



# Economic and Social Council

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## Permanent Forum on Indigenous Issues

Seventeenth session

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### Draft report

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## Chapter I Matters calling for action by the Economic and Social Council or brought to its attention

### B. Matters brought to the attention of the Council

#### Recommendations of the Permanent Forum

#### Discussion on the theme “Indigenous Peoples’ Collective Rights to Lands, Territories and Resources” (Agenda Item 8)

1. The right to lands, territories and resources are at the heart of indigenous peoples’ struggles around the world. Indigenous peoples’ relationships to their ancestral lands is the source of their cultural, spiritual and social identity; the foundation upon which their traditional knowledge systems have developed; and the cornerstone of their physical and economic well-being.

2. The UNDRIP recognizes the right of indigenous peoples to self-determination (articles 3, 4), their collective rights to own and control their lands and resources (articles 25, 26 and 27); to Free, Prior and Informed Consent in relation to legislation, measures and projects that may impact their rights (articles 10, 11, 19, 28, 29 and 32); and to participate in decision-making processes (articles 5, 18 and 27). These rights are further enshrined in the Indigenous and Tribal Peoples Convention, 1989 (ILO 169); and in expanding jurisprudence developed by human rights treaty bodies, the Inter-American Court of Human Rights and the African Court on Human and Peoples’ Rights.

3. Positive developments have been made in international human rights standards setting for the rights of indigenous peoples to lands, territories and resources, including from regional human rights mechanisms in Africa and the Americas. The Permanent Forum welcomes such positive developments, including the recent decision of the African Court on Human and Peoples’ Rights in the case of Ogiek community in Kenya. The Forum encourages indigenous peoples and States to



engage further with the regional mechanisms and implement their decisions effectively.

4. A number of states have recognized the collective rights to lands, territories and resources with constitutional or legal protections or through adjudications, constructive agreements with indigenous peoples and administrative programmes. Countries that have taken steps in this direction include Bolivia, Ecuador, Aotearoa (New Zealand), Canada, Denmark, Norway, The Philippines, Indonesia and the Republic of Congo. In other countries, such as Colombia, Australia and USA, tracts of lands and/or territories have been set aside for indigenous collective control. The Permanent Forum welcomes the progress made in those countries in that regard, while emphasizing that, even in those countries, there is still a wide gap between formal recognition and implementation of laws and policies that are supposed to ensure these rights. ~~Lack of enforcement of laws, as well as contradictory laws and regulations frequently result in de facto denial of these collective rights.~~

5. Even in countries, where the rights are recognized, they are simply not being implemented or procedures for implementation of those rights such as land or resource mapping, demarcation and titling have often not been completed, suffer significant delays or are shelved. *This has, for example, been observed in countries like Cambodia, Kenya ~~and~~ The Philippines and the Russian Federation.* Lack of enforcement of laws as well as contradictory laws and regulation frequently result in de facto denial of the rights accorded to indigenous peoples. ~~This is reported in many countries, including Russian Federation, as observed by the World Bank.~~ The Permanent Forum commends the States for recognition of collective rights of indigenous peoples to lands, territories and resources and at the same time, urges them to take immediate steps for implementation of rights through necessary programmes for mapping, titling or other actions and necessary legislative reforms. The Forum urges States to inform on such steps taken by its 20th session.

6. A majority of States have yet to provide official recognition to indigenous peoples – let alone their collective rights to lands, territories and resources, which might often contrast the dominant models of privatization and development. The Permanent Forum expresses its grave concerns on the non-recognition of indigenous peoples in those States, particularly in Africa and Asia, and recommends that States incorporate the UN Declaration on the Rights of Indigenous Peoples into their national legislations and draft necessary policies and programmes to effectively implement the collective rights of indigenous peoples to lands, territories and resources.

7. The Permanent Forum stresses that ensuring indigenous peoples' collective rights to lands, territories and resources is not only for their wellbeing but also for addressing some of the most pressing global challenges such as climate change and destruction of the natural world. Increasingly, studies show that advancing indigenous peoples' collective rights is the most effective way to protect critical ecosystems, waterways and biological diversity.

8. The Permanent Forum emphasizes that achieving the Sustainable Development Goals under the 2030 Agenda for Sustainable Development is not possible without fulfilling indigenous peoples' rights to lands, territories and resources. The Forum thus calls on States to include recognition of customary rights or tenure of indigenous peoples to their lands and resources under the Sustainable Development Goal 2.3 on secure and equal access to land.

States, in consultation with the Indigenous Peoples, in order to obtain their free, prior and informed consent, should establish national judicial institutions tasked with identifying lands, waters, coastal waters and other resources to which the indigenous peoples concerned have established ownership and usufruct rights, and

to demarcate such lands and resources in order to fulfill the States' obligations concerning legal recognition and protection of the collective lands, territories, waters, coastal waters and other resources that indigenous peoples' have traditionally owned, occupied or otherwise used or acquired. Such an initiative would be fully consistent with the rights affirmed in the Declaration on the Rights of Indigenous Peoples.

