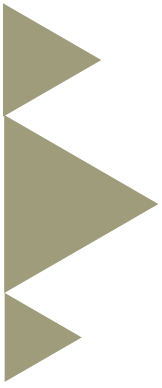
A group of six people, including a woman in a blue patterned dress, a child in a Spider-Man shirt, a man in a striped polo, a man in a blue button-down, a pregnant woman in a pink tank top, and a woman in a dark blue shirt, are sitting around a campfire at night. The fire is burning brightly in the foreground, and the background is dark with some foliage visible on the left.

Jens Dahl . Victoria Tauli-Corpuz . Shapiom Noningo . Shankar Limbu . Sara Olsvig

building Autonomies



building Autonomies

Jens Dahl . Victoria Tauli-Corpuz . Shapiom Noningo
Shankar Limbu . Sara Olsvig

Building Autonomies

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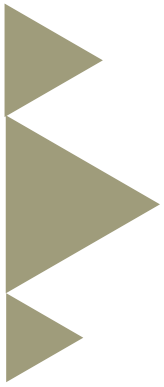
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FOREWORD

This book forms an essential contribution to the process of legitimising the recognition and exercise of the world's Indigenous Peoples' right to self-determination in domestic and international law. It further offers a space for analysis, dialogue and debate between indigenous representatives and/or authorities aimed at coordinating visions and sharing experiences of the difficult path to building and practising autonomy and self-government.

The UN Special Rapporteur on the rights of indigenous peoples greatly appreciates the efforts made by IWGIA, the previous Special Rapporteur Vicky Tauli Corpuz, the Permanent Forum and all those who have contributed to this invaluable text. The importance of Indigenous Peoples' struggles to obtain compliance with the Declaration, in particular Articles 3 and 4 which form the focus of this book, is also notable.

As the book *Building Autonomies* describes, the implementation and recognition of Indigenous Peoples' self-determination is a challenge for both States and Indigenous Peoples themselves, the main issue being to get such exercise fully recognised within the legal framework of each State.

In most countries, the traditional political and economic sectors have been legally and politically founded on conditions of exclusion, racism, racial discrimination, and a lack of consultation with and distancing from Indigenous Peoples. The blinkered nature of legislation, and of the traditional political and economic sectors' outlook, has resulted in different forms of imposition, and the Indigenous Peoples' struggles to defend their lands, territories and natural assets have often been criminalised. National legislative frameworks have enshrined a unitary vision that ignores the pluricultural, multilingual or plurinational nature of the countries.

This book offers an overview of the events and processes being implemented and built by Indigenous Peoples around the world. It also shares the progress made by States as regards constitutional or legislative aspects related to individual and collective indigenous rights. It recounts situations and experiences from America, Europe, Asia, Africa and Oceania, demonstrating the wealth of potential within the indigenous movement to obtain the legitimisation of their right to self-determination.

Opportunities for dialogue must be supported between Indigenous Peoples and States if their individual and collective rights are to be legitimised and recognised. Such dialogue could prevent suffering, repression and confrontation, enabling Indigenous Peoples to live dignified and fulfilled lives.

Finally, it is important that progress in these processes for legitimising self-determination, initiated by both Indigenous Peoples and States, is monitored.

Francisco Calí Tzay

Special Rapporteur on the rights of indigenous peoples



Guna General Congress, Panama. Photo: Lois Iglesias

International human rights mechanisms and indigenous experiences with autonomy

Jens Dahl

The United Nations Declaration on the Rights of Indigenous People (the Declaration) makes it clear that indigenous peoples have the right to practice, manifest, protect and develop their own cultural, social, religious and educational development. Art. 23 specifically states that: “IPs have the right to determine and develop priorities and strategies for exercising their right to development.” The territorial framework for operationalising the Declaration is autonomy, with regard to which Art. 4 states that: “Indigenous peoples have the right to autonomy or self-government in matters relating to their internal and local affairs.” Without some kind of autonomy, the aspirations of the 2030 goals for sustainable development will never be achieved for indigenous peoples. To further analyze this, in January 2018, the Permanent Forum on Indigenous Issues (PFII) in January 2018 organized an expert meeting.

The Expert Group Meeting recommended that the Permanent Forum on Indigenous Issues should give special consideration to indigenous peoples’ experiences of autonomy and constructive arrangements in their expression of self determination, including through a compilation and dissemination of good practices. As a follow-up to this recommendation, a number of UN and other institutions focusing on indigenous issues organized a seminar in Mexico City in March 2019. The objective of the seminar was to share and analyze experiences among indigenous peoples and regions with regard to the recognition and exercise of autonomy and self-government as a manifestation of the right to self-determination. A background paper was published by IWGIA and the report from the seminar was followed-up with a report (UN A/74/149) written by the Special Rapporteur for the Human Rights Council and a study prepared for the PFII (UN E/c. 19/2020/5) to be presented during its meeting in April 2020.

Pursuing their right to self-determination, indigenous peoples seek to establish some kind of autonomy. In this process, very few indigenous peoples have challenged the integrity of the respective states to which they belong. Notable exceptions are the people of East Timor (successfully) and the people of West Papua and Western Sahara (unsuccessfully).

Autonomy requires some kind of recognition by the state but the strategy followed by indigenous peoples will depend on political, legal, economic and demographic circumstances. Constitutional or legal recognition, treaties, constructive agreements, affirmative measures, membership of national political parties and indigenous electoral lists are among the many strategic choices adopted by indigenous peoples.

Indigenous peoples are often tiny minorities and among the poorest and most marginalized populations. They have also often been isolated within the borders of the states, albeit quite as often the traditional owners of large tracts of land. This makes them vulnerable to states, multinational corporations, protection agencies and others who consider such vast tracts of land as “empty” and open for land-grabbing.

Indigenous peoples never benefitted from the global focus on minority rights as predicted in the aftermath of World War I. Some indigenous peoples in settler-states (such as USA, Canada, New Zealand and Australia) were able to occasionally attract national attention but indigenous peoples in post-colonial states that were established after World War II remained unnoticed. It was not until decolonization and the effects of the unlimited expansion of extractive companies into all corners of the globe that the “victims of progress” were exposed. It was at this time that the United Nations developed into a platform for indigenous peoples from all continents.

From all corners of the world, indigenous peoples came to the United Nations to complain about violations of their fundamental human rights. They used all available means to gain the attention of states, UN agencies and the public and get them to listen to their concerns. It was David against Goliath but indigenous peoples came to Geneva and New York in their hundreds every year. They came as objects and observers but, within a few decades, they had become rights-holders over their own future.

Indigenous peoples were no longer simply Sámi, Maasai or Maori but were united as indigenous peoples in their own right. Indigenous peoples' right to self-determination was globally recognized as part of international law when the United Nations in 2007 adopted the United Nations Declaration on the Rights of Indigenous Peoples.

Implementation of this right has, however, turned out to be a key issue for indigenous peoples. For most peoples, autonomy is an ambition for the future rather than a reality. In many states, the rights of indigenous peoples have actually deteriorated since 2007 and, to meet these challenges, indigenous peoples continue to need the support of the international community.

One important issue is to continue to garner support for indigenous autonomy among the members of the United Nations, UN agencies and regional human rights institutions. Special responsibility rests with the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the Rights of Indigenous Peoples. There are so many options for autonomy and the indigenous peoples have to find their own way in each country under its specific political, demographic and economic conditions.

Indigenous peoples demand to be respected as equals with other peoples and their cultures and ambitions to be treated as such. On paper, the Sustainable Development Goals seem to recognize this but, without some kind of autonomy, indigenous peoples "will be left behind".

The challenges are many but indigenous peoples can learn from their international successes and adopt a proactive approach to issues of self-determination and autonomy. The growing number of indigenous people living in urban and metropolitan areas, at the social and economic bottom of the scale, is a challenge but it also opens up new opportunities for indigenous peoples to unite and demand that their rights be respected when they are colonized or evicted from their lands.

Jens Dahl is educated as an anthropologist and taught Inuit and Arctic studies at the University of Copenhagen. He is former director of IWGIA and was member of the United Nations Permanent Forum on Indigenous Issues from 2017-2019. He is author of the book "The Indigenous Space and Marginalized Peoples in the United Nations".



Samediggi. Saami Parliament, Norway. *Photo: Samediggi*



Matigsalug Manobo celebration in Sinuda, Minadanao, Philippines. *Photo: Christian Erni*

The right of indigenous peoples to self-determination through autonomy or self-government

Victoria Tauli-Corpuz

The UN Special Rapporteur on the rights of indigenous peoples is tasked with promoting the UN Declaration on the Rights of Indigenous Peoples. I have had the honour to be the Special Rapporteur for the past six years and, during this time, the UN Declaration has been not only the legal but I would say also the moral reference for all my activities. I have endeavoured, through my reports and communications, to provide recommendations, examine best practices and address obstacles with the aim of advancing the practical realization of the rights enshrined in the Declaration.

I consider that most of the collective human rights of indigenous peoples contained in the UN Declaration revolve around the central right of self-determination, and the multiple elements needed for its implementation, be it control over lands, territories and natural resources; recognition of indigenous self-determined sustainable development; respect for indigenous authorities and justice systems, or realization of the cultural rights related to indigenous languages, religions or traditional knowledge, among others.

In my view, recognition of indigenous peoples' right to self-determination has had a positive and transformative influence in international law. Moreover, it also has a transformative potential when implemented at the national level. Adequate application of this right requires changes in the general governance of states, and this will have a transformational impact in terms of human rights compliance, remedying racism, discrimination and inequality, more democratic and inclusive societies, and enhanced legitimacy of the state itself. Full implementation of indigenous peoples' right to self-determination is also at the core of redress for the past and ongoing human rights violations they have suffered and a foundation for reconciliation.

Over the last two years, I have decided to further engage in examining the actual exercise of the right to self-determination through autonomy or self-government, as provided in article 4 of the UN Declaration.

To this end, I had the pleasure of cooperating with the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council. As part of this collaboration, I participated in the Expert Group Meeting of the UNPFII on 'sustainable development in indigenous territories', which reflected on indigenous peoples' own concepts of autonomy and development and the obstacles they face when they try to implement them. Together with the above-mentioned UN specialized bodies, plus the Inter-American Commission on Human Rights, the International Work Group for Indigenous Affairs and Tebtebba, I also coordinated a seminar on the issue of autonomy at which we gained valuable information on the views, proposals and ongoing experiences of indigenous peoples with regard to their right to autonomy and self-government in all regions of the world: from the advanced process of the Government of Greenland through to the Mexican indigenous autonomous municipalities, the Colombian *resguardos*, the Sami Parliaments of Norway, Sweden and Finland, the implementation of Treaties and the challenges derived from the lack of adequate recognition of indigenous peoples in the countries of Asia and Africa.¹

1. 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).

On the basis of this work, and the information I had collected and received over these last six years, I decided to develop a thematic report that was submitted to the UN General Assembly in October 2019, commenting on some existing legal and other arrangements and processes reflective of or conducive to the recognition and implementation of the indigenous peoples' right to autonomy or self-government. The objective of the report was to identify positive elements as well as limitations and challenges, and to provide some recommendations aimed at move towards achieving this fundamental collective right.¹

In the report, I describe different situations all over the world with regard to the realization of indigenous peoples' self-determination through autonomy and self-government. The report does not comprehensively cover all the situations in which indigenous peoples live in terms of governing themselves and controlling their destiny as distinct societies but it does examine the different ways in which self-government and autonomy of indigenous peoples are recognized within different national socio-political and economic contexts and realities. These include states that do not recognize the identity of indigenous peoples, states with historic and contemporary Treaty relations with indigenous nations and peoples, indigenous peoples living in voluntary isolation, nation-building processes in countries which recognize plurinationality and multiculturalism, and instances of recognition of certain aspects of the right to autonomy or self-government, either with a territorial basis or focused on the exercise of certain sectoral functions.

