

**Indigenous Peoples
and
United Nations Human Rights Bodies**

**A Compilation of UN Treaty Body Jurisprudence, Reports of the
Special Procedures of the Human Rights Council, and the Advice of the
Expert Mechanism on the Rights of Indigenous Peoples**

Volume VI

2013-2014

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Preface

This is Volume VI of the series of compilations of United Nations treaty body jurisprudence pertaining to indigenous peoples. It covers the years 2013 and 2014.¹ It also contains the advice of the Expert Mechanism on the Rights of Indigenous Peoples and selected observations and recommendations of ‘Special Procedures’ of the Human Rights Council, such as Special Rapporteurs and Independent Experts. Contrary to previous volumes, it no longer contains the results of the Human Rights Council’s Universal Periodic Review. This is the case because that procedure rarely elicits anything of normative value and appears to be primarily ritualistic in addressing human rights issues.²

In the period 2013-14, the Committee on the Elimination of Racial Discrimination (CERD) continued to adopt detailed and responsive observations and recommendations, including under its follow up and early warning and urgent action procedures. It also adopted its first decision, concerning Australia, on indigenous issues pursuant to its formal complaints mechanism. Unfortunately, the complaint in question was declared inadmissible. The Human Rights Committee again highlighted the obligation of states to ensure that indigenous peoples are able to exercise their right to free, prior and informed consent in relation to “measures which substantially compromise or interfere with their culturally significant economic activities.”³ It also ‘decided’ a complaint pursuant to Optional Protocol I, finding no violation on the basis that it was “not in a position to conclude” whether a violation was extant “given the limited evidence before it...”⁴ Four members of the Committee dissented, stating that “the decision of the majority fails to sufficiently take into account the facts of the case.”⁵

The Committee on Elimination of Discrimination Against Women (“CEDAW”) has continued to explicitly acknowledge “the multiple forms” of discrimination that indigenous women face, as has CERD. The former has also sometimes continued to include specific sections in its concluding observations entitled ‘indigenous women’ or ‘indigenous and other minority women’. However, as in previous years, there are a number of reporting states in which indigenous women live where they are not mentioned at all in CEDAW’s concluding observations. In those countries where indigenous women are mentioned, the issues were often raised in reports submitted by indigenous peoples and, therefore, the lack of attention in certain countries may be a function of the extent to which indigenous peoples and/or women have chosen to engage with CEDAW.

The Committee on the Rights of the Child continued its practice, which started in 2011-12, calling on states to “establish and implement regulations to ensure that the business sector” complies

¹ Volumes I-V covering the years 1993-2012 are available at: <http://www.forestpeoples.org/topics/un-human-rights-system/publication/2013/indigenous-peoples-and-united-nations-human-rights-bo>.

² For an extended critique of the UPR and discussion of ‘rights ritualism’ see H. Charlesworth & E. Larking, eds., *HUMAN RIGHTS AND THE UNIVERSAL PERIODIC REVIEW. RITUALS AND RITUALISM* (Cambridge U. Press 2015). See also F. Adcock *The Limitations of the Current International Human Rights Law System in Regard to Monitoring of Rights? Does it Encourage ‘Rights Ritualism’?* Dialogue on an optional protocol to the United Nations Declaration on the Rights of Indigenous Peoples 27-29 January 2015, <http://www.un.org/esa/socdev/unpfii/documents/EGM/2015/Experts-papers/Fleur-Adock.pdf>.

³ See e.g., Peru, CCPR/C/PER/CO/5, 29 April 2013 (stating in reference to its 2009 decision in the Angela Poma Poma case that “the Committee is concerned that legislation in force does not provide for free, prior and informed consent of indigenous communities concerning all measures which substantially compromise or interfere with their culturally significant economic activities...”). See also Bolivia, CCPR/C/BOL/CO/3, 6 December 2013, para. 25.

⁴ *Paadar et al v. Finland*, CCPR/C/110/D/2102/2011, 4 June 2014, at para. 7.7.

⁵ *Paadar et al v. Finland*, Individual opinion of Committee members Walter Kälin, Víctor Manuel Rodríguez Rescia, Anja Seibert-Fohr and Yuval Shany.

with human rights, often with an explicit reference to the rights of the indigenous child, and adopted a General Comment on this subject. It also adopted a General Comment on the best interests of the child in May 2013, which includes the important statement that “the child's best interests is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights.”⁶ It also continued to reference the rights of indigenous children under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The Committee against Torture also adopted concluding observations that address indigenous peoples in its reviews of three countries and the Committee on the Rights of Persons with Disabilities adopted concluding observations concerning indigenous issues in its reviews of eight countries.

The Committee on Economic, Social and Cultural Rights continued to make reference to Article 1 of the Covenant in relation to land and resource rights (e.g., El Salvador, Finland and Guatemala). It also continued to stress that states “should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights.”⁷ It additionally adopted extensive and strong concluding observations on the situation of indigenous peoples in Indonesia.

Finally, please be aware that the jurisprudence contained in this volume is excerpted from larger treatments of country situations so that only those sections that either directly refer to indigenous peoples or otherwise are known to be about indigenous peoples are included. Also, while we have tried to locate and include all jurisprudence from this period, this compilation may not be comprehensive. We hope that you find it a useful tool that contributes to awareness about and, ultimately, respect for the rights of indigenous peoples in practice.

June 2015

⁶ *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC/C/GC/14, 29 May 2013, at para. 23.

⁷ *See e.g.*, Gabon, E/C.12/GAB/CO/1, 27 December 2013.

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I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

A. Concluding Observations

1. Belize, CERD/C/BLZ/CO/1, 29 August 2012 (review procedure) (delayed publication)

9. The Committee is concerned at information received about incitement to racial discrimination and hatred against Mestizo and Maya perceived by other groups of monopolizing positions and lands in the State party. It is also concerned at the lack of a legislation in the State party which gives full effect to the provisions of article 4 of the Convention (art. 2, 4).

The Committee draws the State party's attention to its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993), according to which the provisions of article 4 are mandatory, and emphasizes the preventive nature of legislation expressly prohibiting incitement to racial discrimination and dissemination of ideas based on racial superiority. The Committee recommends that the State party adopt legislation which gives full effect to the provisions of article 4 of the Convention. It also recommends that the State party take necessary steps to combat and punish incitement to racial discrimination and hatred against some ethnic groups (Mestizo and Maya) as well as dissemination of ideas based on racial superiority.

Situation of indigenous communities

10. The Committee is concerned at the fact that the State party has not yet recognized the land rights of Maya people, in particular those living in the Toledo district, and continues to grant leases and oil concessions over their traditional lands without their prior, free and informed consent despite the rulings of the Supreme Court of the State party and the recommendations of the Inter-American Commission (art. 5).

Recalling its General recommendation no 23 (1993) on the rights of indigenous peoples, the Committee recommends that the State party recognise the rights of Maya indigenous people, in particular of the Toledo district, to their traditional lands, and stop granting leases and oil concessions without obtaining the prior, free and informed consent of Maya people, in full compliance with the ruling of the Supreme Court and the recommendations of the Inter-American Commission.

11. The Committee is concerned at the discrimination, exclusion and poverty faced by the Maya population and by some people of African descent preventing them from fully enjoying their economic, social and cultural rights on equal footing with the rest of the population, in particular with regard to the labour market, housing, healthcare and education (art. 2, 5).

