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## 议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

## 土著人民权利问题特别报告员詹姆斯·安纳亚的报告

增编

## 关于亚洲土著人民情况的磋商会议\*

## 概要

2013 年 3 月 18 日和 19 日，土著人民权利问题特别报告员参加了在马来西亚吉隆坡举行的磋商会议。参加这一磋商会议的有来自孟加拉国、柬埔寨、印度、印度尼西亚、日本、马来西亚、缅甸、尼泊尔、菲律宾、泰国和越南的土著人民代表以及菲律宾、马来西亚和泰国立法机构和国家人权机构成员。与会者还提交了书面资料。磋商会议分成围绕下列主题举行的三场会议：(a) 土地、领土和资源，侧重于采掘业；(b) 军事化和政府国家安全措施的影响；和(c) 自决，包括认同、宗教歧视、常理公道和政治参与等问题。

本报告概述了每一主题领域磋商会议期间提出的主要问题，并载有根据所收到资料提出的概括性结论和建议。报告中笼统阐述了提请特别报告员注意的各项问题，但在目前阶段未提及具体的国家实例。特别报告员打算在今后几个月内按其任务授权就磋商会议期间提出的许多关注直接致函有关政府，征求其对这些关注的看法。他还打算根据收到的陈述和有关政府的任何答复发表相关的意见和建议，指出积极的事态发展和依然存在的挑战

\* 本报告的内容提要以所有正式语文分发。报告本身载于内容提要的附件，仅以提交语文分发。

## Annex

*[English only]*

### **Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the consultation on the situation of indigenous peoples in Asia**

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	4
II. Indigenous peoples in Asia .....	6–10	5
III. Overview of human rights issues raised during consultation.....	11–36	6
A. Securing rights to lands and resources in the context of extractive activities	11–20	6
B. Conflict, peace and physical security in indigenous territories .....	21–25	8
C. Other human rights issues.....	26–36	9
IV. Conclusions and recommendations.....	37–62	11

## I. Introduction

1. On the 18 and 19 March 2013, in the exercise of his mandate “to gather, request, receive and exchange information and communications from all relevant sources” (A/HRC/RES/15/14), the Special Rapporteur on the rights of indigenous peoples participated in a consultation in Kuala Lumpur, Malaysia. Representatives of indigenous peoples from Bangladesh, Cambodia, India, Indonesia, Japan, Malaysia, Myanmar, Nepal, Philippines, Thailand and Viet Nam participated in the consultation, together with members of the legislative bodies and national human rights institutions of the Philippines, Malaysia and Thailand. Written information was also submitted by meeting participants.

2. The consultation took place over two days. It was divided into three sessions organized around the following principal themes: (a) lands, territories and resources, with a focus on extractive industries; (b) militarization and impact of national security measures of Governments; and (c) self-determination, which included issues such as identity, religious discrimination, customary justice and political participation. Issues related to social and economic conditions were also addressed in each of the sessions. Within each thematic session, indigenous representatives from each country and subregion were given time to present information to the Special Rapporteur. Subsequently, the Special Rapporteur had a chance to ask questions and request clarifications from the meeting participants.

3. The present report provides an overview of the main issues raised during the consultation within each of the thematic areas. It also contains a series of overarching conclusions and recommendations on the basis of the information received. The report presents the issues brought to the attention of the Special Rapporteur in general terms, without pointing out specific country examples at this time. Further, examples of government laws and policies, as well as specific actions to address the concerns mentioned, are not included in the report, given its nature as a report on the consultation meeting itself. The Special Rapporteur acknowledges, however, that many noteworthy laws, policies and programmes related to indigenous peoples, as well as good practices and positive developments, exist throughout the region.

4. In the coming months, within the terms of his mandate, the Special Rapporteur intends to communicate directly with the relevant Governments about many of the concerns raised during the consultation, and request their views on these concerns. He also intends to issue corresponding observations and recommendations, based on the allegations received and any responses by the Governments concerned, noting positive developments and outstanding challenges. The communications concerning specific countries will be made public and presented to the Human Rights Council for its attention. The Special Rapporteur hopes that these communications, as well as his observations and recommendations, will be of use to States, indigenous peoples’ representatives and organizations, and others in Asia as they work to address the human rights concerns facing indigenous peoples in the region.

