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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Recognition of Indigenous Peoples

**Report of the Special Rapporteur on the rights of Indigenous Peoples,
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Summary

The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of Indigenous Peoples pursuant to his mandate under Council resolution 51/16. In the report, the Special Rapporteur provides a thematic analysis of the recognition of Indigenous Peoples worldwide.

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I. Introduction

1. The twentieth anniversary of the adoption, in 2007, of the United Nations Declaration on the Rights of Indigenous Peoples is approaching. The Declaration provides a framework for the recognition of Indigenous Peoples and establishes minimum standards for the protection of their rights worldwide. It has enhanced constitutional and legal recognition of Indigenous Peoples in various countries across the world.
2. However, misunderstanding of the meaning of the term “Indigenous Peoples” continues to hamper the implementation of the Declaration. In Africa and Asia, in particular, many States are still hesitant to recognize Indigenous Peoples, as they misunderstand the term as divisive or seeking to privilege certain groups over others.
3. The present report by the Special Rapporteur on the rights of Indigenous Peoples is not aimed at experts in Indigenous Peoples’ rights. The purpose of the report is rather to present foundational concepts and principles concerning Indigenous Peoples and their rights, to facilitate understanding and adoption of these concepts by States that are facing challenges in their understanding.
4. The term “Indigenous Peoples” has become a human rights call for justice. It is a demand for redress, made by distinct peoples that suffered or continue to suffer historical injustices, grounded in racial discrimination, which led to loss of their ancestral lands and distinct culture. The Declaration was formulated to address this injustice and foster reconciliation and partnership between Indigenous Peoples and States.
5. States should recognize Indigenous Peoples as specific rights holders under international law. However, State recognition neither creates Indigenous Peoples nor grants them their rights. The rights of Indigenous Peoples are guaranteed under international law, and they are binding on States regardless of recognition in domestic laws. Refusal by a State to recognize Indigenous Peoples, or denial by a State of their existence on its territory, does not diminish the rights held by Indigenous Peoples.
6. The report provides regional contextualization of the concept of “Indigenous Peoples” in Africa and Asia. It also addresses the conflation of Indigenous Peoples with local communities, which contributes to misunderstandings and can undermine the recognition of Indigenous Peoples by States.

II. States’ obligation to recognize Indigenous Peoples

7. States have the obligation to recognize Indigenous Peoples as particular subjects of international law, and holders of specific rights under international law. Without such recognition, States cannot fulfil their international obligations under the Declaration¹ and other international instruments. However, international human rights law is not prescriptive as to the model through which Indigenous Peoples must be recognized. The aim of the present report is to provide recommendations for closing this outstanding human rights gap.
8. In the present section, the legal framework for recognition is outlined, the implementation steps are detailed and the negative effect of conflating Indigenous Peoples with local communities on recognition is examined.

A. Normative framework of the obligation of States to recognize Indigenous Peoples

9. The Declaration is premised on an acknowledgement of the historical injustices that Indigenous Peoples have suffered. It constitutes a reaffirmation the obligation of States to recognize Indigenous Peoples as rights holders, including of the right to self-determination, to overcome past and present patterns of discrimination.²

¹ Declaration, preamble and art. 38.

² See *ibid.*, preamble.

10. The Declaration does not provide special or new rights to Indigenous Peoples. Rather, it reformulates and codifies universal human rights, as enshrined in numerous legally binding human rights instruments, contextualizing them to the circumstances of Indigenous Peoples. It is a remedial instrument, aimed at ensuring that Indigenous Peoples can fully enjoy the range of universal human rights to which they are equally entitled. The obligation of States to recognize Indigenous Peoples, therefore, also has its basis in international human rights conventions.

11. Indigenous Peoples are recognized as “peoples” in international law, and as such are entitled to the right to self-determination, guaranteed by common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Under article 1, by virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development. Correspondingly, under article 2 (2) of both the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, States are required to adopt laws and other measures to give effect to the rights recognized in those instruments.

12. The treaty bodies have further elaborated on the status of Indigenous Peoples in international law. They have underlined that Indigenous Peoples should be recognized as holders of the rights to cultural integrity,³ to effective participation in decision-making,⁴ to lands and to way of life as a manifestation of culture,⁵ not to be forcibly displaced⁶ and to intergenerational cultural integrity.⁷

13. The Human Rights Committee has recalled that measures should be taken to ensure that Indigenous Peoples can effectively participate in decisions of concern to them, and, specifically, that it is of vital importance that measures that compromise or interfere with the culturally significant economic activities of an Indigenous community are taken with the free, prior and informed consent of the members of the community.⁸

14. The same Committee has further affirmed that, in the case of Indigenous Peoples, the notion of “home”, under article 17 of the International Covenant on Civil and Political Rights, should be understood within the context of the special relationship that Indigenous Peoples have with their traditional territories and of their way of life.⁹ In a landmark case against Australia, concerning the impact of climate change on the Torres Strait Islander people, the Committee found that the right to culture and family life was deeply tied to the land and environment, and the State’s inaction had constituted a breach of its obligations under the Covenant.¹⁰

15. Under the International Convention on the Elimination of All Forms of Racial Discrimination, States are required to recognize Indigenous Peoples as affected by structural discrimination that is to be addressed through special measures.¹¹ The Committee on the Elimination of Racial Discrimination has constantly reminded States of their obligations to recognize Indigenous Peoples as holders of the rights to self-determination, lands, autonomy and many others. In its general recommendation No. 23 (1997), the Committee called upon States Parties to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources. Furthermore, the Committee has reaffirmed that it adheres to the human rights-based approach of free, prior and informed

³ See Human Rights Committee, *Länsman et al. v. Finland* (CCPR/C/52/D/511/1992).

⁴ See Human Rights Committee, general comment No. 23 (1994).

⁵ See Human Rights Committee, *Lubicon Lake Band v. Canada* (CCPR/C/38/D/167/1984).

⁶ See Human Rights Committee, *269 members of the Maya K’iche’, Ixil and Kaqchikel peoples v. Guatemala* (CCPR/C/143/D/4023/2021-4032/2021).

⁷ Ibid.

⁸ Human Rights Committee, *Oliveira Pereira et al. v. Paraguay* (CCPR/C/132/D/2552/2015), para. 8.7.

⁹ Ibid., paras. 8.2 and 8.3.

¹⁰ See Human Rights Committee, *Billy et al. v. Australia* (CCPR/C/135/D/3624/2019).