Bearing in mind its General recommendations no. 23 (1993), no. 32 (2009) and no. 34(2011), the Committee recommends that the State party take concrete steps, including special measures, to guarantee the enjoyment by Maya and some people of African descent access to the labour market, housing and healthcare, and to combat the poverty they face. The State party should develop bilingual intercultural education to favour the integration of such ethnic groups.

2. Algeria, CERD/C/DZA/CO/15-19, 20 February 2013

4. The Committee welcomes the constitutional review of 22 April 2002, which resulted in the establishment of the Amazigh language as a national language.

6. The Committee takes note of the activities of the High Commission on Amazighness, including the publication of books in Tamazight and the awarding of grants to cultural and scientific associations to promote Amazigh culture.

Relevant data

10. While noting the State party's position that it does not collect population data disaggregated by ethnic origin, the Committee notes the absence from the report of statistical data on the composition of the population. It also notes the lack of relevant socioeconomic indicators on the enjoyment of the rights guaranteed under the Convention by members of various groups, in particular the Amazigh and non-citizens, as such data are necessary to determine the progress made and difficulties encountered in implementing the provisions of the Convention (arts. 1 and 5).

In the light of its general recommendation No. 8 (1990), concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and paragraphs 10 to 12 of its revised guidelines for the preparation of periodic reports (CERD/C/2007/1), the Committee recalls the usefulness of disaggregated data on the ethnic composition of the population. Relevant information on the socioeconomic and cultural situation and living conditions of different groups within the population can be used by the State party as a valuable tool for taking the necessary measures to ensure the enjoyment by all of the rights enshrined in the Convention and to prevent discrimination based on ethnic origin and nationality.

Promotion of the Amazigh language

14. While noting the measures taken to promote the Amazigh language and culture, including teaching of the language in schools, the Committee is concerned by reports that there are not enough qualified teachers and teaching materials and that Amazigh-language teaching has been abolished in several wilaya communes. It also regrets that, despite its status as a national language, the Amazigh language is not yet recognized as an official language and is thus excluded from areas of public life such as the public administration and the justice system (art. 5).

The Committee notes the State party's statement on the additional efforts that will be made and strongly encourages it to ensure that the Amazigh language is taught at all levels of education and is established as an official language so as to further promote its use throughout the country.

Promotion of economic, social and cultural rights of Amazighs

15. The Committee is concerned by reports about economic disparities, affecting in particular the regions inhabited by Amazighs, who allegedly do not benefit from adequate public investment. In addition, while it takes note of the activities of the High Commission on Amazighness, the Committee is concerned by the lack of information on consultation and involvement of Amazighs in those activities and on the real impact of the activities on the promotion of Amazighs' rights (art. 5).

The Committee recommends that the State party step up its development efforts in the most disadvantaged regions, especially those inhabited by Amazighs. The Committee also recommends that the role and activities of the High Commission on Amazighness be strengthened and that its activities be carried out both for and with the Amazighs in a manner that ensures respect for their rights and freedoms. The Committee invites the State party to include in its next periodic report information on the results of the High Commission's work and the impact of its activities.

Right to use Amazigh first names

16. The Committee is concerned by the fact that civil registrars in certain *wilaya* communes refuse to register Amazigh first names on the ground that they do not appear on "the list of Algerian first names" (art. 5).

The Committee takes note of the information provided by the State party concerning the revision of the list of first names to include 500 Amazigh first names, and recommends that it take the necessary steps to ensure, *de facto* and *de jure*, that all Algerians can freely choose their children's first names and register them with a civil registrar without encountering discrimination of any kind.

Situation of women, especially Amazigh women

17. While the Committee commends the State party on the measures adopted to increase the number of women in decision-making positions, it is concerned by the fact that Amazigh women risk being subjected to double discrimination on the basis of ethnicity and gender (art. 5).

The Committee draws the attention of the State party to general recommendation No. 25 (2000), concerning gender-related dimensions of racial discrimination, and recommends that it continue to promote women's rights, focusing in particular on Amazigh women.

3. New Zealand, CERD/C/NZL/CO/18-20, 17 April 2013

3. The Committee notes with appreciation the numerous legislative and policy developments which have taken place in the State party since its last report to combat racial discrimination, including: ...

(e) The official endorsement of the United Nations Declaration of the Rights of Indigenous Peoples of 2007 (albeit with some qualifications), as well as the New Zealand Supreme Court's reliance on the Declaration in construing the scope of Māori rights to freshwater and geothermal resources in the case between the New Zealand Māori Council et al and the Attorney General et al SC 98/2012, [2013] NZSC 6, whose judgement was delivered on 27 February 2013.

Treaty of Waitangi

7. The Committee recalls its previous concluding observations (CERD/C/NZL/CO/17, para. 13) and notes with regret that the Treaty of Waitangi is not a formal part of domestic law even though the State party considers it the founding document of the nation. The Committee also notes that the decisions rendered by the Waitangi Tribunal are not binding. The Committee notes that a constitutional review is underway and an independent Constitutional Advisory Panel has been appointed that will consider a wide range of issues including the role of the Treaty of Waitangi within the State party's constitutional arrangements (art. 2 and 5).

The Committee recalls its previous recommendation (CERD/C/NZL/CO/17, para. 13), and urges the State party to ensure that public discussions and consultations are held on the status of the Treaty of Waitangi within the context of the ongoing constitutional review process. In particular, the Committee recommends that public discussions and consultations focus, inter alia, on whether the Treaty of Waitangi should be entrenched as a constitutional norm. The Committee further recommends that the State party consider adopting the recommendation by the Special Rapporteur on the rights of indigenous peoples that any departure from the decisions of the Waitangi Tribunal be accompanied by a written justification by the government.

Administration of justice

11. The Committee notes the efforts made by the State party to address the overrepresentation of members of Māori communities in the criminal justice system, such as the introduction of the "Better Public Services" programmes, the "Drivers of Crime" initiative and reforms to the jury selection system with regard to the pool of jurors. The Committee, however, remains concerned at the disproportionately high rates of incarceration and the overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice system (arts. 2, 4, 5 and 6).

Recalling its previous concluding observations (CERD/C/NZL/CO/17, para. 21) and its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to intensify its efforts to address the overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice system. In this regard, the Committee urges the State party to provide comprehensive data in its next periodic report on progress made to address this phenomenon.

Indigenous peoples

13. While commending the State party for its repeal of the Foreshore and Seabed Act of 2004, the Committee remains concerned that the Marine and Coastal Areas (Takutai Moana) Act of 2011 contains provisions that, in their operation, may restrict the full enjoyment by Māori communities of their rights under the Treaty of Waitangi, such as the provision requiring proof of exclusive use and occupation of marine and coastal areas without interruption since 1840 (arts. 2 and 5).

The Committee urges the State party to continue to review the Marine and Coastal Area (Takutai Moana) Act of 2011 with a view to facilitating the full enjoyment of the rights by Māori communities regarding the land and resources they traditionally own or use, and in particular their access to places of cultural and traditional significance.

14. The Committee welcomes the Waitangi Tribunal's 2011 Wai 262 decision regarding Māori intellectual and cultural property rights, which makes recommendations for changes in law, policy and practice on matters relating to traditional knowledge, genetic and biological resources of indigenous species, and the relation of Māori communities with the environment in connection with conservation, language, cultural heritage, traditional healing and medicine, and proposes a partnership framework for Crown-iwi relations in this sphere. The Committee, is concerned, however, that the State party has not yet announced a timetable for implementing this decision (arts. 2, 5 and 6).

