, as has the recognition of the need for renewed nation-building processes to adequately include indigenous peoples.

69. The 2008 Constitution of Ecuador enshrines Ecuador as a plurinational and intercultural State. It includes a recognition of the rights of indigenous nationalities, peoples and communities to preserve and develop their models of social organization and authorities, the exercise of jurisdictional functions by indigenous authorities and the application of indigenous justice systems. It also enshrines the rights of indigenous peoples over their traditional lands and territories and provides that

⁶⁵ A/HRC/24/41/Add.1, para. 51.

⁶⁶ A/HRC/15/37/Add.2, paras. 10, 11, 16, 50, 51 and 91.

⁶⁷ Barume, *Land Rights of Indigenous Peoples in Africa*, p. 127; A/72/186; E/C.19/2013/18.

indigenous peoples may create autonomous indigenous territorial constituencies, which are to be incorporated into the political and administrative structures of the decentralized State. However, the complex process of establishing those constituencies, the lack of State support and the subordination of the model to the administrative division and procedures of the State are factors that may explain the limited interest of indigenous peoples in their creation.⁶⁸

70. The 2009 Constitution of the Plurinational State of Bolivia provides that indigenous peoples have the right to self-determination, which includes the rights to autonomy, self-government, culture, institutions and the consolidation of their own territorial entities. Through Act No. 3760 of 7 November 2007, the United Nations Declaration on the Rights of Indigenous Peoples was incorporated into national law. The Framework Act on Autonomous Entities and Decentralization (No. 031 of 19 July 2010) allows for the establishment of “indigenous and aboriginal campesino autonomous entities”, which can be created by means of conversion to municipalities or territorial entities. Although the legal framework requires complex exercises of adjustment and the administrative process is extremely long and bureaucratic, some indigenous peoples are creating their own self-governed autonomous entities within the framework.⁶⁹ Such is the case of the Guarani Autonomy of Charagua-Iyambae, for which a statute of autonomy was adopted in September 2015.⁷⁰ In 2016, representatives to all autonomous bodies were elected, and they took office in 2017. The implementation of this model through the traditional collective decision-making bodies is proving difficult, as it involves making consensual structural decisions inside an autonomy circumscription that does not match traditional territorial divisions and includes non-indigenous populations. Nevertheless, the Charagua-Iyambae autonomous government is designing tools for territorial planning and management inspired by the community’s cultural paradigms and adopting ways of coordinating with the traditional authority structures. The case illustrates the potential, as well as the difficulties, of the exercise of autonomy or self-government through frameworks of planning and management that are very different from the reality, practices and logics of indigenous peoples themselves.

71. Nepal initiated a historic process of recognition of the rights of indigenous nationalities during the transition to multiparty democracy through the adoption of the 1990 Constitution. In 2002, the National Foundation for Development of Indigenous Nationalities Act was adopted. Promising steps taken towards the recognition of indigenous peoples’ rights are the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of ILO and the adoption of the 2007 Interim Constitution, which provided for some cultural and participation rights. Indigenous participation in the process to develop a new constitution after 2007 and to establish a federal State, which indigenous nationalities considered an opportunity for the recognition of their autonomy and self-government, was increasingly restricted, and the adopted 2015 Constitution does not adequately reflect the aspirations and proposals of indigenous nationalities.⁷¹

⁶⁸ The implementation of the Constitution was the focus of the Special Rapporteur’s mission to the country in 2018 (see [A/HRC/42/37/Add.1](#)).

⁶⁹ A total of 36 indigenous autonomous entities have begun the process towards self-government, 21 of which are doing so by converting into municipalities and 15 into indigenous territorial entities (IWGIA, *The Indigenous World* (Copenhagen, 2018), p. 181).

⁷⁰ Following a 2009 referendum through which participants declared their support for the establishment of an autonomy.

⁷¹ [A/HRC/12/34/Add.3](#); see also Case No. NPL 5/2012 and AL 15/10/2012 in [A/HRC/24/41/Add.4](#), and [CERD/C/NPL/CO/17-23](#), paras. 22–23.