¹¹ See art. 2 (2).

consent as a norm stemming from the prohibition of racial discrimination, which is the main underlying cause of most discrimination suffered by Indigenous Peoples.¹²

16. Under the Convention on the Rights of the Child, States are required to recognize Indigenous children as holders of the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.¹³ The Committee on the Rights of the Child has addressed the rights of Indigenous children in its general comments¹⁴ and communications.¹⁵

17. The Committee on Economic, Social and Cultural Rights has affirmed that land is closely linked to the right to self-determination and that Indigenous Peoples can freely pursue their political, economic, social and cultural development and dispose of their natural wealth and resources for their own ends only if they have land or territory in which they can exercise their self-determination.¹⁶

18. The Committee on the Elimination of Discrimination against Women has noted that discrimination and violence are recurrent phenomena in the lives of many Indigenous women and girls living in rural, remote and urban areas.¹⁷ The Committee has provided comprehensive guidance to States on implementing their obligations, highlighting the need for legal recognition of Indigenous identity, protection from gender-based violence, and access to culturally appropriate health and education services.¹⁸ In its Views concerning a communication on the subject of gender discrimination against Indigenous Peoples, the Committee recalled that Indigenous Peoples and individuals had the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned, which was essential to prevent forced assimilation. It also recalled that failure to consult Indigenous Peoples and Indigenous women whenever their rights might be affected constituted a form of discrimination, and that the obligation to obtain free, prior and informed consent had been qualified as a general principle of international law.¹⁹

19. The Committee of Experts on the Application of Conventions and Recommendations, of the International Labour Organization (ILO), has repeatedly reminded States of their obligations to recognize Indigenous Peoples as such, to undertake systematic and coordinated efforts to protect their rights, to consult with Indigenous Peoples with the objective of achieving agreement or consent and to ensure their participation in decision-making processes. The Committee of Experts has underscored the importance of guaranteeing that all peoples who meet the criteria provided for in the ILO Indigenous and Tribal Peoples

¹² Committee on the Elimination of Racial Discrimination, *Ågren et al. v. Sweden* (CERD/C/102/D/54/2013), para. 6.16.

¹³ Art. 30.

¹⁴ See Committee on the Rights of the Child, general comments No. 20 (2016), No. 21 (2017) and No. 26 (2023), and joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017).

¹⁵ In September 2024, the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights adopted Views concerning three communications against Finland: *M.E.V. S.E.V. and B.I.V. v. Finland* (CRC/C/97/D/172/2022) and *J.T. et al. v. Finland* (E/C.12/76/D/251/2022-E/C.12/76/D/289/2022). Both Committees concluded that the country had violated the rights of belonging to Kova-Labba Siida, a community of Sami reindeer herders, by granting a mineral exploration permit and a reservation in respect of areas on their traditional territory without conducting an impact assessment and without obtaining their free, prior and informed consent.

¹⁶ Committee on Economic, Social and Cultural Rights, general comment No. 26 (2022), para. 11.

¹⁷ See Committee on the Elimination of Discrimination against Women, general recommendation No. 39 (2022).

¹⁸ Ibid.

¹⁹ *Matson, I.D.M. and A.M.M. v. Canada* (CEDAW/C/81/D/68/2014), paras. 18.4 and 18.11.

Convention, 1989 (No. 169), independent of their legal recognition in national legislation, enjoy the rights recognized in that instrument.²⁰

20. The inter-American human rights system has been instrumental in shaping the normative framework for the recognition of Indigenous Peoples in the Americas. It has clarified that recognition entails legal acknowledgment of Indigenous identity, land tenure, and governance, as well as meaningful participation in decisions affecting their rights.²¹ States are thus obligated to align their domestic legal systems with these standards and to take measures that ensure the full realization of Indigenous Peoples' rights. The Inter-American Commission on Human Rights has affirmed that recognition of Indigenous Peoples includes legal acknowledgment of their existence, identity and traditional governance systems.²² Under article 1 (2) of the American Declaration on the Rights of Indigenous Peoples, self-identification as Indigenous Peoples is a fundamental criterion for determining to whom the American Declaration applies, and States must respect the right to such self-identification as Indigenous, whether individually or collectively, in keeping with the practices and institutions of each Indigenous People.

21. The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have played a pivotal role in advancing the recognition and protection of Indigenous Peoples in Africa. They have developed robust jurisprudence and institutional practice affirming the distinct identity, cultural integrity and land rights of Indigenous Peoples.²³ The Commission has issued country-specific recommendations urging States to recognize Indigenous Peoples in national legislation, protect their land rights and ensure their participation in public life.²⁴

B. Steps in implementing the obligation to recognize Indigenous Peoples

22. Recognition of Indigenous Peoples by States is a process that entails several steps, including understanding the contemporary meaning, in the context of human rights, of the term "Indigenous Peoples", recognizing Indigenous Peoples as a specific group of rights holders under international law and distinguishing Indigenous Peoples from other groups, such as peasants, minorities and local communities.

²⁰ Committee of Experts on the Application of Conventions and Recommendations, *Indigenous and Tribal Peoples Convention, 1989 (No. 169): General Observation, Publication 2019* (Geneva, ILO, 2019), p. 1.

²¹ See, for example, the following judgments of the Inter-American Court of Human Rights: *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment, 31 August 2001; *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005; and *Saramaka People v. Suriname*, Judgment, 28 November 2007.

²² See Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System* (Washington, D.C., 2009).

²³ See, for example, African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, communication No. 276/2003, Decision, 25 November 2009; and 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.

²⁴ See, for example, African Commission on Human and Peoples' Rights, *Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, Democratic Republic of the Congo) v. Democratic Republic of the Congo*, communication No. 588/15, Decision, May 2022, and Corrigendum, June 2024. See also the reviews by the Working Group on Indigenous Populations/Communities and Minorities in Africa of countries such as Cameroon, Namibia and the United Republic of Tanzania.

1. Understanding the contemporary meaning of the term “Indigenous Peoples”

(a) General understanding

23. States’ recognition of Indigenous Peoples as rights holders under international law should be based on an understanding of the term “Indigenous Peoples” as a human rights claim for redress for a particular form of racial discrimination and human rights violations.

24. The right of Indigenous Peoples to self-determination, as peoples, was violated through conquest, colonization or the establishment of present State boundaries, leading to ancestral land dispossession, destruction of cultural identities and even extermination. These violations resulted in the formation of numerous settler States, and they are still committed in various forms in all regions of the world. Despite this history of violations, Indigenous Peoples retain their own social, economic, cultural and political institutions, and are determined to maintain and develop them.²⁵

25. Consequently, the term “Indigenous Peoples” does not uniquely refer to peoples who were colonized, or who were the first inhabitants of a given land, to the exclusion of colonizers or those who came later. It has evolved as a human rights term through which distinct peoples who have suffered particular human rights violations and abuses seek redress.

26. As a previous Special Rapporteur has explained, the Declaration does not define “Indigenous Peoples” but it makes clear who they are by emphasizing the common pattern of human rights violations that they have suffered.²⁶

27. The high-grade racial discrimination that Indigenous Peoples have suffered has been aimed at dehumanizing and demeaning the victims as racially and culturally inferior, backward and unable to govern themselves, bring up their own children or enjoy property rights over their ancestral lands, territories and resources. Often, their livelihoods and ways of life have been perceived as savage and wasteful of resources. These pernicious injustices and racial discrimination have led to acts of mass killing and displacement in many countries, and they affect not only the bodies but also the minds of peoples, through intergenerational trauma. They alter the victims’ self-esteem, making them feel worthless and, in many cases, pushing them into mental illness, addiction, high rates of suicide and homelessness. Indigenous women continue to be affected by multiple forms of discriminations, forced sterilization, sexual violence and trafficking in persons.

