



TO: Prof. John Knox

FROM: Vanesa Echeveste (International Human Rights Clinic - Santa Clara University)

RE: Intersection of Human Rights and Environmental Law, particularly in the context of indigenous peoples and afro-descendants (or non-indigenous groups)

DATE: November 15, 2016

PURPOSE AND STRUCTURE: The purpose of this memo is to provide research assistance to UN Special Rapporteur on Human Rights and the Environment, Prof. John Knox, on the issue of international human rights law protections of special groups of people whose enjoyment of their lands, resources, and territories are affected by development projects. This memo is as follows: first, it describes the international human rights legal framework developed within the Inter-American Human Rights System pertaining to the protection of human rights and the enjoyment of the environment by indigenous peoples in the context of extractive and other development activities. Second, the memo describes how this legal framework has been interpreted to apply to other protected groups, including tribal peoples and afro-descendant communities. This section also includes a critique of the model used by the Inter-American Court of Human Rights and a brief description of the approach taken by the African Commission on Peoples' and Human Rights. Finally, the memo briefly describes how the World Bank has addressed the issue of defining the protected class in this context.

I. Applicable international human rights legal framework developed within the Inter-American Human Rights System

The increase of economic activities around the globe has caused serious social and cultural impacts in the peoples and communities in which they occur, especially those generated by extractive or development activities.¹ Large projects such as construction of roads, canals, dams and hydroelectric plants have a direct effect on the environment and on the people who live in those areas. The Inter-American Human Rights System has developed special legal protections for certain groups of particularly vulnerable people who have a special relationship with the lands and territories affected by such development activities. In this sense, the Commission has declared that “economic activities should be accompanied by measures to ensure that they are not carried out at the expense of the fundamental rights of the persons adversely affected by them”².

Indigenous peoples were the first protected class to benefit from these legal protections. In its 2015 report on extractive industries, the Inter-American Commission on Human Rights stated

The organs of the inter-American System have underscored repeatedly that States have specific obligations in relation to indigenous peoples, given that these are original and pre-existing societies to colonization, or the establishment of current State borders. The recognition of specific rights for these peoples is also linked to the respect and appreciation of different cultural views, understandings of wellbeing and development, and ultimately, of their right to exist as ethnic and culturally differentiated peoples. However, the cultural differences in the region have not always been understood in terms of recognition and protection, instead these peoples have historically been subjected to marginalized conditions and discrimination. The historical exclusion which they have and still suffer and the practices of assimilation and dispossession have solidified gaps of a social, economic and human rights nature between indigenous peoples and the rest of the population.³

¹ United Nations Economic Commission for Latin America and the Caribbean (ECLAC). Statistical Yearbook for Latin America and the Caribbean. UN. Santiago de Chile: 2014.

² INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, December 2015, para. 24

³ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, December 2015, para. 149.

The report further states,

For over a decade, the Commission has indicated that, in the case of activities undertaken by the State or under its authorization that have an impact in the use and enjoyment of the right to property of indigenous peoples, it is necessary that the State guarantees that the affected peoples have the possibility of participating in the different decision-making processes, have information of the activities that would affect them, and have access to protection and judicial guarantees in case their rights are not respect.⁴

The Inter American Commission considers that States' obligations in the context of developing activities are:

(i) the duty to adopt an appropriate and effective regulatory framework, (ii) the obligation to prevent violations of human rights, (iii) the mandate to monitor and supervise extraction, exploitation, and development activities, (iv) the duty to guarantee mechanisms of effective participation and access to information, (v) the obligation to prevent illegal activities and forms of violence, and (vi) the duty to guarantee access to justice through investigation, punishment and access⁵ to adequate reparations for violations of human rights committed in these contexts.

As will be further described in the next section, the Commission places special emphasis on compliance with these obligations in relation to indigenous peoples, tribal peoples, and communities of African descent. The Commission further describes the applicable legal framework by highlighting how

international law has given a specific content to the obligation to guarantee the effective participation of indigenous and tribal peoples in situations which affect their territory. Given these advances, there now is a positive obligation of the State to dispose of adequate and effective mechanisms in order to obtain the free, prior and informed consent of indigenous peoples, in line with their customs and traditions, as a means to protect

⁴ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 156.

