



Economic and Social Council

Distr.: General
26 January 2021
English
Original: Spanish

Permanent Forum on Indigenous Issues

Twentieth session

New York, 19–30 April 2021

Item 4 of the provisional agenda*

Discussion on the six mandated areas of the Permanent Forum (economic and social development, culture, environment, education, health and human rights) with reference to the United Nations Declaration on the Rights of Indigenous Peoples, the outcome document of the World Conference on Indigenous Peoples and the 2030 Agenda for Sustainable Development

The rights of indigenous peoples in Latin America and the Caribbean in the context of the exceptional measures adopted during the pandemic**

Note by the Secretariat

Summary

At its nineteenth session, the Permanent Forum on Indigenous Issues appointed Darío José Mejía Montalvo, a member of the Forum, to conduct a study on the rights of indigenous peoples in Latin America and the Caribbean in the context of the exceptional measures adopted during the pandemic, to be submitted to the Forum at its twentieth session.

* E/C.19/2021/1.

** The contributions of men and women leaders of indigenous peoples and organizations in the Latin American and Caribbean region, academics and independent consultants have been crucial to the realization of this study. We would also like to thank Jennifer Andrea Montaña Granados, Gabriela Recalde Castañeda, Oscar William Valbuena Vega, Michael Cruz Rodríguez and Esperanza Castañeda for their participation.



Introduction

1. The period of the pandemic¹ has summed up the historical relationship between nation States and indigenous peoples in Latin America and the Caribbean.² States in the region have shown themselves to be strong and effective in establishing mechanisms for control over territory and people, but inconsistent in responding to the pandemic by adopting redistributive policies and policies that take into account ethnic and cultural diversity; they have made indigenous peoples' citizenship even more a matter of tokenism by repeating and entrenching reductive policies of assimilation and integration. In this way, indigenous peoples have been excluded from the governance of the pandemic and their ability to exercise their fundamental rights and responsibilities has been curtailed.

2. The pandemic has affected specific population groups – notably, the deaths of authority figures, wise men or women and spiritual guides is having a negative impact on indigenous people's capacity for self-government, their relationship with governmental and non-governmental institutions and the transmission of their cultures to future generations.

3. In these adverse circumstances, however, indigenous peoples have acted to strengthen democracy and the social and multicultural State under the rule of law the foundations of which have been laid in recent decades. Indigenous communities and authorities have once again demonstrated the effectiveness of self-determination in areas such as traditional medicine, self-government and territorial management; as well as their creativity, by developing communication and data-collection platforms and strategies to influence the decisions that affect them. Indigenous peoples, without the assistance of State financial support, have responded by adopting a strategy of "going back to their roots".

4. The continuation and repetition during the pandemic of patterns of exclusion of indigenous peoples can partly be explained by the fact that the States of Latin America share a colonial past from which they inherited their systems of law and government, characterized by features including presidentialism and a concentration and abuse of power. States have incorporated legal or constitutional mechanisms that authorize the executive to implement exceptional measures to prevent the possibility of direct interference with political power, including in abnormal or emergency situations, such as the pandemic. In relation to indigenous peoples, the colonial legacy of States is evident in policies and practices of reductionism, assimilation and integration.

5. Despite this, indigenous peoples' struggles and movements have won constitutional and legal recognition of their ethnic and cultural diversity. Because these peoples predate modern States, that recognition includes ensuring the continuation of, and respect for the validity of, their cultures, forms of government and ownership of land, among other rights. These political rights call into question the notion of the monocultural State, as they show that "indigenous peoples" and "nation States" are entities of the same nature. However, as a result of asymmetric historical power relations, indigenous territories have either been absorbed within or been traversed by the geographical borders of nation States, and subordinated to the legal systems of the latter.

6. The struggles and movements, organizing process and platforms for action of indigenous peoples demonstrate their capacity for governance and are in themselves

¹ References to "the pandemic" should be understood as referring to the coronavirus disease (COVID-19), as designated by the World Health Organization (WHO).

² Hereinafter, "the region" or "Latin America" should be understood to mean South America, Central America and the Caribbean.

a constitutive contribution to democracy in the region. They thus support the renewed recognition of equality as an important factor in building diverse societies and the incorporation of human rights standards, such as respect for dignity and life, from a universal, and not exclusively anthropocentric, perspective.

7. The relationship between cultural diversity and democracy remains complex. In institutional life, the role currently played by indigenous peoples is still that of insular, discrete or marginal minorities,³ inasmuch as they have limited real means of participating, with decision-making capacity, in legislative, executive and judicial bodies. However, those are the bodies which make rules, budgets and public policies, and therefore indigenous peoples' participation is typically complemented by acts of protest or demonstrations.

8. Although in recent decades States have made progress with the formal recognition of indigenous peoples, as evidenced by differentiated public policies and bodies for intercultural dialogue, the exceptional measures adopted in response to the pandemic have been detrimental to indigenous peoples' rights, mainly because such measures have been taken without respect for those peoples' autonomy, and have resulted in an increase in the criminalization of their leaders, the suspension of prior consultation and consent, and the intensification of policies promoting extractive industries and deforestation during the health emergency.

9. The 2020 session of the Permanent Forum on Indigenous Issues had to be postponed due to the pandemic. The 20th session will be held from 19 to 30 April 2021 at United Nations headquarters in New York, with an agenda including "Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16" approved by the Economic and Social Council. Although, because of the pandemic, there is some uncertainty as to whether the session will proceed as planned, the members of the Forum have prepared reports.

10. This study focuses on the impacts on the rights of indigenous peoples of the exceptional measures adopted by Latin American States in response to the pandemic. It is based on the voices of indigenous men and women who are leaders of their communities, the voices of indigenous organizations, and conversations with independent experts and various State and United Nations system entities.

I. Restrictions on indigenous peoples' participation mechanisms and associated impact on democracy

11. Indigenous peoples are important political actors in the region. They have furthered democratic values and practices, working to achieve the incorporation of international standards for indigenous peoples' rights into national legal frameworks. They have made contributions through their knowledge and expertise regarding climate change risk-mitigation and the protection of biodiversity (Paris Agreement, art. 7 (5)). Unfortunately, these contributions are undervalued by States.

