

## **KEYNOTE ADDRESS**

### **Honoring Indigenous Peoples' Rights as Restoring Relationships**

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Presented at the Conference on Reconciliation Processes and Indigenous Peoples: Truth, Healing and Transformation , 20-21 June 2016, Trondheim, Norway

### **Introduction**

At the outset let me pay my respects and tribute to the Sami who are traditional owners of this land where we are now. I also thank the Sami Church Council, the World Council of Churches, the Sami Parliament of Norway and Southern Sami Congregation for inviting me to this important conference. This topic is very close to my heart because in implementing my mandate as the Special Rapporteur on the Rights of Indigenous Peoples, I encounter, very often, situations of indigenous peoples who are grappling with conflict and post-conflict situations. I know that the Church in various countries have played positive roles in supporting indigenous peoples and I believe that the Church can play even greater roles in helping address such situations. I am very aware of the roles played by the Churches in the colonial project and in facilitating discrimination against indigenous peoples and I believe the Churches should address these issues. However, this is not the topic I will be addressing in this paper.

I was appointed in June 2014 as the third UN Special Rapporteur on the Rights of Indigenous Peoples. What I will share with you today are my experiences and views on the issue at hand, especially after I assumed this mandate.

Since I was appointed I did four official country visits to Paraguay, Honduras, Sapmi (Norway, Sweden and Finland) and Brazil. This year I also unofficially visited countries where peace negotiations between governments and non-state armed groups have either been concluded or are still being negotiated and truth and reconciliation processes were undertaken or are being planned. While the negotiations are not between the government and indigenous peoples such processes have direct implications for indigenous peoples and these implications are what I am concerned with.

Upon the invitation of academic institutions and some government bodies I spoke in several seminars which they organized. These are on the issues of indigenous justice and the peace process in Colombia, missing and murdered First Nations Women in Canada and the possibility of a national inquiry on this issue and the issue of violence against the Maya Q'iche women of Sepur Zarco in Guatemala who were raped and made sexual slaves by the military. When the peace agreement between the Government of the Philippines and the Bangsamoro was concluded last year and a proposed Bangsamoro Basic Law was deliberated in the Congress of the Philippines, I also got involved in pushing for the inclusion of indigenous peoples' concerns in the draft law.

For my presentation today, I will talk briefly about my mandate, my key observations on the issue of conflict, peacebuilding, truth seeking and reconciliation processes as these relate to indigenous peoples' rights. I will present brief case studies of Guatemala, Colombia and the Philippines. The case studies will come with some recommendations on how to pursue peacebuilding processes especially in conflict and post-conflict situations. The case studies of Colombia and the Philippines were presented also in a paper I made for a seminar on Conflict, Peace and Human Rights of Indigenous Peoples held at the Columbia University last May 14 of this year.

### **Mandate of the UN Special Rapporteur on the Rights of Indigenous Peoples**

This mandate was established by the UN Commission on Human Rights in 2001 and that time the mandate is called Special Rapporteur on the Fundamental Freedoms and Human Rights of Indigenous People. After the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007, the mandate was renamed and now is called the Special Rapporteur on the Rights of Indigenous Peoples.

The mandate as revised by the Human Rights Council resolution 15/14 and 24/9 authorizes and requests the Special Rapporteur to "examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights and fundamental freedoms of indigenous peoples, in conformity with his/her mandate, and to identify, exchange and promote best practices"

In addition to this, the other mandates are the following ;

- Gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous people and their communities and organizations, on alleged violations of their human rights and fundamental freedoms
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations
- Address specific cases of alleged violations of the rights of indigenous peoples through communications with Governments and others
- Report on the overall human rights situations in selected countries
- Conduct or contribute to thematic studies on topics of special importance
- Provide technical assistance to governments and other actors to promote good practices

I agreed to come and present in this conference because awareness raising on the issues of indigenous peoples is also part of my mandate.