As I concluded in my report, all the steps adopted by states in terms of realizing indigenous peoples' right to autonomy or self-government have merit and should be pursued. Nevertheless, in most of the cases examined, the existing arrangements have not resulted in full compliance with these rights. Indigenous peoples can thus only, at best, exercise what could be termed as 'fragmented self-determination.'

In terms of assessing state practice, the main question to be considered is whether a particular legal or policy arrangement does actually strengthen indigenous peoples' self-determination or, on the contrary, weaken it because the end goal is more focused on integration or assimilation. A second important aspect to consider is whether such arrangements have been developed in true partnership with indigenous peoples. With these considerations in mind, it is difficult to identify undisputable best practices. In my view, it is more appropriate to refer to many of the existing arrangements as 'evolving practices', meaning they provide a starting point on which the realization of indigenous self-determination could be built. As recommended in my report, exchanges between indigenous peoples and states on current situations could help identify useful measures by which to move forward.

Adequate enjoyment of the rights to self-determination, autonomy and self-government can only be achieved through full recognition of indigenous peoples' rights to their lands, territories and natural resources, to maintain and develop their own governing institutions, and to enjoy the ways and means to finance their autonomous functions. It is important to stress that the UN Declaration calls upon states to provide the necessary means to realize these rights. How this obligation will be met will depend on many factors, given that, in some cases, indigenous peoples have or may fully or partly have the resources to provide for their autonomous functions while in other cases, dispossession of lands, territories and resources may have rendered them dependent on external support, still facing serious challenges to regain control over these territories and resources.

Also related to indigenous peoples' history of discrimination and colonization is the issue of the weakening of their own government structures and practices. The exercise of autonomy or self-government may, in many instances, require a strengthening of indigenous institutions and self-government structures to allow them to take control of all aspects of their lives. Supporting indigenous peoples to build their capacities, according to their own needs and aspirations, should be the priority of all actors cooperating with them, not only states but also UN bodies and agencies, other donor bodies, private sector and civil society organizations.

Given that indigenous peoples' right to self-determination is essential for their dignity and survival as distinct peoples, and also bearing in mind its potential transformative influence on states themselves, efforts have to focus on how both states and indigenous peoples can work together for its fulfilment. In my view, this calls for the estab-

1. Rights of indigenous peoples. Report of the Special Rapporteur on the rights of indigenous peoples, A/74/149, 17 July 2019.

lishment of a true intercultural dialogue that takes into account indigenous peoples' own concepts of autonomy or self-government. Insufficient attention has been devoted to the interpretation indigenous peoples themselves give to these rights, and to their own initiatives to realize them. Indigenous peoples' interpretation should be the starting point for the development and adoption of the measures required for their implementation.

For this dialogue to be fruitful, mutual trust has to be built. There is a need for a change in states' approaches to indigenous claims. They should be considered as justice and human rights issues which, 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. This position and the erroneous view that indigenous peoples are demanding unwarranted rights and privileges only further widens the gap between indigenous peoples and the state and the country. Such views also go against the spirit of partnership emphasised by the UN Declaration. It is the UN Declaration itself, as a consensual framework, that provides the best basis on which to commence or continue an intercultural dialogue on how to implement indigenous peoples' rights in an environment of reciprocal cooperation.

I do firmly believe that states, indigenous peoples and societies at large share common goals in responding to the human rights, sustainability and environmental challenges the world faces today. And yet, in order to contribute to the solutions needed, indigenous peoples need to be able to control their own lives and futures through exercising their rights to self-determination, autonomy and self-government.



International meeting on autonomies, Mexico. Photo: IWGIA

Victoria Tauli-Corpuz has been UN Special Rapporteur on the rights of indigenous since 2014 to 2020. She is an indigenous activist of the Kankanaey-Igorot people of the Cordillera region, in the Philippines. From 2005 to 2011 she was an expert member of the UN Permanent Forum on Indigenous Issues acting as its Chair from 2005 to 2010. She also served as the chairperson-rapporteur of the UN Voluntary Fund for Indigenous Peoples. She is the founder and executive director of Tebtebba Foundation.



Charagua Iyambae Autonomy. Bajo Isoso, Bolivia. *Photo: Francisco Méndez Prandini*

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Nineteenth session

New York, 13–24 April 2020

Item 6 of the provisional agenda*

Future work of the Permanent Forum, including issues considered
by the Economic and Social Council and emerging issues

Study on indigenous peoples' autonomies: experiences and perspectives**

Note by the Secretariat

The Permanent Forum on Indigenous Issues, at its seventeenth session, appointed member **Jens Dahl** to conduct a study on the topic “Indigenous peoples’ autonomies: experiences and perspectives”, to be submitted to the Forum at its nineteenth session (see [E/2019/43-E/C.19/2019/10](#), para. 141).

I. Introduction

1. Indigenous peoples’ right to autonomy is firmly entrenched in articles 3 and 4 of the Declaration on the Rights of Indigenous Peoples. The Permanent Forum on Indigenous Issues has often focused on issues of self-government and the rights of indigenous peoples. The present study focuses specifically on the experiences of indigenous peoples, the backgrounds to the various indigenous autonomies, the options available to indigenous peoples and the obstacles that indigenous peoples face when trying to exercise their rights according to international law.
2. In January 2018, an international expert group meeting on sustainable development in territories of indigenous peoples was held in New York by the Department of Economic and Social Affairs.¹ In March 2019, a seminar on indigenous peoples’ rights to autonomy and self-government as a manifestation of the right to self-determination was held in Mexico City by the Inter-American Commission on Human Rights, the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum and the Expert Mechanism on the Rights of Indigenous Peoples.² The present study is a continuation of the proceedings and outcome of those meetings and of the recent report of the Special Rapporteur on the right of indigenous peoples’ to autonomy or self-government ([A/74/149](#)).
3. On every continent, indigenous peoples have been able to use what they consider to be their right to self-determination to establish autonomies in accordance with the local political and demographic realities. The lesson to be learned is that there is a wide variety of options for indigenous peoples to take control of their own destiny. Options include a range of opportunities, including governance structures based on exclusive territorial control.
4. In the present study, the concept of autonomy is used as the de facto implementation of self-determination by indigenous peoples and is thus broader than territorial self-government.

1. See www.un.org/development/desa/indigenouspeoples/meetings-and-workshops/egm2018.html.

2. See www.iwgia.org/en/focus/global-governance/3326-seminar-indigenous-peoples-rights-to-autonomy.

* [E/C.19/2020/1](#).

** The present study relies on the support from a large number of persons without whom it could never have been accomplished, although the responsibility for the content of the study are the author’s alone. The author would like to give special thanks to Lola García-Alix and Alejandro Parellada, who were actively involved in the report from the outset.

5. The present study focuses on some of the forms of autonomy chosen by or available to indigenous peoples. For each case, there is an analysis of the conditions, advantages, problems and prospects.

II. Types of autonomy

► A. Territorial autonomy

6. When a State recognizes the rights of indigenous peoples, it may determine a territory within which indigenous peoples are given a number of specified rights. The Greenland Self-Government is a well-known example; in Latin America, indigenous peoples have created autonomous regions in several countries, including Colombia, Nicaragua and Panama. In other cases, Governments have in effect forced indigenous peoples into autonomous territorial structures. One example is the North American Indian reservations, and another is the autonomous entities established in the northern, Siberian and far eastern regions of the Russian Federation as early as the 1920s. Among the largest indigenous territorial autonomies are Nunavut in Canada, Guna Yala in Panama and the Navaho Reservation in the United States of America.

7. Territorial autonomy can be compared to Governments. In such cases, whether the autonomy is established at the village, community or regional level, equal rights are in principle given to all citizens. All citizens that fulfil certain criteria have voting rights in the governing bodies of the autonomy.

8. Autonomy at the village level exists not only in countries such as Canada and in Alaska, United States, but also in other countries, such as Mexico, where, in Oaxaca, 417 of the 570 municipalities are now governed by indigenous customary traditions with the creation of indigenous autonomous governments. In Mexico, the fact that the interests and rights of indigenous peoples are not being adequately heard at the national level explains why indigenous peoples have created municipal autonomy as local strongholds. In Canada, the Indian Act of 1876 allows recognized indigenous peoples the right to establish First Nations band governments that may include as few as several hundred people living in a single community. Those bands can merge with others and create tribal councils and can also organize individuals living outside the band reservation.

9. The smallest types of territorial autonomies are those vested in a family or a unification of families. These are based on precolonial types of social and political unities. Although they are under pressure today, the *obshchina* communes in the Russian Federation provided a small group of recognized indigenous families with user rights in a specified territory, where the title nonetheless remains with the State. An *obshchina* is entitled to receive an allotment of land on which to pursue traditional activities, such as reindeer herding, hunting or fishing. The reindeer herding Sámi in Scandinavia are organized in groups of individuals or households with their own and exclusive herding territory, called *siida*, which is a reindeer pastoral district and the basic institution regarding land rights, organization and herding management. In Norway and Sweden, the *siida* institution is recognized as an aboriginal institution.

10. In some cases, when territorial and political autonomy has appeared unrealistic in the foreseeable future, indigenous peoples have negotiated land claims that give them collective ownership or other forms of control of their traditional territory. The collective titles to land give the concerned indigenous communities specified access to use the land or tracts of their original territory.

11. All known land claims involving indigenous peoples differentiate between surface and subsurface rights. The indigenous communities of the Peruvian Amazon are contiguous, compact and connect with other communal territories, but they include surface rights only. In the land claims settlement of Nunavut, the Inuit have preferential hunting rights in the whole claimed territory, but Inuit-owned corporations have only surface rights to a minor part of the territory and subsurface rights to an even smaller part. Troubled by land invaders, the Government of the United Republic of Tanzania, in 2011, issued title deeds to a small Hadza hunter-gatherer community but only for “traditional” use.

12. Most land claims settlements are costly and politically and technically complicated. First, the claim has to be recognized by the national authorities, then demarcated (vis-à-vis other communities and the interests of third parties) before the formal and legal titling can take place. Many land claims face challenges as to whether the land can be sold, mortgaged or handed over to companies or individual persons.

► B. Functional autonomy

13. In a global context, indigenous peoples generally follow two types of functional autonomy: ethnic autonomy and cultural autonomy. Ethnic autonomy within a nation-State gives specified rights to all members of the indigenous group, for example, when indigenous groups are allowed to establish their own schools or speak their own language in court. In large tracts of the Arctic region, indigenous peoples have preferential or exclusive rights to specified types of hunting, fishing and foraging activities.

14. In Norway and Finland, the Sámi Parliaments are elected by all Sámi in the country who are registered on an electoral list. The Sámi Parliaments are advisory bodies funded by the States. In many villages in rural Alaska, a tribal council is elected by indigenous peoples only but may also have a village council that is elected by all inhabitants in the community. There is a certain division of responsibilities between the two councils.

15. An increasing number of indigenous peoples live in cities where they can sometimes claim the right to cultural autonomy as a means of recognizing the resurgence of “diasporic indigeneity”. Functional autonomy can be inclusive when the indigenous group is scattered, but the rights of indigenous peoples may best be secured when there are means to unite those living in urban areas with those living in the traditional homelands. Although cultural autonomy is a rather limited type of autonomy, it may give the indigenous group a platform for further claims.

16. There are a number of important differences between territorial autonomies and functional autonomies and the options they give indigenous peoples. One of these is to distinguish between a “breaking-out” strategy that aims to create autonomy and self-determination through territorial self-rule, and a “breaking-in” policy where legitimate indigenous political leadership continuously promotes indigenous rights in cooperations and agreements with the State. The “breaking-in” approach is thus a way to create autonomy that goes beyond a specific territory and where self-determination is concretized through cooperation and consultation with the State authorities.

III. Integration in the State

17. Indigenous autonomies are always part of nation-States, but the level, degree and means of integration varies. For that purpose, we can distinguish between independent, parallel and subsumed types of integration. However, most if not all types of autonomies may include components of all three types of integration.

