



SPOTLIGHTING IDPs' LAND ACCESS ISSUES

AMNESTY INTERNATIONAL'S SUBMISSION TO THE
NATIONAL COMMITTEE ON THE REVISION OF THE LAND
LAW IN MOZAMBIQUE

RESEARCH
BRIEFING

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A woman at Masquil Alto 1 resettlement centre, in Búzi district, Sofala province, Mozambique, October 2020, a year and half after Idai cyclone.

Photo taken by Ucitissa Mandamule, a researcher from the Observatório do Meio Rural, a Mozambican research organization.

On 16 July 2020, the President of the Republic of Mozambique triggered the process of land law reform through a public consultation. The Committee for the Revision of the Law has already produced two draft bills and the final version is due soon. This is an opportunity to engage with the Government of Mozambique to advance the right to security of tenure of the increasing number of internal displaced persons in the country as result of the intersecting effects of armed conflict and climate change events.

1. EXECUTIVE SUMMARY

On 16 July 2020, the President of the Republic of Mozambique launched a public consultation on the country's land policy (Auscultação Pública para a Revisão da Política Nacional de Terras), a key step towards revision of the National Land Policy 10/95 (Política Nacional de Terras 10/95 de 17 de Outubro) and the Land Law 19/97, from 1 October 1997 (Lei de Terras 19/1997 de 1 de Outubro). According to the announcement made by the president, the revision would be guided by four principles: 1) maintenance of state ownership of land; 2) ensuring access and use of land by all Mozambicans; 3) protecting rights of communities and individuals to land they occupy; and 4) protecting and guaranteeing the rights of women to land and its natural resources that are fundamental for family livelihoods. The revision “was designed to respond to evolving market dynamics where commercial agriculture promotes economic growth, while preserving land rights of local communities”.¹ The Committee for the Revision of the Law has already produced Draft 0² and Draft 1³ of the new law and the final version is due soon.

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Amnesty International welcomes the opportunity for stakeholders to provide input into the Committee for the Revision of the Land Policy on the Government of Mozambique's proposed revision of the Land Law. The organization acknowledges that this ongoing reform is situated within broader government efforts to address development issues resulting from intersecting events such as the climate crisis, conflict, and growing corporate financial investment, particularly in rural areas, that increase land prices and potential for land conflict, and recommends that the ongoing reform takes a human rights approach.

While Amnesty International acknowledges that there are several areas of the current drafts of the proposed land bill that would need to be examined from a human rights perspective, this submission focuses on the issue of access to land for internally displaced persons (IDPs), including women who have been internally displaced. The organization sees the public consultation as a unique opportunity to address issues concerning access to land faced by IDPs. The number of IDPs has increased in recent years and could continue to increase significantly because of the climate crisis (for instance, as observed after Cyclones Idai, Freddy, Kenneth, etc) and conflict in Cabo Delgado, which has intensified recently. Consequently, the organization is concerned that the land bill, as currently drafted, does not contain provisions to safeguard the right of IDPs and particularly women IDPs, to access and use land to be able to support themselves and their families. Despite the approval of the Policy and Strategy for Management of Internally Displaced Persons (Política e Estratégia de Gestão de Deslocados Internos) on 3 August 2021, Amnesty International recommends including provisions concerning access and use of land by IDPs in the bill.

¹ Ministry of Land and Environment, “Presidente da República lança o processo de auscultação sobre a revisão da política nacional de terras”, [“President of the Republic launches the public consultation process on the revision of the land policy”], 16 December 2020, www.mta.gov.mz/presidente-da-republica-lanca-o-processo-de-auscultacao, (in Portuguese); Centre for Public Integrity, Relatório Relativo à Revisão da Política e Lei de Terras, [Report on the Revision of the Land Policy], October 2021, pp. 9-11, (in Portuguese); Republic of Mozambique, Política Nacional de Terras e Estratégia de Implementação, [National Land Policy and Implementation Strategy], November 2022 (in Portuguese).

² Commission for the Revision of the National Land Policy, Draft 0 do Ante – Projecto de Revisão da Lei de Terras, Versão para Consulta Pública, [Draft 0 of the Land Bill for Public Consultation], June 2023 (in Portuguese).