28. While these injustices have led to higher poverty rates among Indigenous Peoples, it is important to acknowledge that they are not merely poor. Indigenous Peoples suffer far more destructive social injustice. Considering them as merely poor has misled States’ interventions, focusing on effects rather than the historical root causes.

29. The Declaration is the remedial instrument that aims to correct the wrongs of the past and establish equality.²⁷ It does not give special rights to Indigenous Peoples. Rather, it sets the minimum standards necessary for ensuring substantial equality between them and all others. Acknowledging the uniqueness of the injustices suffered by Indigenous Peoples and legally recognizing their rights does not mean that States discriminate against other groups or provide Indigenous Peoples with a special status or more rights than others.

30. Acknowledging historical injustices initiates a process of reconciliation and an opportunity to build a new future with Indigenous Peoples, based on partnership and mutual respect. As proclaimed in the Declaration, the recognition of the rights of Indigenous Peoples in the Declaration will enhance harmonious and cooperative relations between the State and

²⁵ See ILO Indigenous and Tribal Peoples Convention. 1989 (No. 169), art. 1; and Declaration, preamble.

²⁶ S. James Anaya, “The rights 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, International Work Group for Indigenous Affairs, 2009), pp. 190 and 191.

²⁷ See Ian Brownlie, “The rights of peoples in modern international law”, in *The Rights of Peoples*, James Crawford, ed. (Oxford, Oxford University Press, 1992).

Indigenous Peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.²⁸

(b) Regional contextualization of the term “Indigenous Peoples”: the examples of Africa and Asia

31. A regional contextualization of the term “Indigenous Peoples” has emerged in recent years. This approach is in line with the recognition in the Declaration that the situation of Indigenous Peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.²⁹

32. In postcolonial Africa and Asia, some peoples remained attached to their ancestral lands, way of life, livelihoods and culture but, given their political marginalization, did not partake in the shaping of the modern States. Their traditional land-use practices were stereotyped as backward and uncivilized, and their customary rights over their ancestral lands were not considered or protected in national legislation. Many postcolonial Governments have attempted, and some still attempt, to force them to abandon their traditional lifestyles, including by transferring ownership of ancestral lands, territories and resources to third parties. However, they have resisted and continue to do so, to preserve their cultural identities, which are closely linked to their ancestral lands.

(i) Understanding of Indigenous Peoples in Africa

33. The African Commission on Human and Peoples’ Rights has stressed that in postcolonial Africa, the term “Indigenous Peoples” does not mean first habitants of a given land or country. Instead, the concept refers to a limited number of African communities, whose cultural identities face extinction because of prejudiced views of their livelihoods and ancestral ways of using lands. They are mostly hunter-gatherers and pastoralists, whose mobile lifestyle was and continue to be stereotyped as backward, outdated, unfriendly to national development and destined to disappear.³⁰

34. For outsiders, the lands traditionally used and occupied by these peoples were considered unoccupied, empty, unused or belonging to no one (*terra nullius*). Consequently, these lands were either declared State-owned, given to private owners or simply taken by dominant neighbouring groups.

35. The African Commission has thus concluded that in Africa, the term “Indigenous populations” does not mean “first inhabitants” in reference to aboriginality as opposed to non-African communities or those having come from elsewhere, and that this peculiarity distinguishes Africa from the other continents where native communities have been almost annihilated by non-native populations.³¹

36. The African Commission further elaborates on the term “Indigenous Peoples”:

It is a term through which those groups – among the variety of ethnic groups within a [S]tate – who identify themselves as [I]ndigenous and experience particular forms of systematic discrimination, subordination and marginalization because of their particular cultures and ways of life and mode of production can analyse and call attention to their situation. It is a term through which they can voice the human rights abuses they suffer from – not only as individuals but also as groups or peoples. If genuinely understood in this way, it is a term through which the concerned groups can seek to achieve dialogue with the [G]overnments of their countries over protection of

²⁸ Declaration, preamble.

²⁹ Ibid.

³⁰ See African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities* (Banjul, African Commission on Human and Peoples’ Rights; Copenhagen, International Work Group for Indigenous Affairs, 2005).

³¹ African Commission on Human and Peoples’ Rights, *Advisory Opinion of the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous Peoples*, Advisory Opinion, May 2007, para. 13.

fundamental individual and collective human rights, and over recognition as peoples who have a right to choose their own future destiny.³²

37. This human rights-based meaning of the term “Indigenous Peoples” should not be confused with the etymological, anthropological or generic understanding of the word “indigenous”, presented in most dictionaries, as meaning “originating from”. Under the human rights-based meaning, not all Africans are considered Indigenous Peoples. The term covers only those distinct peoples who have experienced or continue to experience the specific violations pertaining to Indigenous Peoples, and who are determined to maintain and pass on their distinct identities to future generations.

38. The clarification of the term “Indigenous Peoples” in Africa has since allowed the continent to contribute actively to the normative frameworks concerning Indigenous Peoples at international, regional and domestic levels. The 2007 advisory opinion of the African Commission guided African diplomats during the process of adopting the Declaration. For instance, the African Commission indicated in the advisory opinion that in Africa, the term “Indigenous Peoples” was not aimed at protecting the rights of a certain category of citizens over and above others, and that the notion did not create a hierarchy between national communities, but rather was aimed at guaranteeing the equal enjoyment of the rights and freedoms on behalf of groups that had been historically marginalized.³³

39. The African Commission and the African Court on Human and Peoples’ Rights have issued three landmark decisions, in favour of the Endorois, Ogiek and Batwa Indigenous Peoples.³⁴ Though still unimplemented, these rulings are crucial milestones in protecting and enforcing the rights of Indigenous Peoples in Africa. Furthermore, several African countries have strengthened their national legal frameworks with specific legislation concerning Indigenous Peoples’ rights. In 2010, the Central African Republic became the first African State to ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). The following year, the Republic of the Congo enacted specific legislation concerning Indigenous Peoples, followed by the Democratic Republic of the Congo in 2022.

40. However, owing to limited awareness of the African Commission’s conceptual work, several African countries maintain the position that they do not have Indigenous Peoples under their jurisdiction, or that all citizens are considered Indigenous to the country or continent. One common misunderstanding about the term and the rights of Indigenous Peoples is that they lead to tribalism, division and ethnic conflict. The African Commission has responded to this misunderstanding by clarifying as follows:

There exist a rich variety of ethnic groups within basically all African [S]tates and multiculturalism is a living reality. Giving recognition to all groups, respecting their differences and allowing them all to flourish in a truly democratic spirit does not lead to conflict, it prevents conflict. What rather creates conflict is that certain dominant groups force through a sort of “unity” that only reflects the perspectives and interests of certain powerful groups within a given [S]tate, and which seeks to prevent weaker marginalized groups from voicing their particular concerns and perspectives. Or put another way: conflicts do not arise because people demand their rights but because their rights are violated.³⁵

(ii) *Understanding of Indigenous Peoples in Asia*

41. Asia has endorsed its own human rights understanding of the term “Indigenous Peoples”. Many Asian traditional communities identify themselves as Indigenous Peoples to

³² African Commission, *Report of the African Commission’s Working Group*, p. 102.

