

Conflict, peace and the human rights of Indigenous Peoples

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It is a pleasure for me to be present here today and speak on this important topic. Through many decades of my life as an indigenous activist and an indigenous rights advocate and in my two years as the Special Rapporteur on the rights of indigenous peoples appointed by the United Nations Human Rights Council, I regrettably have born witness to the tragic consequences armed conflict has on indigenous peoples across the world.

As part of my mandate as Special Rapporteur, I monitor and report publicly on the situation of indigenous peoples through country visits and by sending communications to Governments on specific cases of alleged violations. Through this work, my predecessors and I have engaged numerous situations of armed conflict where we have called for a halt to violations and the adoption of protection measures, argued for the need to hold perpetrators accountable and to ensure that victims are provided with reparations.

The specific triggers and context of each armed conflict are different; however the grave consequences share common characteristics of serious violations such as forced displacement, extrajudicial executions, sexual violence and forced recruitment of children. The violations against indigenous peoples in the context of armed conflict cause trauma and irreparable harm, destroy their culture and rip apart the social fabric of the affected indigenous communities. Conflict generally affects indigenous peoples who are already marginalised and entrenches them in poverty, perpetuating high illiteracy rates and poor health indicators.

Conflicts affecting indigenous peoples can often be traced back to long-standing historical injustices and discrimination originating in the context of colonization and dispossession of indigenous peoples' lands, territories and resources. Many indigenous peoples reside in ancestral territories that are rich in natural resources. Land disputes are

1. Victoria Tauli-Corpuz is the United Nations Special Rapporteur on the Rights of Indigenous Peoples; she addressed the International Expert Seminar on "*Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace*" at Columbia University on 14 May 2016.

frequently the root cause of conflict as indigenous peoples are faced with dominant and powerful political and economic interests who use the state institutions (e.g., police, military, courts) and state laws to seek control over their lands and exploit their resources. In many instances, there are private interests behind this, and they utilise the presence of armed actors to facilitate land grabbing and exploitation of natural resources such as minerals and metals, oil, gas and coal, timber and water. In other situations, armed groups claim ideological grounds for occupying indigenous lands and seek to involve indigenous peoples in their armed struggle. The often-scarce presence of state institutions and services in indigenous territories leaves indigenous peoples particularly vulnerable to the force of non-state armed actors.

In this presentation, I wish to underline the international legal standards applicable in situations of armed conflict and I would like to highlight examples of two countries where indigenous peoples are caught in between on-going hostilities and continue to face serious violations of their rights. The two countries, Colombia and the Philippines, also highlight the challenges indigenous peoples face in the context of peace negotiations and transitional justice.

I. International legal standards applicable to armed conflict

a) International human rights law

The International Covenant on Civil and Political Rights (ICCPR) affirms basic human rights such as the right to life, the right to liberty and security and the prohibition against torture or cruel, inhuman or degrading punishment, and the right to have an effective remedy for persons whose rights have been violated. The ICCPR also stipulates the right to self-determination, non-discrimination, and that ethnic, religious or linguistic minorities not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.²

2. International Covenant on Civil and Political Rights (ICCPR), Arts. 1, 2, 6, 7, 9 and 27.

In situations of armed conflict and unrest, States commonly seek to declare states of emergency and derogations from human rights. The Human Rights Committee has noted that any measures derogating from a State party's obligations under the Covenant must be limited to the extent strictly required by the exigencies of the situation. In addition, Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: Article 6 (right to life), Article 7 (prohibition of torture or cruel, inhuman or degrading punishment), Article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), Article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), Article 15 (the principle of legality), Article 16 (the recognition of everyone as a person before the law), and Article 18 (freedom of thought, conscience and religion).³

Article 2(2) of the Convention against Torture is explicit and states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

b) Right to a remedy

In order to advance the right to a remedy in situations of armed conflict, the General Assembly adopted Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2006.⁴ The Basic Principles entrench the obligation to respect and implement international human rights law and international humanitarian law by preventing violations; ensure prompt and impartial investigations and action against those alleged responsible; provide victims of violations with equal and effective access to justice, irrespective of who may ultimately be the bearer of responsibility for the violation; and provide effective remedies to victims, including reparation. Reparations are defined

3. CCPR/C/21/Rev.1/Add.11, "General Comment No. 29 on States of Emergency (Article 4)," (2001 Human Rights Committee, 2001).