12. Declarations of states of emergency and the adoption of such exceptional measures as quarantines, border closures, militarization and curfews are provided for by national legal frameworks, making them legal, and, in the main, legitimate. Despite a warning from the Inter-American Commission on Human Rights that these measures should not be "(...) used illegally or in an abusive or disproportionate way, causing human rights violations or harm to the democratic system of government",⁴

³ Romero Pérez, Xiomara, "Minorías marginadas, ocultas o invisibles", *Revista Derecho del Estado*, vol. 26 (January–June 2011), pp. 153–173.

⁴ Resolution 1/2020, recommendation 3 (g).

in practice, they have been damaging to indigenous peoples. They have been used to foster authoritarianism and to suppress voices of protest and peoples' self-government, impeding democratic progress. Moreover, due to the tradition of a concentration of power in the executive, there is a risk that such measures could become permanent through legislation.

13. In the Plurinational State of Bolivia, Chile, Colombia and Guatemala, for example, there has been an obvious deterioration of democracy and obvious consequences of the restriction of indigenous peoples' autonomy. Governments have used the pandemic and the rule of law to justify exceptional measures through which they are encouraging repression, as well as criminalizing and refusing to recognize the legitimacy of indigenous peoples' acts and mechanisms of participation, such as *mingas* (voluntary cooperative work groups) or demonstrations.

14. In Chile, social protest has been forcefully suppressed; this has particularly affected the Mapuche people, who are demanding their right to self-determination. This is taking place while a process to draft a new constitution is under way in the country. As part of the process, the Senate Committee on the Constitution, Legislation, Justice and Regulations decided to reserve 23 seats for indigenous peoples, as follows: Mapuche (14), Aymara (2), Rapa Nui (1), Kawéskar (1), Yagán (1), Quechua (1), Atacameña (1), Diaguita (1) and Kolla (1).⁵ The indigenous peoples consider the reservation of seats on the Committee insufficient to satisfy their right to self-determination, and are also seeking to obtain recognition of a plurinational State, as well as the adoption of a self-determination statute through which the State recognizes their existence.⁶

15. Luis Arce Catacora was elected president of a polarized Plurinational State of Bolivia on 18 October 2020, the same day that the new Legislative Assembly was formed. Some reacted to this political event by denying the victory of the president-elect and the representatives to the Assembly; this was the case in the Santa Cruz region, where social organizations also reported abuse by police and racism. In Guatemala, indigenous organizations have asked the Public Prosecution Service to investigate President Alejandro Giammattei for his mistreatment of members of the indigenous Kaqchikel people, who are demanding respect and a say in the decisions made regarding their territory.⁷ They have also called for him to resign over corruption.⁸

16. In Colombia, the President has concentrated power by limiting the functions of the institutions responsible for exercising control over his mandate.⁹ The Government declared a state of emergency, which it then used to issue nearly 900 decrees, an unprecedented event in the region. Unfortunately, the measures adopted did not provide for differentiated treatment, and there were no prior consultations with the indigenous peoples; moreover, the measures did not include provisions for effective checks to ensure that public funds were handled in a transparent manner. For instance, it was reported that the Emergency Mitigation Fund (FOME) created in response to the pandemic financially favoured private funds, used inadequate contractors and

⁵ www.senado.cl/despachan-reforma-sobre-escanos-reservados-para-pueblos-originarios-e/senado/2020-10-29/230654.html, 30 October 2020.

⁶ Interviews with Aucan Huilcamán, 22 and 28 September, 2020.

⁷ Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean (FILAC), www.filac.org/wp/comunicacion/actualidad-indigena/comunidad-indigena-de-guatemala-denuncia-prepotencia-del-presidente-giammattei, 29 July 2020.

⁸ Noticias de América Latina y el Caribe (Nodal), www.nodal.am/2020/11/continuan-las-protestas-en-guatemala-pueblos-originarios-piden-la-renuncia-de-alejandro-giammattei/, 24 November 2020.

⁹ Transparencia por Colombia, Transparency International chapter, <https://transparenciacolombia.org.co/2020/09/03/alarmante-concentracion-del-poder-en-el-ejecutivo-en-colombia/>, 3 September 2020.

incurred extra costs in its procurement of food and medical supplies that were to be distributed in the country.¹⁰

17. Although some States notified the Organization of American States of the suspension of guarantees for the duration of their states of emergency,¹¹ their failure to involve or consult indigenous peoples is incompatible with their obligations under international law.¹²

18. In the face of the pandemic, the indigenous peoples of the region adopted a strategy of “going back to their roots”, turning to their own traditional medicine and strengthening their ancestral know-how, food systems, self-government structures and mechanisms for territorial management. However, the lack of horizontal dialogue between national and indigenous governments has limited indigenous authorities’ ability to effectively fulfil their duty to protect their peoples. This exclusion is not consistent with the nature of the social State under the rule of law.

II. Indigenous peoples in the pandemic and deepening inequality

19. The World Bank estimates that 71 million people will fall into extreme poverty after the pandemic, but, due to underreporting, the figure could be higher. This is without taking into account the economic slowdown that has been affecting Latin America since 2016 and the fact that, as the region’s economies are dependent on the extractive industry, they will also be affected by the 2020 fall in oil prices.¹³ States’ fiscal stimulus packages are not geared towards the redistribution of wealth through social transfers for those in poverty or extreme poverty – on the contrary, States have prioritized investing in banks in order to avoid a financial crisis. Inequality will deepen if the Governments of the region do not negotiate their foreign debt to allow themselves adequate fiscal space and prioritize the rights and access to basic services of the most vulnerable in their responses to the pandemic.¹⁴

20. The economic and social crisis, a consequence of the closure of markets and borders, justified the executive’s adoption of extraordinary powers and the imposition of emergency measures in most countries in the region, with the exceptions of Cuba, Guyana, Nicaragua, and the Dominican Republic.¹⁵ In Brazil and Mexico, both federal countries, it is the individual states that have taken emergency measures, without the permission of those countries’ Presidents, who, initially refused to recognize the severity of the virus and its consequences for public health.