5. The Special Rapporteur would like to warmly thank the organizers and hosts of the consultation: the Asia Indigenous Peoples Pact, the Jaringan Orang Asal Semalaysia, and the Partners of Community Organizations in Sabah, with support from the Center for Orang Asli Concerns. He would also like to thank those representatives from the Asia region who presented their concerns and shared their stories with him.

## II. Indigenous peoples in Asia

6. The Special Rapporteur is aware that the vast majority of the people in the countries of the Asian region may be considered, in a literal sense, indigenous to the region. He concurs with the participants of the consultation, however, that there are particular groups that distinguish themselves from the broader populations of the Asian countries and that fall within the scope of the international concern for indigenous peoples as it has developed throughout the United Nations system and in connection with his mandate.

7. The groups in Asia that fall within the international rubric of “indigenous peoples” include groups such as those referred to as “tribal peoples”, “hill tribes”, “scheduled tribes” or “adivasis”. The international concern for indigenous peoples, as manifested most prominently by the United Nations Declaration on the Rights of Indigenous Peoples extends to those groups that are indigenous to the countries in which they live and have distinct identities and ways of life, and that face very particularized human rights issues related to histories of various forms of oppression, such as dispossession of their lands and natural resources and denial of cultural expression. Within the Asian region, the distribution and diversity of such groups varies by country, as does the terminology used to identify them and legal recognition accorded to them. These groups, some of which span State borders, include, among others, the:

(a) Chakma, Marma and Tripura (collectively known as Jumma), and Santal, and Mandi, of Bangladesh, commonly referred to as Adivasi and officially referred to as tribes (upajati), minor races (khudro jatishaotta), ethnic sects and communities (nrigoshthi o shomprodai);

(b) Broa, Bunong, Chhong, Jarai, Kachak, Kavet of Cambodia, officially referred to as ethnic minority groups, indigenous minority peoples and Khmer-Loeu (hill tribes);

(c) Gond, Oraon, Khond, Bhil, Mina, Onge, Jarawa, Nagas of India, officially referred to as Scheduled Tribes or Adivasi (original inhabitants);

(d) Masyarakat adat communities, including groups such as the Dayak Benuaq, the Orang Tengger and the Orang Badui of Indonesia, a subset of whom are officially referred to as komunitas adat terpencil;

(e) Ainu of Japan, officially referred to as indigenous peoples, and the Ryukyuan or Okinawans, who have sought similar recognition as indigenous peoples;

(f) The majority of the Mon-Khmer, Sino-Tibetan and Hmong-Mien grouping in the Lao People’s Democratic Republic, officially referred to as ethnic minorities and non-ethnic Lao;

(g) Orang Asli (original peoples) of peninsular Malaysia, the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks groups of Sarawak, and the natives of Sabah, officially referred to as aborigines and natives;

(h) Shan, Kayin (Karen), Rakhine, Kayah (Karenni), Chin, Kachin and Mon of Myanmar, commonly known as ethnic nationalities and officially referred to as national races;

(i) Magar, Tharu, Tamang, Newar, Rai, Gurung and Limbu of Nepal, commonly known as Adivasi Janajati and officially referred to as indigenous nationalities;

(j) Aeta, Ati, Ibaloi, Kankanaey, Mangyan, Subanen of the Philippines, officially referred to as indigenous peoples and indigenous cultural communities;

(k) Karen, Hmong, Lahu, Mien of Thailand, commonly known as ethnic minorities and officially referred to as “chao khao” or “hill tribes”, and the nomadic sea gypsies or “Chao Lay”; and

(l) Tay, Thai, Hmong, Muong and Khmer of Viet Nam, officially referred to as ethnic minorities (dan toc thieu so, dan toc it nguoi).

8. Today these groups are among the most discriminated against, socially and economically marginalized, and politically subordinated parts of the societies of the countries in which they live. Regardless of the controversy around issues of definition and categorization, it is apparent that political actors in Asia agree that there is a need to address the human rights issues facing these distinct peoples, which are issues very similar to those faced by groups unquestionably recognized as indigenous peoples in other parts of the world, and which fall within the sphere of the current international concern for the rights of these peoples.