9. The Permanent Forum draws its attention to the number of reports of acts of intimidation and reprisals, including restrictions on indigenous peoples' representatives in attending the Permanent Forum session, from across the world. Indigenous leaders and human rights defenders, including women defenders, face disproportionately higher rates of intimidation and reprisals as shown by various studies, including from the Special Rapporteur on Human Rights Defenders.

10. Given that the United Nations rely on the cooperation of the people they serve and that the freedom to engage with the UN is a basic exercise of fundamental freedoms and human rights of all, the Forum requests the Secretary General, through Assistant Secretary-General on Human Rights in coordination with the Office of the High Commission for Human Rights, Special Rapporteur on Human Rights Defenders and other relevant UN mechanisms, to collect information on such abuses through regular reporting from all parts of the UN system and inputs from indigenous peoples and submit a report to the Forum in its eighteenth session, including on measures taken and suggested to prevent such abuses.<sup>1</sup>

11. The Permanent Forum has paid particular attention to the World Bank's process of revising its social safeguard system. The Forum continues to be concerned that the new Environmental and Social Safeguard 7 (ESS7) allows for the conversion of indigenous peoples' collective territories in to individual ownership rights, in spite of the fact that it recognizes the importance of protecting indigenous peoples' collective attachments to their lands. Providing funding for states to divide indigenous peoples' lands generates conflict, irreparably harms livelihoods and traditional resource management strategies, and erodes indigenous peoples' own governance structures. The Forum urges the Bank to take urgent action to remedy this. Paragraph 29 of ESS7 should be revised to ensure that indigenous peoples maintain their collective rights to lands, territories and resources in all World Bank funded projects.

12. The Forum requests that the Inter-Agency Expert Group on SDG Indicators operationalize and report on the land based indicator, including on changing land use and security of land tenure on the traditional territories of indigenous peoples.

13. The Permanent Forum urges all United Nations' funds, agencies and programmes to incorporate recognition of indigenous peoples' collective rights to lands, territories and resources into their policies and programmes at the country level and report to the Permanent Forum on progress made at its 18th session in 2019.

14. The Permanent Forum expresses its concern for the indigenous peoples of **Central Africa**<sup>2</sup>, who continue to be victims of violations of their rights to lands, territories and natural resources. Multiple threats and obstacles are a hindrance to their social, economic, political and legal development, including: discrimination and marginalization; lack of rights to land and natural and productive resources;

<sup>1</sup> <http://www.ohchr.org/EN/Issues/Reprisals/Pages/ReprisalsIndex.aspx>

<sup>2</sup> Burundi, Cameroon, Congo, Gabon, Equatorial Guinea, Central African Republic, Democratic Republic of Congo, Rwanda, Sao Tome and Principe, Chad.

denial and lack of access to justice; violations of cultural rights; denial of the right to legal recognition, political representation and participation; lack of access to basic social services; denial of the right to existence and self-development; violence against indigenous individuals and communities, including rape of indigenous women; multiple-impact land conflicts arising from development and conservation projects that fail to take into account the rights and interests of indigenous peoples.

15. Recalling articles 3, 4, 8, 18, 25, 26 and 32 of the Declaration, the Permanent Forum urges Central African States to promote, recognise and protect the collective rights of indigenous peoples to their lands, territories and resources through the development of mechanisms to ensure the legal recognition of land and resource rights, the resolution of land disputes, fair and equitable redress, and the creation of permanent dialogue frameworks to facilitate political participation and representation of indigenous peoples in decision-making.

16. The Permanent Forum urges States to provide information on the about developments in the collective rights of indigenous peoples and constructive agreements with indigenous peoples at its eighteenth session on 2019 including the following:

- Effective measures taken to halt land alienation in indigenous peoples' territories;
- Financial and technical assistance provided to indigenous peoples to map the boundaries of their communal lands;
- Legal and policy frameworks for the registration of collective titles that have been implemented;
- National legislation adopted with the principle of free, prior and informed consent of indigenous peoples when involving their territories, lands and natural resources.

17. The Permanent Forum on Indigenous Issues has been asked to give special consideration to indigenous peoples' experience with autonomy and constructive arrangements in their expression of self-determination, including through a compilation and dissemination of good practices. Based on this, the Permanent Forum invites UN entities and academic institutions to support the Permanent Forum in its efforts to collect information on indigenous forms of autonomy.

18. The Permanent Forum urges states, in consultation with Indigenous Peoples, to establish national institutions with the responsibility to collect data on the lands, territories and water areas to which indigenous peoples have collective ownership rights by traditional use or occupancy.

19. As an advisory body to the United Nations' system and with a mandate to promote the implementation of the Declaration on the Rights of Indigenous Peoples and in accordance with paragraph 29 of the Outcome Document of the World Conference on the Rights of Indigenous Peoples, the Permanent Forum requests all states to include developments of the rights of indigenous peoples in their regular Universal Periodic Review to the Human Rights Council. The Permanent Forum will include these developments in its annual review of the human rights of indigenous peoples.