4. A/RES/60/147.

as consisting of the following elements: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The Committee against Torture has furthermore noted in its General Comment No. 3 that “culturally sensitive collective reparation measures shall be available for groups with shared identity, such as minority groups, indigenous groups, and others. The Committee notes that collective measures do not exclude the individual right to redress.”⁵

The jurisprudence of the Inter-American human rights system has entrenched the responsibility of States to guarantee indigenous peoples protection in the context of armed conflict and to establish accountability of perpetrators. It has provided concrete orders on the obligation to remedy and repair damages to indigenous peoples caused by State actors, their collusion with paramilitaries or by omission of the State to protect.⁶ The case of *Plan de Sanchez Massacre v. Guatemala* set an important precedent by recognising the community as a beneficiary of collective reparations. The IACtHR ordered in its judgment in 2004 that the State, in addition to compensation, should undertake a series of measures aimed at achieving restitution, rehabilitation and satisfaction through acknowledgement. The measures included a public act of recognition in the village, translation of the Convention and judgment into indigenous languages, the provision of free medical and psychological services, and to undertake efforts to promote indigenous culture by the establishment of an educational institution.

c) International humanitarian law

In situations of armed conflict, both human rights law and international humanitarian law apply concurrently.⁷ International

5. CAT/C/GC/3, para. 32.

6. *Plan de Sanchez Massacre v. Guatemala*, IACtHR, Judgment, Ser. C, No. 105, 2004; *Moiwana Community v. Suriname*, IACtHR (Reparations), Ser. C, No. 145, 2006.

7. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Judgment, 2004, para. 106; *Democratic Republic of the Congo v. Uganda*, ICJ Judgment, 2005, paras. 217–219; see also OHCHR, *International Legal Protection of Human rights in Armed Conflict*, 2011.

humanitarian law is binding on all parties to hostilities; both State and non-State armed groups.

International humanitarian law is based upon the fundamental principles of distinction and proportionality. All sides in a conflict must distinguish between legitimate military targets on the one hand and civilians and civilian objects on the other. Attacks must not be directed against civilians and civilian objects. All persons who are not members of the armed forces are considered to be civilians and protected against attack, unless and for such time as they take a direct part in hostilities.⁸ The obligation to respect and ensure respect for international humanitarian law applies in all circumstances, even if the adversary breaches the law; it does thus not depend on reciprocity.⁹

The applicable international law provisions, binding on all parties in non-international conflict, are Common Article 3 of the Geneva Conventions and the obligations and prohibitions found in customary international humanitarian law.

Common Article 3 binds all parties to the conflict to respect and apply humane treatment of persons taking no active part in hostilities without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. It prohibits the following acts at any time and in any place: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused. Serious violations of international humanitarian law furthermore constitute war crimes and entail individual criminal responsibility. States must investigate war crimes allegedly committed by their nationals

8. *Customary International Humanitarian Law*, ICRC, Rules 1, 5, 6, 7.

9. *Customary International Humanitarian Law*, ICRC, Rule 140.

or armed forces or on their territory, and, if appropriate, prosecute the suspects. Statutes of limitation do not apply to war crimes.¹⁰

d) Crimes against humanity

Serious human rights and international humanitarian law violations that have been carried out in a widespread or systematic manner against a civilian population may constitute crimes against humanity. The commission of crimes against humanity may occur irrespective of the existence of an armed conflict and the application of international humanitarian law.

e) The ILO Indigenous and Tribal Peoples Convention No. 169, 1989

Article 16 of the ILO Convention No. 169 stipulates that “the peoples concerned shall not be removed from the lands which they occupy. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent...whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.” Article 6 speaks of the duty of States to consult indigenous peoples “through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.” The Convention furthermore establishes the right to be able to take legal proceedings for the protection of their human rights (Art. 12) and to retain their own customs and institutions (Art. 8). The Convention further requires that, when applying national laws to indigenous peoples, customs and customary laws be regarded (Art. 8); and that adequate procedures be established to resolve land claims (Art. 14).

10. *Customary International Humanitarian Law*, ICRC, Rules 150, 151, 156, 158, 160

f) The United Nations Declaration on the Rights of Indigenous Peoples, 2007

Under the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms recognized under international human rights law (Art. 1). This includes rights of indigenous individuals to “life, physical and mental integrity, liberty and security of person” and also includes collective rights of indigenous peoples to “live in freedom, peace and security as distinct peoples and... not be subjected to any act of genocide or any other act of violence” (Art. 7).