9. It is worth noting that all of the countries addressed in the consultation supported the United Nations Declaration on the Rights of Indigenous Peoples when it was adopted by the General Assembly in 2007, with the exception of Bangladesh, which abstained from the vote on the Declaration. Although not espousing a fixed definition of the term “indigenous”, the specific relevance of the Declaration, as evident by its terms, and of the various United Nations programmes and mechanisms concerning indigenous peoples, including the mandate of the Special Rapporteur, is to those groups indigenous to a territory that are in non-dominant positions, and that have suffered and continue to suffer threats to their distinct identities and basic human rights in ways not felt by dominant sectors of society.

10. In adopting the Declaration, State Members of the United Nations manifested their support for the Declaration’s call for affirmative and concerted measures to address the disadvantaged conditions of indigenous peoples in accordance with the human rights principles elaborated upon in that instrument. The Special Rapporteur does not question that the Declaration applies to disadvantaged indigenous peoples in Asia, as it does to indigenous peoples elsewhere.

### **III. Overview of human rights issues raised during consultation**

#### **A. Securing rights to lands and resources in the context of extractive activities**

##### **1. Recognition and protection of land and resources rights**

11. A principal concern expressed by the participants at the consultation is the lack of adequate regulatory protections for indigenous peoples’ customary rights over land, territories and resources. In many countries throughout the region, there is no specific legislation that recognizes indigenous peoples’ customary land tenure. Even in those States where the regulatory frameworks afford such recognition, significant challenges remain to secure those rights in practice. Implementation of land laws has been found wanting, with slow land demarcation rates and formal procedures that place a heavy burden of proof on indigenous communities to demonstrate ownership.

12. In addition, despite notable jurisprudence in a few Asian countries recognizing the rights of indigenous groups to their customary lands, the gazetting of indigenous lands has been slow and fraught with problems. Some Governments have continued to challenge court decisions recognizing pre-existing rights to customary lands. Misrepresentation of customary law and misunderstanding of indigenous conceptions of land and natural resource management are alleged to have led to inconsistent land tenure practices.

13. The Special Rapporteur also received allegations that, in the face of inadequate regulatory frameworks, indigenous peoples' lands in Asia continue to face a number of threats. Land dispossession by non-indigenous settlers and migrants continues in many countries. The adoption of policies in States promoting individual titles over collective land titles was also raised as an issue in a number of jurisdictions. In addition, the Special Rapporteur received information that, across the Asia region, the dispossession of land is having a profoundly negative impact on indigenous peoples' social and cultural patterns and means of subsistence.

14. Another matter of growing concern is the manner in which lands that are traditionally occupied by indigenous peoples are officially designated for conservation or tourism. Indigenous participants highlighted that conservation wildlife management legislation empowers Governments to declare lands as conservation areas or limit access to wildlife resources, thereby dispossessing indigenous peoples of their customary lands or impeding their subsistence activities. Those people who remain in, or continue to access, conservation areas for subsistence purposes have been in many instances subjected to criminal prosecution.

## **2. Extractive, energy and development industries**

15. The Special Rapporteur has received, both during the consultation and on an ongoing basis, information about the widespread negative impacts of extractive projects that are implemented in or near indigenous peoples' territories in places throughout Asia. Such activities represent one of the major challenges to securing indigenous peoples' rights to land, territories and resources across the region, and in some instances are alleged to pose an imminent threat to their physical and cultural survival. Escalating violations of indigenous peoples' rights are also associated with the absence of appropriate and effective consultation and oversight processes around the planning, authorization and implementation of mining, dam and plantation projects.

16. The demand for minerals and metals, combined with the liberalization of mining legislation to facilitate foreign direct investment in mineral rich areas, has fuelled an unprecedented expansion in mining, oil and gas projects in indigenous peoples' territories. The Special Rapporteur was informed of the negative impacts of these projects on a range of rights of indigenous peoples. Mining projects have reportedly resulted in displacement of indigenous peoples, the alienation of their lands, as well as in limitations to access to areas within their traditional territories. There are allegations of widespread health impacts of development projects, including on the reproductive health of women. Furthermore, past and existing exploration and exploitation projects have involved the dumping of tailings into rivers and collapsed tailings dams, resulting in significant negative environmental impacts within indigenous areas. Indigenous groups also cited problems with actions of police, military and security forces in relation to extractive projects.