³³ African Commission, *Advisory Opinion*, para. 19.

³⁴ African Commission, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*; African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Republic of Kenya*; and African Commission, *Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, Democratic Republic of the Congo) v. Democratic Republic of the Congo*.

³⁵ African Commission, *Report of the African Commission’s Working Group*, p. 88.

seek redress for historical injustices, loss of or threat to their ancestral lands, and marginalization that threatens their cultural identities and livelihoods.

42. A previous Special Rapporteur concluded that there were particular groups that distinguished themselves from the broader populations of the Asian countries and that fell within the scope of the international concern for Indigenous Peoples as it had developed throughout the United Nations system and in connection with his mandate, including those referred to as “tribal peoples”, “hill tribes”, “scheduled tribes” or “Adivasis”.³⁶ Another previous Special Rapporteur noted that some nation States had forcibly integrated territories of Indigenous Peoples or included them as part of their territorial claims, and she concluded that in Asia, modern nation State-building had contributed to the creation of Indigenous Peoples.³⁷

43. The Asian Development Bank considers the term “Indigenous Peoples” to be a generic concept that includes cultural minorities, ethnic minorities, Indigenous cultural communities, tribal peoples, natives and aboriginals.³⁸ The majority of Asian countries voted in favour of the Declaration, and none voted against it.³⁹

2. Recognizing Indigenous Peoples as a specific group of rights holders under international law

44. The recognition by States of Indigenous Peoples as a specific group of rights holders under international law is the first step towards the full implementation of their rights.⁴⁰ However, the rights of Indigenous Peoples do not derive from States’ recognition. Indigenous Peoples’ rights are inherent rights, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources.⁴¹ Refusal by States to recognize Indigenous Peoples, or denial by States of their existence, does not take away these rights, but does negatively affect States’ ability to protect them.

45. The adoption of the Declaration by the General Assembly in 2007 marked a historic recognition of Indigenous Peoples as subjects of international law. It is indeed a further important step forward for the recognition, promotion and protection of the rights and freedoms of Indigenous Peoples.⁴² In article 38, the Declaration stipulates that States, in consultation and cooperation with Indigenous Peoples, must take the appropriate measures, including legislative measures, to achieve the ends of the Declaration. This requirement for active recognition through appropriate measures is mirrored in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which calls for coordinated and systematic action by Governments to protect Indigenous Peoples’ rights, including through legislative and other measures and supervision of the application of such measures, in cooperation with the Indigenous Peoples concerned.

46. In practical terms, recognition by States of Indigenous Peoples involves incorporating their status, as defined by international law, into domestic legal frameworks. Such incorporation could consist of one or few straightforward legal provisions. Alternatively, it could involve reproducing the fundamental rights of Indigenous Peoples in the domestic legal framework.

³⁶ A/HRC/24/41/Add.3, paras. 6 and 7.

³⁷ Victoria Tauli-Corpuz, “The concept of Indigenous Peoples at the international level: origins, development and challenges”, in *The Concept of Indigenous Peoples in Asia: A Resource Book*, Christian Erni, ed. (Copenhagen, International Work Group for Indigenous Affairs; Chiang Mai, Asia Indigenous Peoples Pact Foundation, 2008), p. 81.

³⁸ Asian Development Bank, “Operations manual: Bank policies – Indigenous Peoples”, 13 May 2004. Available at <https://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/Cross-Border-Infrastructure-Toolkit/Cross-Border%20Compilation%20over%2029%20Jan%2007/Resources/ADB%20-%20Safeguard%20Indigenous%20Peoples.pdf>.

³⁹ Only Bangladesh abstained from voting for the Declaration.

⁴⁰ Anaya, “The rights of Indigenous Peoples to self-determination in the post-Declaration era”, p. 192.

⁴¹ Declaration, preamble.

⁴² Ibid., preamble.

47. Regardless of the chosen approach, it is essential that Indigenous Peoples are formally recognized as distinct peoples with the right to self-determination, that the specific historical injustices that they suffered are acknowledged and that provisions are adopted for restitution, remedy and reparation. Recognition should guarantee effective governing and representative institutions for Indigenous Peoples. As the cultural identity of Indigenous Peoples passes through their own institutions, States should legally recognize and support effective institutions for self-governance, decision-making and representation, as stipulated in the Declaration.⁴³

48. States may recognize Indigenous Peoples through their constitutions, treaties, statutes, sectoral laws, regulations or policies. Recognition at a higher level of the legal hierarchy generally results in broader and stronger protection of Indigenous Peoples.

3. Identification of Indigenous Peoples

49. States' recognition of Indigenous Peoples should also involve an effective process for constructively identifying the specific peoples within the relevant jurisdiction. Such localized and contextualized identification allows States to fulfil their duty to prevent cultural assimilation of Indigenous Peoples or any action that has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities.⁴⁴ The specific identification process also allows a State to develop appropriate measures, such as the delivery of public services to Indigenous Peoples in an effective manner, while safeguarding their identity from pretenders or fraudsters.

50. However, such a process of identifying the specific Indigenous Peoples with respect to whom they have obligations does not give States the right to define Indigenous Peoples or determine their rights. Rather, States must abide by the fundamental principle of self-identification as a core criterion. As specified in the Declaration, Indigenous Peoples have the right to determine their own identity or membership in accordance with their customs and traditions.⁴⁵ In a similar vein, the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), under article 1 (2), requires that self-identification as Indigenous be regarded as a fundamental criterion for determining the groups to which the provisions of the Convention apply.

51. Furthermore, the norm of "self-identification" is a means of restoring Indigenous Peoples' self-esteem and confidence, counteracting centuries of marginalization, including in decisions about their own destiny. It also provides for Indigenous Peoples to assume greater control over their own future.

52. An effective process of identification of specific Indigenous Peoples by States should therefore be based on the fundamental right of Indigenous Peoples to determine their own identity (self-identification), combined with the objectively distinguishing characteristics (criteria), understood as the historical injustices the peoples concerned suffer and continue to suffer. The ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), in its article 1, lists additional objective characteristics that can guide States to clearly identify Indigenous Peoples, including descent from the populations who inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

53. A State may request supplementary information from Indigenous Peoples during registration processes; however, any such information should be available to Indigenous Peoples and the decisions by the State in any identification process must remain open to judicial review and legal challenge. Such specific identification processes must be inclusive of those Indigenous Peoples who may have lost access to ancestral lands or languages or whose traditional institutions have been undermined. Indigenous individuals in urban areas, therefore, must also have access to protection.

⁴³ Ibid., art. 5.