Of particular relevance in the context of armed conflict, Article 30 establishes 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. Article 30 also establishes that States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 10 affirms that indigenous peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Article 28 states that “indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”

Article 40 states the right of indigenous peoples to “access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective

remedies for all infringements of their individual and collective rights” and said decisions should consider the customs, traditions and legal systems of indigenous peoples and international human rights.

II. Experiences of indigenous peoples in armed conflict

Indigenous peoples are currently affected by armed conflicts between the military and armed groups in a number of countries including Colombia, India, Myanmar and the Philippines. Other countries where similar occurrences in the past still have lingering effects on indigenous peoples include Bangladesh, Guatemala and Peru. These armed conflicts affect indigenous peoples in various ways and indigenous peoples have adopted different strategies in such situations. Certain indigenous peoples join or are sympathetic to revolutionary or guerrilla armed movements because these groups are able to sympathise and to a certain extent address the problems indigenous peoples face, such as extreme poverty, absence of the State and the utter lack of basic social services and infrastructure which the State should provide, as well as protection against land grabbing and other injustices from the wealthy and politically influential sectors of society. From the perspectives of indigenous peoples, guerrilla movements may be perceived to provide them protection against despotic landlords or abusive government officials including police, military or local politicians.

Certain indigenous individuals choose to become members of armed guerrilla movements. Their families are often stigmatised and subjected to military harassments and become paramilitary targets on the mere basis of their relationship with a member of a non-state armed group. Indigenous members of armed groups who seek to leave armed movements for various reasons and attempt go back to their communities as civilians face particular challenges. Their community may not accept them back and because they fear for their safety, they may seek protection from the military or police. Thus they become identified by the armed group as enemies of the revolution and designated targets for extermination. In such cases, indigenous former members of armed groups are at risk of being recruited to join paramilitary armed groups who are used to fight the guerrillas.

Some indigenous peoples have declared their neutrality and seek to keep away from armed groups in their territories and from State armed forces through their traditional governance systems. There are examples of this in the Philippines and Colombia. In many cases, because the indigenous peoples are divided amongst themselves, with some sympathetic to guerrillas and others to the State military and police forces, their communities become centers of armed operations that often lead to their being forcibly displaced from their communities.

In some cases, indigenous peoples themselves are armed and they have their own indigenous warriors who attempt to keep the military and armed guerrillas away.

In other situations, private security guards of corporations (e.g., mining corporations present in indigenous peoples' territories) recruit indigenous men and use them to protect their mining operations. State sponsored paramilitary forces are at times used by private corporations for their security.

Armed non-state groups address the issues of indigenous peoples in a range of ways. For Marxist or Maoist groups, indigenous peoples' issues and rights are regarded to be within the objectives of the class struggle. The legitimate concerns of indigenous peoples are thus utilised by such armed groups to highlight the failure of the State and therefore supports their justification to overthrow the State in favour of the dictatorship of the proletariat. Indigenous peoples are classified by such armed groups as national and ethnic minorities and not as indigenous peoples with the right to self-determination. This is the case of the New Peoples' Army in the Philippines and the Naxalites of India.

a) Some common aspects of the conflicts in Colombia and the Philippines

I wish to make specific reference to two country situations, Colombia and the Philippines, where indigenous peoples have been caught in armed conflict between multiple armed groups and State forces. In both countries, left-wing guerrilla groups have operated since the 1960s and have used indigenous territories to launch attacks. The ensuing armed confrontations between the armed groups and State forces within their

territories has converted their ancestral lands into conflict zones and resulted in frequent large-scale forced displacements of indigenous peoples, killings of their leaders and community members, the forced recruitment of indigenous children, sexual violence and other serious violations.¹¹ The considerable natural resources within indigenous territory add additional dimensions to the conflict as private entities seek to exploit such resources, notably mining and logging, and use private armed actors to advance their economic interests.