⁵ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 5

their human rights, before the launching of activities which might affect their interests and can affect their rights on their lands, territories and natural resources.⁶

Additionally, the Commission stated,

For the purposes of granting extractive concessions or undertaking development and extraction plans and projects over natural resources in indigenous or tribal territories, the Inter-American Court has identified three mandatory conditions that apply when States are considering approval of such plans or projects: (a) compliance with the international law of expropriation, as reflected in Convention Article 21; (b) non-approval of any project that would threaten the physical or cultural survival of the group; and, (c) approval only after ensuring effective participation –and, where applicable, consent–, a prior environmental and social impact assessment conducted with indigenous participation, and reasonable benefit sharing. These requirements “are consistent with the observations of the Human Rights Committee, the text of several international instruments, and the practice of several States Parties to the Convention.” They are equally⁷ consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

The applicable legal framework within the Inter-American Human Rights System is further described in the Commission’s 2015 report titled “Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities”, found [here](#).

II. Application of this legal framework to other (non-indigenous) protected groups, including tribal peoples and afro-descendant communities

Whether these protections that apply to indigenous peoples also apply to “non-indigenous” peoples, has been the subject of much debate. In part, the problem lies with a lack of a universal definition for the term “indigenous peoples”.

⁶ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 159.

⁷ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 160 (internal citations omitted).

According to the Inter-American Human Rights System, indigenous and tribal peoples, as well as afro-descendant communities,⁸ are entitled to similar special measures of protection, but there is no universal definition to identify who meets the requirements to fit into those categories. The 2016 American Declaration on the Rights of Indigenous Peoples points out that self-identification as indigenous peoples will be a fundamental criteria for determining to whom the Declaration applies, keeping into special consideration the subjective element of the definition outlined by the Inter-American Court on Human Rights.⁹

In its 2015 report, the Commission mentions the standards in international law that are taken into consideration to determine when a human group can benefit from the same legal protections as “indigenous peoples.” The Commission distinguishes objective elements such as the historical continuity, territorial connection, and presence wholly or partially of distinctive policies and their own specific social, economic, and cultural institutions, as well as the subjective element related to self-identification as indigenous or tribal group.¹⁰ This last element, self-identification, has been considered by the Inter-American Court and the Commission as the supreme element in order to determine the status of an indigenous people or community.¹¹

According to the Inter-American Commission, the lack of a universal definition is not a barrier for protecting the rights of various groups. The Commission recognizes that there is much

⁸ Afro-descendants are one of the most vulnerable minority groups. There are approximately 200 million afro-descendant people in America. In the Declaration of Santiago and the Declaration of Durban, the American States recognized the obstacles that minorities groups suffer in America due to racism and discrimination. Among other things, in the Declaration of Santiago, the States recognize their concern related to the environmental impacts that indigenous peoples, afro-descendants, migrants and other minorities suffer. Also, they noted the disparities between their economic and social level which are lower than the rest of the population.

⁹ AG/RES. 2888 (XLVI-O/16) - American Declaration on the Rights of Indigenous Peoples, June 2016, available at <http://www.narf.org/wordpress/wp-content/uploads/2015/09/2016oas-declaration-indigenous-people.pdf>

¹⁰ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities, December 2015, para. 27

¹¹ IACHR. Rights of indigenous and tribal peoples to their ancestral lands and natural resources. Rules and jurisprudence of the Inter-American Human Rights System. OAS/Ser.L/V/II.Doc.56/09, 30 December 2009. III. Definitions, A. Indigenous peoples; tribal peoples.

diversity within and between indigenous peoples all over the world and “a strict definition runs the risk of being restrictive.”¹²

Accordingly, the Inter-American Court has understood as “tribal peoples” those who are

not indigenous to the region, but that share similar characteristics with indigenous peoples, such as having social, cultural, and economic traditions different from other sections of the national community, identifying themselves with their ancestral territories, and regulating themselves, at least partially, by their own norms, customs, and traditions.¹³

The Inter American Court has developed these concepts in the cases of the Moiwana Community¹⁴ and the Saramaka people, for example, where the victims belonged to different communities or peoples that are part of the Maroon population of Suriname, descendants of slaves who encamped in their territory from the colonial period, and therefore are not considered strictly as "indigenous".¹⁵ The Court concluded that the Maroon peoples fall under the category of “tribal” communities since they maintain their traditional ways of life based on a special connection with their lands and territories, and therefore, the State has a duty to guarantee their physical and cultural survival. For example, in the Saramaka case, the Court stated that the "Court's

¹² INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 27

¹³ I/A Court, *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits and Costs. Judgments of November 28, 2007. Series C No. 172*, para. 79 and paras. 80-84. Similarly, see I/A Court, *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124*, paras. 132-133.

¹⁴ IA Court, *Case of Moiwana Community vs. Suriname. (Preliminary Objections, Merits, Reparations and Costs). Judgment of June 15, 2005, Series C No. 124 (2005)*.