21. Governments’ approaches to de jure or de facto states of emergency have been characterized by executive actions, omissions or overreach that abusively curtail

¹⁰ Ciudadanía Activa, third report, 2020, <https://transparenciacolombia.org.co/Documentos/Publicaciones/gestion-publica/3-rep-Ciudadania-Activa-21-08-20.pdf>.

¹¹ Argentina, the Plurinational State of Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Panama and Peru sent communications to the Organization of American States notifying it of the suspension of guarantees in accordance with article 27 of the American Convention on Human Rights.

¹² States are not authorized to suspend the rights to recognition as a person before the law, life or personal safety; the prohibition of slavery and servitude, the principles of legality and retroactivity, freedom of conscience and religion, protection of the family, or the right to a name, the rights of the child, the right to nationality or political rights; and nor may they suspend the judicial guarantees that protect those rights.

¹³ Interview with Mario Valencia of the Universidad Externado de Colombia (2 October 2020).

¹⁴ See A/75/164, chap. III.

¹⁵ No data are available for these countries as at 23 November 2020. “States of Emergencies in Response to the COVID-19 Pandemic”, <https://datastudio.google.com/u/0/reporting/1sHT8quopdfavCvSDk7t-zvqKIS0LJiu0/page/dHMKB>.

human rights.¹⁶ In the package of economic proposals to address the social and economic crisis resulting from the pandemic, they prioritized the investments of major extractive companies, the privatization of the health-care system and Internet access, as well as the protection of a small number of landowners.¹⁷ In contrast, redistributive measures aimed at expanding health-care coverage and comprehensive social protection, or at strengthening the food sovereignty of indigenous peoples, have been scarce, and, when they have been adopted, it has been without indigenous peoples' participation.

22. In Latin America, 30 percent of indigenous peoples live in poverty, compared with 19 per cent in the rest of the world.¹⁸ The pandemic has exacerbated inequality and conditions of extreme poverty for most indigenous peoples by suspending the activities by which they earn their livelihoods, such as the sale of handicrafts or trade in agricultural products. The income from these activities has not been replaced by meaningful State financial support to alleviate hunger or provide access to goods, such as medicines, basic toiletries, mobile phone and Internet plans, transport and fuel, in which those peoples are not self-sufficient.¹⁹

23. The measures adopted by States are based on the erroneous assumption that indigenous peoples are a homogeneous group who require only general and short-term welfare measures. This deepens exclusion with regard to the exercise of fundamental rights, such as the rights to health, autonomy, education, participation, protection of the environment and a dignified life, all of which are essential for effective recognition and physical and cultural preservation.

A. Differential impacts of the pandemic on indigenous peoples

24. Pre-existing inequity and poverty have contributed to indigenous peoples experiencing the effects of the pandemic more severely – this applies especially to the elderly, women and children.

25. Older people are less likely to survive if they contract the virus. For example, in Colombia in August 2020, approximately 160 elderly indigenous people were reported to have died.²⁰ Their loss implies the weakening of self-government, affects their peoples' relationship with institutions and wider society and prevents the transfer to the next generations of knowledge fundamental to the protection of the spirit, nature, the family, territory and culture. In countries like Argentina, the Plurinational State of Bolivia, Chile, Costa Rica and Uruguay, indigenous societies are ageing.²¹ The situation is worrying for peoples at risk of extinction owing to

¹⁶ Roberto Gargarella and Jorge Roa, "Diálogo democrático y emergencia en América Latina", Max Planck Institute for Comparative Public Law & International Law Research Paper No. 2020–21.

¹⁷ A/HRC/44/40, paras. 33–36.

¹⁸ International Labour Organization (ILO), *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future* (Geneva, 2019), available at www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_735607.pdf.

¹⁹ Interviews with Lejandrina Pastor, member of the indigenous Wiwa people, and Dunen Muelas, member of the indigenous Arhuaca people (30 September 2020).

²⁰ The following leaders lost their lives: in Colombia, a governor of the Kogui people of the Sierra Nevada, José de los Santos Sauna; in the Peruvian Amazon, Awajún leader Santiago Manuin Valera; and in the Plurinational State of Bolivia, the authority of the Sura Nation, Claudio Centeno Quito (EFEverde, 9 August 2020, www.efeverde.com/noticias/dia-internacional-de-los-pueblos-indigenas-perder-conocimientos-ancestrales-por-el-covid-19/).

²¹ Economic Commission for Latin America and the Caribbean (ECLAC), "Los pueblos indígenas de América Latina – Abya Yala y la Agenda 2030 para el Desarrollo Sostenible: tensiones y desafíos desde una perspectiva territorial", *Documentos de Proyectos* (LC/TS.2020/47), Santiago, 2020, pp. 154–156.

demographic fragility – that is, those peoples with a population of fewer than 5,000. In Colombia, for example, there are groups with fewer than 500 and fewer than 100 members, a high percentage of whom are people over 60.

26. In the cities, older indigenous people, who for various reasons are unable to return to their territory during the quarantine period are not visible to institutions and are at risk of falling into begging networks. Because they are not fluent in the majority language, they are unable to access essential support services and communicate their needs. This invisibility means that neither their existence nor their death is accounted for in official statistics. While in the cities the quarantine has resulted in the above-mentioned problems, in rural areas this population group has experienced serious difficulties in obtaining food products and hygiene and biosafety supplies, as a consequence of remoteness and lack of money. In addition, restrictions on movement and the militarization of their territories have severely reduced the ability of older indigenous people to practise traditional medicine, by limiting journeys to find plants and weakening the economic capacity of communities more broadly.²²

27. Indigenous women are suffering the consequences of extreme poverty, which are compounded by the pandemic. Over 85 per cent of them work in the informal sector,²³ selling handicrafts or working in rural areas, and therefore are not covered by the few government financial relief measures put in place to address the emergency.²⁴ Women are taking on a caregiving role, which reduces the time they have available to participate in the labour market. In addition, they are vulnerable because of such factors as armed conflict, and domestic and sexual violence, which has increased during the period of isolation.²⁵ Women are nevertheless playing a critical role in maintaining life and family in the health emergency: they contribute to food sovereignty, practise midwifery and other areas of traditional medicine and support the protection of their communities against the virus, compensating, to a large extent, for States' failure to adopt differentiated health measures.²⁶

28. Indigenous peoples in cities swell the ranks of the poor, are constantly stigmatized because of their origins and are excluded from access to basic goods and services. Internal armed conflict and widespread violence aggravate these circumstances because of the fact that armed groups operate out of urban areas, and they exploit indigenous people in begging and trafficking networks, as is occurring in some cities in Colombia. In Bogotá, Mexico City, Manaus, Buenos Aires, Guayaquil, Lima, Santiago, Asunción and Ciudad del Este, the risk of infection is high and there are no culturally adapted health measures or financial stabilization support measures in place for housing and food, nor are there measures to support these populations' return to their territories. People are returning without any kind of biosafety measures.²⁷ Outside their territory, indigenous structures of self-government are weakened or may dissolve; when this happens, the survival of these communities is the responsibility of the local governments of the cities where they have settled.