18. Independent autonomy can be described as a nested autonomy.³ In such cases, the national authorities have no rights to intervene in decisions made by the governing bodies of the autonomy, as long as the decisions only involve matters within the authority of the autonomous unit. For example, the Greenland Self-Government decides unilaterally on school curricula, the language used in schools and parliament, the issuance of mining concessions, etc. But there are limits: while the Greenlandic authorities unilaterally decide upon the issuance of mining concessions, that does not include the mining of uranium or other radioactive resources.

19. In Panama, the autonomous *comarcas* indigenous territories are recognized by law and provide a legal background for the indigenous peoples’ collective rights to their own territory and political/administrative structure. In the *comarcas*, indigenous peoples have exclusive rights over their lands and enjoy considerable autonomy over internal matters (see [A/HRC/27/52/Add.1](#)).

3. Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Duke University Press, 2014).

20. Other examples of independent indigenous autonomy are “trust relationships” and “free associations”, such as in the Marshall Islands, Micronesia (Federated States of) and the Cook Islands (New Zealand). Autonomy of any kind has been denied for indigenous peoples in Western Sahara and West Papua (Indonesia).

21. Parallel autonomy is where the indigenous autonomy exists in parallel to the national structures. While such autonomy can give an indigenous group collective and exclusive land rights within a certain territory, those groups keep their individual rights as citizens of the State. In other cases, such parallel rights or affirmative measures may limit other types of rights.

22. In Finland, Norway and Sweden, the indigenous Sámi vote for the Sámi Parliaments, but that in no way limits their rights to vote for municipal elections or the national parliaments, in which they can vote together with all other citizens of that country. In some States in the Pacific region, traditional political institutions have been represented in the House of Chiefs, which is parallel to the House of Commons.

23. In Peru, in 2015, indigenous Wampís established their own autonomous territorial government of the Wampís nation, elected their first government, established the nation’s strategic plan and issued their first bylaws. Its status in relation to the national political and administrative will be negotiated at a later time with the Government of Peru.⁴

24. In most cases, the indigenous autonomy is to some extent or in some respects subsumed to the national political structure. In Panama, indigenous autonomy reveals that parallel autonomies are, in the end, subsumed to the national legal system and leave the indigenous peoples vulnerable to intruding settlers and mining companies, which are often supported by the national Government.

25. In the most extreme case of subsumed autonomy, the general rules of the autonomy are the same as those under which the rest or majority of the population live. The indigenous autonomy is therefore an administrator of the national system in the same way as other regional or municipal units. The Sámi Parliament in Sweden is an administrative unit or government agency within the national politico-bureaucratic structure. By contrast, in Norway, government agencies must ask the *Sámediggi* (supreme political body of the Sámi) to give a statement on matters concerning Sámi affairs. In the Swedish legislation, however, there is no similar formulation.

26. In Mexico, a number of community governments that follow indigenous traditions have been established but they are externally part of the national political and administrative structure.

27. The Greenlandic judicial system is specific to that country, but court decisions may be appealed to the Danish Regional Court of Appeal and to the Danish High Court.

28. The most radical form of indigenous autonomy is when a group decides to live in voluntary isolation. This is actually a form of forced isolation or a reaction to being excluded and a need to flee from atrocities. However, it has been asserted that, despite their attitude and their increasingly remote locations, these people are failing in their objective because of various external agents who are invading their territories for different reasons and threatening their physical, cultural and territorial integrity.⁵ Peoples in voluntary isolation are constantly under threat from so-called “civilization” in the guise of miners, loggers, missionaries, tourists, anthropologists and diseases. Most groups of people living in voluntary isolation live in the Amazon and Gran Chaco regions, but also in the Andaman Islands, India. As probably the most vulnerable peoples in the world, the only way forward for peoples in voluntary isolation is to ensure a legal and political framework that respects their choice, protects them from intruders and prepares them for the day that they choose to contact outside civilizations.⁶

4. International Work Group for Indigenous Affairs, *Indigenous peoples’ rights to autonomy and self-government* (Copenhagen, 2019), pp. 10–12.

5. Beatriz Huertas Castillo, *Indigenous Peoples in Isolation in the Peruvian Amazon* (International Work Group for Indigenous Affairs, Copenhagen, 2004), p. 14.

6. Ibid. p. 179.

IV. Thematic issues

► A. Negotiating

29. All cases reveal that, in order for autonomy to be real and lasting, the first step must be for indigenous peoples to agree among themselves, create legitimacy, have a clear vision and develop the first draft to be presented.⁷

30. The Special Rapporteur has observed that, 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.⁸

31. Preparing and negotiating autonomy with Governments is a long and expensive process. It took the Inuit of Nunavut more than two decades to negotiate a final agreement. The Wampís made their first approach to the Government of Peru in 1989, the legal and anthropological basis was established in 1995, agreements with neighbouring peoples were made in 2010, but it was not until 2015 that 300 representatives of the 85 communities approved the statutes of the autonomous territorial government of the Wampís Nation, elected their first government and issued their first bylaw as an act of government. The unilateral move took place as a territorial defence strategy by virtue of which internal, social, cultural, economic and educational affairs are administered, along with external affairs and their relationship with the Peruvian State.⁹

32. The Inuit in Canada had no legal or publicly elected representatives who could negotiate autonomy with the federal Government, but they were represented by generally recognized country-wide and region-wide Inuit organizations. The same was the case when the Sámi in Norway started their autonomy negotiations.

33. Concerning the next step to be taken, the experiences of Nunavut and Greenland reveal the importance of agreeing with the Governments that institutional arrangements for the negotiating process should be in place and agreed upon by both parties.

34. Greenland is home to 56,000 inhabitants, 90 per cent of whom are indigenous Inuit living in 70 to 80 communities scattered along an enormous coast. In 1999, Greenland established its own self-government commission, which presented its report in 2003. Soon after, the government of Greenland proposed the establishment of a Greenlandic-Danish commission. The self-government agreement is an act that has been passed by the Parliaments of Denmark and Greenland, and self-government was initiated in 2009. The act recognizes the people of Greenland pursuant to international law, with the right to self-determination. The relationship between Greenland and Denmark is based on a wish to foster equality and mutual respect in the partnership between the two.¹⁰

35. The most successful autonomies are those where both the indigenous peoples and the Governments feel ownership of and responsibility to the establishment of indigenous autonomies.

► B. Demography

36. Territorial autonomy is most often targeted by indigenous peoples when they make up a majority of the population in the area. A general observation tells us that indigenous peoples will carve out the largest possible tract of land in which they make up a majority of the population. A well-known example is Nunavut, where the Inuit now make up 85 per cent of the population.

7. See also [A/74/149](#).

8. Ibid., para. 59.

9. International Work Group for Indigenous Affairs, *Indigenous peoples' rights* (pp. 10–12).

10. See preamble to act No. 473 of 12 June 2009 on Greenland self-government (translation in English only available from <https://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Engelske-tekster/Act%20on%20Greenland.pdf>).

37. The Nunavut Land Claim Agreement consisted of a land claims agreement that provided the Inuit with land surface ownership to approximately 18 per cent of Nunavut. The Inuit was given subsurface rights to approximately 10 per cent of that 18 per cent. An Inuit organization is in charge of supervising Inuit land rights. The Agreement also included a political agreement that established a public government providing equal political rights to all inhabitants of Nunavut.

38. In Alaska, some indigenous groups aimed at and succeeded in establishing boroughs as the largest administrative entity in the state, in which they made up the majority of the population.

39. When indigenous peoples make up the majority of the population at the village level only, community autonomy may be a choice. One particular case is in Canada, where, in September 2016, the 500-people community of Déline became the first self-governed community of the Northwest Territories. Merging a First Nations band government and a municipal government into a single authority is unique.

40. Experience also tells us that, when indigenous peoples are in a minority position, the territorial option is to a large extent problematic. A parallel, functional autonomy often seems to be a realistic choice for indigenous peoples that make up a tiny demographic minority within the State but are still able to refer to a kind of homeland.

41. The Sámi Parliament in Norway is primarily an advisory body on all matters concerning Sámi affairs. It represents all registered Sámi in the country. Although the Sámi Parliament has no territorial rights, it has managed to have an impact on land use in the core Sámi area (Finnmark county). The Sámi Parliament is allowed to discuss any matters deemed to concern them. In practice, this has given the Parliament a significant symbolic power – for example, a number of years ago, a mining company was made to completely shut down its prospecting business.

42. Most indigenous peoples are numerically small in number. For small-numbered peoples, one particular challenge is to recruit indigenous peoples with expertise such as doctors, administrators, etc. Non-indigenous recruited experts typically have different traditions and do not speak the indigenous language, which makes communications precarious. This may be a challenge to the political ambitions for increased autonomy and may lead to increased internal conflicts, as has been the case in Greenland.

► c. Public governments versus indigenous self-governments

43. Even in the cases where indigenous peoples make up a majority of the population within the autonomous units, they have a number of choices to make. The first is whether to aim to be a public government or an ethnic/aboriginal government. The Inuit in Nunavut were very concerned about having a territory that made them the majority of the population and they thus opted for a public rather than an aboriginal government. The Wampís in Peru chose another solution. Second, it has to be decided how the autonomous unit should be integrated into the national administrative and political structure – if it has the choice, which most often is not the case. In 2018, the indigenous inhabitants of the Andrés Bello community within the borders of Mexico City created its own autonomous community, with its own community government council.¹¹ The indigenous community is established as an alternative to the existing public structure. The third decision is whether the internal management of the autonomy should follow national rules, local traditions or a mixture of both. Before Nunavut was established, a referendum suggesting that the future Nunavut legislative assembly should have gender parity was turned down in a plebiscite.

44. As is often the case, municipal management frameworks and State planning follow logics that are far from those of indigenous peoples, where the highest decision-making bodies are collective entities. Indigenous peoples like the Guarani and all other indigenous peoples in the Plurinational State of Bolivia, who are trying to negotiate a path to self-government, have therefore a long and bureaucratic process in front of them (see [A/74/149](#), para. 70).

11. International Work Group for Indigenous Affairs, *Indigenous peoples' rights* (pp. 22–24).

45. The discussion among indigenous peoples around using local governments (as part of the State structure) as an option for promoting their interests includes to what extent the local government will be a challenge to traditional types of self-government.

46. In the Philippines, it has been observed that the local government code can in fact be instruments for the obliteration of indigenous institutions, as these are increasingly subsumed under state law.¹²

47. In the Philippines, the recognition of the right to self-determination of indigenous peoples is guaranteed under the 1997 Indigenous Peoples' Rights Act, which is a comprehensive piece of legislation that essentially respects the fundamental rights of indigenous peoples to lands, territories and resources, self-determination, cultural integrity, social justice and human rights, among others. However, this is negated by the constitutional provision that underscores that the rights of indigenous cultural communities are subject to national policy and development. This explains why in the Cordillera region, where the majority of the population are indigenous, two attempts to establish an autonomous region have been rejected by the people because it is subsumed to national legislation. Indigenous peoples are opposed to attempts to create another bureaucratic layer within the framework of the mainstream Government.

48. Customary laws and customary institutions coexist with national institutions and legislations. The above-mentioned Indigenous Peoples' Rights Act thus recognizes indigenous peoples' rights to ownership, management and control of their ancestral lands and domains, but those rights may be overruled by the administrative structure of the State and other provisions of the State that undermine or weaken the traditional structures.¹³ There is therefore a pending conflict between the local autonomy associated with the customary system and the State-introduced system of autonomy.¹⁴

49. Other concerns include those observed in Malaysia, where it has been asserted that, while indigenous peoples constitute the majority in Sabah and hold posts in the government administration, rural indigenous communities face numerous problems and constraints that hinder their full and meaningful participation in local government. Political autonomy exists only as public governments in Sarawak and Sabah, i.e., as part of the national political system. Even in the state of Sabah, where indigenous peoples make up 60 per cent of the population, the governmental structure is dominated by the national political parties and gives little protection of the rights of indigenous peoples.¹⁵

50. Similarly, in the Plurinational State of Bolivia, the legal framework makes it possible for indigenous people to establish indigenous autonomies as part of the municipal structure or create new indigenous autonomous territories.¹⁶ In both cases, indigenous peoples are faced with internal and external challenges in combining indigenous and national systems of management.¹⁷ Despite administrative and bureaucratic obstacles, three autonomies have so far established their own governmental structures, including the Guaraní Charagua Iyambae. The initiative to establish autonomous territories that cross-cut with existing municipalities shows that indigenous peoples make up a minority in many existing administrative units.