In both Colombia and the Philippines, indigenous peoples' rights have been recognised in the Constitution and domestic legislation has been adopted to protect the rights of indigenous peoples and to award them land titles for their ancestral lands. Yet, in both countries, indigenous peoples fail to receive guarantees for these rights and continue to suffer from poverty and marginalisation, compounded by the persistent violence of armed actors. I wish to refer to some similarities in the challenges indigenous peoples face, both in Colombia and in the Philippines, in the context of the armed conflict and on-going or recent peace negotiations.

i) Colombia

I visited Colombia in February 2016 by invitation of the Government and while I was not there to undertake an official country mission, I nevertheless met with indigenous representatives and was apprised of the situation in the country. Colombia has approximately one million indigenous people, which represents around 3% of the overall population, and there are 102 different indigenous peoples. Land titles, known as *resguardos*, under collective ownership of indigenous peoples, comprise around 30% of the national territory. The Colombian Constitution of 1991 recognizes cultural diversity and the rights of indigenous peoples to autonomy, collective property, participation and the exercise of indigenous jurisdiction. The ILO Indigenous and Tribal Peoples Convention No. 169 was ratified by Colombia in 1991

11. As noted in my report to the Human Rights Council in 2015, military officials have often perpetrated sexual violence as a weapon to weaken the resolve of indigenous peoples where rights to lands and resources are disputed, A/HRC/30/41, para. 47(c).

and while abstaining from the vote on the United Nations Declaration on the Rights of Indigenous Peoples of 2007, the Government later explicitly expressed its support for the Declaration.

Despite the formal recognition of their rights, indigenous peoples face significant obstacles to exercising these as they have been caught in the continuous violence on their territories by the two guerrilla groups—the FARC-EP and the ELN—and by various criminal gangs often composed of ‘demobilized’ paramilitaries. They also suffer violations directly attributed to State armed forces. There are over 6 million internally displaced persons in Colombia. Indigenous displacement is extensive yet reliable data is unavailable as many indigenous people remain unregistered due to the remoteness of indigenous territories, lack of access to State services and cultural barriers.

In 2015, the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Colombia observed that eight indigenous leaders were killed and that 78 indigenous leaders, 11 of them women, were victims of attacks. During the same period, 58 indigenous leaders (11 women) were threatened, the majority by paramilitary criminal gangs; the threats expressly referred to their participation in indigenous mobilisation and pointed out the indigenous leaders of being terrorists at the service of the insurgency.¹² Simultaneously, indigenous children continue to be forcibly recruited by guerrilla groups. Violations were also carried out against indigenous peoples by State forces, such as the excessive use of force by the Mobile Riot Squad of the National Police during various large-scale indigenous mobilisations in 2015.

Despite the disproportionate impact of the armed conflict on indigenous peoples and Afro-Colombians, their situation has not been specifically addressed in the on-going peace talks between the Government and the FARC-EP in Havana. This has raised concerns by indigenous peoples, especially related to their territories and their legal right to be consulted. Indigenous representatives have expressed concerns over the negotiations between the two parties regarding the designation of areas for the demobilisation. There is fear that demobilisation areas will overlap with indigenous lands and

12. A/HRC/31/3/Add.2, para. 82.

territories, thus affecting their autonomy both in economic, cultural and political terms as well as their ability to exercise indigenous jurisdiction. Furthermore, some of the guerrillas who have entered their territories have been involved in abuses against the indigenous peoples or forcibly recruiting indigenous persons, including children. Indigenous peoples also expressed concern over the facilitation of the entry of so-called development projects (e.g., for mineral, oil and gas extraction, the building of huge infrastructures and the expansion of agricultural plantations) in the post-conflict scenario without them being consulted and their free, prior informed consent being obtained.

With regard to victim participation in the peace process, to date only four indigenous persons have been invited to attend as members of a victim delegation to the peace talks with the FARC-EP in Havana. However, the victims participated in their individual capacity and not as representatives of their population groups or social sectors. On 7 March 2016, representatives of indigenous peoples' and Afro Colombian organisations announced the formation of the Ethnic Commission for Peace and Defense of Territorial Rights, made up of authorities from both population sectors, in order to safeguard their territorial and collective rights in the process of negotiation and implementation of the peace agreements. The Ethnic Commission seeks to send a delegation to meet with both of the negotiating parties in Havana and also to dialogue with other actors nationally and internationally about peace building efforts in Colombia.