²² Interview with Francisco Rojas Birry, member of the indigenous Embera people (23 September 2020).

²³ ILO, *Implementing the ILO Indigenous and Tribal Peoples Convention*.

²⁴ Interview with Mario Valencia (2 October 2020).

²⁵ Interview with the International Indigenous Women's Forum (14 October 2020).

²⁶ Office of the United Nations High Commissioner for Human Rights, "COVID-19 and Indigenous Peoples' Rights" (29 June 2020). Available at www.ohchr.org/Documents/Issues/IPeoples/OHCHRGuidance_COVID19_IndigenousPeoplesRights.pdf.

²⁷ Red de Investigaciones Sobre Indígenas Urbanos (RISIU), "Contribución Continental al Informe del Relator Especial sobre los derechos de los pueblos indígenas sobre el Impacto de COVID-19 en los pueblos indígenas" (Mexico, 19 June 2020). Available at www.clacso.org/contribucion-continental-al-informe-del-relator-especial-sobre-los-derechos-de-los-pueblos-indigenas/.

29. Indigenous people deprived of their liberty are at greater risk of infection and death from the virus, due to overcrowding and a lack of basic services.²⁸ In Colombia there is no differentiated approach and prison overcrowding is the norm; the release measures that have been adopted are superficial, and were taken without consulting indigenous peoples.²⁹ In Chile, Mapuche political prisoners declared a hunger strike to protest the fact that the release measure adopted did not cover them, although it benefited those who had committed more serious crimes.³⁰

30. The closure of borders resulted in a humanitarian crisis, as no official corridors were established for the free movement of cross-border or binational indigenous peoples. For some indigenous peoples in the Amazon region,³¹ such as the Awa on the border between Colombia and Ecuador or the Wayuu on the border between Colombia and Venezuela, the restrictions on movement prevented access to health centres and trading locations, or visits to sacred sites.³² In addition, some cross-border peoples were affected by the militarization of their territories, which was done without consulting them.³³

31. The Amazon region constitutes the most extensive natural and geopolitical boundary in South America, and is possibly the place where indigenous peoples have been hardest hit by the effects of the pandemic. The area is home to some three million indigenous individuals, belonging to 420 peoples, 60 of them living in voluntary isolation.³⁴ Historically, these peoples have had limited access to basic transportation, health and education services. It is difficult for them to practise their traditional medicine as a result of extractive activity, drug trafficking and violence. They also suffer from illnesses such as tuberculosis, dengue fever and malaria, often as a result of contact with individuals from outside their communities.

32. In the Amazon region, plans to mitigate the risks of the pandemic have been limited to militarization and partnerships between Governments, measures that have been ineffective in practice. According to current figures, some 73,767 indigenous people have been infected and 2,139 have died of the virus.³⁵ This is equivalent to 58.4 per cent of the total recorded number of indigenous people in Latin America,

²⁸ Nueva Sociedad interview with Gustavo Fondevila (2017), “Pánico, violencia y crisis en las cárceles de América Latina”. Available at <https://nuso.org/articulo/panico-violencia-y-tesis-en-las-carceles-de-america-latina/>.

²⁹ Michael Cruz Rodríguez, Jennifer Andrea Montaña Granados and Manuel Camilo Ayala Sandoval, “Indígenas en prisión. La imposición estatal de la cárcel y el deber de respetar la justicia indígena en Colombia”, *Revista Cambios y Permanencias*, vol. 11, No. 2 (2020).

³⁰ Paradoxically, in some Latin American countries such as El Salvador, Paraguay and the Bolivarian Republic of Venezuela, arrests have increased because of quarantine violations. According to Amnesty International, those arrested are confined in shelters or State-run centres in unsanitary conditions, sometimes without adequate food, water or medical care. See www.amnesty.org/es/documents/amr01/2991/2020/en/.

³¹ Atalayar “Los pueblos indígenas del Amazonas, sin protección ante la pandemia de la COVID-19”. Available at <https://atalayar.com/content/los-pueblos-ind%C3%ADgenas-del-amazonas-sin-protecci%C3%B3n-ante-la-pandemia-de-la-covid-19>.

³² Colombia, Ombudsman’s Office, *Situación de derechos humanos de los pueblos indígenas transfronterizos y binacionales en la frontera colombo-venezolana*.

³³ Interviews with women’s organization Red Sur (22 October 2020) and the organization Autoridades Indígenas de Colombia (AICO) (24 September 2020).

³⁴ The Amazon region is divided as follows: Brazil (59.17 per cent), Peru (11.27 per cent), Colombia (7.94 per cent), Bolivarian Republic of Venezuela (6.69 per cent), Plurinational State of Bolivia (5.99 per cent), Guyana (3.51 per cent), Suriname (2.35 per cent), Ecuador (1.75 per cent) and the overseas territory of French Guiana (1.33 per cent) (Amazon Cooperation Treaty Organization (ACTO), 2020, www.otca-oficial.info/amazon/our_amazon).