⁴⁴ Ibid., art. 8 (2) (a).

⁴⁵ Ibid., art. 33 (1).

54. The self-identification of Indigenous Peoples who suffered violations, combined with States' recognition of these peoples within their jurisdiction, should also serve to protect Indigenous Peoples' history and cultural integrity, including from pretenders. State institutions, including the judiciary, should deal with those who, without having suffered the same or similar historical injustices of Indigenous Peoples, self-identify as such and wrongfully claim access to the subsequent remedial human rights regime. However, this process should involve the active participation of legitimate Indigenous Peoples' organizations and institutions, as required under the Declaration.⁴⁶

C. Adverse impact of the conflation of Indigenous Peoples with local communities, including on recognition

55. The term "local communities" has not yet been established as a human rights concept with a clear meaning or associated rights. It remains primarily a domestic law concept, so far defined by few States. It was embedded in multilateral environmental agreements (MEAs), including the Convention on Biological Diversity, which borrowed it from national practices.⁴⁷

56. However, there is an increasing practice, particularly among actors working on issues pertaining to climate change and biodiversity conservation, of conflating Indigenous Peoples with local communities, including merging the two concepts through the abbreviation "IPLC". This conflation has led to a fundamental misconception that the rights of Indigenous Peoples and those of local communities are the same, and are grounded in the same international instruments. One recent publication asserted that "IPLC rights" were guaranteed by the Declaration and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169),⁴⁸ as if Indigenous Peoples and local communities have become one homogeneous group of rights holders. This assertion is totally incorrect. The term "local communities" (and "IPLC") is neither referred to nor protected in the Declaration or the ILO Convention. This conflation poses serious risks to the rights of Indigenous Peoples, as previously stated by the three United Nations mechanisms on Indigenous Peoples.⁴⁹

1. Blanket extension of the regime of Indigenous Peoples' rights to local communities: serious moral and legal concerns

57. A blanket extension of the regime of Indigenous Peoples' rights to local communities raises serious concerns. The human rights regime concerning Indigenous Peoples, as a remedial framework, cannot be meaningfully applied to individuals or groups who have not experienced the same or similar specific human rights violations or abuses. Remedial human rights regimes are victims-focused. A blanket extension would also risk the cultural integrity of Indigenous Peoples, render invisible the historical injustices that they have suffered and open the door to usurpation.

58. Extending Indigenous Peoples' rights to local communities could also result in empowering dominant groups against Indigenous Peoples. In several cases, particularly in Asia and Africa, neighbouring communities have dispossessed Indigenous Peoples of their ancestral lands, including by using racially discriminatory views against their traditional livelihoods and practices such as hunting, pastoralism or shifting cultivation. Reports have documented cases of local communities in Africa considering neighbouring Indigenous Peoples as having backward cultures and as not being capable of enjoying the same ancestral rights over lands and resources as they do.⁵⁰

⁴⁶ Ibid., art. 19.

⁴⁷ Convention on Biological Diversity, art. 8 (j).

⁴⁸ See <https://www.peoplesforestspartnership.org/principles>.

⁴⁹ See

https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/emrip/Statement_EMRI_IP_July_2023.pdf and <https://www.culturalsurvival.org/news/three-un-indigenous-peoples-mechanisms-joint-statement-about-local-communities>.

⁵⁰ African Commission, *Report of the African Commission's Working Group*, pp. 37–40.

59. A submission from a national human rights institution as input to this report revealed that a community forest scheme that grouped Indigenous Peoples and local communities under the same protective regime did not benefit Indigenous Peoples because of the dominant position of local communities, including in management and decision-making structures.⁵¹ There are also positive cases of Indigenous Peoples and local communities partnering in their advocacy, such as for recognition of their respective rights to lands. However, any alliance between Indigenous Peoples and local communities to work together, particularly in the context of biodiversity and climate change, should be based on the recognition of the differentiated legal regimes applicable to the two groups, and openness about the social dynamics, to counter any attempts at domination by one group.

2. Application of the weaker rights of local communities to Indigenous Peoples: breach of the principle of non-retrogression⁵²

60. Numerous countries, particularly in Africa and Asia, recognize collective customary land rights within their national laws for groups other than Indigenous Peoples. However, these rights are subject to limitations, depend on State discretion and can be overridden in favour of protected areas, private investments or other uses.

61. Multilateral environmental agreements, especially those known as the Rio conventions,⁵³ and associated protocols and frameworks provide for some additional rights for local communities, but these are not human rights and they are limited to participation, respect and protection of their knowledge, innovations and practices, benefit-sharing and information. Additionally, as framework conventions, the Rio conventions establish broad principles and commitments for States Parties, leaving the details to be filled in by subsequent protocols or national legislation, as illustrated by the wording of article 8 (j) of the Convention on Biological Diversity:

Each Contracting Party shall, as far as possible and as appropriate:

...

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of [I]ndigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity....

62. The conflation of Indigenous Peoples and local communities could therefore also mean the application of the weaker rights of local communities to Indigenous Peoples. The legal protection of the rights of Indigenous Peoples would thus be undermined, by subjecting them to domestic legislation, which would thereby amount to retrogression in the enjoyment of rights. Unfortunately, the weakening of the rights of Indigenous Peoples seems to be the objective of States that support the conflation while contesting the relevance of the concept of Indigenous Peoples and their rights in the domestic context. The conflation thus becomes a back-door way of weakening Indigenous Peoples' rights.

63. States can easily justify the non-implementation of international standards dependent on national laws, citing a lack of resources or non-alignment with political priorities.

⁵¹ Submission by the national human rights institution of Cameroon. All submissions received will be made available at <https://www.ohchr.org/en/calls-for-input/2025/call-contributions-report-60th-session-hrc-recognition-indigenous-peoples>.

⁵² Under the principle of non-retrogression, States are obliged not to retreat on human rights already protected and guaranteed. In *Navtej Singh Johar & Ors. v. Union of India*, the Supreme Court of India argued the following in its judgment of 6 September 2018: "[T]here must not be any regression of rights. In a progressive and an ever-improving society, there is no place for retreat. The society has to march ahead. The doctrine of non-retrogression sets forth that the State should not take measures or steps that deliberately lead to retrogression on the enjoyment of rights either under the Constitution or otherwise."

⁵³ The Rio conventions are the multilateral environmental agreements that originated from the 1992 Rio Summit, namely the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.

64. In contrast, Indigenous Peoples' rights are wider in scope and grounded in the strongest possible principles of international law, namely the right to self-determination and the prohibition of racial discrimination, both of which are generally accepted as part of customary international law.⁵⁴ This difference is fundamental. For example, unlike the land rights of local communities, Indigenous Peoples' rights are not dependent on recognition in national legislation. These rights exist and are inherent, irrespective of whether a State recognize and protect them. A State cannot not invoke its domestic laws as a justification for failing to guarantee the rights of Indigenous Peoples.