The Committee recommends that the State party promptly announce a timetable to implement the Waitangi Tribunal's decision in a manner that fully protects the intellectual property rights of Māori communities over their traditional knowledge and genetic and biological resources.

Structural discrimination

15. The Committee notes the efforts of the State party to improve the status of the Māori and Pasifika communities in New Zealand society, and welcomes the State party's recognition that structural discrimination in the State party is partly responsible for the persistent poor outcomes that the members of the Māori and Pasifika communities experience in the fields of employment, health and the administration of criminal justice. The Committee is also concerned at the high levels of school absenteeism and high dropout rates among Māori and Pasifika pupils (arts. 2 and 5).

The Committee recommends that the State party intensify its efforts to improve the outcomes of the Māori and Pasifika in the fields of employment, health and in the administration of criminal justice by, inter alia, addressing the existing structural discrimination in the State party. The Committee also recommends that the State party consider strengthening its special measures to increase the level of educational attainment of Māori and Pasifika children, in particular by focusing its measures at addressing the root causes of absenteeism and high dropout rates in schools.

Languages

17. While noting that the teaching of Māori language (te reo Māori) is part of the general school curriculum and the existence of Māori Immersion Units, the Committee is concerned at the finding by the Waitangi Tribunal that the language is at risk of erosion. The Committee also notes that the State party has adopted a Pasifika Language Framework but regrets that the Māori language strategy is yet to be elaborated. It is also concerned at reports of inadequate funding to support the preservation of community languages (art. 2 and 5).

The State party should take specific measures aimed at preserving the Māori and Pasifika languages, as well as community languages, by ensuring that adequate funding is allocated for specific programmes. The Committee also urges the State party to expedite the development of a new Māori language strategy.

Consultations with indigenous peoples

18. The Committee is concerned by reports by representatives of Māori communities regarding the inadequacy of the consultations conducted by the State party before awarding deep-sea oil seismic, drilling and hydraulic fracturing contracts to commercial companies, under circumstances that may threaten these communities' enjoyment of their rights to land and resources traditionally owned or used, and before pursuing negotiation of Free Trade Agreements that could similarly affect indigenous peoples' rights. The Committee also notes the concerns expressed by representatives of Māori communities concerning the adequacy and genuineness of the consultation process surrounding the enactment of the Finance (Mixed Ownership Model) Amendment Act of 2012 and the State-Owned Enterprises Amendment Bill of 2012 (arts. 2 and 5).

The Committee recalls its general recommendation No. 23 (1997) and reiterates the importance of securing the free, prior and informed consent of indigenous groups regarding activities affecting their rights to land and resources owned or traditionally used, as recognized in the United Nations' Declaration on the Rights of Indigenous Peoples. It urges the State party to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their ways of living and resources.

Māori freshwater and geothermal resources

19. The Committee notes the recent decision of the New Zealand Supreme Court (27 February 2013) affirming that the Finance (Mixed Ownership Model) Amendment Act of 2012 does not materially impair the Crown's ability or obligation to ensure the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.

The Committee urges the State party to ensure that any privatization of energy companies is pursued in a manner that fully respects the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.

4. Russian Federation, CERD/C/RUS/CO/20-22, 17 April 2013

Laws on Combating Extremism and on “Foreign Agents”

13. ... Moreover, the Committee is concerned about the adoption of the Federal Law regarding the “Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents”, which came into effect in November 2012, and the impact it may have on the ability of non-governmental organizations who work to promote and protect the rights of ethnic or religious minorities, indigenous peoples and other vulnerable groups to continue their legitimate activities (arts.2 and 4).

... The Committee also recommends that the Federal Law on Non-commercial Organizations be reviewed to ensure that non-governmental organizations working with ethnic minorities, indigenous peoples, non-citizens and other vulnerable groups who are subjected to discrimination are able to carry out their work effectively to promote and protect the rights contained in the Convention without any undue interference or onerous obligations.

Rights of indigenous peoples

20. While the Committee welcomes the adoption of a Concept Paper in 2009 on the sustainable development of indigenous peoples defining the federal policy from 2009 to 2025, it nevertheless remains concerned that:

- (a) The implementation of the objectives outlined in the Concept Paper remains slow, and that recent changes to federal legislation regulating the use of land, forests and water bodies, such as the voiding of article 39(2) of the Federal Act on Fishing and the Preservation of Aquatic Biological Resources, revision of article 48 of the Law on the Animal Kingdom, and amendments to the Land and Forest Code, have reportedly diminished the rights of indigenous peoples to preferential, free and non-competitive access to land, wildlife and other natural resources by granting licences to access such resources to private businesses;
- (b) Since the adoption of the 2001 Federal Law on Territories of Traditional Nature Use (TTNU) of Numerically Small Indigenous Peoples of the North, Siberia and Far East, which foresees the possibility of establishing federally protected territories to guarantee indigenous peoples’ free access to land, no such territory has been established to date;
- (c) A new draft federal law on TTNU referred to in the State party’s report (CERD/C/RUS/20-22, para. 277) could diminish the status of protected territories, as the draft reportedly no longer contains the reference to the free-of-charge and exclusive use of the territories by indigenous peoples, and thus would allow the territory to be expropriated and used by third-parties, including extractive industries;
- (d) The obligation to consult with indigenous peoples through their freely elected representative bodies prior to any agreement regarding industrial development of their land as stipulated in the 1999 Law on Territories is implemented to varying degrees in different regions and is often disregarded;
- (e) Despite the information that the Ministry of Regional Development has approved a method for calculating the extent of damage caused by private companies to the traditional habitat of indigenous peoples, payment of compensation is on a voluntary basis (CERD/C/RUS/20-22, para. 286), and indigenous communities rarely receive compensation for the destruction of their habitat and resources by private companies, including by Norilsk Nickel, one of the largest industrial conglomerates in the State party;
- (f) Indigenous communities allegedly face obstacles to engage in economic activities beyond their “traditional activities”;
- (g) Indigenous peoples continue to be underrepresented in the State Duma and other Government bodies at federal and regional levels (arts.2 and 5).

The Committee recommends that the State party:

- (a) Include, in its next periodic report, concrete information on the results and impact achieved through the implementation of the 2009 Concept Paper on the sustainable development of indigenous peoples, as previously requested by the Committee (CERD/C/RUS/CO/19, para. 15);
- (b) Ensure that any legislative changes enhance, rather than diminish, the rights of indigenous peoples, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples;
- (c) Take all necessary steps to approve and establish Territories of Traditional Nature Use to ensure the protection of such territories from third-party activities;
- (d) Ensure in practice that indigenous communities are effectively and meaningfully consulted through their freely elected representative bodies for any decisions that may impact them and that adequate compensation is provided to communities that have been adversely affected by the activities of private

companies, in accordance with the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples;

(e) Ensure that indigenous peoples are duly represented at all levels of Government and administration, as previously recommended by the Committee (CERD/C/RUS/CO/19, para. 20);

(f) Implement other recommendations made by the Special Rapporteur on the rights of indigenous peoples following his mission to the Russian Federation in October 2009 (A/HRC/15/37/Add.5).

5. Chile, CERD/C/CHL/CO/19-21, 23 September 2013

5. The Committee notes with interest the work being done to preserve and promote the use of the languages of indigenous peoples.

Equality before the courts and access to justice

11. The Committee reiterates its concern about the absence of information on judicial cases concerning racial discrimination in the State party and follow-up thereto (CERD/C/CHL/CO/15-18, para. 26). The absence of such cases does not mean that racial discrimination does not exist but could be indicative of the presence of lacunae in the justice system. The Committee is also concerned by the obstacles faced by indigenous peoples in obtaining access to justice, including the unavailability of legal advice and interpretation services (arts. 2, 5, para. (a), and 6).