### **Peacebuilding Processes, Truth Commissions and Indigenous Peoples Rights**

Before I became the Special Rapporteur I got involved in the drafting of the UN Declaration on the Rights of Indigenous Peoples since 1985 until its adoption in 2007. As I was the Chairperson of the UN Permanent Forum on Indigenous Issues from 2005-2009, this allowed me to talk with several Ambassadors in New York to answer some of their fears about the Declaration and to convince them to vote for the adoption of this. In all these years I have witnessed and heard of many cases of gross violations of the

rights of indigenous peoples which were exposed and denounced at national and global levels.

When the Declaration was being drafted, indigenous peoples took part in the processes by narrating the various experiences they went through and proposing articles which can address these issues. Violations of the rights indigenous people have taken many forms, such as genocide, ethnocide, torture, extrajudicial killings, disappearances, forcible displacements, exclusion and discrimination and the separation and removal of children from their families. They have been dispossessed of their lands violently or legally, their cultures are disparaged and they were severely punished when they speak their own languages and practice their own cultures and livelihoods.

They are not allowed to govern themselves through their customary laws and traditional governance systems. The indigenous women are subjected to sexual violence. Their communities were militarized by state armies and policemen but also by paramilitary forces and company security guards. Pollution of their communities were caused by oil, coal, gas or mineral extractive activities, pesticides used in agribusiness plantations and heavy metals from military bases.

Thus, if you see the Declaration, all the articles are basically responses to the cries brought forth by indigenous peoples to the United Nations. These include the collective rights of indigenous peoples to self-determination (Article 3), right to lands, territories and resources (Arts. 25-27), right to free, prior and informed consent, the right to maintain and develop their political, economic and social systems and institutions (Art. 20), right to development (Art. 24), among many others.

It behoves States, therefore, to implement the Declaration for any kind of reconciliation to take place. The State needs to demonstrate that it has the political will to implement the rights of indigenous peoples enshrined in the UN Declaration and the ILO Convention No. 169 on Indigenous and Tribal Peoples. Various human rights standards and instruments are needed when dealing with past legacies and present forms of injustice and oppression of indigenous peoples. The Declaration and the ILO Convention 169, no doubt are the legal and normative frameworks which are most appropriate to use. Next year, 2017 will be the tenth year since the Declaration was adopted. This will be an opportune time to assess its implementation.

Transitional justice as defined by the International Centre for Transitional Justice (ICTJ) is the concept which has been developed to deal the past and restore justice during periods of political transition, such as the end of a conflict or in the wake of a widespread political movement. A transitional justice approach includes criminal prosecutions of perpetrators, reparations and compensation to victims, commemorative activities to memorialize the past, reforming flawed institutions, and truth commissions or other activities aimed at recovering the truth about past harms.

Some indigenous peoples have opted to use truth commissions much more than the other options, as a means of confronting the legacies of injustice. According to ICTJ;

*A truth commission is a non judicial body set up to conduct independent investigations into a situation of gross human rights violation. The best-known commissions are large-scale, country-wide undertakings: they are multiyear processes that report on and make public the findings of extensive research, much of it conducted by interviewing many thousands of victims and direct witnesses. Where a formal courtroom focuses only on the facts of a specific crime, a truth commission additionally examines the history around violations and the long-term consequences of these acts on those most affected. It will also research and report on the need for structural reforms necessary to prevent the same kind of harms happening in the future. More than anything, a truth commission gives victims of human rights violations an opportunity to have a voice in a supportive public setting.*

The case studies which follow will tell us how some indigenous peoples used truth commissions in post conflict, peacebuilding processes. These will also show some shortcomings on how indigenous peoples rights and issues are integrated into peace agreements.

### **The Case of Guatemala**

As I mentioned earlier, since I assumed my mandate I have visited several countries officially and unofficially. I used these opportunities to understand more deeply how indigenous peoples rights and issues have been addressed in peace agreements reached or those still being negotiated. In Guatemala as you may recall, before the Peace Accords between the Guatemala Government and the URNG (Guatemalan National Revolutionary Unity) included the 1995 Accord on Identity and Rights of Indigenous Peoples . This was in addition to the accords on human rights, resettlement, demilitarization, and socioeconomic and constitutional reforms. Guatemala's indigenous peoples are said to compose around 60% of the population.