65. Unlike local communities, Indigenous Peoples are recognized as nations and therefore enjoy the right to self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.⁵⁵ From the right to self-determination flow many other rights, such as the right to lands, territories and resources, culture, language and self-governance. Without their right to self-determination, Indigenous Peoples are unable to enjoy the other rights.

66. Indigenous Peoples' rights in international law are undoubtedly distinct from, wider in scope than and legally stronger than those of local communities reflected in the Rio conventions and other multilateral environmental agreements. However, the growing use of the conflated term "Indigenous Peoples and local communities" in multilateral environmental agreements can result in a dilution of the distinct rights pertaining to each of these groups.

3. Concluding remarks on local communities

67. Unlike Indigenous Peoples, local communities lack specific recognition under international human rights law, making their legal status in multilateral environmental agreements more ambiguous and dependent on national contexts. Hence, the conflation of the two groups could breach the principle of non-retrogression in the enjoyment of the rights of Indigenous Peoples, including through the lowering of standards on free, prior and informed consent to consultation and the reclassification of Indigenous lands, territories and resources to generic "community lands".

68. Several countries have defined, or are in the process of defining, the term "local communities" and their land rights within their domestic legislation. This trend should be left to develop; however, pioneering States should refrain from imposing a conflated national understanding on the international scene. Each State is entitled to tailor the concept of "local communities" and their rights to its national context.

69. Internationally, the term "local communities" was first used in the Rio conventions.⁵⁶ However, the term is not yet a human rights concept. It has not undergone a human rights standards-setting process – for example, through the Human Rights Council – to establish its own meaning and attach rights to it. The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas uses the term "local communities", but without giving it a meaning in terms of human rights. According to article 1 (3), that Declaration also applies to Indigenous Peoples and local communities working on the land, transhumant, nomadic and semi-nomadic communities, and the landless engaged in small-scale

⁵⁴ See International Court of Justice, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction and Admissibility, Judgment*, *I.C.J. Reports 2006*, p. 6. See also International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation, Judgment*, *I.C.J. Reports 2024*, p. 78.

⁵⁵ Declaration, art. 3.

⁵⁶ The category of "local communities" was introduced in the Rio Declaration on Environment and Development, adopted in 1992, which notes in principle 22 that Indigenous People and their communities and other local communities have a vital role in environmental management and development. Subsequently, the term was included in the Convention on Biological Diversity, the Convention to Combat Desertification, the Paris Agreement on climate change and the Cancun Agreements. The Kunming-Montreal Global Biodiversity Framework, adopted in 2022, acknowledges the important roles and contributions of both Indigenous Peoples and local communities as custodians of biodiversity and as partners in its conservation, restoration and sustainable use.

agricultural production activities. This provision simply means that “peasants and other people working in rural areas”, as referred to in the title of the Declaration, may be found among “Indigenous Peoples” and “local communities”.⁵⁷

70. In the meantime, the Special Rapporteur strongly recommends an immediate end to the conflation of Indigenous Peoples with local communities. The two regimes should be kept separate and dealt with separately, as shown by good practice emerging from the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, for which separate engagement platforms have been established for Indigenous Peoples and for local communities.⁵⁸ Further, when both concepts are used, not in a conflated way but side by side, the Special Rapporteur recommends that a clarifying note (footnote or disclaimer) always be inserted stating that the use of the term “Indigenous Peoples” next to the term “local communities” does not imply that the two groups enjoy the same rights under international law.

III. Practices of States and other actors with regard to recognition of Indigenous Peoples

71. Recognition of Indigenous Peoples is done through constitutions, legislation, treaties, policies and other measures. While there is progress, practices of recognition remain uneven across regions and countries, shaped by colonial histories, political will, subjective perceptions and advocacy by Indigenous Peoples. This section, on practices for recognition, is based on submissions from Governments, Indigenous Peoples and others.

A. Constitutional recognition

72. Over the past few decades, there has been a growing trend toward recognizing Indigenous Peoples within constitutional frameworks. This shift has been influenced by international legal instruments such as the Declaration and the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), which have catalysed domestic reforms and put the issues and rights of Indigenous Peoples on national agendas.

73. The scope of constitutional recognition varies. Certain constitutions simply refer to Indigenous Peoples, while others go further by expanding on their specific substantive rights.

74. Latin America, as a region, appears to lead in terms of constitutional recognition. The constitutions of the Plurinational State of Bolivia and Ecuador recognize Indigenous Peoples as foundational to the State and plurinational governance.⁵⁹ The constitution of Colombia recognizes Indigenous Peoples and their collective and individual rights.⁶⁰ The constitution of Mexico recognizes Indigenous Peoples and provides for their right to self-determination and autonomy.⁶¹ Brazil recognizes the social organization, customs, languages, beliefs and traditions of Indigenous Peoples, and their rights to the lands that they have traditionally occupied.⁶² In North America, the Constitution Act, 1982, of Canada provides for a recognition of Indigenous Peoples and expands on their key rights.⁶³ The 1787 Constitution

⁵⁷ The Working Group on the rights of peasants and other people working in rural areas has indicated that specific individuals or groups of individuals working in rural areas may be regarded as peasants, provided that they meet the objective and subjective requirements set out in article 1 (1) of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, and that those individuals and groups include Indigenous Peoples and local communities (A/HRC/57/51, para. 38).

⁵⁸ See ICCD/COP(16)/24/Add.1, decision 5/COP.16.

⁵⁹ Submission by a human rights defender from Ecuador.

⁶⁰ Submission by Colombia.

⁶¹ Submission by Mexico.

⁶² Submission by Brazil.

⁶³ Canada, Constitution Act, 1982, sect. 35.

of the United States of America does not recognize Indigenous Peoples, but it provides for Congress to regulate commerce with “the Indian Tribes”.⁶⁴

75. In the Pacific, the referendum in 1967 to amend the constitution of Australia marked a turning point in removing discriminatory provisions against Indigenous Peoples and allowing Parliament to make specific laws for First Nations. However, it does not explicitly recognize them as First Peoples or First Nations, and a referendum on constitutional recognition failed in 2023.⁶⁵ The constitution of Fiji recognizes the *iTaukei* and Rotuman peoples, including their ownership of their lands and their unique culture, customs, traditions and language, and provides for the protection of customary land ownership.⁶⁶

76. In Asia, the practice of constitutional recognition varies considerably. In India, the constitution provides for scheduled tribes, but recognition is more administrative than rights-based. In Nepal, the 2015 constitution does recognize Adivasi Janajatis (indigenous ethnic groups and nationalities), which it differentiates from minorities and other groups. In the Philippines, the constitution of 1987 recognizes Indigenous cultural communities and affirms their rights to their ancestral lands and their rights to preserve and develop their culture, traditions and institutions.