The Committee encourages the State party to continue its efforts to inform the members of the population about their rights and the legal remedies at their disposal for dealing with cases of racial discrimination and human rights violations. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee invites the State party to take the necessary steps to ensure that indigenous peoples have access to justice by providing them with legal advice and interpretation services.

Constitutional recognition and consultation of indigenous peoples

12. The Committee observes with regret the difficulties involved in winning passage of constitutional amendments in the State party and the slow pace of progress towards gaining constitutional recognition of the rights of indigenous peoples. It also observes with regret the slow pace of progress towards the establishment of an effective mechanism for consultation with indigenous peoples and for the promotion of their participation in accordance with international instruments such as, in particular, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples. It is concerned by the postponement of constitutional amendments until such time as a mechanism for consultation with indigenous peoples is in place. The Committee notes with regret that Supreme Decree No. 124 of the Ministry of Planning expressly precludes consultations concerning investment projects and has led to the award of contracts for production activities that impinge upon the rights of indigenous peoples. It also notes with regret that social tensions continue to grow (arts. 1, 2, 5 and 6).

Recalling its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee reiterates its preceding concluding observations (CERD/C/CHL/CO/15-18, para. 16) and urges the State party to:

(a) Place priority on recognizing the rights of indigenous peoples in the Constitution as a first step towards arriving at a consensus-based settlement of their claims;

(b) Fulfil its obligation to ensure that consultations are held with indigenous peoples and serve as a vehicle for their genuine participation in respect of any legislative or administrative decisions that may directly impinge upon their rights to the land and resources that they possess or that they have traditionally used, as established in the relevant international instruments;

(c) Take into account the recommendations made by the Special Rapporteur on the rights of indigenous peoples with regard to consultations with indigenous peoples;

(d) Expedite the establishment of an institutionalized mechanism for consultation in accordance with international standards.

Ancestral lands

13. Recalling the treaties signed by the State party with indigenous peoples, especially the Mapuche people, the Committee is concerned that the public tenders used for the recovery of land by the National Indigenous Development Corporation (CONADI) prevent many members of indigenous peoples from gaining access to their ancestral lands. The Committee also notes with concern that representatives of indigenous peoples claim that the tracts of land given to them in exchange for their ancestral lands, even in nearby areas, have often proven to be unproductive and difficult to make use of and that they do not form part of an overall strategy for the restitution of indigenous peoples' rights. While the Committee takes note of the regulations concerning environmental impact assessments that will soon enter into force, it reiterates its concern about the fact that indigenous peoples complain that their territories continue to be negatively affected by the development of natural resources, the establishment of waste disposal sites and the pollution of water and other subsoil resources located in or on those lands. The Committee regrets that the existing plans to halt some production activities do not provide for measures of redress (arts. 2, 5 and 6).

The Committee reiterates the recommendations it has made to the State party and encourages it to:

- (a) Expedite the restitution of ancestral lands and furnish effective and sufficient means of protecting indigenous peoples' rights to their ancestral lands and resources in accordance with the Convention, other relevant international instruments and the treaties signed by the State party with indigenous peoples (CERD/C/CHL/CO/15-18, para. 21);
- (b) Increase its efforts to ensure that the restitution of indigenous peoples' lands forms part of an overall strategy for the restitution of their rights;
- (c) Undertake environmental impact assessments on a systematic basis and hold free, prior and informed consultations with a view to obtaining indigenous peoples' free and fully informed consent before authorizing any investment project that could negatively affect their health or livelihoods in the areas that they inhabit (*ibid.*, paras. 22 and 23);
- (d) Take steps to provide redress for the damage sustained and place priority on resolving the environmental problems caused by such activities, which, according to a number of reports received by the Committee, are having harmful effects on the lives and livelihoods of indigenous peoples (*ibid.*, para. 24).

The Counter-Terrorism Act and excessive use of force by agents of the State against indigenous peoples

14. The Committee welcomes the amendments made to Act No. 18.314 (the Counter-Terrorism Act). However, it remains concerned by reports that this law continues to be applied to a disproportionate extent to members of the Mapuche people in respect of acts that have taken place in connection with their assertion of their rights, including their rights to their ancestral lands (CERD/C/CHL/CO/15-18, para. 15). The Committee is concerned by the lack of objective legal criteria for the enforcement of this law in respect of Mapuches who are charged with committing a terrorist act and for the determination by police officers and public prosecutors of what types of charges to bring against them, all of which could constitute a violation of the principles of legality, equality and non-discrimination. The Committee also reiterates its concern about the undue and excessive use of force against members of Mapuche communities, including children, women and older persons, by members of Carabineros and the Investigative Police during raids and other police operations (*ibid.*, para. 19) and about the impunity with which such abuse is committed. The Committee observes that the enforcement of the Counter-Terrorism Act and the undue and excessive use of force against members of the Mapuche people could have negative and discriminatory impacts on indigenous peoples that go beyond their impacts on the individuals suspected of having committed an offence (arts. 2 and 5).

The Committee recommends that the State party should, as a matter of urgency:

- (a) Amend the Counter-Terrorism Act so that it specifies exactly what terrorist offences it covers;
- (b) Ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts that take place in connection with the expression of social demands;
- (c) Implement the recommendations made in this respect by the Human Rights Committee (2007) and by the Special Rapporteur on the rights of indigenous peoples (2003 and 2007) and take into account the preliminary recommendations made by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2013);
- (d) Investigate allegations that government employees have used violence against indigenous communities, particularly in the case of the Mapuche and Rapa Nui peoples;

- (e) Monitor the application of the Counter-Terrorism Act and related practices in order to identify any discriminatory effect on indigenous peoples;
- (f) Intensify and expand the human rights training provided to law enforcement officers and judicial officials to ensure the proper performance of their duties.

Indigenous languages and education

15. The Committee regrets that Mapudungun is taught only in the first four grade levels in primary schools where there are a large number of indigenous students and that the number and size of scholarships for indigenous students are too small to allow recipients to cover educational expenses in institutions other than those located in indigenous communities or settlements. In view of the role of the media and, in particular, community radio broadcasts in preserving languages used in widely scattered indigenous communities, the Committee regrets that members of indigenous peoples are confronted with constraints in this respect (arts. 2 and 5 (e) (v)).

The Committee recommends that the State party allocate sufficient resources to revive indigenous languages and ensure that indigenous peoples have access to education. The Committee also recommends that the State party consider fostering the use of indigenous languages in primary and secondary education and promote the involvement of indigenous teachers. It also urges the State party to adopt the necessary legislative and other measures to reduce the constraints faced by indigenous peoples with regard to the use of community-based media in order to promote the use of indigenous languages.

Marginalization of indigenous peoples

16. The Committee reiterates its concern about the fact that indigenous peoples continue to live in a state of poverty and marginalization (CERD/C/CHL/CO/15-18, para. 24). It continues to be concerned about the limited access which indigenous peoples, particularly indigenous women, have to a number of spheres of activity, especially those relating to employment, housing, health and education (ibid., para. 20). It is also concerned by the low level of participation by indigenous peoples in public affairs and regrets the lack of institutional mechanisms of representation which have been endorsed by indigenous peoples (arts. 2 and 5, paras. (d) (i) and (e)).