³⁵ Red Eclesial Panamazónica (REPAM) and Coordinating Body of Indigenous Organizations in the Amazon Basin (COICA), 10 November 2020, <https://redamazonica.org/covid-19-panamazonia/pueblos-indigenas/>.

according to the statistical calculations of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.³⁶

33. In this region, the indigenous peoples living in voluntary isolation and making initial contact are demographically fragile and particularly vulnerable – even prevention and containment measures pose a threat, because aid workers can also be vectors of disease. Individuals associated with the extractive industries entering their territories and evangelical missionaries paying unauthorized visits represent some of the greatest risks. In March 2020, there was a 3 per cent increase in deforestation in the territory of the Yanomami people in the State of Roraima, in the Brazilian Amazon. This people has been among the worst affected, having registered 9 deaths from the virus and 14 other deaths, of causes as yet unknown, as at 4 November 2020.³⁷

34. In the face of the crisis, indigenous governments and organizations have chosen to use their own resources to ensure the life and health of their communities. They have done this mainly through ancestral practices, spirituality, culture and unity. Specifically, they have bolstered their own economy by practising sustainable agriculture for food sovereignty, revitalized the role of the indigenous guard for the defence and protection of their territories and turned to their wise elders to attend to and improve their health, while also disseminating the elders' medical knowledge in their communities via community radio stations, or text and WhatsApp messages. However, not all communities have had the same opportunity to survive by returning to ancestral practices, due to the overexploitation of natural resources, overcrowding caused by production activity, climate variability or the widespread violence that pervades their territories. Although international bodies praise indigenous peoples' so-called "resilience practices", States, instead of supporting these practices, and under the pretext of indigenous autonomy, have shirked their responsibilities and left the protection of indigenous peoples' rights to the peoples themselves.³⁸

B. Rights are in retreat

35. The pandemic has also affected the health of indigenous peoples. Insufficient access to healthcare, coupled with health and social assistance centres made difficult to reach by geography, and insufficient access to drinking water and basic sanitation, worsened the effects of existing problems of malnutrition and parasitism that mainly affect older adults and indigenous children.

36. Western models of healthcare were imposed to manage the pandemic, with no consultation; they lacked differentiation of targeting, and cultural adaptability; no connection was established with indigenous health authorities and systems. All of this negatively affected the transfer of traditional knowledge. Recommendations for protection against biohazards were not translated into local languages, and Government health prevention campaigns favoured technologies – such as web platforms, smartphone applications, cable television or 4G mobile telephony – unavailable in rural areas.

37. Statistically, indigenous peoples were already invisible before the pandemic. Most States lack measurement methods that can produce disaggregated data with a

³⁶ FILAC, "Buenas prácticas de los Pueblos Indígenas ante la pandemia: Comunidades resilientes", La Paz, 2020. Available at https://indigenascovid19.red/wp-content/uploads/2020/09/FILAC_FIAY_tercer-informe-PI_COVID19_final.pdf.

³⁷ La Rede Pró-Yanomami e Ye'kwana (4 November 2020) <http://www.facebook.com/RedeProYanomamiYekwana/posts/214507356950995>.

³⁸ Indigenous resilience practices have been documented by FILAC and highlighted in the report of the Special Rapporteur on the rights of indigenous peoples, Francisco Calí Tzay.

focus on ethnic characteristics in order to implement culturally appropriate health and social investment policies. This shortcoming has been inherited by the information systems for monitoring the public health situation during the pandemic, making it impossible to accurately estimate the number of infections and deaths caused by the virus among indigenous peoples. In contrast, indigenous authorities and organizations have by themselves designed and put into operation information systems generating data which often differs from that published by local, regional and national governments, highlighting the State authorities' underreporting and lack of capability.³⁹ In the Bolivarian Republic of Venezuela, State restrictions requiring data to be official have prevented indigenous peoples from disseminating their own reports.⁴⁰

38. The individual and collective identity attached to funeral rites has been affected by the lack of health protocols that respect indigenous communities' right to mourn. The fact that State health authorities have mandated cremation and prohibited burial of bodies in their traditional territories has affected the indigenous peoples' spiritual practices regarding treatment of the dead. For example, in the Wayuu and Awá communities in Colombia, the bodies of some indigenous people were cremated without the consent of their families and communities, even though it was not known whether complications from the virus caused their deaths. The Pan American Health Organization (PAHO) had already communicated to Governments the need to respect the cosmovision of indigenous peoples in the health management of the pandemic. Failure to act on this recommendation sowed distrust in certain groups, which were afraid of being separated from their communities and mourning rituals, leading many to decide not to call on the healthcare system.⁴¹

39. Another concern for indigenous communities is the lack of action to ensure food security and food sovereignty. The World Food Programme (WFP) has reported that at least 270 million people will go hungry because of the pandemic; about 14 per cent of those in food crisis are in Latin America.⁴² Communities have been badly affected by food shortages caused by remoteness, poor roads, the disruption caused to food supply chains by prolonged quarantine, high prices, and the suspension of income-generating activities. For example, among the Nahua Pipil people (El Salvador), quarantine restrictions have prevented cultivation of fields and marketing of products, making food insecurity worse.⁴³

40. Some countries adopted temporary measures to mitigate hunger during the first months of the pandemic in 2020, but did not promote food sovereignty. For example, policies which permitted only patented seed to be planted remained in place,⁴⁴ and free trade agreements were approved as part of the recovery process. These agreements limit the abilities of the State because they create a dependence on food imports carrying low tariffs, acting as a disincentive to rural producers, including the indigenous population. They also prevent Governments from favouring domestic output in times of crisis.⁴⁵ All of the above contributes to the loss of crops and of

³⁹ The most effective example is the Territorial Monitoring System of the National Indigenous Organization of Colombia (ONIC).

⁴⁰ Interview with a woman leader of the Wayuu (14 October 2020).

⁴¹ ONIC Territorial Monitoring System (2020). Case study among the Awá people.

⁴² World Food Programme, "Responding to the development emergency caused by COVID-19 – WFP's Medium-Term Programming Framework", 2020, p. 7. Available at <http://www.wfp.org/publications/responding-development-emergency-caused-covid-19-wfps-medium-term-programming>; Food Security Information Network (FSIN), "Global Report on Food Crises", 2020, pp. 47–50. Available at www.wfp.org/publications/2020-global-report-food-crises.

⁴³ United Nations Food and Agriculture Organization (FAO) "COVID-19 and indigenous peoples", 2020. Available at www.fao.org/3/ca9106en/CA9106EN.pdf.