17. A heightened focus by Governments on hydroelectric power appears to have set in motion developments that are having profound effects on indigenous peoples in several places in Asia. Over time, the construction of major hydroelectric projects has led to massive displacement of indigenous peoples in several countries. On top of this historical legacy of displacement, a series of additional dams involving potential displacement are planned throughout the region. It is alleged that, in many instances, inadequate impact assessments and safeguards have been put in place around hydroelectric projects, and that there is a lack of transparent and reliable information in relation to the projects. Indigenous peoples have called for a review of pending hydroelectric construction projects to ensure compliance with social, environmental and human rights norms and safeguards. Finally, military and security forces are alleged to use force and intimidation against indigenous

peoples who opposed hydroelectric projects, and at times such opposition has led to an eruption of violence between protestors and security and military forces.

18. As is the case with mining and hydroelectric projects, recent years have seen a rapid growth in biofuel, sugar cane, rubber and timber plantations in indigenous peoples' territories in a number of Asian countries. Plantations cover millions of hectares of land throughout the region, significant portions of which are in indigenous peoples' territories. The Special Rapporteur received information that, in some jurisdictions, communal titles are reportedly provided to indigenous communities with the intent of facilitating oil palm plantations, rather than facilitating the pursuit of development models chosen by indigenous peoples themselves. Major social and cultural impacts of plantations were also raised as a matter of concern. Furthermore, a concern exists around the extent of the migration into indigenous territories that is necessary to operate the plantations. In many cases brought to the attention of the Special Rapporteur, the presence of police, military and private security in relation to plantation projects was associated with a climate of intimidation and allegations of widespread abuses.

19. The Special Rapporteur received information about inadequate or absent consultation and consent procedures in relation to all kinds of development projects. Consultations that are conducted are described as ranging from exercises in intimidation to mere information provision, or as efforts to convince peoples to accept projects rather than opportunities to make informed decisions. The Special Rapporteur also received information that consultation and consent procedures are often highly abbreviated processes and, in some jurisdictions, the imposition of bureaucratic rules and time frames incompatible with indigenous decision-making processes have rendered consultation and consent procedures largely ineffective. Further, even where agreements have been reached, the agreements are said to provide inadequate protection for indigenous peoples' underlying substantive rights, especially rights to lands and resources.

20. Meeting participants also highlighted as a matter of concern that inadequate and inappropriate compensation and remedial measures are available to indigenous peoples affected by extractive operations. Where compensation has been awarded for negative impacts on indigenous peoples, it has often allegedly been limited to financial awards rather than restitution of lands. In addition, consultation and consent-seeking processes are often conducted by multinational companies that implement projects, and indigenous representatives at the consultation with the Special Rapporteur suggested that the Governments of the countries that are home to these companies need to ensure that those companies are not complicit in rights violations. Finally, constitutional or legislative frameworks that recognize indigenous peoples' participatory rights are, according to the information received, frequently subordinated to legislation facilitating resource development.

## **B. Conflict, peace and physical security in indigenous territories**

21. During the consultation, indigenous participants from a number of countries cited the militarization of indigenous peoples' territories as one of the major challenges to the realization of their rights. Low-scale protracted conflict has persisted for decades in some countries and continues to affect indigenous peoples, and in other countries, even where conflict has formally ended, military presence in indigenous areas continues. According to the information raised at the consultation, in some States the term "indigenous" or "tribal" has become synonymous with separatist movements among security forces and the police. Another allegation is that indigenous peoples, as well as the human rights organizations supporting them, are frequently labelled as members of these movements and stigmatized as criminals.