77. The African region has limited constitutional recognition of Indigenous Peoples. The Constitution of Kenya, while not explicitly recognizing Indigenous Peoples, includes Indigenous communities that have “retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy” as a category of the term “marginalized communities”.⁶⁷

78. Within Europe, the Nordic countries lead on constitutional recognition of Indigenous Peoples. Norway provides for the constitutional protection of the language, culture and way of life of the Sami people.⁶⁸ In Sweden, the constitution was amended in 2011 to recognize the Sami people. The Russian Federation constitutionally recognizes “numerically small Indigenous Peoples”.⁶⁹

79. Constitutional recognition of Indigenous Peoples is essential; however, its success relies on sustained political will, supportive legal frameworks and meaningful engagement with rights holders. While there is a global trend towards constitutional recognition, in many cases such recognition is not paired with enabling legislation. Symbolic recognition without the enforcement of substantive rights is likely to negatively affect Indigenous Peoples.

80. Despite advances, challenges remain owing to gaps in implementation and lack of supporting laws and political will. Colonial legacies continue to influence contemporary governance, as States maintain legal frameworks that are not favourable to Indigenous Peoples. The judiciary also plays a significant role, as courts may at times interpret the rights of Indigenous Peoples in a restrictive manner.

81. In addition, States employ varying terminology in their constitutions when referring to groups that self-identify as Indigenous Peoples. In some instances, for example, they may be referred to constitutionally as “ethnic minorities”, “tribal communities”, “traditional communities” or “marginalized communities”. It is essential that Indigenous Peoples are recognized as such to enable the proper and effective implementation of the relevant standards.

B. National legislation and jurisprudence

82. Legislation and acts of parliament are the predominant means by which States recognize Indigenous Peoples. These legal instruments provide flexible and accessible

⁶⁴ United States, Constitution, art. 1, sect. 8.

⁶⁵ Submission by the Australian Human Rights Commission.

⁶⁶ Fiji, Constitution, preamble and sect. 28.

⁶⁷ Kenya, Constitution, 2010, art. 260.

⁶⁸ Submission by Norway.

⁶⁹ Russian Federation, Constitution, art. 69.

mechanisms for upholding the rights of Indigenous Peoples, especially where constitutional reforms are politically or procedurally challenging.

83. National court decisions and international bodies often prompt legal recognition of Indigenous Peoples through legislation. They play a crucial role in interpreting constitutional guarantees, enforcing human rights standards, and holding Governments to account for injustices affecting Indigenous Peoples.

84. However, Indigenous Peoples are often excluded from legislative processes, resulting in laws that do not reflect their priorities or lived realities. Many laws are hard to enforce owing to vague provisions, insufficient funding or weak institutions. In some countries, overlapping laws lead to confusion and uncertainty, particularly when they violate Indigenous customary laws. Furthermore, legislation can be amended or repealed more easily than constitutional provisions, which may affect the stability of rights. In some cases, laws recognize Indigenous identity or status without providing for significant rights or protections, resulting in primarily symbolic recognition.

85. Federal systems can influence the recognition of Indigenous Peoples in various ways, as different entities within a State may possess different degrees of autonomy. Certain federated states may independently recognize Indigenous Peoples and have more progressive laws than those at the federal level. Such differences could lead to legal inconsistencies and fragmented enforcement between federal and state laws.

86. Some States have addressed the recognition of Indigenous Peoples through legislation that establishes national representative institutions. Nordic countries have established Sami parliaments as part of their efforts to recognize the rights of Indigenous Peoples. Often such legislation serves to implement constitutional provisions.

87. Several countries have passed laws for the recognition of Indigenous Peoples in compliance with courts' decisions or constitutional requirements.

88. Many Latin American countries have recognized Indigenous Peoples through acts of parliament. Countries in this region have adopted some supportive legal frameworks, further elaborated on by court decisions. The Supreme Court of Panama has stated that the Government must secure for Indigenous communities the necessary lands and collective land rights to these lands for the achievement of their economic and social well-being.⁷⁰

89. In Europe, several countries have passed laws to recognize Indigenous Peoples. The Greenland Self-Government Act, of 2009, recognizes the people of Greenland as a people under international law with the right to self-determination. The Act enables Greenland to take over responsibility for most of its internal matters and establishes that the people of Greenland can decide to seek independence.⁷¹ As a result of growing Sami political mobilization and State recognition, Norway established the Sami Parliament under the Sami Act, of 1987, recognizing the Sami as an Indigenous People and granting them a degree of cultural autonomy. The Sami Parliament promotes Sami interests, language and culture. It operates independently, setting its own priorities and policies, and serves as both a political and administrative institution for the Sami people.⁷² The establishment in 1993 of the Sami Parliament of Sweden is regarded as a recognition of the status of the Sami as an Indigenous People. Contrary to Norway, Sweden has not ratified the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). Nevertheless, the Swedish courts have utilized the Convention and the Declaration as key sources of law.⁷³ In a ruling regarding the Sami village of Girjas, for example, the Supreme Court referred to the ILO Convention and the Declaration to substantiate the rights of the Sami people.⁷⁴

90. In North America, the United States does not have a single comprehensive act on recognition of all Indigenous Peoples. In 1971, Congress enacted the Alaska Native Claims

⁷⁰ See Center for International Environmental Law, "Panama's Supreme Court recognizes Indigenous Peoples' land rights and role as guardians of the environment", 20 January 2021.

⁷¹ [A/HRC/54/31/Add.1](#), para. 8.

⁷² See <https://sametinget.no/about-the-sami-parliament/>.

⁷³ Submission by the Saami Council.

⁷⁴ See Cultural Survival, "Historic court ruling upholds Sami rights in Sweden", 14 February 2020.

Settlement Act, but only concerning Indigenous Peoples in Alaska. In Canada, the rights of Indigenous Peoples were recognized with the enactment in 2021 of the United Nations Declaration on the Rights of Indigenous Peoples Act, under which Canada is required to harmonize its legislation, including the Indian Act, with the rights set out in the Declaration. In addition, the Act requires the federal Government to prepare and implement an action plan and to submit annual progress reports to Parliament.

91. Several countries in Asia and the Pacific have enacted legislation that formally recognizes Indigenous Peoples. In the Philippines, the Indigenous Peoples' Rights Act, of 1997, is a landmark law recognizing ancestral domains and self-governance. In 2019, Japan enacted the Ainu Policy Promotion Act, which formally recognized the Ainu. In 2023, Osaka High Court identified the Ryukyuan as an Indigenous People in legal proceedings related to the repatriation of Ryukyuan remains. On 6 June 2025, the Supreme Court of Nepal issued a directive requiring all levels of government – federal, provincial and local – to create laws, policies and programmes aligned with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Declaration.⁷⁵

92. In Africa, few countries have passed specific laws recognizing Indigenous Peoples. Those that have include the Republic of the Congo, which in 2011 adopted Act No. 5-2011, on the promotion and protection of the rights of Indigenous populations, and the Democratic Republic of the Congo, which in 2022 adopted Act No. 22/030, on the protection and promotion of the rights of Pygmy peoples.