The Committee reiterates its earlier recommendation and urges the State party to take the necessary steps to provide indigenous peoples with effective protection from racial discrimination. It also encourages the State party to work side by side with indigenous peoples to develop policies for raising the educational levels and attaining the full-fledged participation in public affairs of indigenous peoples, especially indigenous women. The Committee encourages the State party to take into account its general recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 32 (2009) on the meaning and scope of special measures in the Convention in connection with the development and adoption of such measures.

6. Sweden, CERD/C/SWE/CO/19-21, 23 September 2013

4. The Committee notes with appreciation a number of legislative and policy developments regarding the elimination of racial discrimination, including:

- (f) The amendment to the Swedish Constitution (art. 2) confirming the status of the Sami as a people and providing for the right to self-determination;

Indigenous Sami

17. The Committee notes with concern that a bill on Sami rights was to be submitted to the Parliament in March 2010 reflecting on the outcomes of various inquiries into Sami land as well as resources rights, but the draft bill was rejected by the Sami Parliament and other interest groups during the preparatory process. The Committee also expresses its concern that the State party allows major industrial and other activities affecting Sami, including under the Swedish Mining Act, to proceed in the Sami territories without Sami communities offering their free, prior and informed consent (arts. 5 (d) (v)).

Recalling its general recommendation No. 23 (1997) on indigenous peoples and previous concluding observations, the Committee recommends that the State party take further measures to facilitate the adoption of the new legislation on Sami rights, in consultation with the concerned communities, building on the studies undertaken into Sami land and resource rights which are considered mutually acceptable.

The Committee also recommends that the State party adopt legislation and take other measures to ensure respect for the right of Sami communities to offer free, prior and informed consent whenever their rights may be affected by projects, including to extract natural resources, carried out in their traditional territories.

18. The Committee notes the problem of inadequate compensation by the State party for damages due to the killing of Sami herders' reindeer by predators protected under the Swedish wildlife policy (art. 5 (d) (v) and 6).

The Committee recommends that the State party continue its efforts to find ways to compensate the Sami reindeer-herding communities for damages caused to them by predators, based on a negotiated settlement.

19. The Committee is concerned at the lack of progress on developing a Nordic Sami Convention and at the State party postponing ratification of International Labour Organization (ILO) Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries (art. 5 (e) (vi)).

The Committee reiterates its previous encouragement to the State party to contribute to the timely negotiation and adoption of a Nordic Sami Convention and to ratify ILO Convention No. 169.

7. Venezuela, CERD/C/VEN/CO/19-21, 23 September 2013

5. The Committee commends the State party on the following legislative and institutional measures:

(a) The Organic Act on Indigenous Peoples and Communities (2005);

(b) The Indigenous Languages Act (2008);

(c) The Indigenous Artisans Act (2009);

(d) The Cultural Heritage of Indigenous Peoples and Communities Act (2009);

(e) The Organic Act on Racial Discrimination (2011);

(f) The establishment of the Ministry of People's Power for Indigenous Peoples (2007).

9. The Committee welcomes the State party's initiative to conduct its fourteenth population and housing census in 2011, which included questions that gave respondents the opportunity to self-identify as indigenous persons or people of African descent. The Committee is pleased that some of the results of the census were presented during the interactive dialogue.

The Yanomami people

16. Despite the State party's efforts to protect the peoples of the Amazon region, the Committee is concerned about the situation of the Yanomami people, particularly in view of the presence of illegal miners and their attacks on members of the indigenous communities living in this region (arts. 5 (b) and 6).

The Committee urges the State party to increase the protection afforded to the indigenous peoples living in the Amazon region and recommends that it conduct a thorough investigation into violent attacks by illegal miners against members of the Yanomami people. The Committee urges the State party to take into account the guidelines on the protection of indigenous peoples in voluntary isolation and initial contact in the Amazon Basin, El Chaco and the Eastern Region of Paraguay, as adopted following consultations organized by the Office of the United Nations High Commissioner for Human Rights in the region of the Plurinational State of Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru and the Bolivarian Republic of Venezuela.

The Yukpa people

17. The Committee is deeply concerned about the serious acts of violence that have taken place in the Sierra de Perijá, which have involved clashes between indigenous people and occupants of the land in this area. The Committee regrets that such violence has resulted in deaths and injuries among the Yukpa people, including the murder of Chief Sabino Romero, members of his family and other members of the Yukpa community, and that such events are the consequence of a failure to demarcate the land (arts. 5 (b) and 6).

The Committee recommends that the State party conduct a thorough investigation into acts of violence against the Yukpa people and especially into the killing of members of this community. It urges the State party to put both the perpetrators and instigators of these acts on trial. The Committee calls upon the State party to take the necessary measures to prevent such violence in this region by, inter alia, adopting mechanisms to expedite the process of demarcation of the land and territories of indigenous peoples.

Traditional indigenous justice

18. The Committee takes note of the establishment of a special ombudsperson's office for indigenous peoples to act as an advisory body holding a nationwide mandate to safeguard and monitor the implementation of the constitutional rights and guarantees of the indigenous communities and peoples in the country. The Committee also notes that a draft bill on special indigenous courts is currently under discussion. Nevertheless, the Committee is concerned at the absence of information on respect for the traditional systems of justice of indigenous peoples and their harmonization with the national judicial system (arts. 2, 5 (a) and 6).

Taking into account its general recommendation No. 31 (2005), the Committee encourages the State party to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international human rights law. It recommends that the State party ensure that the main objective of the draft bill on special indigenous courts is to regulate and harmonize the functions, powers and responsibilities of indigenous peoples' system of justice and the national justice system.

Consultation with indigenous peoples

19. Although the State party has made efforts to ensure the participation of the indigenous peoples and has recognized, in the Organic Act on Indigenous Peoples and Communities, their right to prior consultation, the Committee is concerned about the lack of information on how this right has been implemented (art. 5 (c)).

Bearing in mind its general recommendation No. 23 (1997) on indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous people — especially women — in all decision-making bodies, particularly in representative institutions and in public affairs, and that it take effective measures to ensure that all indigenous peoples participate at all levels of the public administration. The Committee recommends that the State party implement special measures (affirmative action), as described in the Convention and the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.

Measures to combat structural discrimination

20. The Committee welcomes the fact that the Organic Act on Indigenous Peoples and Communities contains provisions that could provide effective means of combating structural discrimination, such as the recognition of the right of older adults belonging to indigenous groups to receive an old-age pension or financial assistance in line with the life expectancy and particular circumstances of each indigenous people. However, the Committee regrets that it does not have more information on the practical application of this measure and whether specific criteria have been established for its implementation (art. 2, para. 2).

The Committee urges the State party to continue implementing social inclusion policies aimed at reducing inequality and poverty with a view to eliminating structural and historical discrimination of long standing in the State party. The Committee recommends that the State party take the necessary administrative measures to implement the special pension or financial assistance scheme provided for in the Organic Act on Indigenous Peoples and Communities and that it clearly define the criteria to be used in its application. The Committee also urges the State party to assess whether the above-mentioned scheme could be extended to the Afro-descendent population.

Multiple forms of discrimination

21. The Committee welcomes the adoption of the Organic Act on the Right of All Women to a Life Free from Violence and the establishment of such bodies as the Coordinating Office for Women of African Descent and the Coordinating Office for Indigenous Women. However, the Committee remains concerned that women belonging to indigenous, Afro-Venezuelan, migrant and refugee communities continue to encounter multiple forms of discrimination and gender violence in all areas of social, political, economic and cultural life (art. 5).