51. In federal States where indigenous peoples make up the majority or a significant part of the population in a province or substate, there is a question as to what extent indigenous peoples will be able to promote their interests when the province/state is fully subsumed as part of the national political and administrative structure. There seems to be no universal answer to that question. The experiences in Nagaland (India) and the Sakha Republic (Russian Federation) are quite negative, whereas that of Nunavut, where indigenous peoples have combined public rights with indigenous rights to lands and territories, seems more positive.

12. Cordillera Peoples' Alliance, *Indigenous Peoples and Local Government: Experiences from Malaysia and the Philippines* (International Work Group for Indigenous Affairs, Copenhagen, 2005), p. 194.

13. *Ibid.*, p. 158.

14. *Ibid.*, p. 194.

15. *Ibid.*, p. 102.

16. International Work Group for Indigenous Affairs, *The Indigenous World 2018* (Copenhagen, 2018), p. 183.

17. See also [A/74/149](#), para. 70.

52. Since colonial times, the north-eastern states of Nagaland and Mizoram in India have had special provisions for some kind of autonomy. Only the State of Nagaland continues to have robust and continuously evolving customary dispute settlement mechanisms that run parallel to the mainstream legal system. However, in other tribal areas, there is no legal recognition of the traditional dispute settlement mechanisms,¹⁸ and even in Nagaland this has come under national, legal and developmental pressure.

► D. Comprehensive agreements or land claims

53. To guarantee or ensure their rights, indigenous peoples have aimed at establishing comprehensive claims that combine political rights with territorial rights. In Canada, that has resulted in the establishment of the Inuit autonomies of Nunavut, Nunatsiavut (Labrador) and Nunavik (Quebec), as well as treaty-like agreements between Indian First Nations and the Government.

54. Land claims (for example, in Alaska, Canada and Paraguay) and the demarcation of lands and territories (for example, in Brazil and Peru) without political concessions can be seen as a kind of autonomy or a precondition to the development of autonomy and autonomous institutions. Aboriginal territories and native titles in Australia are defined in acts adopted by Parliament and mostly defined under freehold titles or perpetual leases. In Alaska, aboriginal titles have been given by the federal Government without being negotiated with indigenous representatives, and have been vested in 13 regional and more than 200 for-profit corporations, thereby allocating such lands as non-contiguous areas (i.e., a “checkerboard” system). The indigenous peoples have become shareholders. In Paraguay, the Government has adopted a similar system.¹⁹ These options make land-use planning and unified public control with the lands extremely difficult.

55. In the Peruvian Amazon, where large tracts of lands have been demarcated and titled, indigenous communities have made all efforts to eradicate the existence of any “no-man’s land”. However, the titling of indigenous communal lands is bureaucratic, and the experiences of many countries have shown that this does not protect the lands against intruding interests and that discrimination continues into the court system.

► E. Recognition

56. The United States was one of the first States to establish indigenous autonomies through treaties and legal measures. The result today is that a large number, but far from all, of the indigenous peoples belong to federally recognized tribes and live in territorial reservations with Government-to-Government relations with the Government of the United States. Through treaties or other agreements, the United States has a trust responsibility to the Indian autonomies, which includes federal economic, social and legal obligations.

57. According to the Special Rapporteur, “tribes are sovereign nations with certain inherent powers of self-government and original rights, but they are rendered, in words penned by the famous Supreme Court Justice John Marshall, ‘domestic dependent nations’, subject to the overriding power of the federal Government.”²⁰

58. To be recognized as indigenous peoples is obviously a condition for genuine autonomy. In some countries, indigenous peoples are recognized in the constitution. In other countries, their rights are recognized by law or legal provisions. In still other countries, indigenous peoples can be said de facto to have some degree of recognition as being labelled scheduled tribes, marginal or vulnerable groups.

59. Only a few African countries recognize any group as indigenous in accordance with the provisions of international law. The Congo was the first country in Africa to adopt legal recognition of indigenous

18. C. R. Bijoy et al., *India and the Rights of Indigenous Peoples* (Aakar Books, New Delhi, 2010).

19. See [A/HRC/30/41/Add.1](#), paras. 24–25.

20. See [A/HRC/21/47/Add.1](#), para. 15.

peoples, together with Cameroon and the Democratic Republic of the Congo. While there is some dialogue with indigenous populations, there has only been little positive impact so far on the human rights of indigenous peoples.

60. The lack of recognition of the nomadic pastoralists in the Sahel region have for decades led to serious conflicts and civil war, which have been further aggravated by the growth of jihadist movements.

61. In a few cases, indigenous hunter-gatherers and pastoralists have turned to the court system, where they have defeated government-instigated evictions from their lands (Kenya). However, the court rulings have never been implemented, and working through the national political and administrative system is not an option for those peoples.

62. Although Botswana, Namibia and South Africa rank high with respect to human rights standards in general, indigenous peoples' rights remain largely unrecognized. The San peoples of that region are among the most vulnerable indigenous peoples, but with support from the outside, a group of San in Namibia have established one of six conservancies in Namibia, the Nyae Nyae Conservancy. With a governing body that has decision-making power in relation to the land, they can negotiate with the Government on resource issues and have successfully led a court case against illegal trespassing.

63. African indigenous groups can, however, appeal to the international human rights system. This was successfully achieved when a ruling by the African Commission on Human and Peoples' Rights condemned the expulsion of the Endorois people from their land in Kenya.²¹ Furthermore, in 2017, the African Court on Human and Peoples' Rights made a landmark judgment against the Government of Kenya for violating the rights of the Ogiek people to their ancestral lands.²²

64. Apart from the legal and political impact of involving the international human rights system, the psychological factor has been strongly stressed by Antonia Urrejola from the Inter-American Commission on Human Rights.

65. In general, as argued by Gam Shimray, Chair of the Asia Indigenous Peoples' Pact organization, autonomy does not make sense without recognition (i.e., without self-determination). As Mr. Shimray stated in 2019, with reference to the Naga people in India, the challenge is to negotiate a social and political space where indigenous peoples can determine themselves and their affairs and have a meaningful relationship with India. How that is achieved is left open, so the organization can find a dialogue point.

66. Furthermore, a key issue is who has the right to define indigenousness. In Finland, there have been intense disputes with the State over who is indigenous and who can enrol in the election register. Perhaps to the surprise of many, there is no de jure definition of an indigenous Inuk in Greenland. A Greenlander is a person born in Greenland. In this case, there are other criteria that de facto identify an ethnic Greenlander, such as language, culture, family history and association to a locality.

► F. Traditional governance

67. In Rapa Nui, through the Council of Elders, the people claim rights to their ancestral lands. In Kanaky, a national customary senate has responsibilities in all civil and legal matters, although still refers to the national legal system. With advisory rights, the customary senate is located parallel to the national congress, which is composed of three provincial assemblies. In some of the Pacific islands, such as Tokelau and the Cook Islands, indigenous peoples have established parallel structures of traditional institutions, but the relationship between these and "modern" institutions are mostly precarious,²³ and few if any indigenous peoples want to keep their cultural traditions, including governance traditions, completely unchanged.

21. A. K. Barume, *Land Rights and Indigenous Peoples in Africa* (International Work Group for Indigenous Affairs, Copenhagen, 2010).

22. *African Commission on Human and Peoples Rights vs. Republic of Kenya*, application No. 006/2012, judgment dated 26 May 2017.

23. K. Wessendorf (ed.), *Challenging Politics* (International Work Group for Indigenous Affairs, Copenhagen, 2001).

68. When autonomy is independent of the national administrative and political structure, indigenous peoples may choose to retain – in full or in part – the traditional decision-making structure. In Guna Yala, there are 49 communities, each of which has a local congress at which different issues relating to social, economic, political and spiritual life are discussed. The general Guna congress is the highest political-administrative body and meets every six months by agreement of the *sailas* (traditional chiefs of each community). Three general *caciques* (chiefs), the *saila dummagan*, lead this governing body and represent it before the National Congress.²⁴

► G. The platform factor

69. The first and most challenging step for indigenous peoples is to be recognized and to obtain some kind of autonomy. When established, even the most nominal form of autonomy will be used by its incumbents to expand its authority.

70. Although reservations were forced on the Indian tribes, and although successive Governments of the United States have continuously broken the treaties to which they are a party and intervened in legal matters internal to the tribes and in the collective ownership of lands, the Special Rapporteur has stated that, in spite of all kinds of impediments, many tribal governments and justice systems are gaining strength.²⁵

71. Established in 1979, and through 20 years of practice, the Greenland home rule provided a platform for achieving further devolution of powers in crucial areas, such as the right to mineral resource, and led to demands for negotiating self-rule. The indigenous inhabitants of Rapa Nui have appealed to the Inter-American Commission on Human Rights to further their claims in another example.

72. With a clear – and agreed – legal mandate, such autonomies can develop strong platforms and rooms for actions in the promotion of indigenous rights (for example, the Sámi Parliament in Norway). This is less so in case of internal political disagreements and ethnic diversity among the indigenous population (for example, the Chittagong Hill Tracts, Bangladesh).

73. It should be remembered that indigenous peoples continuously aim to control their own destiny. Even in Canada, simply creating a Nunavut Territory with a public government was never going to be enough.²⁶

► H. Co-management and conflict resolution

74. States that recognize that there are groups of marginalized peoples who need special consideration have established institutions, as part of the government system, focusing on those peoples. These States include Bangladesh, Botswana, Chile, India, New Zealand and the Philippines. However, in order to truly promote the rights of indigenous peoples, these institutions must be under the control of indigenous peoples.

75. In many cases of indigenous autonomy, Governments must consult with indigenous peoples in matters relevant to them. While the Government of Bangladesh recognizes parallel autonomies in the Chittagong Hill Tracts in the form of an indigenous regional government and traditional chiefs, there is no legal mechanism to protect and implement agreements entered into between the parties.

76. Cases thus reveal that indigenous rights are better guaranteed when comanagement regimes, such as land management in Nunavut, and conflict resolution mechanisms, such as the Waitangi Tribunal in New Zealand, are legally and politically guaranteed.

77. According to the Special Rapporteur, relationships between the Māori and the New Zealand Government are grounded in and guided by the Treaty of Waitangi of 1840, which is understood to be one of the country's founding instruments. While the constitutional status of the Treaty is the subject

24. International Work Group for Indigenous Affairs, *Indigenous peoples' rights* (pp. 16–18).

25. See [A/HRC/21/47/Add.1](#), para. 55.

26. See <https://nunatsiaq.com/stories/article/making-nunavut-truly-our-land/>.

of ongoing debate in New Zealand, it has an important place in the legal framework of New Zealand and has been described as part of the fabric of New Zealand society.²⁷ Nevertheless, the Māori have since then lost most of their lands and often complain about the lack of procedural consistency.

78. Inherent in the Treaty of Waitangi is the responsibility of the Government to consult with the Māori, and to that extent the Waitangi Tribunal was established in 1975, through which a large number of controversies have been settled. In spite of its shortcomings, the Special Rapporteur concluded that the Treaty settlement process in New Zealand, despite evident shortcomings, is one of the most important examples in the world of an effort to address historical and ongoing grievances of indigenous peoples, and settlements already achieved have provided significant benefits in several cases.²⁸

► I. Organizational matters

79. How do indigenous peoples organize themselves in order to promote their rights of self-determination and establish autonomies? For most indigenous peoples, the national political parties are of no help. In fact, the contrary has been said to be the case, for example because, as observed in Malaysia, government officials and/or politicians select most of the village leaders. The selection of village leaders is strongly influenced by party politics. Leaders must be members of the ruling political party.²⁹ Similar observations have been made from different countries, such as Canada, Mexico and the Russian Federation.