Related to the peace process is also the right to reparation for victims of the armed conflict. Colombia has initiated a commendable reparation and restitution process for victims of the conflict, and specific collective remedies have been devised for indigenous peoples under the Decreto Ley 4633 of 2011. Nevertheless, I am concerned over the delays in implementing collective reparations and restitution for indigenous peoples and over information indicating that indigenous beneficiaries have not been adequately consulted in the process.¹³ In my conversations with the representatives of indigenous peoples, they strongly expressed that it is imperative for them to be effectively

13. A/HRC/31/3/Add.2, para. 67.

involved in defining, designing and implementing collective reparations and territorial peace as these relate to their territories. In light of the above, I consider that collective reparations for indigenous peoples is an issue that should be considered within the potential remedy measures in the final peace accord and these should be subject to prior consultation with indigenous peoples.

Finally, I encourage the parties to negotiations, the Government of Colombia and the FARC-EP, to adopt the measures required to respect, protect and fulfill the rights of indigenous peoples. I strongly recommend that the final peace accord include explicit reference to the commitment of the negotiating parties to ensure respect for internationally and constitutionally recognised indigenous rights in all aspects and phases of their implementation. The participation of indigenous representatives in the peace process would be an important safeguard to ensure their rights are effectively protected and that they become true beneficiaries of the much longed for peace in Colombia.

ii) The Philippines

The indigenous population in the Philippines is estimated at between 10% and 20% of the national population. Mindanao is home to the largest population of indigenous peoples, the Lumads, where the overall socio-economic indicators are some of the lowest in the country.

The Constitution of the Philippines specifically recognizes the rights of indigenous peoples in numerous articles. It was the first country in Asia to pass a law governing indigenous peoples' rights, the Indigenous Peoples Rights Act in 1997. The law recognises the right of indigenous peoples to land titles and to use their own justice systems, conflict resolution institutions and peace building processes. The Philippines voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples of 2007, however it has yet to ratify the ILO Indigenous and Tribal Peoples Convention No. 169.

In the whole country, there have been decades of two long-standing internal armed conflicts: one between the Government and the communist insurgency, the New People's Army, and in Mindanao, between both the Government forces and the communist insurgency

and Government forces and the Moro (the collective name for minority Muslim groups) non-State armed groups, which have resulted in tens of thousands of people being forcibly displaced and killed. In February 2015, the Internal Displacement Monitoring Centre (IDMC) estimated that nearly half a million people were living in displacement, of which estimated 95,000 had fled conflict and violence in Mindanao.¹⁴ Most of the violence and displacement takes place in remote areas and remains under-reported.

The Lumads have, for decades, been disproportionately affected by the conflict and have long been exploited for political use by all parties to the conflict. The majority of the indigenous peoples are located in geographic areas in north east Mindanao where the communist insurgency led by the armed wing of the Communist Party of the Philippines, the New People's Army (NPA), and the counter insurgency operations by the Armed Forces of the Philippines (AFP), have been and continue to take place. Because these areas have been long-standing strongholds for the NPA, the indigenous peoples are often stigmatised and targeted as members of the NPA or considered supportive of the communist agenda and, as a result, are regularly subject to harassment, threats, recruitment into pro-government paramilitary groups, sexual violence, arbitrary arrest and detention and violent attacks which have resulted in the maiming or killing of indigenous peoples, including children and older persons.

Between January 2015 and October 2015, 17 indigenous people who were Lumad leaders, activists, or villagers, including a child, were confirmed killed. In the same period, ten different displacement incidents involving indigenous people were reported.

It is reported that the paramilitary groups that are responsible for many of the extra-judicial killings, threats, destruction of property and other activities are primarily composed of indigenous peoples who have been recruited and armed over the years by the AFP. I wish to

14. "Philippines: Long term recovery challenges remain in the wake of massive displacement," Internal Displacement Monitoring Centre (February 10, 2015), <http://www.internal-displacement.org/south-and-south-east-asia/philippines/2015/philippines-long-term-recovery-challenges-remain-in-the-wake-of-massive-displacement>

underline that paramilitaries have been pointed out as responsible for serious violations against indigenous communities for well over a decade and my predecessor Prof. Stavenhagen raised serious concerns over this during his country visit back in 2002.¹⁵ The Government and the AFP, however, continue to deny any links with such groups.