⁴⁴ Interview with Dora Tabera, leader of the Pijao people (30 September 2020).

⁴⁵ Centro de Estudios de Trabajo (24 August 2020) <https://cedetrabajo.org/los-tratados-de-libre-comercio-y-la-pandemia/>.

diversity of species and seed. It also impedes alternative forms of agrarian development, limiting the food sovereignty of communities. This situation is deteriorating because of the region's loss of biodiversity, which reached 94 per cent between 1970 and 2016; its cause is the abrupt changes in land use, overexploitation and poor access to technology for climate change mitigation.⁴⁶

41. Indigenous and intercultural education is an important part of the recognition agenda, and has been one of the achievements of building indigenous peoples' organizational structure. Some Governments, such as those of Colombia and Mexico, have acted in a timely way to offer school curricula in virtual environments. Despite that, little budget provision was made to expand information and communication technology infrastructure in rural areas. The lack of computers, the lack of access to digital literacy and electricity supply problems have prevented indigenous children and teachers from meeting expectations regarding schooling in virtual environments. As a result, many teachers chose to use their personal resources to make copies of activity material and to travel long distances to their students' homes to distribute that material and provide study support. The ICT infrastructure shortcomings also affect young indigenous university students who return to their home territories and must suspend their studies because they do not have money or access to an adequate internet connection.

42. One positive aspect is the role of communities during the school closures: women, elders and authorities have taken advantage of this time to transmit to the younger members of the community their own knowledge of language, farming, the use of medicinal plants, the importance of the Indigenous Guard and indigenous justice systems. Despite community efforts to promote youth education, dropout rates have increased during the pandemic, increasing the vulnerability of young people. In some parts of Colombia, such as the south-west and Amazon regions, armed individuals are illegally recruiting indigenous children and young people or using them to produce and sell illicit crops.

43. Digital inclusion is related to the right to education and other rights. In Latin America, the percentage of connectivity is 36.8 per cent in rural areas, in contrast to 70 per cent in urban areas.⁴⁷ Because of the emergency closure of educational institutions and workplaces, and bans on gatherings, the pandemic requires the use of information and communication technology, even to provide remote medical assistance. The gap seen in rural areas is caused by the lack of technological infrastructure, connectivity and digital literacy. This is the result of factors including low investment in such fields, and of regulations that favour privatization of the related services and of the ether, even when this should be recognized by the State as part of the territorial rights of indigenous peoples.

44. The indigenous population falls into the category of digitally excluded rural people; indigenous territories lack high-capacity fixed broadband connections and mobile phone signals. That digital exclusion, dating back to before the pandemic, violates fundamental rights such as the right to education, health, access to justice, and participation. Indigenous peoples were not prepared for interaction using remote connections; technological resources in indigenous territories are scarce or non-existent, and few people know how they work. Therefore, participation in virtual decision-making has been drastically restricted in the case of the spiritual authorities

⁴⁶ Worldwide Fund for Nature, "Living Planet Report 2020 – Bending the curve of biodiversity loss", Gland, WWF, 2020, p. 22. Available at https://wwf-eu.awsassets.panda.org/downloads/lpr20_full_report.pdf.

⁴⁷ Inter-American Institute for Cooperation on Agriculture (IICA) (2020) <https://iica.int/es/prensa/eventos/conectividad-rural-en-america-latina-y-el-caribe-un-puente-al-desarrollo-sostenible#!#transmision>.

and of women who are less computer literate. In the view of those women, remote connection means more individualism and lost opportunities for community assembly, and represents a considerable threat to the transmission of knowledge “which always takes the form of using words in a collective environment”.⁴⁸

45. Indigenous authorities have little or no participation in virtual decision-making and consultation with the Government and companies, precisely because of the lack of connectivity and digital literacy. As a result, the digital divide is much wider and worsens inequality in the environment of the pandemic because it excludes indigenous peoples from the benefits of technology, including using web applications to register for and collect financial assistance, engage in e-commerce and get access to justice. Likewise, indigenous peoples have been unable to benefit from e-government virus-monitoring measures, such as telemedicine, diagnostic campaigns, or prevention and mitigation through social networks or web portals, which have been designed without regard to ethnic considerations.⁴⁹

46. The American Convention on Human Rights (art. 27) establishes that the suspension of a fundamental right is not authorized. States have therefore failed to give effect to the right to autonomy and self-determination of indigenous peoples during the pandemic. When the emergency measures were established, free, prior and informed consent and consultation as a human right and a mechanism to guarantee other rights were disregarded.⁵⁰ No consideration was given to the possibility of carrying out consultation at the same time as, or after, to the design of the measures to ensure that they were culturally appropriate. Coordination with indigenous authorities has been rare, and has been promoted more by the indigenous peoples than by the conscious will of Governments.

47. Several indigenous organizations in Peru complained to the Inter-American Commission on Human Rights about the violation of their right to prior consultation regarding measures affecting their territory. Under the guise of “socio-economic recovery”, the Peruvian State gave priority to pushing forward without consultation the Amazon Waterway project and the Lote 58 gasfield project on the lower Urubamba.⁵¹ In Colombia, the Government attempted to carry out virtual consultations without guaranteeing the right to digital inclusion and access to adequate means of connectivity. The indigenous peoples, supported by the Public Prosecution Service, rejected these attempts, and the process was cancelled;⁵² however, no alternative was proposed to avoid the suspension of prior consultation during the state of emergency, as established by the Constitutional Court.⁵³

48. In Ecuador, several indigenous organizations in the Central Amazonia region have refused to countenance draft laws on prior consultation presented without their consent.⁵⁴ Tupak Viteri, leader of the Kichwa People of Sarayaku, told the Inter-American Commission on Human Rights that extractive activities in Ecuador have not stopped during the pandemic. In some cases those activities even increased, following the Government’s decision, through Executive Decree 1017 of 16 March

⁴⁸ Interview with Dunen Kaneybia Muelas, Arhuaca indigenous woman (30 September 2020).

⁴⁹ *Ibid.*

⁵⁰ A/75/185, paras. 44, 89, 99 and 109.