22. The presence of military forces in indigenous areas is alleged to have resulted in a number of violations of the rights of indigenous peoples. The widespread nature of militarization in the region according to the information received by the Special Rapporteur poses a serious obstacle to access to justice and freedom of expression. Intimidation and fear of reprisal prevents indigenous peoples from taking legal action against the military for ongoing and historical abuses. Killings of indigenous activists and human rights defenders continue in many places throughout the region. In some jurisdictions, indigenous peoples regard the military as violently suppressing their movements for self-determination and autonomy. In addition, in some States, the presence of military forces in indigenous areas has reportedly resulted in the forceful acquisition of indigenous lands, the increased settlement of non-indigenous groups in those lands, the destruction of indigenous peoples' homes, and in breakdowns in indigenous peoples' control over their territories.

23. The Special Rapporteur also received information that security plans often tend to target insurgent groups located in the resource-rich territories of indigenous peoples. Thus, in many cases, indigenous peoples regard the military presence in their territories, which is purported to be for anti-insurgency purposes, to be aimed instead at suppressing resistance to natural resources extraction projects. In this regard, the militarization of indigenous territories is also considered as deeply connected with the failure to recognize indigenous peoples' land rights and the denial of access to justice.

24. The particularly serious impact that militarization of indigenous peoples' territories has on women was raised. Participants pointed to the need to tackle the culture of silence which often accompanies such gender-based violence and to guarantee that an appropriate forum is available to address it. The relevance of Security Council resolution 1325 on women, peace and security was raised, as was the importance of education for the police and other government bodies.

25. Prosecutions and compensation for extrajudicial, summary or arbitrary killings remain inadequate, according to participants in the consultation. The importance of ensuring indigenous participation in peace negotiations impacting them, and the potential role of customary practices in such negotiations, was also emphasized. Indigenous representatives recommended the application of customary law to military units and the recognition of indigenous guards by local government and law enforcement agencies. A representative of a national human rights institution pointed to the role these institutions could play in facilitating dialogue between the military, communities and other independent human rights organizations. Some indigenous peoples have implemented a proactive monitoring approach through the use of information communication technologies to rapidly alert relevant actors when human rights violations occur in remote areas.

## **C. Other human rights issues**

### **a. Social and economic conditions**

26. Indigenous peoples in Asia constitute some of the most vulnerable and socio-economically marginalized sectors of the countries in which they live. Their disproportionate representation among the region's poor is attributable to historical and contemporary alienation of their lands and resources, inadequate participation in decision-making related to policy and legislation, and poorly designed or targeted government programmes implemented against a backdrop of structurally embedded centuries-old discrimination.

27. In many parts of the region, indicators for access to education are significantly worse in areas with high concentrations of indigenous peoples, and illiteracy rates in those areas are high. The lack of education in indigenous languages, culturally inappropriate



curricula, distance of schools from indigenous communities, and inadequate accommodation contribute to low levels of educational achievement and high dropout rates among indigenous peoples. While mother tongue education is provided in some places, the Special Rapporteur was informed that such programmes, overall, are lacking.

28. Reports received during the consultation also allege that indicators for health are worse in areas where indigenous peoples are living. Food insecurity, chronic hunger and malnutrition are serious issues facing the region's indigenous peoples, with obvious impacts on health. These conditions are attributable in large part to indigenous peoples' loss of lands, which has had a profoundly negative impact on their self-sustained means of subsistence. Traditional subsistence activities, including yak-raising, fishing, rice farming, and forest gathering, are also threatened by a range of infrastructure, development agro-industrial, and conservation projects. There are also allegations of widespread health impacts of extractive projects.

29. A related issue of concern is the lack of birth registration or citizenship documentation afforded to indigenous individuals in some countries, for varying reasons, which limits many indigenous peoples' access to basic public services including for health and education. This situation reportedly contributes to an increased vulnerability of women and children to trafficking. Participants noted that some progress has been made in remedying this situation, although much more remains to be done. Furthermore, in some areas, indigenous groups are currently internally displaced as a result of armed conflict, and they suffer extreme social and economic hardship.

30. In some countries in the Asia region, resettlement programmes have been framed as developmental in nature, including programmes to cluster scattered indigenous communities in lowland villages in order to provide them with improved access to public services and infrastructure. However, indigenous organizations point to deterioration in indicators related to poverty, malnutrition, health and mortality in cases where communities have been relocated.