80. Furthermore, in other countries, national political parties seem to be an obstacle for the indigenous autonomies. In Nicaragua, Law No. 445 of 2001 recognized the ethnic communities of the autonomous regions of the Atlantic coast, including the communities' rights to self-government and the demarcation of 23 indigenous and Afrodescendent territories within the autonomous regions. However, the final implementation of demarcation and titling of the indigenous territories drags on and is dominated by the national political parties' promotion of a mega-canal project through indigenous territories. Furthermore, the autonomy is put under constant pressure from illegal settlers.

81. The people of the community Ayutla de los Libres (55 per cent indigenous) in the state of Guerrero, Mexico, managed to exercise their right of self-determination by changing from a party-run election to a process following the local indigenous traditions. An assembly of representatives from 140 communities elected three coordinators – one from each of the three ethnic groups – to make up the governing unit.³⁰

82. Although indigenous peoples in most countries relate to political parties for jobs, national elections, lobbying, etc, other ways must be found for the promotion of autonomy. Indigenous peoples in Bolivia (Plurinational State of), Mexico and Peru have turned to traditional or redefined traditional ways of organizing, although it is a challenge to include traditional institutions in a modern governing structure. Greenlanders, for example, have established local political parties that are structurally similar to Danish political parties.

83. The options chosen by the Sámi are more complex. In Finland, Norway and Sweden, the national authorities have established popularly elected Sámi political bodies – Sámi Parliaments (Norway in 1989, Sweden in 1993, Finland in 1996). There are established electoral rolls where only Sámi can register according to specific criteria, and thus only Sámi can be elected as representatives. There are political bodies that have voters nationwide, and policies can be relevant for Sámi both all over the country and in specific areas. In the Norwegian Sámi Parliament, some members are elected on ethnic electoral lists and others as members of national political parties.

84. In Canada, Nunavut has a consensus-style government with no political parties but that is guided by a set of Inuit societal values.

27. See [A/HRC/18/35/Add.4](#), para. 7.

28. *Ibid.*, para. 67.

29. Cordillera Peoples' Alliance, *Indigenous Peoples and Local Government* (p. 102).

30. International Work Group for Indigenous Affairs, *Indigenous peoples' rights* (pp. 25–27).

85. In some countries, the national parliaments have reserved seats for indigenous regions (Greenland/Denmark) or indigenous peoples. In New Zealand, some seats in Parliament are reserved for persons enlisted in a Māori electoral role, but each Māori can also choose to vote for the general list. In India, there are hundreds of ethnic groups that are officially recognized in the Constitution as *adivasis* (scheduled tribes) and officially they enjoy a number of affirmative measures. In general, all scheduled tribes share the characteristics of indigenous peoples, although the Government of India insists that there are no indigenous peoples in that country. In national and State elections, there are reserved constituencies for scheduled tribes, but everyone can vote for those lists and indigenous individuals can choose to vote for general candidates. At the same time, *adivasi* members can belong to different political parties.

► J. Obstacles

86. Indigenous peoples often mention natural resource extraction, lack of political recognition and the influx of settlers as the main obstacles to autonomy. Other external factors mentioned are racism, the caste system, opposition from other indigenous groups in the country, the criminalization of indigenous peoples, a lack of involvement in projects affecting them and increasing disrespect for human rights by politicians, the authorities and the general public. Missionaries have also been mentioned as an obstacle to people living in voluntary isolation.³¹

87. Indigenous peoples frequently face the problem of limited funding, even in countries that recognize indigenous autonomies. The Emberá indigenous reserves (*resguardos*) in Colombia³² illustrate a type of autonomy where the indigenous communities are legally recognized with defined legal, administrative, judicial and political rights. Being part of the national political structure, those reserves depend on funding from the State. Greenland, however, has been able to strengthen its autonomy by generating its own funds through local taxation. Parallel indigenous institutions cannot work properly without funding, for example as is the case in Kanaky.

88. Currently, one very worrying global trend is the alarming increase in violent attacks and the criminalization of indigenous peoples, as well as the killing of indigenous human rights defenders and increasing violations of their fundamental human rights in general. This raises the question as to how we can talk about autonomy when indigenous leaders are being criminalized and murdered. Although the creation of indigenous autonomies, such as indigenous reserves in Colombia, have been an advantage for the recovery of lands taken away from indigenous peoples during colonial and postcolonial times, they are continuously threatened by armed and criminal groups.³³

► K. Implementation

89. Following years of armed conflict, the Government of Bangladesh and the indigenous peoples of the Chittagong Hill Tracts agreed in 1997 on a peace accord. That agreement gave the indigenous peoples allocated seats in the district councils and the regional council, created a special ministry for the Chittagong Hill Tracts and confirmed the rights of the traditional chiefs ([E/C.19/2014/4](#)). Those institutional arrangements established negotiating links between the indigenous peoples and the Government, but more than two decades later, key agreements (land issues) are still not being implemented and injustice against indigenous peoples have continued. Militarization, lack of political support in the national parliament and lack of unity among indigenous peoples are some of the factors that have been mentioned as obstacles to the implementation of the 1997 agreement ([E/C.19/2011/6](#)).

90. Indigenous peoples are recognized as cultural groups in the Constitution of Paraguay, and the country has an extensive legal framework that guarantees and recognizes a very broad range of rights in favour of indigenous peoples,³⁴ including communal land ownership. However, that normative framework has not been translated into the legislative, administrative or other measures needed to

31. See [A/HRC/33/42/Add.1](#), para. 27.

32. International Work Group for Indigenous Affairs, *Indigenous peoples' rights* (pp. 13–15).

33. International Work Group for Indigenous Affairs, *The Indigenous World 2019* (Copenhagen, 2019).

34. *Ibid.*

ensure the enjoyment by indigenous peoples of their human rights, in particular their fundamental right to self-determination and their rights to their lands, territories and natural resources (see [A/HRC/30/41/Add.1](#), para. 75).

► L. Regression

91. Many indigenous peoples who have experienced any form of autonomy may have witnessed a process of regression over recent years. This is even the case in areas where indigenous peoples are recognized, such as in many countries in Latin America, where, despite progressive legal frameworks, there has been a de facto process of regression of indigenous rights whereby extractive industries have been able to invade indigenous peoples' lands and territories without their consent or proper consultation.

92. In the Russian Federation, under the Soviet regime, the first autonomous republics and autonomous areas were established in the 1920s in the north, Siberia and far east. In those autonomies, indigenous peoples enjoyed certain privileges in relation to culture, language, education and resource exploitation. The *okrugs* (autonomous republics and areas) were named after their titular nations, reflecting the ethnic composition, and officially those entities constituted the realization of the peoples' right to self-determination. Exploitation of all kinds of non-renewable resources and the immigration of non-indigenous peoples have always been a challenge for indigenous peoples, whose influence depended on their numerical numbers. However, the authorities often utilized indigenous culture and identity as an asset to strengthen a sense of regional identity and get better deals from the centre. This is particularly true for the Yamal and the Khanty-Mansi regions, which are the main oil and gas producers.

93. In the twenty-first century, the centralization of the Russian Federation became a main political goal and the various autonomies lost much of their independence. The central authorities in Moscow took over much of the administrative and political control and autonomous areas, such as Koryakia, Evankia, Komi-Permyakia and Taimyr, have been dissolved. These areas became "municipal districts" of the Russian-dominated neighbouring regions, which also meant that they had to deal with a distant regional capital thousands of kilometres away that had barely any knowledge about their existence.

► M. Decolonization

94. The Pacific is the home to a number of countries that are Non-Self-Governing Territories under the Special Political and Decolonization Committee, including Kanaky, French Polynesia, Tokelau and Guam. There are other islands that remain under colonial-type relationships, like Rapa Nui and American Samoa, or that are in free association, such as Niue and the Cook Islands with New Zealand, and the Marshall Islands, Micronesia (Federated States of) and Palau with the United States.

95. In Kanaky and French Polynesia, local parliaments enjoy some autonomy but both territories are integrated parts of the French political structure. Although the indigenous peoples make up significant parts of the population (French Polynesia 80 per cent, Kanaky about 45 per cent) the quests for further autonomy or independence have been drowned in conflicts or disagreements between political parties.

96. The indigenous peoples of the isolated Rapa Nui make up 60 per cent of the population but have lost control of most of their traditional land, and now only control 13 per cent of the island. They aspire to be included on the list of Non-Self-Governing Territories recognized by the Special Political and Decolonization Committee, without this affecting the territorial integrity of the Chilean State, but also wish to investigate the option of a free-association status to secure their rights of self-determination. For that purpose, they have submitted a petition to the Inter-American Commission on Human Rights to obtain recognition of their rights to the lands and waters of Rapa Nui. Being a tiny minority in Chile and living 3,800 kilometres from the mainland, Rapa Nui exhibits all the problems of being part of the political and administrative structure of a unitary State without having an independent type of indigenous autonomy.



v. Recommendations

97. The Permanent Forum on Indigenous Issues should pay further attention to institutions that have been or can be established to promote dialogue between indigenous peoples and Governments in order to advance the implementation of indigenous peoples' rights to autonomy and self-government.

98. The Permanent Forum should further coordinate activities with the Special Rapporteur and the Expert Mechanism on the Rights of Indigenous Peoples to increase the understanding and support of United Nations agencies and other relevant multilateral institutions of indigenous peoples claims to autonomy and self-government.

99. The Permanent Forum should facilitate an inclusive process aimed at the development of guiding principles for the implementation of indigenous peoples' rights to autonomy and self-government.

100. In accordance with articles 16 and 21–22 of the Declaration on the Rights of Indigenous Peoples, States are encouraged to take measures to establish ombudsman institutions to ensure that the rights



Sierra Nevada, Colombia. Arhuaco territory. Photo: Martin Ladd

of all indigenous peoples are respected and protected and to facilitate the establishment of similar institutions in autonomous areas.

101. Indigenous peoples are often left with no grievance mechanism when States do not respond to their claim for autonomy or do not fulfil their responsibilities. The Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights have in various ways given support to indigenous claims. Governments are urged to increase their financial and political support for these and other regional human rights mechanisms.

102. Given their extreme vulnerability, and in accordance with the draft guidelines on the protection of indigenous peoples in voluntary isolation and in initial contact of the Amazon basin and El Chaco ([A/HRC/EMRIP/2009/6](#)), States are urgently required to establish global monitoring mechanisms and protection frameworks for peoples living in voluntary isolation.



Rapa Nui, Easter Island. Photo: IWGIA

Rights of indigenous peoples

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](#)

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.

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.

* [A/74/50](#)

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 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

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](#).

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](#)).

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 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

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.

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).

► **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 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 has often resulted in what could be termed "fragmented autonomies".

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.

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 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

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 Autonòmics 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](#).

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 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

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.

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.

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 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

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).

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 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

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).

29. [A/73/176](#), para. 77; [E/C.19/2018/7](#)

30. IWGIA, "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.

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 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

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.

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.

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

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.

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 FILAC* (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).

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 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

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.

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](#).

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 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

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.

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.

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 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.

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.

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).

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-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 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

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](#).

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

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.

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.

72. [A/HRC/42/37/Add.1](#).

73. [A/HRC/39/17/Add.3](#).

74. [E/CN.4/2004/80/Add.2](#), para. 57; [A/HRC/39/17/Add.2](#), paras. 2, 49–50 and 96.

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 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.

75. [A/HRC/39/17/Add.2](#), para. 51.

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.

79. [A/HRC/15/37/Add.3](#), paras. 46.