¹⁵ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 32

jurisprudence regarding indigenous peoples' right to property is also applicable to tribal peoples"¹⁶ because of their shared characteristics and special relationship to their lands and territories.

Ariel Dulitzky is critical of the Inter-American Court's jurisprudence in this area of the law.¹⁷ According to Dulitzky, in order to recognize the collective rights to property of indigenous and tribal peoples, and afro-descendants, the existing Inter-American jurisprudence incorrectly "assumes and requires" that these groups have a special cultural relationship with their land.¹⁸ He argues that there are several inconsistencies in the Court's cultural approach to territorial claims and he proposes the adoption of an expanded approach. He argues that the Court's approach presents three limitations. First, the fact that the Court recognizes collective property rights to groups that have similar cultural characteristics means that groups that seek to get protection under this framework might "essentialize their culture, portraying it in imprecise ways." Second, he points out that there are certain groups that are excluded from making similar claims based on the cultural approach used by the Court, such as rural populations that do not meet the cultural features listed by the Court but who share a similar situation in relation to their dispossession of the land.¹⁹ For example, the model would exclude many landless, predominantly Afro-descendant rural workers in Brazil and Colombia, and other rural communities in Peru (the *rondas campesinas*), since the Inter-American System has failed to extend the reach of the right to property to a population that is rural but not indigenous or Afro-descendant, and who do not

¹⁶ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 32

¹⁷ WHEN AFRO-DESCENDANTS BECAME "TRIBAL PEOPLES": THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND RURAL BLACK COMMUNITIES Ariel E. Dulitzky [FN1], *UCLA Journal of International Law and Foreign Affairs* Spring 2010

¹⁸ WHEN AFRO-DESCENDANTS BECAME "TRIBAL PEOPLES": THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND RURAL BLACK COMMUNITIES Ariel E. Dulitzky [FN1], *UCLA Journal of International Law and Foreign Affairs* Spring 2010

¹⁹ WHEN AFRO-DESCENDANTS BECAME "TRIBAL PEOPLES": THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND RURAL BLACK COMMUNITIES Ariel E. Dulitzky [FN1], *UCLA Journal of International Law and Foreign Affairs* Spring 2010

claim a cultural adhesion to the land.²⁰ Lastly, he recognizes that there is a limitation on the protection offered by the Court to economic activities, specially to the use and exploitation of natural resources concluding that “lands are protected only as they are necessary for the preservation of the cultural identity, and not for their material and economic value.”²¹

Other treaties and UN instruments provide further guidance on how to define “indigenous peoples” or similar groups for purposes of applying to them special measures of protection under international law. For example, in 1991, Convention 169 of the International Labour Organization describes the following elements to identify groups that are protected under that treaty:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”²²

ILO 169 also states that “[s]elf-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.”²³

²⁰ WHEN AFRO-DESCENDANTS BECAME “TRIBAL PEOPLES”: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND RURAL BLACK COMMUNITIES Ariel E. Dulitzky [FN1], UCLA Journal of International Law and Foreign Affairs Spring 2010

²¹ WHEN AFRO-DESCENDANTS BECAME “TRIBAL PEOPLES”: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND RURAL BLACK COMMUNITIES Ariel E. Dulitzky [FN1], UCLA Journal of International Law and Foreign Affairs Spring 2010

²² Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, September 5, 1991.

²³ International Labour Organization (ILO), Indigenous and Tribal Peoples Convention, C169, 27 June 1989

Similarly, the United Nations Declaration on the Rights of Indigenous Peoples does not define the term but identifies “indigenous peoples” as the beneficiaries of the rights contained in that instrument.²⁴ In its preamble, the UN Declaration mentions some of the characteristics that they share, such as “distinctiveness, dispossession of lands, territories and natural resources, historical presence in certain territories, cultural and linguistic characteristics, and political and legal marginalization”.²⁵

The African Commission on Human and People’s Rights has applied the concept of “marginalized and vulnerable groups” in the context of claims of communal property rights to traditional lands.²⁶ Dulitzky recommends that the Inter-American Court consider using the same approach. In the Endorois case, the African Commission recognizes that the living situation of individuals who have been subjected to historically inferior treatment and discrimination must be taken into account in defining the application of international law standards to a protected class claiming protection of their traditional lands. The African Commission stated that indigenous peoples “have, due to past and ongoing processes, become marginalized in their own country”²⁷ and that the term is not used to create a class of citizens “but rather to address historical and present-day injustices and inequalities.”²⁸

Accordingly, the African Commission, along with its Working Group of Experts on Indigenous Populations/Communities, has established criteria to identify indigenous peoples that takes into consideration the following four aspects: the occupation and use of a specific territory; the

²⁴ UN Document A/61/L.67 12 September 2007: The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on 13 September 2007.