C. Recognition through sectoral laws and policies

93. Many States have acknowledged the rights and roles of Indigenous Peoples through sectoral legislation, on forests, biodiversity, land use, water and climate change, among others. Such laws may recognize the rights of Indigenous Peoples to land, natural resources, traditional knowledge and participation in decision-making. Legal instruments of this type often provide practical avenues for the participation, resource rights and environmental stewardship of Indigenous Peoples, frequently emerging in response to environmental justice movements, land conflicts or international funding requirements tied to Indigenous inclusion.

94. Climate-related laws and policies increasingly incorporate provisions for the participation of Indigenous Peoples, particularly in the context of carbon offset programmes, adaptation planning and climate finance. Sectoral laws in areas such as intellectual property or cultural heritage may recognize Indigenous knowledge systems and provide mechanisms for their protection and equitable use.

95. Latin America has integrated the rights of Indigenous Peoples into forest and land laws, often as part of broader environmental governance reforms. Climate change frameworks in the Latin American region increasingly reference Indigenous participation. Africa, Asia and the Pacific show a growing trend, but implementation varies. North America features a mix of federal and subnational sectoral laws that recognize the roles of Indigenous Peoples in environmental management, often through negotiated agreements or co-governance structures.

96. While such sectoral laws can be used as leverage for the recognition of certain aspects of the rights of Indigenous Peoples, they fail to recognize Indigenous Peoples as rights holders in a comprehensive and coherent way. Moreover, there are many examples of sectoral laws that conflict with the customary laws and practices of Indigenous Peoples.

⁷⁵ See Cultural Survival, "Historic victory: Nepal's Supreme Court mandates nationwide implementation of treaties for Indigenous Peoples' rights", 16 June 2025.

IV. Conclusions and recommendations

A. Conclusions

97. The recognition of Indigenous Peoples remains a cornerstone of international human rights efforts aimed at redressing historical injustices against them and promoting equality. States are the primary duty bearers concerning human rights. However, to fulfil their obligations, States must necessarily recognize the beneficiaries (rights holders) of the rights concerned. The rights of Indigenous Peoples are inherent, they are recognized by international law, and they are binding on States regardless of recognition in domestic laws.

98. The United Nations Declaration on the Rights of Indigenous Peoples has led to increased global recognition of Indigenous Peoples. Many countries have adopted constitutional, legislative or policy measures acknowledging Indigenous Peoples as rights holders under international law. Several States have taken further steps by formally incorporating the Declaration into their national legislation.

99. The trend of constitutional recognition is most pronounced in regions with strong Indigenous movements grounded in a history of colonialism where constitutional reforms have been used as tools for reconciliation and State redefinition. However, this practice is gradually being adopted in other States, at varying rates. These efforts indicate a growing movement towards enhanced legal recognition for Indigenous Peoples.

100. Legislation and acts of parliament are among the most utilized mechanisms for State recognition of Indigenous Peoples. These legal instruments are often more readily employed to affirm the rights of Indigenous Peoples, especially in circumstances where constitutional reforms may present political or procedural challenges.

101. Recognition through legislation is increasingly common worldwide, but enforcement is often hampered by vague wording, limited resources or weak institutions. Overlapping or conflicting laws, particularly with Indigenous customary laws, can also undermine implementation.

102. In Africa and Asia, recognition of Indigenous Peoples has progressed slowly, in part because of ongoing misunderstandings about the term “Indigenous Peoples”. The term is sometimes wrongly viewed as potentially divisive, as a challenge to territorial integrity or as conferring advantages to certain communities.

103. The term “Indigenous Peoples” is a human rights concept devised to remedy unique historical injustices with the view to reconciling Indigenous Peoples with States and forging between them new partnerships grounded in trust and rights.

104. The term “local communities” is not yet recognized as a human rights concept and remains a concept of domestic law, fundamentally different from the internationally recognized human rights framework for Indigenous Peoples.

105. The conflation of Indigenous Peoples with local communities has contributed to misunderstandings. This practice may undermine the distinct rights of Indigenous Peoples, and is sometimes utilized by States that either do not recognize the existence of Indigenous Peoples within their jurisdiction or attempt to undermine the implementation of their rights as defined in international law.

B. Recommendations

106. On the recognition of Indigenous Peoples as rights holders, States should:

(a) Legally recognize Indigenous Peoples as distinct rights holders under international law, as affirmed by the Declaration and other relevant human rights instruments;

(b) **Recognize Indigenous Peoples as key partners in promoting national reconciliation and unity;**

(c) **Guarantee effective governing and representative institutions for Indigenous Peoples.**

107. **On the use of accurate terminology, States should consistently use the term “Indigenous Peoples”, or alternative national or local terms preferred by these Peoples with the understanding that they are internationally known as Indigenous Peoples. States should avoid substituting these terms with terms such as “local communities” or “ethnic minorities”.**

108. **On ensuring recognition based on self-identification and historical injustices, States should recognize Indigenous Peoples within their jurisdiction on the basis of:**

(a) **The principle of self-identification;**

(b) **Objective distinguishing characteristics, including historical injustices and cultural distinctiveness, among other characteristics enshrined in international human rights norms;**

(c) **Consultations and cooperation with Indigenous Peoples, in accordance with the Declaration.**

109. **On the incorporation of the Declaration into domestic legal frameworks, States should, in the lead-up to the twentieth anniversary of the adoption of the Declaration, reaffirm their commitment by:**

(a) **Incorporating the Declaration into national legislation;**

(b) **Adopting legislative, administrative and policy measures to implement its provisions;**

(c) **Ensuring that such measures are developed in partnership with Indigenous Peoples.**

110. **On the promotion of constitutional and legislative recognition, States should:**

(a) **Recognize Indigenous Peoples in their constitutions to affirm equality and prevent discrimination;**

(b) **Enact specific legislation to operationalize Indigenous Peoples’ rights;**

(c) **Ensure that such laws are enforceable and aligned with Indigenous Peoples’ customary laws and institutions;**

(d) **Repeal legislation that is discriminatory against Indigenous Peoples and conduct a review with a view to harmonizing existing legislation with Indigenous Peoples customary laws.**

111. **On the implementation of judicial decisions, States must comply with the decisions of national, regional and international courts and treaty bodies that affirm the rights of Indigenous Peoples, particularly those mandating recognition and restitution.**

112. **On ensuring free, prior and informed consent, recognition must include the right of Indigenous Peoples to participate in decisions affecting them, including the right to give or withhold free, prior and informed consent in accordance with international standards.**

113. **States should refrain from conflating Indigenous Peoples with local communities. When both terms are used in documents, a footnote should be included to clarify that the use of the term “Indigenous Peoples” next to the term “local communities” does not imply that the two groups enjoy the same rights under international law.**

114. **The United Nations system and the international community should:**

(a) **Promote the participation of Indigenous Peoples who self-identify as such and ensure that engagement mechanisms reflect the distinct status and rights of Indigenous Peoples under international law;**

(b) **Avoid conflation of Indigenous Peoples with local communities in practice and in language; when both terms are used in documents, include a footnote or a disclaimer clarifying that the use of the term “Indigenous Peoples” next to the term “local communities” does not imply that the two groups enjoy the same rights under international law.**