³ Commission for the Revision of the National Land Policy, Lei de Terras (Proposta de Ante-Projecto), Draft 1, [Draft 1 of the Land Bill], November 2023 (in Portuguese).

1.1 METHODOLOGY

The intensification of conflict and the country's exposure to damaging effects of climate change events result in an increasing number of IDPs in Mozambique who are at risk of land dispossession, forced eviction or other threats. This briefing provides an analysis of the Mozambican land policy and land law and other related Mozambican policies and legislation with a view of engaging the government of Mozambique during the ongoing review of its land law to ensure that the right to legal security of land tenure of IDPs are effectively addressed in the upcoming land law. The briefing, which is part of a long-term research on the land rights of IDPs in Mozambique, is based heavily on secondary research. While the national policy and law were useful to identify gaps regarding the right to legal security of land tenure for IDPs, the regional and international instruments were used to recommend ways in which the Mozambican government can improve its land law to meet these laws and standards. It also benefited from inputs gathered during seminars and workshops dedicated to the analysis of the land law reform process in Mozambique, organized by the Observatory of Rural Environment (Observatório do Meio Rural-OMR). Its findings were framed in the context of national, regional and international human rights instruments and standards, mainly the current Mozambican land law, the Kampala Convention and Convention on Economic Social and Cultural Rights, particularly its General Comment No. 26.

2. ACCESS TO LAND IS KEY TO SAFEGUARD ECONOMIC, SOCIAL AND CULTURAL RIGHTS

According to Observatório do Meio Rural (OMR), about two-third of Mozambique's population live and work in rural areas. An estimated 51% of them are women who rely on land for housing, food and their livelihoods. The agricultural sector employs 80% of Mozambique's labour force and 93% of women are involved in agriculture. They rely on access and use of land for housing, food, water and firewood.⁴

According to United States Agency for International Development (USAID), in the last 35 years, Mozambique has experienced 52 climate-related disasters – 13 droughts, 25 floods and 14 tropical cyclones. According to the United Nations Office for Coordination of Humanitarian Affairs (OCHA), in 2019 alone, Mozambique was impacted by two cyclones, Idai and Kenneth. As USAID points out, in 2022, three cyclones hit in the space of three months: Ana in January, Dumako in February and Gombe in March. In 2023, cyclone Freddy affected about 966,200 acres of land in central and southern Mozambique and displaced hundreds of people.⁵ According to the International Organisation for Migration (IOM), as of August 2023, there were 850,599 IDPs in Mozambique.⁶ As noted by the Humanitarian Response Team,⁷ "IDPs have significantly increased in Mozambique in recent years, including in Sofala, Manica, Zambezia and Inhambane provinces, due to the climate crisis, and in

⁴ Observatory of Rural Environment, Agricultural policy instruments and agricultural production in Mozambique, August 2023, omrmz.org/wp-content/uploads/2023/08/OR-139-ENG-1.pdf

⁵ United States Agency for International Development (USAID), "Disaster Response", July 2019, www.usaid.gov/mozambique/fact-sheet/disaster-response; United Nations Office for Coordination of Humanitarian Affairs (OCHA), "2018-2020 Mozambique Humanitarian Response Plan, November 2018- May 2020 (Revised in August 2019)", 11 September 2019, available at: www.reliefweb.int/report/mozambique/2018-2020-mozambique-humanitarian-response-plan-november-2018-may-2020-revised, p.1; USAID, "Mozambique Complex Emergency and Tropical Cyclone Fact Sheet 4", September 2023, available at: www.reliefweb.int/report/mozambique/mozambique-complex-emergency-and-tropical-cyclone-fact-sheet-4-fiscal-year-fy-2023

⁶ International Organisation for Migration (IOM), Mozambique – Progress Towards Achieving Durable Solutions: IDP Resettlements in Sofala, Mozambique, November 2023, available at: www.reliefweb.int/report/mozambique/progress-towards-achieving-durable-solutions-idp-resettlements-sofala-mozambique-november-2023, pp. 6-7.