²⁵ UN Document A/61/L.67 12 September 2007: The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on 13 September 2007.

²⁶ Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, Afr. Comm'n on Human & People's Rights, P 148, (Feb. 4, 2010).

²⁷ Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, Afr. Comm'n on Human & People's Rights, P 148, (Feb. 4, 2010).

²⁸ Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, Afr. Comm'n on Human & People's Rights, P 148, (Feb. 4, 2010). Id. at P 149.

voluntary perpetuation of cultural distinctiveness; self-identification as a distinct collectivity, as well as recognition by other groups; and “an experience of subjugation, marginalization, dispossession, exclusion or discrimination.”²⁹ Dulitzky emphasizes that:

for the African Commission, the recognition of marginalization, dispossession, exclusion, and discrimination to help determine communities' property rights to their traditional lands constitutes only the first step in the protection of traditional African communities. It is the starting point but not the endpoint, as it appears to be in inter-American case law.³⁰

Dulitzky concludes that the Inter-American Commission should follow the African Commission's approach and incorporate a marginalization analysis that takes into consideration the social inequalities and the context in which the claims over lands take place. Dulitzky recognizes that the Inter-American Court has already applied a similar mechanism in the Saramaka case by recognizing the right to collective property in the context of a structural problem of indigenous and Afro-descendant peoples, but he criticizes that the Court did not do so in other cases, such as the Yakye Axa³¹ and Sawhoyamaya vs. Paraguay cases.³²

III. Definition of the protected class by the World Bank

NOTE: *This memo does not address in detail the updated [policies recently adopted](#) by the World Bank, including the 2016 updated board paper on “[Environmental and Social Framework](#)”, the 2015 report on “[Indigenous Peoples Development in WB-financed Projects](#)”, or other relevant World Bank [reports](#). This section merely addresses very briefly how the World Bank has traditionally defined “indigenous peoples” in previous policies.*

²⁹ Centre for Minority Rights Development v. Kenya, 276/2003, Afr. Comm'n on Human & People's Rights, P 150

³⁰ WHEN AFRO-DESCENDANTS BECAME “TRIBAL PEOPLES”: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND RURAL BLACK COMMUNITIES Ariel E. Dulitzky [FN1], UCLA Journal of International Law and Foreign Affairs Spring 2010

³¹ Indigenous Community Yakye Axa v. Paraguay, ICHR, June 2005

³² Indigenous Community Sawhoyamaya v. Paraguay, ICHR, March 2006

The World Bank does not define the term “indigenous peoples” in its policy, arguing that there is no universally accepted definition of “Indigenous Peoples”, and it mentions that they may be referred by other terms such as "indigenous ethnic minorities," "aboriginals," "hill tribes," "minority nationalities," "scheduled tribes," or "tribal groups" depending on the country.³³

In its Operational Manual, the World Bank states that the term “indigenous peoples” is used in a generic sense to refer to a distinct, vulnerable, social and cultural group possessing the following characteristics in varying degrees:

- (a) self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- (b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- (c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture;
- (c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- (d) an indigenous language, often different from the official language of the country or region.³⁴

The World Bank understands that the flexibility in terminology that is already afforded by the above definition is key to frame its policy.³⁵

³³ OP 4.10 - Indigenous Peoples, July 2005

³⁴ OP 4.10 - Indigenous Peoples, July 2005

³⁵ REVIEW AND UPDATE OF THE WORLD BANK’S SAFEGUARD POLICIES ENVIRONMENTAL AND SOCIAL FRAMEWORK (PROPOSED THIRD DRAFT) Strengthening the effectiveness of our safeguard policies to enhance the development outcomes of Bank operations. August 4, 2016, para. 54

When a project affects indigenous peoples and it is financed by the Bank, it requires borrowers to take appropriate measures to protect Indigenous Peoples and local communities including conducting meaningful consultation with them.³⁶ It also requires to follow an special mechanism:

(a) screening by the Bank to identify whether Indigenous Peoples are present in, or have collective attachment to, the project area;

(b) a social assessment by the borrower;

(c) a process of free, prior, and informed consultation with the affected Indigenous Peoples' communities at each stage of the project, and particularly during project preparation, to fully identify their views and ascertain their broad community support for the project;

(d) the preparation of an Indigenous Peoples Plan or an Indigenous Peoples Planning Framework; and

(e) disclosure³⁷ of the draft Indigenous Peoples Plan or draft Indigenous Peoples Planning Framework.