⁵¹ Derecho, Ambiente y Recursos Naturales (DAR) and others, (2020) <https://dar.org.pe/wp-content/uploads/2020/10/Solicitud-Audiencia-Consulta-CIDH-2020.pdf>.

⁵² Comisión Nacional de Territorios Indígenas (CNTI) (2020), http://cntindigena.org/wp-content/uploads/2020/04/VF_COMUNICADO_Circular-Mintinterior_consulta-previa_CNTI_14042020.pdf.

⁵³ Ruling SU 383 of 2003, available at www.corteconstitucional.gov.co/relatoria/2003/su383-03.htm. Respect for prior consultation as a right and as a mechanism was also recommended by the Office of the Ombudsman, see https://www.defensoria.gov.co/attachment/3374/Informe%20Defensorial%20Derecho%20a%20Consulta%20Previa_%281%29.pdf?g_show_in_browser=1.

⁵⁴ Confederación de Nacionalidades Indígenas del Ecuador (CONAIE) (26 November 2020).

2020, to declare them essential and/or strategic. In addition, the Ministry of Energy and Non-Renewable Natural Resources announced the promulgation by executive decree of the regulations regarding free, prior and informed consultation for mining activities. The development of these regulations did not include participation of the indigenous and Afro-descendant peoples of the country.⁵⁵

C. Extermination as a form of genocide is increasing

49. Territorial rights have continued to be affected during the pandemic. Lockdowns, obstacles to the movement of nomadic or transboundary peoples, displacement and forced migration, large-scale exploitation of fossil fuels and deforestation in indigenous territories are continuing. The understanding of “territory” for indigenous peoples is not merely land or physical space; it is based on those peoples’ cosmogony, their relationships with mother earth and their ways of life. For that reason, the harm caused to territory by enforced lockdowns or the presence of legal or illegal armed forces, imposing rules that are alien to the communities concerned, has further worsened the human rights situation, especially for nomadic and semi-nomadic peoples.

50. The militarization of indigenous territories is an emergency measure that instead of containing the virus spreads it, because outsiders are entering ethnic groups’ territories.⁵⁶ Militarization has little or nothing to do with the pandemic, but it provides fertile ground for illegal land grabs and dispossession, the desecration of sacred or farming sites, the recruitment of minors and the violation of the principle of separate treatment of non-combatants in armed conflict.⁵⁷ The movement restrictions applied are disproportionate and invasive.⁵⁸

51. In Brazil, one of the world epicentres of the pandemic, President Jair Bolsonaro has dismissed the existence and effect of the virus. In addition, most of the staff of his private office are military personnel, and he has deployed his armed forces to indigenous territories, ignoring Federal Supreme Court orders regarding due protection. These forces turned out to be the main transmitters of the virus in the territories.⁵⁹ In Chile, the constitutional state of emergency reinforced the military presence in Mapuche territory, with measures including drone overflights, in order to weaken community structures and self-determination in matters concerning the territory.⁶⁰ The indigenous peoples of the Amazon borders (Brazil, Colombia, Ecuador and Peru), and in the north-east between Colombia and Bolivarian Republic of Venezuela, are no strangers to these circumstances. In these cross-border territories, mobility has been unjustifiably restricted and military measures have been given priority over health measures.⁶¹

⁵⁵ Amazon Frontlines (2020) www.amazonfrontlines.org/chronicles/pueblos-indigenas-amazonia-denuncian-cidh/.

⁵⁶ A/75/185, paras. 83–85.

⁵⁷ Ibid., para. 82.

⁵⁸ Pan American Health Organization, “Epidemiological Alert: COVID-19 among indigenous peoples in the Americas – 15 July 2020”. <https://www.paho.org/en/documents/epidemiological-alert-covid-19-among-indigenous-peoples-americas-15-july-2020>.

⁵⁹ Frente Emergencia Indígena (2020), <https://emergenciaindigena.apiboficial.org/es/>.

⁶⁰ Interviews with Aucan Huilcaman of the Mapuche people (22 and 28 September 2020).

⁶¹ Observatorio de Derechos Territoriales de Pueblos Indígenas “Impactos del COVID-19 en los derechos territoriales de los pueblos indígenas en Colombia”, (Bogotá, 2020) Available at https://www.ohchr.org/Documents/Issues/IPeoples/SR/COVID-19/IndigenousCSOs/COLOMBIA_Observator_de_Derechos_Humanoa_y_Secretar%C3%ADa_Técnica_Ind%C3%A9gena.pdf.

52. The militarization of the territories increases violence against indigenous women, because it directly attacks the family, organizational and cultural structures that would previously have protected those women.⁶² For indigenous women, the military presence is a harbinger of multiple forms of violence, particularly sexual violence.⁶³ One of the most serious cases occurred in the coffee-growing region of Colombia, where a 14-year-old indigenous girl from the Embera Chamí people was kidnapped and sexually abused by seven soldiers.⁶⁴ In addition, military restrictions on mobility hinder channels of access to justice for indigenous women and exacerbate threefold discrimination against individuals who are women, indigenous and poor.

53. The arbitrary detention of indigenous social leaders, wrongly founded in criminal law and disregarding indigenous justice systems, as well as the stigmatizing discourse that associates the indigenous movement with illegal armed groups, has endangered the work of human rights and environmental defenders in the territories.⁶⁵ This weakens the social and environmental governance structures of the indigenous peoples, aggravating the risk of physical and cultural extermination. In the case of Colombia, this risk is related to the delay in the implementation of the Peace Agreement signed in 2016 with the Revolutionary Armed Forces of Colombia–People’s Army (FARC-EP) guerrillas. The escalation of violence and the lack of protection for social, ethnic and community leaders is evidenced by the 254 murders of such individuals in 2020; 88 were indigenous people.⁶⁶

54. During the emergency, governments have prioritized those areas of the economy which they considered necessary for economic recovery. Thus, States have promoted extractive, energy and agro-industrial projects that affect indigenous territories.⁶⁷ Being considered an engine of economic recovery, the activities with the largest environmental footprint have not been subject to precautionary suspension during the pandemic; that has led to consequences including environmental pollution, associated illnesses, changes in climatic cycles, and effects on subsistence crops. The restriction of the right to consultation on these projects goes against the processes of enforceability and defence of ethnic-territorial rights, leading to a rollback incompatible with human rights.⁶⁸

55. The Colombian Constitutional Court has declared 32 indigenous peoples at risk of physical and cultural extermination. In the indigenous peoples’ territories, extractive activities and megaprojects have been accompanied by militarization and a prohibition of social protest. One of these peoples is the Wayúu nation, whose health, poverty and malnutrition are exacerbated by pollution from the El Cerrejón open-pit mine, which continues to operate despite the recommendation of the United Nations to suspend large-scale coal mining in Wayúu territories.⁶⁹

56. In order to guarantee its conservation, the Amazon region is classified under legal concepts of environmental protection as an area of reserves and natural parks.