5. Autonomy through local government structures

72. For many reasons, including as a result of history, patterns of habitation, ways of life, population demographics, processes of colonization and nation-building and legal frameworks, indigenous peoples in certain countries or areas within a country exercise powers of autonomy or self-government through local governments within the conventional administrative structure of the country. A number of countries in Asia recognize to varying degrees indigenous peoples' traditional institutions as the legal authorities at the local level.⁷² That is also the case of indigenous municipalities found, for example, in Ecuador,⁷³ Guatemala⁷⁴ and Mexico.

73. The Constitution of Mexico, following its controversial amendment in 2001, includes a recognition of the right of indigenous peoples to self-determination, although with restrictions that make it difficult to implement the right in practice.⁷⁵ The Constitution also includes a recognition of indigenous peoples' autonomy regarding, *inter alia*, the application of their own legal systems to resolve internal conflicts and to elect their authorities or representatives for their internal government according to their norms, procedures and customs. Owing to both the serious constitutional limitations and the lack of enabling legislation to put into effect the right to self-determination, indigenous peoples in Mexico have developed different ways of exercising autonomy and self-government. An important feature has been the demand of indigenous municipalities and communities to elect their authorities through their customary system. The Constitution of the State of Oaxaca provides for that right, and 417 municipalities (of a total of 570) choose their authorities through their customary election processes and without the presence of political parties. Following the amendment to the Constitution, several municipalities with indigenous peoples appealed to the national electoral courts to demand the recognition of customary electoral systems for municipal elections. This is now the case in Cherán (Michoacán), Ayutla de los Libres (Guerrero) and Oxchuc (Chiapas).⁷⁶

6. Functional autonomies: the exercise of autonomy or self-government in specific sectors

74. As mentioned in the previous report,⁷⁷ the ethnic-based recognition of indigenous autonomy or self-government in specific sectors also exists in certain countries, which may be exercised beyond the boundaries of indigenous territories. Those functional autonomy arrangements are important in the context of migration and urbanization, as they may allow indigenous peoples to make decisions on issues affecting indigenous members outside their lands and territories. An example of such an exercise in autonomy is decision-making regarding education laws and policies, including for indigenous children residing outside the traditional territories.

7. Permanent instances for partnership and intercultural dialogue

75. The existence of institutional processes and bodies for intercultural dialogue and continuous engagement between indigenous peoples and States has shown positive results. Sami parliaments in the Nordic countries provide a very relevant example.⁷⁸ In Colombia, the Standing Committee for Consultation with Indigenous Peoples and

⁷² Errico, *The Rights of Indigenous Peoples in Asia*, p. 27.

⁷³ A/HRC/42/37/Add.1.

⁷⁴ A/HRC/39/17/Add.3.

⁷⁵ E/CN.4/2004/80/Add.2, para. 57; A/HRC/39/17/Add.2, paras. 2, 49–50 and 96.

⁷⁶ A/HRC/39/17/Add.2, para. 51.

⁷⁷ A/73/176, paras. 68 and 88.

⁷⁸ A/HRC/33/42/Add.3, paras. 20, 36–37 and 56–59; A/HRC/18/35/Add.2; A/HRC/15/37/Add.6; A/73/176, para. 82.

Organizations, which coordinates between State institutions and indigenous peoples, has helped to sustain dialogue even in difficult circumstances, in spite of its limitations.⁷⁹ Joint State-indigenous peoples' bodies exist in many countries, although indigenous power within them is usually limited. It is essential that such mechanisms allow for true joint decision-making and go beyond mere advisory roles. States should consider mechanisms proposed or established by indigenous peoples themselves.⁸⁰

V. Conclusions and recommendations

76. The full realization of the right of indigenous peoples to autonomy or self-government implies deep changes in the legal and structural architecture of the State, amounting to what has been termed "belated nation-building". In most cases, those implications have not been fully recognized and addressed by States.⁸¹ Nevertheless, instances of "hopeful practices" can be found, which may provide useful guidance and practical points for reflection on the full realization of indigenous peoples' collective and individual human rights.