80. [A/73/176](#), para. 82.

81. [A/HRC/9/9](#), para. 51.

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 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.

Santiago River, Wampís territory. *Photo: Pablo Lasansky*





Wampís autonomous territory, Peru. *Photo: Pablo Lasansky*

Socio-territorial governance or autonomy of the Wampís nation Origins, progress and prospects

Shapiom Noningo

The Wampís nation, or simply the Wampís, live along the Ecuadorian border in north-east Peru, in the Kanus and Kankaim basins, both of which are rivers that rise in Ecuador. Its inhabitants have been living in communities since the 1960s, and there are now 85 in all (21 titled and 64 annexed), with a total population of 15,300 individuals. The Wampís keep their language alive and defend their territories, and they share common cultural, linguistic and social origins with the Shuar, Awajún and Achuar peoples, together with some basic cultural elements.

After many years of organisational and collective discussions around their destiny and future, in November 2015 (from 28 to 30) the Wampís proclaimed themselves an autonomous nation within the Peruvian nation state. This ambition for autonomy and control over their own destiny and future means that the Wampís People have collectively decided and committed to maintaining their own sociocultural identity in perpetuity, maintaining and conserving the territories and forests, strengthening their ancestral conservation system and achieving “Tarimat Pujut” (living well). Their traditional autonomy has been blocked and greatly weakened since the birth of the nation state. This weakening has particularly intensified over the last six decades, as the state educational model was implemented in our communities. The Wampís nation has therefore decided to recover some of its autonomy as a nation. This means creating, maintaining, strengthening and consolidating its internal capacity to build and lead its future. This process of revitalising its autonomy does not, however, imply a return to an ancestral way of life (like those indigenous peoples living in voluntary isolation or initial contact). It instead means, firstly, having the sufficient capacity to creatively find solutions to the many problems facing Wampís individuals and families and, secondly, having the necessary capacity and strength to influence the decisions of the Peruvian state’s central and regional governments, building a framework for a positive and innovative relationship with the state sector and an equally creative relationship with civil society.

With this ambition in mind, the Wampís nation has from the start been implementing a highly important strategy aimed at achieving national and global visibility, both of which are necessary aspects for its social and institutional positioning and aspects that will contribute to its gradual recognition among UN member states.

This motivation has led the authorities of the Autonomous Territorial Government of the Wampís Nation (GTANW) to establish a creative relationship with three key spaces and institutions: a) international cooperation, in particular, IWGIA; b) the Special Rapporteur on the rights of indigenous peoples; and c) indigenous peoples’ rights experts. GTANW has obtained much sympathy and support from all three.

Evidence of this can be seen, firstly, in the international event that was organised and held in Mexico City, entitled: Indigenous peoples’ rights to autonomy and self-government as a manifestation of the right to self-determination. This event was attended by many of the world’s indigenous autonomies and gave them an opportunity to discuss their weaknesses, strengths and aspirations. The conclusions of this meeting were set out in a document that was agreed and approved by all participants.

Secondly, the Special Rapporteur has very skilfully gathered together the key elements of indigenous autonomies, including those of the GTANW, and produced an innovative body of thought in the form of an official UN report (A/74/149). Lastly, experts on indigenous peoples’ rights, such as Dr. Jens Dahl, have been providing the necessary impetus to get the world’s indigenous autonomies onto the agenda as a priority issue. The Permanent Forum has also produced a report on the benefits of autonomies, which is annexed to this publication.



Community of Soledad, Wampís territory. *Photo: Pablo Lasansky*

As already stated, one of the GTANW's ambitions is to achieve global visibility at the level of the UN and its specialised bodies (ECOSOC, Permanent Forum, etc.) and to demonstrate the virtues of such autonomies so that countries cannot use this as a pretext to reject and hinder their consolidation. This aspiration draws both on the fact that while the world's indigenous autonomies are often consolidated and influential within their own nation states, remain notably unknown or invisible to the wider world and, what's more, also within UN fora and the indigenous world generally. Whether or not they perhaps fear reprisals from their governments if they become too visible, the GTANW has chosen another path. It is of utmost importance to the GTANW that it continues to actively promote a process of greater global visibility, as set out in the above plan, because this is seen as a specific and necessary aspect and one of their key aspirations. The GTANW consequently intends to propose the creation of a UN caucus of the world's indigenous autonomies in the very near future, thereby creating a space in which indigenous autonomies can come together and discuss, creating a kind of forum for indigenous peoples' international solidarity.

What next?

The GTANW has, from the very start, been forging a common path for the future through collective discussions, bringing people together so that they are able to tackle problems. To do this, the Wampís have taken their ancestral history (knowledge, wisdom, practices, habits and customs) as their natural starting point and have been analysing the strengths and weaknesses of their past, their current situation and future aspirations. Their strengths will form a cultural and sociohistorical basis on which to build and empower their common destiny. This necessary process is planned to conclude in 2021, when the next stage of building their own thinking will begin. This will be expressed in official GTANW documents, many of which will be used to begin establish-

ing agreements with the Peruvian state. Nevertheless, alongside this, the Wampís Autonomous Government will also begin to strengthen some economic activities, family initiatives, and will be launching new activities based on natural resources, which Wampís people call the bounties of nature.

Initial discussions are also due to take place with other indigenous peoples so as to build common ground for action, both internal and external, in order to come up with a number of joint strategies and positions in relation to the Peruvian state, civil society and the world.

Conclusion

The GTANW is in the process of strengthening and consolidating its autonomy or socio-territorial governance. Its main strategy in this is to reconstruct its people's ancestral thinking around 13 thematic areas, as set out in its statutes of autonomy. This thinking will then be expressed in official documents for internal use and, when necessary, be used in establishing agreements with the Peruvian state.

Beginning in 2020, GTANW will also share its progress and difficulties with other indigenous peoples' autonomies in the Amazon Region with the aim of combining efforts and strategies, and reaching a collective position on internal and external issues.

This position will guide their plan to formally request official recognition from the state, i.e., whether or not to submit a legal proposal and the possibility of using international fora.

Finally, the encouragement and support of the noted institutions will be strengthened through the possibility of opening up spaces and dialogues with other institutions. The aim will be to gain acceptance of the final report that is currently being prepared by members of the Expert Mechanism on the Rights of Indigenous Peoples.



Community of Soledad, Wampís territory. Photo: Pablo Lasansky

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Kyar Wang Village of the Tangshang Naga tribe in Sagaing Region, Western Myanmar. *Photo: Christian Erni*

Autonomy for Indigenous Peoples in Asia: A Path to Justice, Liberty and Democracy

Shankar Limbu

It is estimated that two-thirds of the world's Indigenous Peoples live in Asia, in other words approximately 260 million people representing 2,000 distinct civilizations and languages.¹ They make the continent diverse, colorful and unique in many ways. Governments are highly selective when giving or not giving recognition to Indigenous Peoples' identity and rights. Identity politics in many Asian countries only comes to the fore during election times. As Indigenous Peoples constitute a significant voter base in some Asian countries, they have to some extent been successful in gaining a profile in politics, constitutions, laws and policies. The Constitution of Nepal, for example, states that in order to ensure Indigenous Peoples' right to live with identity and dignity, special provisions shall be imposed and participation in decision-making established.² This is actually more of a morally binding provision than a mandatory one, reliant on the discretion of the government. The current communist government of Nepal is regressive in terms of respecting the rights of Indigenous Peoples. In India, there are special provisions in the Constitution for tribal areas namely: Tribal Areas under the Fifth Schedule and Tribal Areas under the Sixth Schedule, which are governed by different systems and granted different forms of autonomy. The Philippines and, to some extent, Cambodia stand out in the region, pursuing approaches reflective of a contemporary understanding of the concept of Indigenous Peoples, based on respect for cultural integrity and recognition of their collective identity and attachment to a territory.³ Symbols of Indigenous collective identities such as landmarks, sacred sites, belief systems, spirituality and way of life, are undoubtedly territorially-specific. Territory here is taken in the sense of customary lands under their exclusive possession, in accordance with customary rights, and not necessarily under the existing state laws relating to land and resources. In a nutshell, recognition of Indigenous Peoples and their rights, including the right to autonomy, lands, territories and domains varies from nation to nation in Asia. There is no fully-fledged recognition of Indigenous Peoples and so they are still struggling to enforce their right to freely determine their political, social and cultural status as peoples within their own homelands, as set out in Article 3 of the UNDRIP. This gives a new interpretation of exercising the right to self-determination, one in which Indigenous Peoples have the right to self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural rights.

The case of the Nagas is representative of many Indigenous Peoples in the region. The Nagas, an Indigenous people with over 40 tribes, used to live as self-sufficient and self-governing communities. They did so under different forms of self-government. The Sema and the Konyak tribes, for instance, were aristocratic chiefdoms in which power was largely in the hands of the chiefs. The Ao tribe had (and to some extent still have) a complex system of village councils with representatives from all clans, their membership limited to a more or less fixed time period and then passed on to the next age-group. Others, like the Tangkhul, had and still have, a chief-in-council system, which means that the hereditary chief's power is limited in the sense that his decisions need the consent of the council. The Angami and Chakhesang are again known for their egalitarian system of governance, in which there are no chiefs and in which all clans are equally represented. While encompassing

1. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_545484.pdf visited 13 February 2020

2. Article 51(j)(8) of the Constitution of Nepal, 2015

3. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_545484.pdf visited 13 February 2020

the whole range of governance systems, from the most egalitarian through to the most autocratic, what all the Naga villages had in common was that they were sovereign, controlling their own affairs without external intervention. The term Village Republic has thus been coined to capture the nature of the Nagas' self-governance system.⁴

Only parts of the Naga areas were administered during British colonial rule. Like other tribal areas in Northeast India, those areas over which the British had established control were considered Excluded Areas, which means that they were not governed like the rest of colonial India. They were excluded from the competence of the provincial and federal legislature and were administered solely by provincial governors appointed by the British. The separate status of these areas was maintained in post-independence India. Excluded Areas came under the Sixth Schedule of the Constitution, which provided for limited autonomy in the form of Autonomous Districts. The Nagas, however, refused the inclusion of their territories under the Sixth Schedule and insisted on remaining independent. After the First World War, a pan-Naga national identity had emerged and, on the eve of India's independence, the Naga declared their own independence, which was, however, rejected by India. When the Nagas insisted on being recognized as an independent nation, the Indian state responded with severe repression and, once the negotiations had failed, the Nagas returned this repression with armed resistance. The creation of Nagaland state, covering only part of the Naga areas and leaving others under three different states, was no solution as it was opposed by the leading Naga political organizations. Armed conflict continued, ending only in 1997 after more than 40 years, when a ceasefire agreement was reached between the Indian government and the strongest armed group of the Naga resistance, the National Socialist Council of Nagalim (Isak-Miuvah). A framework peace agreement was finally signed by the two parties in 2015. The details of the peace agreement and, in particular, the political status, i.e. the extent of Naga autonomy, are still being negotiated, however. Furthermore, the political landscape in the Naga territories has become extremely complex, making a final agreement utterly challenging. There is thus still a long way to go for the Nagas to achieve their right to self-determination, which has been recognized as a fundamental right of all Indigenous Peoples by the UNDRIP.