⁶² Interview with ECLAC Latin American and Caribbean Demographic Centre team (1 October 2020) and Dora Tavera, indigenous leader of the Pijao people (30 September 2020).

⁶³ Enlace Continental de Mujeres Indígenas de las Américas (ECMIA) (2020) <http://ecmia.org/index.php/ecmia/noticias/241-mujeres-indigenas-expuestas-a-todas-las-formas-de-violencia-durante-la-pandemia-del-covid-19>.

⁶⁴ Ibid. <http://ecmia.org/index.php/ecmia/noticias/242-mujeres-indigenas-de-las-americas-repudian-violencia-cometida-por-fuerzas-del-orden-en-colombia>.

⁶⁵ Interview with Aida Quilcue, a Nasa indigenous woman (30 September 2020).

⁶⁶ Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ) (2020). www.indepaz.org.co/lideres/.

⁶⁷ The ECLAC Latin American and Caribbean Demographic Centre experts who were interviewed and Mario Valencia agree on this matter.

⁶⁸ Interview with Aida Quilcue, a Nasa indigenous woman (30 September 2020).

⁶⁹ United Nations Special Rapporteur on human rights and the environment (2020) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26306&LangID=E>.

However, colonization, small and/or large-scale agricultural production, road and hydroelectric infrastructure development, and extractive industries, continue to limit access to natural resources for the survival of indigenous peoples.⁷⁰ Cultural structures are being adversely affected through intervention in those peoples' economies and self-governance, thus increasing the risk of genocide by separating these communities from the essence of their territory. During quarantine, minimal attention was paid to issues including deforestation and restricted contact with indigenous peoples.⁷¹

57. The exercise of self-determination, and indigenous peoples' control over their own government, economies, health and education, have been more effective than State measures, and have mitigated the impact of the pandemic on those peoples. This has brought them strengthened autonomy, and has highlighted their creativity and capacity to survive. If given a place in forums for governmental dialogue, indigenous peoples could contribute effectively to the planning, design and implementation of pandemic governance, helping to strengthen democracy in the region.

III. Recommendations

58. In line with international standards regarding the rights of indigenous peoples, and the existing constitutional and legal frameworks, the measures which follow are being recommended to the States of the region.

59. Define special protection measures for indigenous peoples' older adults, wise men and women and spiritual guides; the measures must be culturally appropriate to the purpose of strengthening the capacity of indigenous self-government and transmitting knowledge to upcoming generations.

60. Intensify measures to control deforestation in indigenous territories, strengthening the institutional framework for environmental monitoring and verification, and redouble environmental restoration and recovery efforts, relying at all times on the genuine participation of indigenous peoples.

61. Establish specific economic and social measures emphasizing redistribution, with a focus on collective targeting and maintaining a connection with the achievement of the Sustainable Development Goals. Measures should be formulated with the participation of indigenous self-government structures, traditional authorities, subregional and subject-based platforms, as well as members of indigenous peoples' entities such as the Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples.

62. Promote regional forums for dialogue between PAHO, FAO and other United Nations agencies, ministers of health and social protection, ministers of agriculture and rural development, the authorities responsible for criminal and justice policy, and national and regional bodies for the participation of indigenous peoples, in order to establish culturally relevant strategies to address the epidemiological risks, the food and environmental crisis resulting from the pandemic, as well as the approach to the application of justice and territorial control.

63. Establish policies that allow access to or improvement of information and communications technology infrastructure, based on the recognition that territorial rights include use of the ether. Such measures should include digital literacy, full

⁷⁰ ACTO (2020), www.otca-oficial.info/amazon/our_amazon.

⁷¹ Inter-American Commission on Human Rights (6 May 2020) www.oas.org/en/iachr/media_center/PReleases/2020/103.asp.

access to new technologies, the availability of translators and interpreters when needed, and the promotion of indigenous peoples' own community networks.

64. Recognize and promote the exercise of indigenous justice, during and after the pandemic, interjurisdictional coordination must respect the cosmovision of the peoples. Action must be taken to prevent indigenous peoples from being subject to legal proceedings for exercising their right to autonomy and territorial leadership during the pandemic.

65. Generate or activate emergency operating procedures for the protection of indigenous peoples' leaders acting as human rights defenders if they are under threat for their activism. For these procedures to be effective, the relevant United Nations bodies must fulfil a monitoring role and make recommendations to States.

66. Generate or activate operating procedures to eliminate all forms of violence against indigenous women and girls, avoiding revictimization during investigations, and guaranteeing genuine participation in such processes.

67. Use cooperation between the various institutions and States to promote inclusive policies for cross-border indigenous peoples, migrants and those forcibly displaced for a variety of reasons. These alliances are urgently required for the Amazon region, which needs an emergency action plan against deforestation and against the imposition on indigenous peoples of systems that are incompatible with their cosmovision.

68. Adhere to the right to, and procedure for, prior consultation, and do not conduct without the consent of indigenous peoples activities that directly or indirectly affect indigenous territories. As the measures to counter the pandemic are still in force, indigenous peoples must be involved in order to ensure cultural suitability and avoid harm.

69. In addition, United Nations agencies, funds and programmes must encourage and support the implementation of national action plans, development assistance frameworks and other measures to achieve the aims of the United Nations Declaration on the Rights of Indigenous Peoples. States must be urged to implement the recommendations of the Permanent Forum on Indigenous Issues, the Special Rapporteur and the Expert Mechanism on the Rights of Indigenous Peoples.