⁷ The Humanitarian Response Team is composed of members from the National Institute for Disaster Management, humanitarian non-governmental organizations and civil society organizations.

conflict-affected Cabo Delgado, and Nampula recently”.⁸ This, and the degrading conditions that IDPs live in, were noted by the UN Special Rapporteur on the human rights of internally displaced persons, Paula Betancur, on her recent visit to Mozambique.⁹

Many people displaced by extreme weather events continue to face challenges that impact their human rights, long after their displacement. One of these is access and use of arable land, as seen in Zambezia, Sofala and Cabo Delgado. Many IDPs living in resettlement areas, rely on humanitarian aid provided primarily by UN agencies, such as IOM, the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP) or development agencies, such as USAID. This is because even after several months or years of displacement the IDPs often lack access to land and other productive resources.

According to a study published by IOM, in Sofala province, 97,353 IDPs live in 36 resettlement sites, with 35,284 displaced within host communities. An estimated 63% of IDP households in the resettlement sites have lived in temporary shelters since March 2019 when cyclone Idai hit Mozambique. Around 80% indicated to IOM that they were worried about not having enough food to eat. Compared to host communities, many IDPs still face challenges accessing land for their livelihoods, as well as health and education.¹⁰

As climate change increases the intensity and frequency of storms, such events are likely to happen more regularly in Mozambique. Alongside climate adaptation and mitigation measures that are part of the Mozambique’s disaster and risk management strategy, it is critical that IDPs are given access to land and that their tenure is legally protected.

In Cabo Delgado, many IDPs live in precarious low-lying areas along the coastline of Pemba (Paquitequete, Maringanha and Chuiba) and south-east Metuge, where they are at risk of floods and cyclones moving in from the Indian Ocean.¹¹ Many continue to live in tents, makeshift shelters and buildings abandoned by owners who could not afford to rebuild after storms. Efforts to reduce flooding in homes, for example, through building irrigation channels as water outlets, have often created tensions with downstream communities – highlighting the complex ways in which climate, conflict and displacement intersect and overlap.¹²

While host communities in Cabo Delgado ceded land for displaced people voluntarily, when conflict started in 2017, this generosity soon turned to grievance as displacement became protracted, and pressure on land increased. Land conflicts are now common, and often result in forced eviction of IDPs.¹³

According to para. 1 of the General Comment 26, access to, use and control over land is key in facilitating access to essential goods and services and for the right to an adequate standard of living.¹⁴ Many IDPs, particularly women, lack access to land. Furthermore, where IDPs have access to land, they often lack security of tenure, which places them at risk of forced evictions, harassment and other threats. Lack of access to land can compound the many challenges that IDPs face in accessing essential goods and services including food, placing them in increasingly vulnerable situations and

⁸ Action Aid, “Equipa de resposta humanitária prepara-se para responder necessidades de mais de 30 mil deslocados”, [“Humanitarian Response Team Prepares to Respond to the Needs of 30 thousand Displaced People”], 26 February 2024, <https://mozambique.actionaid.org/pt-pt/news/2024/equipa-de-resposta-humanitaria-prepara-se-para-responder-necessidades-de-mais-de-30-mil>, (in Portuguese).

⁹ Office of the High Commissioner for Human Rights (OHCHR), “Mozambique: Opportune moment to address critical protection and humanitarian needs of IDPs”, 27 November 2023, www.ohchr.org/en/press-releases/2023/11/mozambique-opportune-moment-address-critical-protection-and-humanitarian

¹⁰ IOM, Mozambique: Progress Towards Achieving Durable Solutions: IDP Resettlements in Sofala, Mozambique, (previously cited).

¹¹ HPG and ODI, Coping with the risk of conflict, climate and internal displacement in northern Mozambique, ‘We can’t just sit here with our arms crossed’, 2022, <https://odi.org/en/publications/coping-with-the-risks-of-conflict-climate-and-internal-displacement-in-northern-mozambique-we-cant-just-sit-here-with-our-arms-crossed>

¹² HPG and ODI, Coping with the risk of conflict, climate and internal displacement in northern Mozambique, ‘We can’t just sit here with our arms crossed’, (previously cited).

