United Nations E/C.19/2020/5

Economic and Social Council

Distr.: General
30 January 2020

Original: English

Permanent Forum on Indigenous Issues
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).

* 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.

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.

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.

[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.

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).

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).

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

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

[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.

intruders and prepares them for the day that they choose to contact outside civilizations.[6]

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]

[6] Ibid. p. 179.
[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).

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.

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 Totoltepec 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).

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

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

[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.

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.

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

[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.

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

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 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.

[19] See A/HRC/30/41/Add.1, paras. 24–25.
[20] See A/HRC/21/47/Add.1, para. 15.

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.

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]

[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).

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

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 co-management 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 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

[25] See A/HRC/21/47/Add.1, para. 55.
[26] See https://nunatsiaq.com/stories/article/making-nunavut-truly-our-land/.
[27] See A/HRC/18/35/Add.4, para. 7.

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

[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).

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.

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 Colombia[32] 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]

[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).

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 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

[34] Ibid.

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.[35]

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 of all indigenous peoples are respected and

[35] International Work Group for Indigenous Affairs, *The Indigenous World 2019* (p. 208).

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.