## **b. Recognition**

31. As discussed earlier, a number of Asian Governments have yet to accept the applicability of the concept of "indigenous peoples" to those groups in their countries that share characteristics similar to those of indigenous peoples in other regions of the world. In this regard, the notion that the entire population of the country is indigenous has been used as a justification for denying recognition of particular indigenous peoples as such. In regard to those countries in which some form of recognition is provided, participants in the consultation complained that the procedures through which recognition is afforded constitute limitations on indigenous peoples' right to self-determination and opportunities for self-identification and definition. Further, procedural requirements in some countries to register as legal entities in order to obtain titles over lands, or to participate in government processes, was cited as a matter of concern in some countries.

32. According to the information received by the Special Rapporteur during the consultation, notions of "economic backwardness" and "primitiveness" continue to underpin the definition of groups in some countries. Further, discriminatory perspectives that indigenous peoples should be assimilated into mainstream society in order to address their "backwardness" are still reflected in the development policies of a number of countries. Another related concern among indigenous peoples in the region is in the perception of a significant divergence between official and actual population figures, which they attribute to either a resistance towards the recognition of certain groups or a lack of disaggregated data.

**c. Religious discrimination**

33. Discrimination against indigenous peoples whose religious beliefs are distinct from the majority populations is also widely cited matter of concern. The Special Rapporteur was informed that sites considered sacred by indigenous peoples under their own religions and belief systems have been desecrated or destroyed by large-scale development projects, and that reparations for environmental damage, where they have been provided, have allegedly failed to take the religious significance of these sites into consideration. Religious discrimination is also manifested in attempts to convert indigenous peoples to mainstream religious beliefs. Finally, religious discrimination has allegedly resulted, at least in one country, in the wilful burning of indigenous peoples' temples, as well as in the inciting of hate campaigns.

**d. Political participation**

34. Indigenous peoples throughout the region allegedly have been excluded from full participation in political life. Only a few States facilitate some such participation, through quotas or other means, although other countries have started to address the issue. Indigenous representatives suggest that, given that indigenous representation in legislative bodies and the exercise of legislative power to protect indigenous peoples have been limited, it has often been more effective for indigenous peoples to seek action by the executive and judicial branches of the State. Indigenous peoples are, however, taking initiatives to increase their participation in the creation, promotion and implementation of policies and practices in relation to the realization of their rights. Nonetheless, it was also noted that powerful positions at national, provincial and district levels are generally not held by indigenous peoples.

35. A general observation made by indigenous peoples was that, in contexts where political patronage plays a major role in local and national politics, it was important for traditional authorities to avoid being politicized and the distinction between electoral representation and traditional representation should be respected. In some contexts, local government officials were regarded as beholden to political parties and thus rendered ineffective in upholding community rights, especially in the context of central government-authorized projects.

**e. Customary justice**

36. Indigenous peoples regard the exercise of their right to self-determination as contingent on their freedom to maintain, develop and engage their own legal systems. While some progress in recognizing indigenous peoples' rights to resolve conflicts in accordance with customary laws has been made, the Special Rapporteur was informed that a lack of education of government agencies education about customary justice systems presents an obstacle to the use of customary laws and procedures for conflict resolution.

## **IV. Conclusions and recommendations**

37. **In light of the information received during the Asia consultation, the Special Rapporteur respectfully submits a number of overarching conclusions and recommendations. He understand that many of the concerns raised at the consultation are already being addressed by the Governments concerned, and that there are a number of positive developments in the region that were not addressed during the consultation. Nonetheless, it is clear that, despite some positive developments, much more needs to be done to improve the human rights situation of indigenous peoples in**

Asia. The Special Rapporteur looks forward to following up with each of the Governments concerned in relation to their specific country situations.

#### Recognition of indigenous peoples' rights

38. The implementation of the United Nations Declaration on the Rights of Indigenous Peoples and core international human rights conventions is fundamental to the promotion and protection of the rights of indigenous peoples. Broader ratification of International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries would be of significant assistance to Governments in the implementation of their human rights obligations regarding indigenous and tribal peoples in their countries.