¹³ HPG and ODI, Coping with the risk of conflict, climate and internal displacement in northern Mozambique, ‘We can’t just sit here with our arms crossed’, (previously cited).

¹⁴ UN Committee on Economic Social and Cultural Rights (CESCR), General comment 26 on land and economic, social and cultural rights, 2022, UN Doc. E/C.12/GC/26, para. 1.

rendering them highly dependent on humanitarian aid. Human Rights Watch documented allegations of sexual exploitation and abuse of women in exchange for humanitarian aid, in Cabo Delgado, in 2021.¹⁵ In most, if not all, camps there is no mechanism or strategy for prevention and response to conflict-related sexual violence, including reintegration of women who experienced sexual exploitation or abuse.¹⁶

3. LAND TENURE IN THE CONTEXT OF THE HUMAN RIGHTS FRAMEWORK

3.1 REGIONAL AND INTERNATIONAL INSTRUMENTS ON SECURITY OF LAND TENURE

As per Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), state parties “recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and the continuous improvement of living conditions”. Paragraphs 6,7 and 8 of the General Comment 26 on land and economic, social, and cultural rights by the UN Committee on Economic, Social and Cultural Rights, a body of experts tasked with providing authoritative interpretations of the rights enshrined in ICESCR, have recognized the centrality of access to land for the realization of the rights to food, housing, water, and health among other human rights.¹⁷ With regard to state obligations vis-à-vis access to land, paragraph 27 of the General Comment recognizes that “secure land tenure systems are important to protect people’s access to land as a means of guaranteeing livelihoods and avoiding and regulating disputes”.¹⁸

Paragraph 13 of General Comment 26 contends that “women are among those who are disproportionately affected by poor access to, use of, control over and bad governance of land, threatening their rights under the Covenant and potentially leading to discrimination, including intersectional discrimination.”¹⁹ In several of its concluding observations, the Committee has drawn special attention to discrimination against women regarding security of land tenure, access to, use of and control over land, marital property, inheritance and exclusion from decision-making processes, including in the context of communal forms of land tenure. In its General Comment 16 (2005), the Committee noted that women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so (paragraph 28).²⁰

In its General Comment 12 (1999), the Committee recognized the importance of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land (paragraph 26). “For women, land is a pivotal resource for meeting subsistence needs and for accessing other goods and services, such as credit. Furthermore, land is important to enhance women’s engagement in household decision-making and for their participation in rural institutions that could strengthen their decision-making power and leverage over collective rights and resources. In addition, women’s property ownership improves children’s welfare and increases access to sexual and reproductive health services. It also reduces women’s exposure to violence, in part, because women who have security in access to tenure can flee domestic violence more easily by seeking access to protection, and by making women’s households more secure, by enhancing women’s self-confidence and self-esteem and their role in decision-making, and by allowing them to garner more social, familial

¹⁵ Human Rights Watch, “Aid-for-Sex Alleged in Northern Mozambique”, 7 September 2021, www.hrw.org/news/2021/09/07/aid-sex-alleged-northern-mozambique.

¹⁶ OHCHR, “Mozambique: Opportune moment to address critical protection and humanitarian needs of IDPs”, (previously cited).

¹⁷ CESCR, General comment 26, (previously cited), paras. 6, 7 and 8.

¹⁸ CESCR, General Comment 26, (previously cited), para. 27.

¹⁹ CESCR, General Comment 26, (Previously cited), para. 13.

²⁰ CESCR, General comment 6 on the equal right of men and women to the enjoyment of all economic, social and cultural rights, 2005, UN Doc. E/C.12/2005/3, para. 28.

and community support.”²¹ Therefore, in cases of agrarian reform or any redistribution of land, the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed. States should also monitor and regulate customary law, which in many countries has an important role in governing land, to protect the rights of women and girls who are affected by traditional inheritance rules of male primogeniture.