The Committee recommends that the State party take into account the Committee's general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and that it incorporate a gender perspective in all policies and strategies for combating racial discrimination, so as to address the multiple forms of discrimination that affect women. The Committee urges the State party to continue its efforts to support women victims of racial discrimination and to improve their access to justice. The Committee requests that information be provided in the State party's next report on the

progress of cases involving domestic violence and racial discrimination targeting women who are protected under the Convention.

8. Honduras, CERD/C/HND/CO/1-5, 13 March 2014

Measures to combat structural discrimination

7. The Committee notes that the indigenous peoples and Afro-Honduran communities (especially Garifuna and English-speaking Afro-Hondurans) are particularly badly affected by poverty and social exclusion. According to the data provided by the State party, poverty affects 88.7 per cent of indigenous and Afro-Honduran children (relative poverty — 10.4 per cent; extreme poverty — 78.4 per cent). According to the data, poverty is a particular problem among Tolupan, Lenca and Pech children, where figures of over 88 per cent are reported (art. 2, para. 2).

The Committee urges the State party to continue implementing social inclusion and identity-based development programmes that reduce inequalities and poverty with a view to eliminating structural and historical poverty in the State party. The Committee recommends that action be taken to break the link between poverty and racism, *inter alia*, through special measures or affirmative action, taking into account its general recommendations No. 32 (2009) on the meaning and scope of special measures in the Convention and No. 34 (2011) on racial discrimination against people of African descent. Such action should include multilingual intercultural education activities, bearing in mind the need to strengthen or revive the languages of the indigenous peoples and Afro-Honduran communities.

Institutional measures

11. The Committee notes with concern that the Ministry of Justice and Human Rights and the Ministry for Indigenous and Afro-Honduran Peoples have been merged with other institutions and thus no longer have ministerial status (art. 2, para. 1).

The Committee takes note of the State party's undertaking that, in spite of the merger, these institutions will continue to fulfil their original mandate and to keep their own budget. The Committee nonetheless regrets that these institutions have lost ministerial status and urges the State party to provide them with the resources required to discharge their duties in accordance with their mandate.

14. The Committee is concerned that women belonging to indigenous and Afro-Honduran communities still face multiple forms of discrimination in all aspects of social, political, economic and cultural life (art. 2, para. 2).

The Committee recommends that the State party take into consideration the Committee's general comment No. 25 (2000) on gender-related dimensions of racial discrimination and include a gender perspective in all policies and strategies against racial discrimination to address the multiple forms of discrimination encountered especially by women in indigenous and Afro-Honduran communities. It further recommends the production of disaggregated data on this topic.

Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage

16. The Committee takes note of the information provided by the State party regarding the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage. The Committee notes that, between 2002 and 2013, the Special Prosecutor received 55 complaints for discrimination offences, of which 31 are under investigation, 17 were dismissed, 4 were brought to trial and 3 were resolved by other means. According to information from alternate sources, no penalties have been imposed for this offence. The Committee is concerned by the small number of complaints filed with the Special Prosecutor and by the disproportionality between the number of complaints dismissed and those brought to trial (art. 6).

The Committee recommends that the State party consider its general comment No. 31 (2005), on the prevention of racial discrimination in the administration and functioning of the criminal justice system, especially the obligation to facilitate access to justice by providing legal information and advice to victims as well as the need to ensure the accessibility of services so that indigenous peoples and Afro-Honduran communities, and their members, may bring individual or collective complaints. The State party is urged to remind members of the Public Prosecution Service that it is in the public interest to prosecute racist acts given their harmful effect on social cohesion and society.

The situation of Miskito divers

19. The Committee remains concerned about the deplorable situation of Miskito divers who suffer work injuries because minimum safe diving conditions are not in place. Although it notes the establishment of an inter-agency commission to address and prevent the problem of underwater fishing, the Committee regrets the lack of information about measures taken to assist divers who have developed a disability and to prevent this abusive practice (art. 2, para. 2).

The Committee requests that the State party provide information about the exact situation of the Miskito divers concerned, the inspections programmes it has carried out on this issue, the availability of social programmes, insurance schemes and health services, any penalties imposed and compensation awarded and any other actions taken by the inter-agency commission. The Committee also requests information regarding the participation of the Miskito people in the decisions and measures taken in this connection.

Consultation with indigenous peoples and Afro-Honduran communities

20. The Committee notes with concern the information received from various sources regarding the lack of systematic free, prior and informed consultation with indigenous and Afro-Honduran peoples on development and natural resources projects (including hydroelectric and mining projects) and other legislation or programmes affecting them. While the State party has made efforts to ensure the participation of indigenous peoples, the Committee is concerned at the lack of information on how this right has been implemented. The Committee also notes the importance of free, prior and informed consultation and of access to justice in relation to the titling of lands and territories (art. 5 (c)).

In light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to establish practical mechanisms for implementing the right to consultation in a manner that respects the free, prior and informed consent of the affected peoples and communities and to ensure that consultations are carried out systematically and in good faith. It also recommends that an independent body carry out impact studies before permission is granted for natural resource exploration and exploitation in areas traditionally inhabited by indigenous peoples and Afro-Honduran communities. The Committee further recommends that indigenous peoples and Afro-Honduran communities be guaranteed access to the courts so that they may defend their traditional rights, their right to be consulted before concessions are awarded and their right to receive fair compensation for any harm or damage suffered. The Committee notes that ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) is directly applicable and that the absence of national legal provisions in this regard does not release the State party from its obligation to implement the right to free, prior and informed consultation.

Participation of indigenous peoples and Afro-Honduran communities

21. Notwithstanding the progress achieved in Honduras, the Committee notes that indigenous peoples and Afro-Honduran communities still face significant barriers to full participation and representation in decision-making bodies (art. 5 (c)).

In the light of its general recommendations No. 23 (1997) and No. 34 (2011), the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples and Afro-Honduran communities, especially women, in all decision-making institutions, particularly in representative institutions and those dealing with public affairs, and that it take effective measures to ensure that all indigenous peoples and Afro-Honduran communities participate at all levels of public service. The Committee also recommends that the State party take special measures (affirmative action), in accordance with the Convention and the Committee's general recommendation No. 32 (2009).

9. Cameroon, CERD/C/CMR/CO/19-21, 26 September 2014

6. The Committee notes that the State party's report still does not contain recent, reliable and detailed statistical data on the ethnic composition of the population living in its territory, specifically economic and social indicators disaggregated by ethnic origin, giving special consideration to indigenous peoples, minority groups and immigrants, to enable it to better evaluate their enjoyment of civil and political, economic, social and cultural rights in the State party, as recommended in its previous concluding observations (CERD/C/CMR/CO/15-18, para. 11).

In accordance with paragraphs 10 to 12 of its revised treaty-specific reporting guidelines (CERD/C/2007/1), the Committee reiterates its recommendation that the State party collect and publish reliable and comprehensive statistical data on the composition of the population living in its territory, including socioeconomic indicators disaggregated by ethnic origin and sex, particularly on minority groups, indigenous peoples and immigrants, from national surveys or censuses based on self-identification. That would allow the State to adopt adequate measures, including special targeted measures, and the Committee to better evaluate the enjoyment of the rights enshrined in the Convention in Cameroon. The Committee reiterates its request that the State party provide these disaggregated data in its next report.

