



**Statement of Ms. Victoria Tauli-Corpuz
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**Expert Mechanism on the Rights of Indigenous Peoples
Tenth session, 12 July 2017**

**Tenth Anniversary of the United Nations Declaration on the Rights of
Indigenous Peoples**

Distinguished members of the Expert Mechanism,
Excellencies,
Distinguished representatives of indigenous peoples,
Ladies and gentlemen,

I am grateful for the opportunity to address the Expert Mechanism on the Rights of Indigenous Peoples today and to celebrate the tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples together.

I feel a strong personal attachment and commitment to the Declaration. I participated in the negotiations of the Declaration already back in the mid-1980s and onwards and at the time of its adoption. I was the Chairperson of the Permanent Forum that time and had the honour to address the General Assembly on that historical occasion.

Over the past decade, I have closely followed progress and challenges in the operationalization of its provisions. In my current role as the Special Rapporteur on the Rights of Indigenous Peoples, I have a specific mandate to promote its implementation.

As I mentioned to you last year, I will be presenting a report commenting on implementation of the Declaration to the General Assembly this October.

I would now like to take this opportunity to reflect on some positive developments as well as some of the obstacles that impede the Declaration from being put into practice.

Progress

We have come a long way even if hurdles remain and the Declaration needs further and more consistent practical implementation.

To start on a positive note, I would like to note how the Declaration has become a normative standard with widespread recognition. The only four states that voted against the adoption of the Declaration at the time have since reversed their position to

explicit support. In 2014 at the World Conference on Indigenous Peoples, all states reaffirmed by consensus their support for its implementation.

The impact of the Declaration is further illustrated by how its provisions have been embedded **at the national level**, notably by incorporation of indigenous peoples' rights in **Constitutions and domestic legislations**. Examples of countries that have revised their Constitutions since the adoption of the Declaration incorporating the recognition of indigenous peoples and some positive standards include Ecuador, Bolivia, El Salvador and Kenya. Ongoing discussions on Constitutional reform in that sense are underway in other countries such as Australia, Nepal, Chile and Guatemala.

National laws have been adopted to give effect to the Declaration, as is the case of Bolivia and the Republic of the Congo. In some countries, **treaty** discussions with indigenous peoples are taking place.

Supreme Courts and Constitutional Courts in Belize, Colombia and Mexico, among others, have furthermore cited the Declaration as a source of law in their **jurisprudence**.

National policies that seek to apply an indigenous rights based approach have been adopted in several countries, such as in the area of bilingual intercultural education, and in relation to public health in Paraguay and Australia.

Independent national human rights institutions are using the Declaration as a framework for monitoring the implementation of indigenous peoples' rights at the national level in numerous countries including Indonesia, Malaysia, Tanzania, Namibia and Australia.

The Declaration has provided an invaluable **tool to galvanize** indigenous peoples' movements at the national level as well as globally to assert their inherent rights and empower themselves.

At the international level, the Declaration has bolstered the focus that **international human rights treaty** bodies dedicate to indigenous rights. The provisions in the Declaration elaborate upon existing binding rights in the specific cultural, historical, social and economic circumstances of indigenous peoples and the various human rights treaty bodies have drawn upon the Declaration as in their recommendations to States.

Of particular importance is the application of the Declaration as a source of law in the jurisprudence of **regional human rights mechanisms, notably the Inter-American Court on Human Rights and the African Court on Human and Peoples' Rights**.

In this regard, I would like to highlight the examples of the case of the Kaliña and Lokono peoples in Surinam. I acted as an expert witness at the Inter-American Court on Human Rights and emphasised, with reference to the Declaration, the obligations to ensure the effective participation of indigenous peoples in conservation management and their right to restitution for lands incorporated into protected areas

without their consent. I was delighted that the judgment issued in favour of indigenous peoples' rights in January 2016 provided explicit recognition of the above rights.

Another precedent setting case is the recent judgement issued in May 2017 by the African Court on Human and Peoples' Rights in the case of the Ogiek peoples in Kenya. It specifically cites the provisions of the Declaration and the recommendations set forth by my mandate in several interventions in relation to the situation of the Ogieks.

Both of these cases relate to longstanding concerns over forced evictions of indigenous peoples in the name of nature conservation. Such violations are of particular concern for me and the mandate has since its inception sought to address such cases. Last year, **my report to the General Assembly explored how conservation measures impact on indigenous** peoples and contained recommendations to the conservation community. I presented the report to the **World Conservation Congress of the International Union for Conservation of Nature (IUCN)**, the key global forum for the adoption of conservation policies on protected areas. The IUCN subsequently adopted several resolutions in accordance with the recommendations of my report regarding the need for safeguarding indigenous lands, territories and resources from unsustainable developments by enforcing management regimes to enhance accountability.