39. Asian States should commit to recognizing the rights of indigenous peoples as set out in international instruments, irrespective of the terminology used under national law and policy to identify these groups, and they should be guided by the manner in which these groups perceive and define themselves. This commitment should be accompanied by an acknowledgement of the widespread discrimination and marginalization that these groups face, and their vulnerable status as a result of their socio-economic and political circumstances.

40. There is a continued need to develop new initiatives and reform existing ones, in consultation and in real partnership with indigenous peoples, to conform to international standards requiring genuine respect for cultural integrity and self-determination. In this connection, States should undertake a review of their laws and policies in light of the United Nations Declaration on the Rights of Indigenous Peoples.

41. Coordinated and systematic dialogue with indigenous peoples is necessary to secure their rights. This dialogue should include decision makers at the ministerial level and result in the sensitization of political leaders to indigenous rights. Institutional reform of existing government structures affecting the realization of indigenous peoples' rights is also important to accomplish in many contexts. Reforms should address issues around credibility, transparency and capacity of existing institutional arrangements. Governmental bodies that are responsible for programmes directly related to indigenous peoples' rights should be structured so that they are directly accountable to, and representative of, indigenous peoples, with any vestiges of paternalism or assimilation eradicated.

42. All strategies, policies and programmes that have the pursuit of national unity and development as their objective must be fully consistent with respect for indigenous peoples' rights. This implies that all development policies that are premised on notions of indigenous peoples as primitive and backwards, and in need of assimilation into mainstream society, should be abandoned and replaced with policies that recognize these groups as self-determining peoples capable of exercising their right to choose their own social, cultural and economic development path.

#### Securing rights to land, territories and resources, with a focus on extractive industries

43. As with other indigenous peoples throughout the world, securing rights over land and natural resources for indigenous peoples in the Asia region is fundamental to their self-determination and is a prerequisite for them to be able to survive as distinct peoples.

44. Yet, ownership and control of their lands and territories continue to be denied to many indigenous communities throughout the Asia region. States should ensure that all laws and administrative practices related to lands and natural resources align with international standards concerning indigenous peoples' rights to lands,

territories and resources. To this end, the Governments should establish mechanisms to comprehensively review at the national level all such laws and related institutions and procedures, and implement necessary reforms.

45. Where they have not done so already, States should enact and effectively implement legislation recognizing indigenous peoples' customary tenure rights over lands and resources. This legislation should provide for demarcation of indigenous peoples' territories in a manner that is efficient and not burdensome on the groups concerned, and ensure that respect for indigenous peoples' authorities and customary laws and practices is a paramount consideration. These mechanisms should also provide for restitution and compensation for lands taken from indigenous peoples without their free, prior and informed consent, including lands taken as a result of concessions issued for extractive or other projects or the establishment of conservation areas such as natural parks

46. States should ensure good-faith consultations with indigenous peoples on extractive activities that would affect them and engage in efforts to reach agreement or consent. In any event, the State remains bound to respect and protect the rights of indigenous peoples and must ensure that other applicable safeguards are implemented as well, in particular steps to minimize or offset any limitation on the rights through environmental and social impact assessments, measures of mitigation, compensation and benefit sharing. The Special Rapporteur reiterates in this regard, recommendations made in his final study on extractive industries and indigenous peoples (A/HRC/24/41).

47. Indigenous peoples should be able to oppose or withhold consent to extractive projects free from reprisals or acts of violence, or from undue pressures to accept or enter into consultations about extractive projects. In no circumstances should States use criminal prosecutions to silence indigenous peoples' opposition to development projects.

48. Consultation and free, prior and informed consent processes should ensure the effective participation of all affected indigenous groups and guarantee sufficient time and culturally appropriate processes for internal consensus-building. Communities should be protected from interference of government agencies, companies or the military in their internal decision-making processes. Overregulation and bureaucratization of consultation and free, prior and informed consent processes should be avoided. Instead, States should guarantee flexibility so that rights-based consultation processes are consistent with the customary laws and decision-making practices of the indigenous peoples concerned.