The 1995 Accord basically revolved around the following. The first part calls for the formal recognition of Guatemala's indigenous people and mandated a constitutional amendment redefining Guatemala as a multiethnic, multicultural and multilingual nation. The second part focused on the struggle against discrimination. It called for a legislative reform to make discrimination a crime, root out discriminatory laws, promote public education, and secure the active defense of rights by providing legal aid for the poor. It also included need to respect the rights of indigenous women who are doubly discriminated on the basis of ethnicity and gender.

The third part identified key cultural rights of indigenous peoples to promote their own cultural development. This included the constitutional recognition of indigenous languages in schools, social services, official communications, and court proceedings. The fourth part is on constitutional reforms in civil, political, social, and economic rights. Autonomy will be operationalized through decentralization wherein the government will fund municipal autonomy which recognized customary laws and community decision-making powers in issues of local courts, education, health, culture, and community development.

If these provisions were implemented the Peace Accords would have spelled a

big difference in the lives of indigenous peoples in Guatemala. Unfortunately most of these were not implemented. The Council of Hemispheric Affairs assessed the situation in 2011 and came up with this observation.

*Scholars and members of the international community are often optimistic about the prospects of consolidating peace in Guatemala, but for the country's citizens, life remains just as dangerous today as it had been during the civil war. Widespread fear of street violence, mistrust of government institutions, government disregard for indigenous' and women's rights, corruption in government structures, co-optation of the bureaucratic structures by narcotic traffickers, complete impunity, and widespread poverty are still the norm fifteen years after the Peace Accords. Furthermore, deep rooted racism, structural inequality, restricted political participation, and discriminatory state policies remain at the core of the challenges that Guatemala faces, just as they had been over fifty years ago, when the civil war first broke out.*

This same report further quoted the Latin News Daily, which stated;

*One recent assessment of violent crime highlights that the annual death rates in Guatemala are higher today than they were for much of the civil war. Between 2000 and 2010, the number of recorded violent deaths reached 54,223, which translates into an annual average of 4,929, a number greater than the civil war average of 4,166. By the end of 2010, Guatemala reportedly had a homicide rate of 41.1 per every 100,000 individuals, a rate four times higher than that of Mexico and twelve times higher than that of the United States, making it the fourth most murderous country in the world.*

A national truth commission was also established in Guatemala as part of the peacebuilding process. This was the Historical Clarification Commission which worked extensively in the Maya communities who were targets of genocide by the State military forces in the 30 years of civil war. One member of this Commission was Otilia Lux de Cojhti, who was my co-member of the UN Permanent Forum on Indigenous issues in 2005-2008. However, the truth commission had a lot of weaknesses. It was tasked to investigate human rights violations (Guatemalan State) and acts of violence (URNG) which took place between 1962 to 1996. The time frame given was 6 months but this eventually lasted for 19 months. It did not possess subpoena powers, had no right to grant amnesty and could not name individual perpetrators. The National Reconciliation Law which emerged from this was seen by many as a blanket amnesty for crimes committed by the State and its agents and by the URNG during the armed conflict. To a certain extent this experience feeds into what some critiques say about Truth Commissions, that these processes are for guilty parties to claim that the past is over and dealt with and it is time to forgive and move on. It was also said that the Commission diminished international pressure on Guatemala by providing an alternative to domestic prosecutions and justice which was demanded by the survivors.

When I was there in February this year, I was able to attend the trial of the military men accused of raping the 15 Maya Q'iche women of Sepur Zarco and making them sexual slaves in 1982 after they killed their husbands. The case was filed by the

Attorney General of the Guatemalan government but the support for the case came from women's rights NGOs and the Canadian Lawyers without Borders. This case was won and it was a major breakthrough for the continuing search for justice of many of those who suffered from military abuses during the war.