In this context, I note as positive that already in 2008, the International Union for the Conservation of Nature (IUCN), the key global entity for the adoption of conservation policies on protected areas explicitly pledged their commitment to implementing the Declaration in conservation work.

I also wish to underline the importance that the Conferences of Parties to the **UN Framework Convention on Climate Change** and to the **Convention on Biological Diversity** have adopted several decisions, which refer to standards set out in the Declaration. During the negotiations of the **Paris Agreement** in December 2015, I, together with the Special Rapporteur on human rights and the environment and the Office of the United Nations High Commissioner for Human Rights successfully advocated for the inclusion of provisions on indigenous peoples and human rights.

I am furthermore encouraged that the **2030 Development Agenda** and the Sustainable Development Goals set targets and indicators relevant for indigenous peoples and that the United Nations has adopted a **System Wide Action Plan for the Rights of Indigenous Peoples** last year.

It is also important to mention that in the Universal Periodic Reviews of some countries where indigenous peoples live, the Declaration is an instrument used to measure how governments are adhering to international human rights standards. Some references have been made on how provisions of the Declaration have been respected or violated by the governments.

I hope that during this session we can discuss opportunities and proposals that can assist in multiplying the existing good practices in implementing the Declaration.

Obstacles

However, despite these positive developments, significant obstacles continue to hamper the ability of indigenous peoples to enjoy their rights set out in the Declaration. I wish to recall that in 2014, I dedicated my thematic report to the Human Rights Council to identifying global obstacles to the practical application of Declaration. The fact-finding mission reports and communications I continuously send to States further inform my analysis in this regard.

Among the challenges, I, and my two predecessors, have observed that the failure by certain States to recognise indigenous peoples as such is an important barrier to the implementation of the Declaration in several parts of the world. This lack of recognition denies many indigenous peoples their rights enshrined in international human rights law.

While an increasing number of countries are adopting legislation that recognises the rights of indigenous peoples, regrettably there are often glaring **inconsistencies between such legislation and other laws**, notably those concerning investments, as I analysed in two of my thematic reports. These include laws on extractive activities such as mining as well as laws on forestry, agriculture and conservation.

In order to advance implementation, it is imperative that States undertake thorough harmonisation of their national legal framework with applicable international human rights standards on the rights of indigenous peoples, particularly the Declaration.

Linked to this is also the importance that legislation be effectively enforced and complied with. The failure to comply and implement **decisions affirming the rights of indigenous peoples by the national judiciary as well as judgments by regional human rights courts** remains a major concern.

An important element to translate rights into practice is the adoption of **adequate public policies**. Public policies need to be based on participation and should address the underlying causes of poverty and marginalisation. The denial to self-determination is a central causal factor in the prevalence of poverty among indigenous communities. In order to overcome this, policy design should be done in consultation with indigenous peoples in order to jointly assess their needs, identify priorities and develop strategic action plans with goals and time frames for implementation.

The **lack of adequate data and indicators** to measure progress in relation to the policies and measures adopted makes it difficult to assess the adequacy of State initiatives. I have noted this to be a major shortcoming in most of my country visits.

Exclusion of indigenous peoples in the design and implementation of laws and policies that affect them is linked to prevailing attitudes which range from ignoring or undervaluing indigenous peoples' ways of life to blatant **discrimination and racism**. This stems from the legacy of past **racist** colonial laws and policies that continue to distort perceptions of indigenous peoples and disregard indigenous governance and customary laws.

The Declaration provides key guidance on measures that States need to take in order to break the cycle of racial discrimination and enable indigenous peoples to enjoy their human rights on equal footing with the society at large.

Another challenge to ensure the respect for the fundamental rights of indigenous peoples is **the State's failure to comply with their duty to consult and obtain the free, prior informed consent** of indigenous peoples before the adoption of measures that may affect them, as observed by myself and my predecessors during our fact-finding missions and in our numerous communications to Governments..

The expansion of **extractive industries, agribusiness and mega infrastructure** development projects which encroach into indigenous peoples' territories still remain as the main threats for most indigenous peoples.. **Conservation measures** continue to pose risks to indigenous peoples, as do the swiftly expanding resources dedicated to **climate change projects** done without obtaining their free, prior and informed consent. The consequences of such violations on indigenous peoples, as I have observed in a wide range of countries across the world, continue to result in the expropriation of land, forced evictions, the denial of self-governance, as well as lack of access to livelihoods and loss of culture and spiritual sites.