Special measures

10. The Committee welcomes certain campaigns conducted by the State party in favour of vulnerable groups, minorities and indigenous peoples, but is concerned that no special measures have been introduced or are being planned as part of a coherent strategy to accelerate the achievement of equality in law and in practice for all Cameroonians (art. 1, para. 4, and art. 2, para. 2).

The Committee encourages the State party to implement special measures, in accordance with articles 1, paragraph 4, and 2, paragraph 2, of the Convention and with its general recommendation No. 32 (2009) on the meaning and scope of special measures in all areas of the Convention. In this regard, the Committee recommends that the State party adopt a comprehensive strategy on the situation of minority groups and indigenous peoples and coordinate its various programmes and policies for such persons so as to give a coherent picture of its actions and enhance their efficiency.

Participation in political and public life

11. Recalling the State party's policy of promoting understanding and a culture of social harmony among the different sectors of society, including minority groups and indigenous peoples, the Committee underlines the importance of ensuring the effective participation of such persons in political and public life and, to the extent possible, of taking this diversity into account in the State party's public bodies and institutions, including the parliament, public administration, police and judiciary (art. 5 (c) and (d)).

The Committee recommends that the State party take measures to guarantee the effective participation in political and public life of all sociocultural sectors of the population, including minority groups and indigenous peoples.

The State party shall, in particular, ensure access to information, awareness of civil rights and direct participation in elections. It shall also guarantee diversity and multiculturalism in the civil service.

Lastly, it shall adopt concrete measures to strengthen the participation of minorities and indigenous peoples, including through the establishment of quotas, in accordance with the Convention and the Committee's general recommendation No. 32 (2009).

Political parties should be encouraged to develop mentoring programmes for minorities and indigenous peoples, and to take such persons into account in candidate lists.

Minorities and indigenous peoples

Definition and recognition of the rights of minorities and indigenous peoples

14. While welcoming the recognition of minorities and indigenous populations in the Constitution of Cameroon, and the various steps taken by the State party to promote and protect their rights, the Committee is concerned by the discrimination and marginalization that such groups continue to face in the exercise of their civil, political, economic, social and cultural rights. The Committee also deplores the delays in the process that should lead to a definition of indigenous peoples and the adoption of appropriate measures to guarantee their rights (art. 5 (d) and (e)).

The Committee recommends that the State party:

(a) Expedite the completion of the study to identify populations in Cameroon that could be considered indigenous, and ensure that the conclusions derived from it and the associated recommendations translate into concrete activities and programmes with a positive impact on the enjoyment, by indigenous populations, of their rights;

(b) Complete the adoption of the bill on the rights of indigenous peoples. Bearing in mind its general recommendation No. 23 (1997) on the rights of indigenous peoples, include in the aforementioned bill the definition of indigenous peoples as contained in the United Nations Declaration on the Rights of Indigenous Peoples;

(c) Expand its efforts to guarantee the continued participation of indigenous peoples, particularly the Pygmies and the Mbororos, in the process of drafting the bill and the resultant measures.

Lastly, the Committee calls on the State party to include, in its next report, detailed information on the situation of women and girls of the minority groups and indigenous populations identified and on the measures taken and envisaged to ensure that they can exercise all their rights, including the right to equality and non-discrimination.

Access to education

15. The Committee recognizes the efforts made by the State party to improve the access of indigenous children to education, notably through the development of specific measures linked to the adaptation of the school system to the culture of the indigenous communities, with a view to promoting access to education for girls belonging to such groups on an equal footing with boys. The Committee remains concerned, however, by the many enduring obstacles to the full and effective realization of the right of minorities and indigenous peoples to education.

The Committee recommends that the State party strengthen its efforts to prevent and eliminate the discrimination faced by indigenous children and members of minority groups in the enjoyment of their right to education. The Committee also recommends that the State party:

- (a) Guarantee such children access to all levels and all forms of State education, without discrimination, in particular by guaranteeing completely free access to primary education and the availability of the birth certificates necessary for enrolment;
- (b) Continue to take the necessary steps to adapt the education system to their way of life and culture, including on the basis of the conclusions drawn from the evaluation of the relevant pilot projects;
- (c) Continue to develop and implement, in cooperation with minority groups and indigenous peoples, education programmes that address their special needs and incorporate their history, knowledge, technologies and value systems;
- (d) Pay special attention to the situation of girls belonging to minority groups and indigenous peoples, and to the specific measures necessary to ensure their equal access to all levels of education.

Land rights

16. While noting the steps taken by the State party in favour of indigenous peoples, the Committee is concerned by the attacks on their land rights. It also finds it regrettable that current land ownership legislation does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life, particularly as it makes the recognition of land ownership and compensation conditional on land development. The Committee is concerned at reports that the right to consultation as provided in legislation and the right to prior, free and informed consent to projects and initiatives concerning indigenous peoples are not fully applied by the State party. It is also concerned that indigenous peoples are not always consulted about projects conducted on their lands or which affect their rights (art. 5).

The Committee recommends that the State party take urgent and adequate measures to protect and strengthen the rights of indigenous peoples to land. In particular, it requests that Cameroon continue to ensure the active involvement of indigenous populations in the ongoing review of its law on land tenure (ordinance of 1974) and its forestry law of 1994, allowing them to make recommendations to the committee responsible for the review of land legislation.

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party, in consultation with indigenous peoples:

- (a) Establish in domestic legislation the right of indigenous peoples to own, use, develop and control their lands, territories and resources;
- (b) Consult the indigenous peoples concerned and cooperate with them to obtain their free and informed consent before approving any project that affects their lands, territories or other resources, in particular with regard to the development, use or exploitation of mineral, water or other resources;
- (c) Guarantee indigenous peoples just and fair compensation for lands, territories and natural resources that they have traditionally owned or otherwise occupied and used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;

(d) Ensure that the legal land registry procedure in force duly respects the customs, traditions and land tenure systems of the indigenous peoples concerned, without discrimination.

Access to justice

17. The Committee remains concerned by the enduring obstacles to the enjoyment, by some minorities and indigenous populations, of their right to access to justice, notably equal access to justice, and particularly the availability of appropriate interpreting services at every stage of the proceedings (arts. 5 and 6).

The Committee recommends that the State party ensure equal access to justice for minorities and indigenous peoples, in particular by:

(a) Reducing the distances between national courts and the areas where some minority groups and indigenous populations live;

(b) Establishing official services for interpretation into the languages of minority groups and indigenous peoples in national courts, including customary courts.

10. El Salvador, CERD/C/SLV/CO/16-17, 25 September 2014

3. The Committee takes note with satisfaction of the amendment of article 63 of the Constitution of El Salvador, which now, for the first time, accords recognition to the indigenous peoples of El Salvador. The article establishes that “El Salvador recognizes the indigenous peoples and shall adopt policies to preserve and develop their ethnic and cultural identity, world view, values and spirituality.”

4. The Committee takes note with interest of the adoption of the Municipal Ordinance on the Rights of the Indigenous Community of Izalco, which is formulated in much the same terms as the Municipal Ordinance on the Rights of Indigenous Communities Established in the Municipality of Nahuizalco.

5. The Committee notes also the organization of the First National Indigenous Congress in 2010, at which President Mauricio Funes apologized, on behalf of the State, to “... indigenous communities for the persecution and slaughter of which they were victims for so many years”.

Structural discrimination

8. The Committee notes with concern that rates of poverty and social exclusion are particularly high among indigenous peoples and Afro-descendent communities. The study entitled “Profile of Indigenous Peoples in El Salvador”, prepared in 2003 with the support of the World Bank, estimated that 38.3 per cent of indigenous families live in extreme poverty and 61.1 per cent are below the poverty line. That study also illustrated the gap existing between the indigenous population and the non-indigenous population in terms of housing, health and access to basic services such as drinking water and electricity (art. 2, para. 2).