As noted in paragraph 51 from the General Comment 26, in many post-conflict situations, land restitution programmes, even if successful, might be insufficient to prevent new conflicts and to guarantee rights under the Covenant to refugees and IDPs, as such populations were often living in poverty and excluded from land rights before the conflict. In these circumstances, land restitution or compensation alone are insufficient as they would not lift refugees and IDPs out of poverty or reduce social and gender inequality in land tenure. In such contexts, reparations for victims of internal displacement or violence should go beyond restitution. They should be transformative reparations in the sense that they should include policies and measures aimed at reducing inequality and improving those persons’ standard of living. Specific measures should be taken to improve gender equality in land tenure, for instance, by giving preference to women when granting land rights. In addition, States should make efforts to ensure that land restitution programmes include rural reform policies that involve technical, financial and educational support for beneficiaries.²²

While Mozambique has not ratified the International Covenant on Economic, Social, and Cultural Rights, it is bound by several other international human rights instruments to respect, protect and fulfil the human rights of IDPs. For example, according to the African Union Convention for the Protection and Assistance of Displaced Persons in Africa (known as the Kampala Convention), which Mozambique ratified in 2019, and the UN Guiding Principles on IDPs, states have the primary responsibility to protect and respect human rights of IDPs, including the right to adequate housing to which legal security of tenure is fundamental.²³

Article 14 of the Convention on the Elimination of All forms of Discrimination Against Women “requires state parties to take all appropriate measures to eliminate discrimination against women in rural areas and ensure that they participate in and benefit from rural development on the same basis as men, and to have access to agricultural credit and to enjoy adequate living conditions”.²⁴ Articles 15, 16, 18 and 19 of the Maputo Protocol require state parties to take appropriate measures to ensure that women have clean drinking water, sources of domestic fuel, land and the means of producing nutritious food, access to adequate housing, and ensure that women are provided with necessary capacity and means to participate and benefit from development programmes.²⁵

3.2 ANALYSIS OF NATIONAL LAW

Article 109 (1,2) of the Mozambique’s Constitution asserts that “land belongs to the state”. “It cannot be sold, traded or mortgaged” and “all Mozambicans have the right to use the land as a mean to create wealth and achieve social well-being”. Article 110 (2) states that “the right to use the land is granted to individuals or communities depending on the social or economic goal” and in article 111,

²¹ CESCR, General Comment 12 on the right to adequate food, 1999, UN Doc. E/C.12/1999/5, para. 26.

²² CESCR, General comment 26, (previously cited), para. 51

²³ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted on 23 October 2009; UN Guiding Principles on Internal Displacement, adopted on 17 April 1998

²⁴ UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted on 18 December 1979.

²⁵ African Union Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), adopted on 11 July 2003

“the Mozambican state recognizes and protects the land right acquired by occupation or inheritance”.²⁶

The 1997 Land Law, which is currently in force, grants legal security of land use to communities and national and international investors through the *Direito de Uso e Aproveitamento da Terra* (DUAT). Article 12 (b) of DUAT “recognises and protects the right of individuals and communities to use the land acquired by occupation for at least 10 years”. Article 13 (2) states that the absence of DUAT does not affect the right to use and explore the land if individuals or communities have occupied the land for at least 10 years and can prove the occupation. According to article 15, “the proof of occupancy can be through (a) DUAT, or (b) witness from local communities, or (c) expert opinion or other means permitted by the law”.²⁷

Both the Constitution of Mozambique and the current Land Law guarantee the right to use land to all Mozambicans, including IDPs, for the purpose of wealth and social well-being. Mozambique has incorporated the UN Guiding Principles on Internally Displaced Persons into its legislation, policies and strategies, including:

The 10/2020 Law on Disaster Risk Management and Reduction, which defines post-disaster recovery as a set of medium and long-term actions for the sustainable restoration of infrastructures destroyed or damaged as a result of natural phenomena.

The Disaster Management Law establishing the legal framework for disaster risk management, including the prevention and mitigation of the destructive effects of disasters, the development of relief and assistance actions, as well as reconstruction and recovery actions in affected areas.

Decree 76/2020 approving the Regulations of the Disaster Risk Reduction and Management Act.

Resolution 42/2021 approving the Strategic Policy for the Management of IDPs. The country established a displacement policy and adopted its National Policy and Strategy for Internal Displacement Management (PEGDI) in 2021. The policy and strategy include a matrix of actions to be taken by various government authorities to prevent and respond to displacement from a development perspective. It also encompasses provisions addressing the prevention and support of IDPs that have returned.