Last year, I publically called for a full and independent investigation into several killings of indigenous community members and human rights defenders working in favor of indigenous peoples' rights in Mindanao. In one instance, the director of the Alternative Learning Centre for Agriculture and Development (ALCADEV), a school providing education to indigenous youth, was found murdered on 1 September in one of the classrooms in the town of Sitio Han-ayan. They were killed immediately after members of the Philippine Army and alleged members of paramilitary forces had occupied the school, which resulted in the displacement of 2,000 people. On the same day, two leaders of the Lumad, one youth leader and an elder who is a traditional authority, were also killed. These incidents followed several brutal killings that took place on 18 August 2015 in Bukidnon, Northern Mindanao, where five members of an indigenous Manobo family, including a 72-year-old blind person and two children, were murdered, allegedly by members of the Philippine Army.¹⁶

My colleague, the Special Rapporteur on the human rights of internally displaced peoples (IDPs), visited Mindanao on a country mission in July 2015 and met with displaced indigenous communities who stated that they wished to return to their lands but would only feel safe to do so if the long-term militarization of their region comes to an end and they can return with guarantees of safety, dignity and protection. They expressed concerns over alleged forced recruitment into paramilitary groups, known as Magahat Bagani and the Alamara, and over harassment in the context of the on-going conflict between the AFP and the NPA. Schools have reportedly been closed and/or

15. E/CN.4/2003/90/Add.3, paras. 46–53. See also Philippines Indigenous Peoples ICERD Shadow Report (August 2009), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PHL/INT_CERD_NGO_PHL_75_9922_E.pdf

16. Special Rapporteurs on the rights of indigenous peoples and on the situation of human rights defenders, Press Release (September 22, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16481&LangID=E>

occupied by the AFP or Alamara, hampering the access to education of indigenous children. The Special Rapporteur on IDPs urged the Government to give greater attention to militarisation as a cause of displacement and to include specific provisions on the rights of indigenous peoples in the IDP Law currently under consideration.¹⁷

In view of the Government's on-going counter-insurgency efforts and its serious impact on the safety of indigenous communities, I urge the APF to respect core IHL principles, notably that of distinction and the protection of civilians and civilian objects. I join my voice to that of the UN Resident Coordinator in the Philippines¹⁸ and call for the Government to urgently disarm and disband all armed groups and arrest and prosecute those responsible for violence against indigenous peoples. I specifically urge prompt and impartial investigations to be conducted into the allegations of extra-judicial executions, forced displacements and school occupations by the APF and paramilitaries. I call for the resumption of a peace process between the Government and the NPA to end hostilities and to ensure that indigenous peoples are consulted in such a process.

With regard to the conflict between Government forces and the Moro (the collective name for minority Muslim groups) non-State armed groups, I wish to note that non-State armed groups in Central Mindanao and the Autonomous Region in Mindanao are comprised of different factions. The Moro National Liberation Front (MNLF) fought an armed struggle against Government forces between 1969 and 1996, when a peace deal with the MNLF created the Autonomous Region in Muslim Mindanao (ARMM). The Moro Islamic Liberation Front (MILF), a breakaway faction of MNLF, agreed to a peace process in 2012 and the Comprehensive Agreement on the Bangsamoro in 2014, which allows for greater autonomy for the region. Subsequently, the Bangsamoro Islamic Freedom Fighters (BIFF) broke with the MILF and together with the Abu Sayyaf group, remain active in the region.

17. Special Rapporteur on Internally Displaced Persons, Press Release, (July 31, 2015), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16280&LangID=E>

18. United Nations Resident Coordinator Statement at the Office of the President (December 8, 2015).

The Comprehensive Agreement on the Bangsamoro was intended to end the armed conflict and grant greater political autonomy to the Muslim areas of Mindanao through a Bangsamoro Basic Law (BBL), which has yet to be adopted. Indigenous peoples were sidelined and not invited to participate in the peace negotiations with the MILF¹⁹. While the Comprehensive Agreement states that “indigenous peoples’ rights shall be respected,” it did not mention nor make any references to the Indigenous Peoples’ Rights Act (IPRA, RA 8371), the national law which recognizes rights of indigenous peoples in the whole country.²⁰ It also contains nebulous language, notably stating that: “the customary rights and traditions of indigenous peoples shall be taken into consideration in the formation of the Bangsamoro’s justice system. This *may* include the recognition of indigenous processes as alternative modes of dispute resolution.”²¹ This provision fails to guarantee the existing legal rights of indigenous peoples contained in the IPRA and the UN Declaration on the Rights of Indigenous Peoples. The National Commission on Indigenous Peoples (NCIP) expressed their opinion on this: “As an official statement supporting the sentiment of the affected IPs/ICCs therein, let it be known that the NCIP will continue to work with the implementation of RA 8371 in the Bangsamoro entity believing that the right of IPs/ICCs thereat is protected by the very Constitution of the Republic of the Philippines. The NCIP is one with the IPs/ICCs in saying that the IPRA should continue to remain in the Bangsamoro and must be protected from possible amendments that might be caused by the passage of the BBL in Congress.”²²