In my talks with the various representatives of indigenous peoples' communities and organizations, they expressed their utter disappointment over the failure of the Peace Accords and the Truth Commission to address their long quest for peace and justice. They said the war was over but the impunity, high rates of criminality, discrimination against indigenous peoples and criminalization of indigenous activists continue.

One bright spot which I have seen was the establishment of the International Commission against Impunity in Guatemala (CICIG) in 2007. CICIG is shaped to provide Guatemala with the necessary technical assistance to revamp its justice system and confront criminal gangs. It is expected to bring about institutional reforms in the areas of criminal investigation, prosecution procedures and witness protection systems as well as push for the implementation of national security legislation. The establishment of CICIG led to the arrest of President Otto Pérez Molina on corruption charges and his resignation from the Presidency and the victory of the Sepur Zarco widows against the two military men, are positive developments.

### **The Case of 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 appraised of the situation in the country. Colombia has approximately one million indigenous people, this 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 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 in 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, by various criminal gangs often composed of 'demobilized' paramilitaries and 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 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.<sup>1</sup> 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 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.

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<sup>1</sup> A/HRC/31/3/Add.2, para. 82

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.<sup>2</sup> In my conversations with the representatives of indigenous peoples, they expressed strongly that it is imperative for them to be effectively 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.

### **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 has yet to ratify the ILO Indigenous and Tribal Peoples Convention No. 169.

In the whole country, decades of two long-standing internal armed conflicts; one between the Government and the communist insurgency, the New People's Army, and

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<sup>2</sup> A/HRC/31/3/Add.2, para. 67



the 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, 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.<sup>3</sup> Most of the violence and displacements takes place in remote areas and remain 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 to 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 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.<sup>4</sup> 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 favour of indigenous peoples' rights in Mindanao. In one instance, the director of the Alternative Learning Center 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

<sup>3</sup> IDMC, <http://www.internal-displacement.org/south-and-south-east-asia/philippines/2015/philippines-long-term-recovery-challenges-remain-in-the-wake-of-massive-displacement>

<sup>4</sup> E/CN.4/2003/90/Add.3, paras. 46-53, see also Philippines Indigenous Peoples ICERD Shadow Report 2009

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 leader, Dionel Campos and an elder, who is a traditional authority were also killed. These incidents followed several brutal killings which 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.<sup>5</sup>

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 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.<sup>6</sup>

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 International Humanitarian Law 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 Philippines<sup>7</sup> 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,

<sup>5</sup> Special Rapporteurs on the rights of indigenous peoples and on the situation of human rights defenders, Press release 22 September 2015,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16481&LangID=E>

<sup>6</sup> Special Rapporteur on Internally Displaced Persons, Press release at end of country visit, 31 July 2015;

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16280&LangID=E>

<sup>7</sup> United Nations Resident Coordinator Statement at the Office of the President, 8 December 2015

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.

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 side-lined and not invited to participate in the peace negotiations with the MILF<sup>8</sup>. 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.<sup>9</sup> 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’.<sup>10</sup>

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.*’<sup>11</sup>

As far as the development track is concerned, the indigenous peoples also expressed serious concern over the priorities mentioned in the Bangsamoro Development Plan which will have direct impacts on them. These include the use of their lands for mineral extraction, 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

<sup>8</sup> ICG Report, *The Philippines: Indigenous Rights in the MILF Peace Process*, 2011

<sup>9</sup> The indigenous representatives of the Teduray, Lambangian and Dulangan peoples, who are the ones living with 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.

<sup>10</sup> The Comprehensive Agreement on the Bangsamoro, Section III.6, IV.3

<sup>11</sup> NCIP Resolution No. 06-102 2014 – Series of 2014

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.<sup>12</sup>

### **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 are 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 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'.<sup>13</sup>

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

<sup>12</sup> Transitional Justice and Reconciliation Commission Report, 2016, p. 27

<sup>13</sup> [A/67/368](#), para. 32

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.

As far as the Church is concerned, I believe that it should still continue to do its prophetic ministry and it should support and join the call of indigenous peoples on states to comply with their obligations to International Human Rights Law and International Humanitarian Law.

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 and the Church 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.

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