On August 4, 2016, the World Bank's Board of Executive Directors approved a new Environmental and Social Framework that expands protections for people and the environment in Bank-financed investment projects after four years of analyzing the situation. "The framework is part of a far-reaching effort by the World Bank Group to improve development outcomes and streamline its work"³⁸ in order to ensure strong protections for people and for the environment. The Bank is evolving these policies to better address new development demands and challenges, and to better meet the varied needs of borrowers.³⁹ It recognizes that indigenous peoples⁴⁰ have

³⁶ REVIEW AND UPDATE OF THE WORLD BANK'S SAFEGUARD POLICIES ENVIRONMENTAL AND SOCIAL FRAMEWORK (PROPOSED THIRD DRAFT) Strengthening the effectiveness of our safeguard policies to enhance the development outcomes of Bank operations. August 4, 2016, para. 110

³⁷ OP 4.10 - Indigenous Peoples, July 2005

³⁸ Review and Update of the World Bank Safeguard Policies found at <https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

³⁹ Review and Update of the World Bank Safeguard Policies found at <https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>

one of the highest poverty rates in the world and it seeks to position their social inclusion as a priority of its development agenda in order to achieve indigenous peoples own vision of shared prosperity and poverty reduction.

From March 2013 until March 2014, the World Bank “carried out the first phase of a worldwide Global Dialogue and Engagement Process with Indigenous Peoples with four objectives: 1. inform the ongoing World Bank Environmental and Social Safeguards Review and Update process, particularly as it relates to Operational Policy OP 4.10 (mentioned above) 2. improve the effective implementation of the Operational Policy OP 4.10 (Indigenous Peoples Policy) 3. identify strategies to direct increased World Bank investment to indigenous peoples based on their own visions of development 4. strengthen the engagement process between the World Bank and indigenous peoples worldwide.”⁴¹ In an attempt to better understand good practices and lessons learned regarding the indigenous peoples development, the World Bank prepared a [report](#) showing experiences from eight case studies (representing four regions: Latin America and the Caribbean, Africa, South Asia, and East Asia) that document examples of practices and approaches in World Bank financed projects that the bank claims had positive impacts on indigenous communities.⁴²

Conclusion

⁴⁰ There are varying estimates of the total number of self-identified indigenous people worldwide, ranging from approximately 250 million to 375 million. The largest populations of indigenous peoples are in China (more than 100 million), South Asia (94.9 million), and Southeast Asia (30 million). There are also large numbers of indigenous peoples in Latin America (16 million in South America and 12.7 million in Central America/Mexico) and Africa (21.98 million). Many indigenous populations live in forested areas, such as those in India and Southeast Asia, the Amazon tropics, and the Mexican tropics and temperate areas. Dense numbers of indigenous peoples are also found in mountainous areas, including the Andes of South America, the Sierra Madre of Mexico, and the Himalayas of Asia.

⁴¹ INDIGENOUS PEOPLES DEVELOPMENT IN WORLD BANK-FINANCED PROJECTS: Our People, Our Resources Striving for a Peaceful and Plentiful Planet Case Studies Report, World Bank Group, April 2015

⁴² INDIGENOUS PEOPLES DEVELOPMENT IN WORLD BANK-FINANCED PROJECTS: Our People, Our Resources Striving for a Peaceful and Plentiful Planet Case Studies Report, World Bank Group, April 2015

Lands and territories that have been occupied by indigenous, tribal, and afro-descendent communities are often areas rich on natural resources and many development activities are taking places on those lands, affecting the communities' enjoyment of several human rights. According to the Commission, these extractive and developmental activities have detrimental effects on indigenous peoples, tribal peoples and afro-descendent communities and result in “violations of the right to collective ownership over their lands, territories and natural resources; the right to cultural identity and religious freedom; the right to life, health, personal integrity, and a healthy environment; economic and social rights such as food, access to water and labor rights; the right to personal liberty and social protest; and protection from forced displacement.”⁴³

There is no agreement on a universal definition of the term “indigenous peoples” for purposes of applying to them special measures of protection under international human rights law. Nevertheless, relevant jurisprudence and normative frameworks suggest that self-identification as indigenous peoples is key, and that definitional flexibility in a case by case basis that takes into account the context of marginalization suffered by the protected groups is desirable to ensure non-indigenous groups who have a special relation to their lands and territories are not excluded from international law protection.

⁴³ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, December 2015, para. 8 of Executive Summary.