The painful history of Indigenous Peoples is that they became stateless by losing their own nations, territories and lands in the wake of colonization, and in the name of nation-building. It is a fact that Indigenous Peoples across Asia have been resisting both external and, in independent Asian states, internal colonization and its consequences. Their own lands became controlled by others through the State machineries. There are many forms of colonization that Indigenous Peoples have faced in Asia. Colonialism is, more fundamentally, characterized by political and legal domination, relations of economic and political dependence, imperial exploitation of colonies, and racially-based inequality.⁵ Some countries such as Malaysia, Indonesia, Myanmar, India, the Philippines and others were colonized by outsiders, who left the countries following independence. However, in some countries like India, Myanmar, Cambodia, Nepal and Bangladesh, internal colonization is ongoing, and Indigenous Peoples are surviving under latent and manifest subjugation, discrimination and marginalization, dominated by a mainstream society that controls the State power and rule based on their identity (religion, language and culture) and interest, which they claim is the national interest. Andrew Gray, the former director of the International Work Group for Indigenous Affairs (IWGIA), considered the experience of being colonized to be fundamental to Indigenous identities.⁶ The experience of being colonized is one reason why autonomy is at the core of the agenda of the Indigenous Peoples' rights movement in Asia, which seeks to exercise equal political social, cultural and economic rights, including the right to control their own destiny. In some externally colonized countries, India for example, Indigenous Peoples raised the autonomy movement immediately after independence from the British. The Jharkhand Movement is the oldest autonomy movement in post-independence mainland India.⁷ Internal colonization of Indigenous Peoples was initiated tactically by the colonizer government prior to the British exodus from the country. And the colonial legacy is still continuing

4. Wouters, Jelle J. P. 2017. Who is a Naga village? The Naga 'village republic' through the ages. *The South Asianist* 5 (1)

5. Michael Watts, *Dictionary of Human Geography* (4th edition) 2000

6. Briad G Ian, *colonialism indigeneity and the Brao*, The concept of Indigenous Peoples in Asia: edited by Christian Erni, IWGIA 2008.p. 202

7. Munda RD & Mullick Basu Sanjay, *The Jharkhand Movement*, Indigenous Peoples' Struggle for Autonomy in India, IWGIA 2003 P. iv

on the territories of Indigenous Peoples. The British, for example, not only crushed the Indigenous Peoples' one hundred years of resistance movement in Jharkhand but gradually prepared the ground to turn it into an internal colony of India.⁸ For Indigenous Peoples, the British were external colonizers. After independence, however, a new kind of hegemony described as internal colonization was imposed on the Indigenous Peoples by dominant groups, which subjugated, marginalized and discriminated against them.

Autonomy is a legal and legitimate subject in Asia

The right to autonomy is recognized by some nation states of Asia in their legal and policy systems. If autonomy is not recognized on a *de jure* basis, then some states do recognize this right on a *de facto* basis. International legal systems, including Article 4 of the UNDRIP, conceive of the concept of autonomy as an avenue for exercising the right to self-determination, and all Asian nation states are a party to the UNDRIP. Furthermore, as members of the United Nations, they accept its Charter, Article 1 of which states that all peoples have the right to self-determination.

Importantly, some nation states do constitutionally or legally recognize Indigenous Peoples and their identity. However, the notion as set out in this recognition is highly assimilationist, and this is another form of colonization that Indigenous Peoples have had to survive by the grace of outsiders who control the national governments. Article 8 of the 1991 Constitution of Lao PDR, for example, provides that the State shall implement every measure possible to gradually develop and upgrade the economic and social level of all ethnic groups but there is no reference to the inclusion of Indigenous Peoples in decision-making on how this development and 'upgrade' is to take place. The Philippines recognizes Indigenous Peoples' right to self-determination, self-governance and regional autonomy⁹ through a statutory provision but the implementation of this provision is almost completely lacking. In the case of Taiwan, Article 4 of the Indigenous Peoples Basic Law of 2005 obliges the government to guarantee equal status and development of self-governance *vis-à-vis* implementing Indigenous Peoples' autonomy, in accordance with the "will" of the Indigenous Peoples. The language is more precise and progressive compared to similar legal provisions in other Asian countries although it still needs to be realized in practice.

An unconventional understanding of the right to self-determination, with a much wider meaning that includes autonomy as a way of achieving this, would reduce the fear of State and dominant sectors in governments. It is important to understand that Indigenous Peoples' demand to exercise autonomy has to be governed by their own free will and by a model determined by their customary system and processes for their own affairs, without external interference. In relation to State affairs, they want equal power and resources based on democratic values and international human rights instruments, including the UNDRIP. Exercising democratic rights on an equal footing with dominant groups through ethnically-based inclusion, recognition and due regard for identity, collective rights, a customary justice system, self-determined development and free, prior and informed consent are just some of the models being practiced.

The right to autonomy or self-government and rights to lands and resources are closely linked to the fundamental aspects of their existence as differentiated societies.¹⁰ For Indigenous Peoples, the right to land and resources forms the fundamental basis for exercising their right to autonomy. There are also several examples of the judiciary playing a constructive role in promoting the pre-existing rights of Indigenous Peoples to lands and resources. Drawing on English Common law precedents, Malaysian courts have gone much further, recognizing that, under the Constitution and laws of Malaysia, the Orang Asli retain customary rights over their traditional territories.¹¹

8. Ibid.

9. Sections 13 and 14 of the Indigenous Peoples' Rights Act 1997

10. E/C.19/2018/7, para. 28.

11. <https://www.forestpeoples.org/en/node/50358> visited 18 February 2020

Autonomy as a means of conflict resolution

In 1972, the people of the Chittagong Hill Tracts (CHT) in Bangladesh formally demanded regional autonomy and constitutional safeguards through the political party known as Jana Samhati Samiti (JSS). These demands, however, were summarily rejected, and peaceful demonstrations in favor of autonomy were met with police brutality. The demand was nothing more than an attempt to address the historical colonization of the Indigenous Peoples of the CHT in a changing context. It came as no surprise to anyone when the hitherto peaceful struggle for autonomy turned into an armed revolt in the early 1970s.¹² After several rounds of dialogues and negotiations between the conflicting parties, a peace accord was signed on 2 December 1997. The signing of the Accord included the re-establishment of a partially autonomous self-governing system in the CHT, and the region was officially recognized as a “tribal-inhabited area”.¹³ Although the CHT Accord ended decades of armed conflict, Indigenous leaders continue to recall that the peace accord has yet to be duly implemented by the State. The main way in which the status of tribal-inhabited region is to be preserved is via the introduction of special governance systems in the CHT, i.e. the Chittagong Hill Tracts Regional Council and the Hill District Councils. However, several critical issues have yet to be adequately addressed and important parts of the CHT Accord have still not been implemented.¹⁴ This includes the resolution of land disputes, which are still outstanding.

In Nepal, a decade-long conflict led by the Maoist Party ended with a comprehensive peace accord in 2006. Several agreements¹⁵ were concluded with Indigenous Peoples’ organizations to ensure the right to self-determination, autonomy, self-governance and special protected areas in the new Constitution. Unfortunately, the conclusion of these agreements turned out to be a mere strategy by which to pacify the vibrant Indigenous movement because none of the autonomy agendas of these agreements were implemented in the new Constitution. The aspirations of Indigenous Peoples to have equal power and resource sharing through autonomy thus remains pending in Nepal, as in all other countries of the region.

Challenges of autonomy

Autonomy is in principle accepted in the legal and political arena in much of the Asian context. However, states consider it a problematic agenda, especially when it comes to questions of due implementation of power and resource sharing or redistribution of the nation’s resources. In addition, leaders of the majority community may be reluctant to concede autonomy, fearing a loss of electoral support among their own community (a problem that has occurred in Sri Lanka with regard to the Tamils). On top of this, it is clear that international law provides for the right to self-determination, autonomy and self-governance, and thus free, prior and informed consent should be binding for all Asian nation states. Majority leaders, even if well-disposed to autonomy, may not have the confidence that they would be able to implement the autonomy agreements, especially if they require amendments to the Constitution, a referendum or even merely fresh legislation.¹⁶ Furthermore, Indigenous Peoples do not control political decision-making bodies, including mainstream political parties, which are also obstacles to exercising autonomy.

Negative narratives such as the threat of secession, jeopardizing of social harmony, the branding of autonomy demands as anti-nationalist and communalist are used to suppress autonomy movements or dismiss the

12. Roy Raja Devashis, *Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh*, 2004, *Arizona Journal of International & Comparative Law* Vol 21, No. 1 p. 121

13. *Ibid.* p. 122

14. Dhamai Moy Binota, Paper submitted to OHCHR “Strengthening Partnership between States and indigenous peoples: treaties, agreements and other constructive arrangements” HR/GENEVA/ /SEM/NGOs/2012/BP.12

15. Agreement between Federal Limbuwan State Council and Government Dialogue Committee concluded on 29 March 2008 (2) Agreement between Federal Republic National Front and Government concluded on 1 March 2008 (3) Agreement between Madhesi Janadhikar Forum and government concluded on 30 August 2007

16. Peter Harris and Ben Reilly (editors) *Democracy and Deep-Rooted Conflict: Option for Negotiators*, IDEA: Ghai Yash, *The Structure of the State: Federalism and Autonomy* Stockholm 2003, P. 163

autonomy agenda by dominant groups that hold power in the nation. Some governments instead impose national identities based on religious denomination, favoring dominant groups and systematically discriminating against Indigenous Peoples, posing serious threats to their survival and existence.

Opportunities

A growing recognition of international law by the judiciary (“judicialization”) and National Human Rights Institutions is bringing new hope for the recognition of Indigenous Peoples’ right to autonomy in Asia. The decision of Malaysian courts to recognize the customary land rights of Indigenous Peoples, and the Indian Supreme Court’s decision¹⁷ to ban bauxite mining in Kondh Indigenous areas, respecting their cultural and land rights, are examples of this. Similarly, the Constitutional Court of Indonesia passed a decision¹⁸ affirming the right of Indigenous Peoples to manage the forest in which they live. This decision should make it possible for Indonesian Indigenous Peoples to continue their age-old practices on their ancestral lands. Implementation of the decision, however, remains lacking. In Taiwan, President Tsai Ing-Wen officially apologized for the historical discrimination of Indigenous Peoples in the country. This apology was not only historical but can be seen as a persuasive move in encouraging other democratic governments around the world to accept past injustices and correct them.

Conclusion

There is a famous maxim in the Limbu Indigenous language from Nepal that captures the situation of Indigenous Peoples in Asia: *“Yungma ang pap melle ha le ang meghepsun, pokma ang pap melle Suriti le Pokhuderu”*, meaning: “If you sit and speak, no one listens to your voice and, if you stand and speak, air will blow your voice away”. Over the years, however, this situation has been changing due to the Indigenous Peoples’ movement to defend their rights, which include the right to self-determination, autonomy, self-governance and free prior and informed consent, plus rights over lands, territories and natural resources which, together, form the basis for their right to live with dignity, retaining their identity.

Long experience in the region shows that armed struggles may not bring justice but that entering into agreements with governments, surrendering weapons or dismantling armed forces may also lead to regression. More promising in terms of bringing about change is the continuous, strong but also amicable movement, which has a good strategy that respects human rights, fundamental freedoms and international human rights law while also making use of the justice system. Last but not least, the world needs to realize and understand Indigenous Peoples’ collective value-based understanding that: “We Indigenous Peoples have faced historical injustices and continuing discrimination but we are not calling for reverse discrimination”.

17. Orissa Mining Corporation Ltd vs Ministry Of Environment & Forest <https://indiankanoon.org/doc/153831190/>

18. Case No.35/PUU-X/20 <https://www.loc.gov/law/foreign-news/article/indonesia-forest-rights-of-indigenous-peoples-affirmed/> visited 18 February 2020

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Sisimiut, Greenland. *Photo: Anders Gerhard Jørgensen*

Greenland's self-government and security matter implications in decision-making

Sara Olsvig

The reports by Victoria Tauli-Corpuz and Jens Dahl underlines the significance of indigenous peoples' own interpretation of autonomy and of their feeling of ownership and responsibility to the establishment of indigenous autonomy.

Both authors consider the Greenland Self-Government agreement as an exemplary negotiated process that has established a high degree of independent autonomy that includes provisions for dialogue between Denmark and Greenland. Even though the arrangement includes the option for Greenland to become independent, a closer review of the position of Greenland and Greenland/Denmark in the Arctic points to de facto challenges in the options available to Greenland to pursue the rights of self-determination on external matters, -when external matters affect matters that unequivocally belong to internal autonomous decision-making.