According to the president, the revision of the 1997 Land Law was driven by the need to respond to, among other things, the devastating effects of climate change, and to safeguard women’s right to use land.²⁸ The Committee for the Revision of the Law is due to present the final version of the revised law soon, after two earlier versions produced in June and November 2023, respectively.

Whereas Draft 0 stated that “the state safeguards the right to use land by those affected by involuntary displacement” in article 37 (1), this provision was omitted in draft 1. The only relevant provision that refers to land in the context of IDPs in draft 1 is article 30 (1), which refers to temporarily abandoned land, whose owners involuntarily left because of natural disaster, violence or insecurity. Instead of safeguarding IDPs’ rights to use land or to voluntarily return to their former lands or places of habitual residence, as underscored in paragraph 50 of General Comment 26²⁹, this provision undermines this right by considering the land abandoned. Consequently, the abandoned land reverts to the state for at least 10 years, as interpretation of article 30 (3) suggests. As currently drafted, the draft revised law provides no obligation for the state to provide alternative land or compensation for land from which IDPs have been displaced because it is considered abandoned land. As a result, IDPs displaced by

²⁶ Republic of Mozambique, “Constituição da República de Moçambique”, [“Constitution of the Republic of Mozambique”], 2004, Articles 109 (1.2), 110 (2) and 111, (in Portuguese).

²⁷ Republic of Mozambique, *Lei de Terras 19/97*, [Land Law 19/97], October 1997, Article 15, (in Portuguese).

²⁸ Office of the President of the Republic of Mozambique, “Discurso de Lançamento do Processo de Auscultação sobre a Revisão da Política Nacional de Terras”, [“Speech to launch the public consultation on the review of the national land policy”], 16 July 2020, presidencia.gov.mz/por/Actualidade/PR-lanca-processo-de-auscultacao-sobre-a-revisao-da-politica-nacional-de-terras, www.mta.gov.mz/wp-content/uploads/2021/02/Discurso-PR-Lancamento-da-Auscultacao-da-Revisao-da-Politica-Nacional-de-Terras-VF-.pdf

²⁹ CESCR, General comment 26, (previously cited), para. 50.

climate events and conflict cannot claim for compensation for the land that is lost and subsequently taken over by the state.

Article 140 (1,2) of the bill limits the obligation to provide compensation for resettlement to where people are required to move for private business investments only, and in those cases, it places responsibility on the investor to resettle or find alternative land. However, international human rights standards, such as paragraph 13 of the General Comment 7, require state parties to ensure that all the concerned individuals have a right to adequate compensation for any property, both personal and real, which is affected.³⁰

4. RECOMMENDATIONS

Considering the above, Amnesty International makes the following recommendations to the Committee for the Revision of the Land Law:

- Include provisions that reflect the government's obligation to ensure access to land and provide legal security of tenure to all, including those affected by involuntary displacement, including by strengthening provision 37 from draft 0 by ensuring that it explicitly addresses compensation or provision of alternative land to those affected, particularly IDPs, and assistance for voluntary return of IDPs, and by reinserting it in the current bill, as established in the UN Basic Principles and Guidelines on Development Based Evictions and Displacement;³¹
- Ensure that any measures to guarantee access to land and confer legal security of tenure to IDPs consider the specific experiences of women who have been displaced and address the barriers that those who are subject to multiple and intersecting forms of discrimination face when accessing land and productive resources. These measures must be put in place through a process of genuine consultation with all affected people.
- Revise article 140 in line with international human rights standards on evictions including the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, the Kampala Convention, the Maputo Protocol and the UN Guiding Principles on IDPs, to ensure that just and fair resettlement and compensation for any loss of property, is provided to all those who may be evicted from their homes and land, regardless of whether the eviction is for a private or a state led development project.

³⁰ CESCR, General Comment 7 on the right to adequate housing (art.11(1) of the Covenant): Forced evictions, para.13.

³¹ UN Basic Principles and Guidelines on Development Based Evictions and Displacement, adopted on 13 June 1997, UN Doc. A/HRC/4/18.

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