49. States in the region should take steps to increase the participation of indigenous peoples in the management of natural parks and other conservation areas, and should minimize any restrictions that prohibit these peoples from carrying out traditional subsistence and cultural activities within these areas.

#### **Conflict, peace and physical security**

50. With respect to the presence of military forces in indigenous territories, States should be guided by article 30 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirms 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.

51. Indigenous peoples' rights, including their rights to health, education and to practice their livelihoods, should act as a constraint on any military programmes

targeting their territories. Elements of counter-insurgency programmes resulting in violation of indigenous peoples' rights should be identified and abandoned.

52. Any blanket equation of indigenous peoples, and human rights organizations supporting them, with insurgent groups or terrorists, and the suppression of opposition to development projects through force and intimidation, should be halted immediately. Prompt and transparent investigations should be held leading to prosecutions of those responsible, including military officers, where alleged abuses of indigenous rights are confirmed.

53. Effective and credible safeguard mechanisms aimed at preventing the recurrence of human rights abuses in the context of conflicts, and facilitating the transition from conflict to post-conflict situations, should be developed in conjunction with indigenous peoples, civil society and National Human Rights Institutions. Indigenous participation should be guaranteed in all peace processes affecting their rights. Where agreements have been entered into with indigenous peoples, their effective implementation and oversight should be guaranteed, with United Nations agencies or other international actors involved in ensuring this where requested by indigenous peoples.

#### **Socio-economic conditions**

54. The disadvantaged socio-economic situation of indigenous peoples requires urgent attention in States throughout the region. The collection of disaggregated data is a prerequisite to effectively targeting and monitoring measures to address this disadvantage. Affirmative measures to address indigenous peoples' particular conditions and needs should be developed in consultation with them.

55. The Governments in the Asia region should seek to include in their development programmes and initiatives the goal of advancing indigenous peoples' self-determination, in particular by encouraging indigenous self-governance at the local level, ensuring indigenous participation in the design, delivery and monitoring of programmes, and developing culturally appropriate programmes that incorporate or build on indigenous peoples' own priorities. In this regard, financial and technical assistance should be provided to indigenous peoples to enable them to improve their own socio-economic conditions and build their institutional capacity.

56. Particular attention should be directed toward the provision of adequate, accessible and culturally appropriate education in indigenous peoples' own languages, and to ensuring that indigenous peoples can access health services appropriate to their cultural patterns.

57. States should ensure that all indigenous individuals have appropriate birth registration and citizenship documentation, and that the lack of such documentation does not present barriers to their access to adequate education, health and other basic services.

#### **Religious discrimination, justice and political participation**

58. States should implement affirmative measures to prevent and punish discrimination against indigenous peoples whose religious beliefs are distinct from the majority populations.

59. Significant efforts should be made to ensure that appropriate mechanisms are in place to guarantee access to justice for indigenous peoples. This necessitates a combination of (a) training on indigenous peoples' rights and customary laws for the judiciary and legal profession; (b) consideration, in consultation with indigenous

peoples, of how customary law and national law interrelate; and (c) the role that indigenous judicial systems should play in addressing rights violations and conflict resolution.

60. States should facilitate the participation of indigenous peoples in States' governance and decision-making institutions, both at the national and local levels. Further, indigenous peoples must be able to freely determine their own development plans and priorities. Development plans specifically targeting indigenous peoples should therefore either be developed by indigenous peoples themselves, or in conjunction with them, in accordance with the principles of full and effective participation and free prior and informed consent.

**Recommendations to regional human rights bodies and United Nations agencies**

61. The Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights should consider the establishment of a working group with a mandate to address the implementation of indigenous peoples' rights and engage States, indigenous peoples and relevant agencies in dialogues on issues affecting indigenous peoples in the region.

62. The organs and specialized agencies of the United Nations system should help to facilitate constructive and effective dialogue between Governments and indigenous peoples in the Asia region, and should also provide financial and technical assistance to indigenous peoples for the development and implementation of initiatives aimed at securing the realization of their rights. United Nations agencies should jointly develop, in cooperation with indigenous peoples, focused and targeted programmes at the country level to address the particular needs of indigenous peoples, including the particular needs of indigenous women and youth.

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