As far as the development track is concerned, the indigenous peoples also expressed serious concern over the priorities mentioned in the

19. “The Philippines: Indigenous Rights and the MILF Peace Process,” International Crisis Group (November 22, 2011), <https://www.crisisgroup.org/asia/south-east-asia/philippines/philippines-indigenous-rights-and-milf-peace-process>
20. The indigenous representatives of the Teduray, Lambangian and Dulangan peoples, who are the ones living within the claimed Bangsamoro territory, have told me that one of their key demands is that the Indigenous Peoples’ Rights Act should be recognized as they believe this is what will ensure the protection of their rights within the territory. This is part of the list of demands they officially presented to the MILF and the Government of the Philippines.
21. The Comprehensive Agreement on the Bangsamoro, Section III.6, IV.3.
22. NCIP Resolution No. 06-102 2014—Series of 2014.

Bangsamoro Development Plan, which will have direct impacts on them. These include the use of their lands for mineral extraction, and the development of agricultural plantations for palm oil and bananas. They alleged that there have not been adequate consultations with them on such plans and they view this as business-as-usual, where the Government together with the future Bangsamoro authority will potentially violate their rights to their lands, territories and resources and their right to development.

As part of the transitional justice measures foreseen in the Comprehensive Agreement, a Transitional Justice and Reconciliation Commission (TJRC) was established to *inter alia* address human rights violations, historical injustices and marginalisation through land dispossession. The TJRC was essentially national, with the exception of the Chairperson, and composed of delegates from the Government and the MILF. As part of the TJRC's working methods, it organised "listening sessions" which included indigenous peoples, however there was no indigenous TJRC delegate. The Final Report of the TJRC, presented in February 2016, only contains limited reference to the experiences of indigenous peoples, who have suffered violations of their rights both by the Moros as well as by the Government.²³

III. Conclusion and areas for further attention

When a State undertakes measures that affect the rights of indigenous peoples, there must be compliance with provisions contained in international instruments and the State has the obligation to consult indigenous peoples. This principle applies even in the context of armed conflict and its aftermath and thus it is therefore crucial that indigenous peoples be consulted and that their rights be expressly recognised in peace negotiations and in transitional justice measures, including truth commissions and reparation programmes.

As stated by my colleague the Special Rapporteur on the promotion of truth, justice and reparation, "systematic violence and rights violations are often accompanied by and leave in their wake pernicious

23. Transitional Justice and Reconciliation Commission Report, (2016), 27, http://www.tjrc.ph/skin/vii_tjrc/pdfs/report.pdf

forms of marginalisation. Under such circumstances, victims tend to disappear from public awareness and discourse, and the violations and conflict are often discussed as if they affected primarily infrastructure and the economic interests of elites” and therefore the importance of exercising voice, especially in public debates, “is particularly relevant for *inter alia* indigenous peoples, who are often either the special targets of violence or experience it distinctly.”²⁴

I want to emphasise that military activities shall not take place in the lands or territories of indigenous peoples unless imperative for the security of peoples concerned, and that in such exceptional circumstances, States should undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities. States need to strengthen their prevention and protection mechanisms, such as national human rights institutions and other Government bodies mandated to protect indigenous peoples’ rights such as the National Commission on Indigenous Peoples in the Philippines and FUNAI in Brazil, and ensure that these represent the diversity of all sectors of the population, have sufficient resources and are present in areas most prone to violations in order to prevent forced displacements.

The responsibility of holding perpetrators responsible lies with the States. In order to ensure that States fulfil their obligations to provide justice and reparation, I urge indigenous peoples to make thorough use of international law to continue to advocate for breaking the impunity for human rights and humanitarian law violations. Accountability must be established at the national level and though such processes are painstakingly challenging, positive steps are being taken, such as the recent *Sepur Zarco* verdict in Guatemala. I thank you for your attention and look forward to exchanging further experiences with you on this important topic.

24. A/67/368, para. 32.