As Greenland has gained more self-determination and developed as an autonomous nation, the people and politicians of Greenland have become increasingly aware of how crucial Greenland's position is for Denmark, as an "Arctic state". In recent years, issues that have security and defense policy implications have put the Self-Government agreement to the test, and grey areas have been exposed within the agreement. With the Self-Government agreement,¹ a clear path has been set towards economic and political independence from Denmark. Greenland continues to formulate its own development policies and, by dealing with areas such as resource extraction, critical infrastructure and possible large-scale industrial projects, decisions taken in Greenland increasingly have security and defense implications.

In this commentary, focus will be placed on: 1) the challenge of issues relating to security and defense, as authority for these matters falls constitutionally to Denmark; and 2) the trilateral relationship between Greenland, Denmark and the US, in which the above issues are challenging the legal arrangements between Greenland and Denmark.

The relationship with the US

Denmark and the US had established official defense agreements as far back as 1941 and 1951, stating that the "Defense of Greenland against attack by a non-American power is essential to the preservation of the peace and security of the American Continent and is a subject of vital concern to the United States of America and also to the Kingdom of Denmark".² The defense agreement with the US was amended and supplemented by the "Igaliku Agreement" and joint declaration in 2004, when Greenland's status as "an equal part of the Kingdom of Denmark" and with "wide ranging Greenland Home Rule" was recognized and a "joint committee" established. The task of the committee was to promote further cooperation between Greenland, Denmark and the US but, most importantly, it made Greenland a party to and co-signatory of the agreement. Prior to the Igaliku Agreement, the "Itilleq Declaration" between the Premier of Greenland and the Danish Foreign Minister had ensured Greenland's involvement and participation in matters relating to foreign policy and security.³ This

1. Act on Greenland Self-Government, Act No. 473 of 12 June 2009.

2. Defense of Greenland. Agreement signed in Washington on 9 April 1941, <https://www.loc.gov/law/help/ustreaties/bevans/b-dk-ust000007-0107.pdf>

3. Kleist, Mininnguaq. "Grønlands Udenrigspolitisk og internationale relationer: Nuværende rammer og mulig udvikling i et selvstændighedsperspektiv", in Politik, Nummer 1, Årgang 22, 2019.

was reiterated in the Self-Government agreement in 2009, which gives Greenland some authority over foreign policy, for example, the power to negotiate agreements with foreign states on legislative matters already taken back from Denmark. The agreement does not give Greenland authority over security and defense issues.

Internal vs. external decisions

Because of Greenland's geo-political position, Greenlandic foreign policy, plus security and defense issues, continue to be of great media interest both nationally and internationally, and to the Arctic and self-proclaimed "near Arctic" states. When it comes to domestic Greenlandic decision-making, however, not all Greenland's foreign policy issues seem to arise from a distinct and particular Greenlandic wish to focus on foreign policy, defense or security matters. One clear example is the 2018 decision-making process regarding the (re) construction of three of Greenland's airports essential for traffic and tourism: the airports in Nuuk and Ilulissat in Mid- and North Greenland, and the plan for a new regional airport in Qaqortoq, South Greenland.

These infrastructure decisions were initially debated by Greenlandic politicians as a purely domestic or "internal" Greenlandic issue. As the decision-making developed, however, ever more questions were raised regarding the military use of the existing Kangerlussuaq airport. This was a former US military base which - according to the initial plans - was intended to close when two new international airports were established in Nuuk and Ilulissat. The focus thus gradually started to include security and defense aspects as there was a clear need for alternative runways to the existing US Thule Air Base for military airplanes to land on. This resulted in the issue becoming an "external" matter: areas of legislation which the Self-Government agreement does not give Greenland authority over, and nor is there an agreement for partial responsibility.

World power quarrels over Greenland?

Political debates in recent years have underlined this development and the public debate and media have focused on the dichotomy of a close relationship with the US, as well as a relationship with China, whether based on science or trade. This dichotomy can be seen in cases such as the possible rare earth minerals and uranium mine in Kuannersuit, South Greenland, where a part Chinese-owned corporation is said to be causing the US concern,⁴ or in the case of the Chinese construction corporation's bid to handle the expansion of two of the new airports.

Denmark has respected the fact that decision-making on how, where and when to build airports falls to Greenland, although the security implications for Kangerlussuaq remained an unknown in the overall project and business case study. The issue of airports thus turned into an example of Greenland's domestic politics expanding into security and defense issues for both Greenland, Denmark and the US.

In 2018, Denmark decided to co-fund the loans for the two international airports in Nuuk and Ilulissat. This created a political crisis in Greenland⁵ as some Greenlandic parties and politicians considered Danish involvement to be counterproductive to Greenland's path towards further independence. The debate was not so much about the possible security implications of foreign involvement in the construction and ownership of critical infrastructure but rather a matter of the relationship between a former colonial power and its colony, i.e. Greenland's historic bilateral relationship with Denmark.

Following this, the US expressed an interest in investing in the new airports.⁶ A Statement of Intent was issued by the US Department of Defense using wording such as: "This Statement of Intent lays out principles for

4. Lucht, Hans, 2018. "Chinese investments in Greenland raise US concerns. Strictly business?", Danish Institute for International Studies, Policy Brief, 20 November 2018.

5. Macpherson, Ross. "Parliament's 700 million kroner offer to fund Greenland's airports splits island's coalition", CPH Post Online, 11 September 2018. <http://cphpost.dk/news/parliaments-700-million-kroner-offer-to-fund-greenlandsnew-airports-splits-islands-coalition.html>

6. "United States keen to invest strategically in Greenland", Reuters World News, 17 September 2018. <https://www.reuters.com/article/us-greenland-politics-usa/united-states-keen-to-invest-strategically-in-greenlandidUSKCN1LX1V3>

investments in Greenland to enhance U.S. military operational flexibility and situational awareness in order to address the changing security environment in the Arctic. Considering this development and in an effort to strengthen U.S. and NATO capabilities, the U.S. Department of Defense intends to pursue potential strategic investments vigorously, including investments that may serve as dual military and civilian purposes.”⁷ The question of whether US involvement in Greenland’s airport debate and decision-making was motivated by the Chinese interest therein is widely and openly debated and, to some extent, expressed in the media.⁸

In August 2019, US President Trump announced a wish to purchase Greenland,⁹ which sparked a new and overwhelming international interest in Greenland and the complexity of the trilateral relationship between Greenland, Denmark and the US.

Since then, the clear connection between the new airports and security and defense issues has been widely accepted. Greenland has *de facto* taken decisions with clear security implications but the question is how informed the Greenlandic politicians were on these aspects when decisions on the political “airport package” were taken. There is also a question of when Denmark or the US gets involved in internal Greenlandic matters *because of* security implications.

Decision-making processes on matters with security implications should be studied in the light of Article 30 of the UN Declaration on the Rights of Indigenous Peoples, which states that: “Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned” and “States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities”.

The duality of the people of Greenland

With the Self-Government agreement, the people of Greenland are recognized as a “people pursuant to international law with the right of self-determination”. The UN was informed of this recognition by the Danish Ambassador to the UN in a letter to the UN Secretary General in October 2009, where the Danish recognized Greenland’s possibilities of conducting foreign policy and negotiating international management and trade agreements with foreign states on matters of Greenlandic competence.¹⁰

Recognition of the people of Greenland pursuant to international law in 2009 is seen as an important milestone for Greenland, not only as it serves as part of a de-colonization process but also as it concretely determines the right of the people of Greenland to self-determination. Researchers have described the duality of Greenlanders, recognized as a people pursuant to international law while also identifying as an indigenous people, claiming rights as an indigenous people in international fora.¹¹

In a statement given at the 2nd session of the UN Expert Mechanism on the Rights of Indigenous Peoples in Geneva, August 2009, the then Premier of Greenland Kuupik Kleist stated that: “The new development in Greenland and in the relationship between Greenland and Denmark should be seen as a *de facto* implementation of the [UN Declaration on the Rights of Indigenous Peoples]”. The Premier also stated that: “The Declaration has been endorsed by both Government and Parliament of Greenland and it has raised expectations of citizens

7. Statement of Intent on Defense Investments in Greenland by the Department of Defense of the United States of America, published 17 September 2018 on the U.S. Embassy in Denmark’s Twitter account. <https://twitter.com/usembdenmark/status/1041695240686632960?lang=da>.

8. Cammarata, S and Lippman, “Trump’s budget gives Greenland another try”, Politico, 19 February 2020. <https://www.politico.com/news/2020/02/19/trump-budget-greenland-115961>

9. Salama, Vivian, et. al. “President Trump Eyes a New Real-Estate Purchase: Greenland”, The Wall Street Journal, 16 August 2019. <https://www.wsj.com/articles/trump-eyes-a-new-real-estate-purchase-greenland-11565904223>

10. Olsvig, Sara and Nielsen, Rasmus Leander. “Da Trump ville købe Grønland”, in Udenrigs 3, 2019.

11. See, inter alia, the articles “Setting the scene in Nuuk” by Marc Jacobsen and Ulrik Pram Gad and “Greenlandic sovereignty in practice” by Kristensen & Rahbek-Clemmensen in “Greenland and the International Politics of a Changing Arctic: Postcolonial Paradiplomacy between High and Low Politics”, edited by Kristian Sjøby Kristensen and Jon Rahbek-Clemmensen, Routledge.

and interest groups. We need to take a closer look at our own compliance with this important (human) rights instrument”.¹²

A closer look should also be taken at compliance with the Declaration by the international community, by Arctic states generally and between Greenland and Denmark particularly. The Declaration is clear in recognizing Indigenous Peoples as equal to all other peoples. Where the Declaration is not clear on Indigenous Peoples’ rights is when it comes to matters of security and military issues.

As was seen in August 2019, when President Trump confirmed his wish to purchase Greenland, the international law and human rights aspects of such a desire did not garner much attention in the mass media. Phrases such as “Denmark owns Greenland” or examples given of nations or islands sold more than a century ago, for example the Danish sale of the Virgin Islands to the US in 1917, were never really debated in the light of developing international law, Indigenous Peoples’ rights or decolonization processes in general.

Further studies on Indigenous Peoples’ rights in relation to necessary security matters

The case of the relationship between Greenland and the US raises questions not only of the lack of decision-making structures between Greenland and Denmark but also of the relationship between Denmark and the US in situations where Greenland - by virtue of its right to self-determination - wanders further from Danish control. This leaves Greenland and the US in a new era of a bilateral and still developing relationship, which merits further research as a case.

Greenland’s position in relation to international law also needs to be studied in more depth. It will furthermore be necessary to analyze the current legislative framework, in particular Greenland’s Self-Government Act in relation to the Constitution of the Kingdom of Denmark, and how these legal frameworks position Greenland in relation to foreign nations. An analysis of whether or not they form an adequate foundation for Greenland’s development and actual self-determination is needed.

Finally, there is a need to shed light on the position of Indigenous Peoples’ rights in matters of security, defense and foreign policy issues, and particularly self-determination for Arctic Indigenous Peoples in an era where the focus is increasingly on security matters and tensions in the Arctic.

12. Kleist, Kuupik. “Statement by Mr. Kuupik Kleist, Premier of Greenland, 2nd session of the Expert Mechanism on the Rights of Indigenous Peoples, Geneva, 10-14 August 2019”, pp. 248-251 in Making the Declaration Work, eds. Claire Charters and Rodolfo Stavenhagen, IWGIA, 2009.

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Kangaamiut, west coast of Greenland. *Photo: Anders Gerhard Jørgensen*



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This book forms an essential contribution to the process of legitimising the recognition and exercise of the world's Indigenous Peoples' right to self-determination in domestic and international law. It further offers a space for analysis, dialogue and debate between indigenous representatives and/or authorities aimed at coordinating visions and sharing experiences of the difficult path to building and practising autonomy and self-government.

Francisco Calí Tzay

Special Rapporteur on the rights of indigenous peoples



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