I am particularly concerned by the escalating number of **direct attacks against indigenous leaders and community members** who seek to defend their land rights.. Indigenous peoples defending their fundamental human rights are being threatened, arrested and prosecuted and in the worst situations they become the victims of extrajudicial executions. Only in the past year I have sent communications expressing concerns over these kinds of attacks *inter alia* in Brazil, Colombia, Ecuador, Guatemala, Honduras Paraguay, Peru, Kenya, Tanzania, India, Indonesia, the Philippines and the United States of America.

. As previously announced, I intend to scrutinise this issue in a **forthcoming thematic report** next year.

I also regret that there are still **conflicting interpretations** among key actors about how indigenous rights should be applied in specific situations, especially when competing rights and interests are at stake. I continue to observe that discrepancies in interpretation exist especially in relation to rights to lands and resources and the application of the duty of States to consult with and seek the free, prior and informed consent of indigenous peoples before the adoption of measures that affect them. As part of my mandate to promote good practices in this regard, I have provided technical advice through dialogue with Governments on issues such as consultation and consent, indigenous jurisdiction and access to justice for indigenous peoples, particularly indigenous women.

I also must point out that **the United Nations system still fails to speak as one**. Despite the work the mandate has developed in cooperation with other UN specialized bodies, including the UNPFII and the EMRIP for the full incorporation of the Declaration in the work of UN agencies, bodies, programmes and funds and other entities, there continues to be a lack of coherence within the UN system with regards to the rights of indigenous peoples. Articles 41 and 42 of the Declaration clearly state that the organs and specialized agencies of the UN System and other intergovernmental



organizations shall promote respect for and full realization and application of the provisions of the Declaration, including at the country levels. I regret that I still hear some UN personnel, in particular those working on development issues, saying that indigenous peoples should not be obstacles to progress and development, echoing what some government officials say.

Activities undertaken to promote indigenous peoples rights in fulfilment of the mandate

I would also like to take this opportunity to briefly share with you information about activities that I have undertaken during the past year. As part of my mandate from the Human Rights Council, I am tasked with four interrelated areas of work. I conduct country visits; undertake thematic studies; promote good practices; and address communications to Governments on alleged cases of human rights violations.

In February 2017, I carried out an official follow up visit to examine the situation of indigenous peoples in the **United States of America**, and in particular the situation related to extractive industries. In my end of mission statement, I expressed concern over the lack of meaningful consultation with indigenous peoples and recommended at a minimum, meaningful engagement and effective participation of tribal governments in assessing and reviewing extractive industry projects as a key element to the United States' meeting its human rights obligations under the Declaration.

In March 2017, I undertook a follow up country visit to **Australia**. I observed overall negative trends despite Australia's commitment to advance the United Nations Declaration on the rights of indigenous peoples and the rights of indigenous peoples. While the Government has adopted numerous policies to address the socio-economic disadvantage of Aboriginal and Torres Strait Islanders, these policies do not duly respect the rights to self-determination and to full and effective participation in society. Notably, Government policies have failed to reach targets in the key areas of health, education and employment and have led to a rapidly growing number of Aboriginal and Torres Strait Islanders being jailed, and a disconcerting escalation of children being removed from their homes and communities.

I will present more in-depth assessments of these country visits in my reports at the 36th session of the Human Rights Council in September 2017.

I also undertook **several working visits**, with the aim of promoting good practices in implementation standards concerning the rights of indigenous peoples. As already mentioned, I visited **Honduras** for this purpose in April. Upon invitation of the Government, I also went to **Mexico** in November last year to discuss the concept of free, prior informed consent. My most recent working visit was to **Peru** in June this year to participate in a regional meeting on the promotion of guidelines for the protection of indigenous peoples in voluntary isolation.

One of my thematic reports this year will be dedicated to analysing the impact of **climate change investments and projects**, to be submitted to the Human Rights Council in September, and my second thematic report, to be General Assembly, will

contain **an assessment of the implementation of UNDRIP from the perspective of my mandate.**

For next year, I will dedicate **a thematic report to analyse the growing threats faced by indigenous peoples when defending their fundamental rights, as previously mentioned.** I welcome your suggestions for how this study could be undertaken and how we can more effectively join forces to prevent and stop these deplorable attacks against indigenous peoples.

I look forward to our discussion and I thank you for your attention.

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