77. Existing positive State practices include the adequate constitutional and legal recognition of the right of indigenous peoples to self-determination and the related right to autonomy or self-government. The recognition of the plurinational and multicultural nature of the States in which indigenous peoples live, the constructive interpretation and implementation of treaties and the development of new treaties and agreements or constructive arrangements based on good faith and mutual trust provide a solid basis upon which to build the necessary partnership between States and indigenous peoples.

78. Legal, administrative and policy measures regarding the rights of indigenous peoples to their lands, territories and natural resources have been adopted in several countries. Indigenous authorities, self-government institutions and jurisdictions also enjoy varying degrees of recognition in a significant number of countries. Initiatives to foster dialogue and, to a certain extent, joint decision-making have also been established.

79. Different arrangements are in place in relation to the ways and means for financing indigenous autonomous functions, such as regular transfers from the national budget or funds agreed upon through treaty implementation processes. Special measures have also been adopted in some countries to combat inequality and discrimination in the context of the socioeconomic situation that indigenous peoples face in many countries.

80. Notwithstanding those positive practices, the Special Rapporteur considers that most of the existing autonomy or self-government arrangements do not completely fulfil the international human rights obligations of States regarding the rights of indigenous peoples.

81. The Special Rapporteur recommends the following:

(a) States should enshrine the right of indigenous peoples to self-determination and the related right to autonomy or self-government in their national legal systems, including in their national constitutions;

(b) States should adopt and implement all measures necessary to ensure the adequate recognition of the rights of indigenous peoples to their lands, territories and natural resources, as that recognition represents the cornerstone

⁷⁹ A/HRC/15/37/Add.3, paras. 46.

⁸⁰ A/73/176, para. 82.

⁸¹ A/HRC/9/9, para. 51.

of their autonomy and self-government and is essential for their survival as distinct peoples;

(c) Existing arrangements in terms of indigenous autonomy and self-government in their internal and external aspects should be reviewed and harmonized with the internationally recognized human rights standards on the rights of indigenous peoples, in particular the United Nations Declaration on the Rights of Indigenous Peoples;

(d) Mutually agreed upon and formalized mechanisms for permanent intercultural dialogue between States and indigenous peoples should be jointly established;

(e) States must adopt the measures necessary to provide ways and means for the financing of indigenous peoples' autonomous functions. Systems to access and utilize State resources should be culturally adequate and under the direct control of indigenous peoples. States should refrain from imposing their own priorities on the use of State funds corresponding to indigenous autonomous governments;

(f) States have the duty to provide social services and, if needed, special measures for indigenous peoples to enjoy their basic human rights. The fulfilment of that obligation must not be used as a control mechanism. In that sense, all existing or proposed measures have to be assessed and, if necessary, modified considering two main questions: whether they strengthen indigenous peoples' self-determination or, on the contrary, force them into schemes that lead to integration or assimilation, and whether the measures have been developed and are being implemented in true partnership with indigenous peoples;

(g) A change in the mindset of States and societies is needed so that indigenous peoples and their cultures may be considered a valuable part of the identity of the State itself and indigenous peoples' claims are dealt with as a fundamental human rights and justice issue and not as a threat to State structures or welfare. The national education and justice systems, as well as the media, have an important role to play in that regard;

(h) Lastly, it is important to stress that indigenous peoples themselves have taken steps to enjoy their right to autonomy or self-government and have developed substantive proposals in that regard. States should prioritize the support for those proposals.

82. Taking into account existing positive practices and the multiple pending challenges, the Special Rapporteur considers that there is a need for capacity-building for both States and indigenous peoples as concerns the exercise of State duties and indigenous responsibilities for the implementation of the right of indigenous peoples to autonomy or self-government. Exchange and cooperation among indigenous peoples themselves on their experiences, successes and challenges, as well as inter-State dialogues on the issue, should be encouraged and supported.

83. In that context, the Special Rapporteur calls upon the United Nations system, as well as the regional human rights systems and national human rights institutions, to support capacity-building, intercultural dialogue and information exchange among States and indigenous peoples to achieve the full realization of indigenous peoples' right to autonomy or self-government.