The Committee urges the State party to continue to implement social inclusion and identity-sensitive development policies designed to reduce inequality and poverty and to strengthen indigenous peoples’ and Afro-descendants’ enjoyment of their economic, social and cultural rights with a view to eliminating the structural discrimination that is rooted in the country’s history. It recommends that the State party adopt special measures or take affirmative action to break the link between poverty and racism and, in so doing, that it bear in mind the Committee’s general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention.

Complaints filed with the courts

13. The Committee is concerned by the fact that the State party has reported that no complaints of discrimination have been filed with the Salvadoran courts. The Committee is also concerned by the absence of information on any judicial action taken to combat discrimination against migrant workers in the enforcement of municipal ordinances. It observes that the absence of complaints does not equate with an absence of discrimination but may instead be a reflection of a lack of trust in the judicial system and law enforcement authorities or a lack of knowledge on the part of the most vulnerable sectors of the population about the legal remedies available (art. 6).

The Committee recommends that the State party carry out information campaigns among the most vulnerable sectors of the population on human rights, especially the right to non-discrimination, and on the legal remedies available. The Committee also recommends that the State party bear in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. More specifically, the Committee wishes to remind the State

party that it is under an obligation to facilitate access to justice, provide legal information and advisory services to victims and guarantee access to those services so that migrants and members of indigenous peoples and Afro-descendent communities can file individual or collective complaints.

Implementation of decisions on the protection of human rights

14. The Committee is concerned by the fact that the Amnesty Act of 1993 remains in force despite the decision handed down by the Supreme Court on 26 September 2000 and the commitment made by the State party regarding the repeal of that law. The Committee takes note of the progress made by the State party in implementing the decisions of the Inter-American Commission on Human Rights regarding the Las Hojas massacre and the decision of the Inter-American Court of Human Rights regarding the El Mozote massacre. The Committee is nonetheless concerned by the fact that victims have still not received reparation or satisfaction (art. 6).

The Committee reiterates its recommendation (CERD/C/SLV/CO/14-15, para. 18) that the State party repeal the Amnesty Act of 1993 and implement the decisions of the inter-American human rights system concerning the adoption of a programme of reparation and material compensation for the victims, thus creating a climate of trust that will enable indigenous peoples to express their identity without fear.

Legal framework for the protection of the rights of indigenous peoples

16. The Committee takes note with interest of the municipal ordinances developed in Izalco and Nahuizalco, but also observes that they are as yet isolated initiatives. The Committee takes note of the Government's commitment and efforts to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), as demonstrated by the study prepared by the Ministry of Labour and Social Security. Nevertheless, the Committee is concerned by the fact that the State party has not yet ratified that Convention (art. 2, para. 2).

The Committee reiterates its recommendation (CERD/C/SLV/CO/14-15, para. 15) that the State party take the necessary steps to ratify ILO Convention No. 169. The Committee also encourages the State party to develop a legal framework, in consultation with indigenous peoples, for the recognition and protection of the rights of indigenous peoples.

Titling of land

17. The Committee acknowledges the State party's efforts to provide land titles to indigenous and other persons and observes that more property deeds have been issued in the last 3 years than in the preceding 20 years. The Committee also welcomes the establishment of the Gender Affairs Unit of the Salvadoran Agrarian Reform Institute.

The Committee encourages the State party to continue its efforts to ensure that people have access to their land and territory by issuing the corresponding property deeds while ensuring, in the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the participation of indigenous peoples and Afro-descendent communities.

Participation and consultation

18. While the Committee takes note of the establishment of forums such as the Multisectoral Forum of the National Directorate for Indigenous Peoples and Cultural Diversity, which is attached to the Cultural Secretariat of the Office of the President, it is concerned by the fact that these platforms have not been equipped with all the mechanisms that they need to ensure the full participation, through representative structures, of indigenous peoples in the formulation of plans and in decision-making regarding matters that affect them.

In the light of its general recommendation No. 23 (1997), the Committee urges the State party to develop practical mechanisms for ensuring the participation of indigenous peoples, through representatives elected by them, in the adoption of decisions that are likely to affect them. The Committee also recommends that practical mechanisms be developed to uphold the right to prior, free and informed consultation with a view to securing the consent of the peoples and communities concerned and to ensure that such consultations are held on a systematic basis and in good faith.

Languages of indigenous peoples

19. The Committee observes with concern that although the State party has furnished information about a programme for revitalizing the Nahuatl language, it has not provided information on other indigenous languages. In view of the repression of indigenous communities in the past, the Committee is concerned by the absence of information on efforts to determine whether other indigenous languages are still being spoken (art. 7).

The Committee recommends that the State party continue its efforts to revitalize the Nahuatl language and that it take steps to determine whether other indigenous languages are in use in the State party and, based on its findings, take the necessary steps to revitalize them.

Intercultural health and education

20. The Committee takes note of the State party's efforts in the field of education, which include the modification of textbooks in order to eliminate all stereotypical or degrading images, references, names or expressions of opinion and the establishment of the Educational Support Committee for Indigenous Affairs. However, the Committee is concerned about the lack of participation and full consultation of indigenous peoples in the development of these initiatives. The Committee also observes that work on the preparation of a proposal for developing an intercultural approach to health in areas having a strong indigenous heritage was begun in 2011 and takes note of the potential impact of the country's intercultural health policy.

The Committee recommends that the State party redouble its efforts to narrow the gap between educational achievement in urban and rural areas and to facilitate access to culturally appropriate health services in both urban and rural areas. The Committee recommends that, with the participation of indigenous peoples and Afro-descendent communities, the State party evaluate existing health and education programmes and that, with the active participation of indigenous peoples and Afro-descendent communities and in consultation with them, it develop intercultural health and education programmes.

Multiple discrimination

22. The Committee is concerned by the fact that women in indigenous and Afro-descendent communities continue to face multiple forms of discrimination in all areas of social, political, economic and cultural life. The Committee also notes with concern the persistence of violence against indigenous women (art. 2, para. 2).

The Committee recommends that the State party take into account general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and mainstream a gender perspective in all its policies and strategies for combating racial discrimination as a means of addressing the multiple forms of discrimination to which women in indigenous and Afro-descendent communities in particular are subjected. It also recommends that the State party compile disaggregated statistics on these matters.

11. Japan, CERD/C/JPN/CO/7-9, 25 September 2014

Situation of the Ainu people

20. While noting efforts by the State party to promote and protect the rights of the Ainu people, the Committee is concerned at some shortcomings in the measures developed by the State party, including; (a) the low/insufficient number of Ainu representatives in the Council of the Ainu Promotion Policy and in other consultative bodies; (b) persistent gaps between the Ainu people — including those living outside Hokkaido — and the rest of the population in many areas of life, in particular in education, employment and living conditions; and (c) insufficient protection of the rights of the Ainu people to land and natural resources, and the slow progress made towards the realization of their right to their own culture and language (art. 5).

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples and taking into account the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party:

- (a) Consider increasing the number of Ainu representatives in the Council of the Ainu Promotion Policy and in other consultative bodies;
- (b) Enhance and speed up the implementation of measures taken to reduce the gaps that still exist between the Ainu people and the rest of the population with regard to employment, education and living conditions;
- (c) Adopt appropriate measures to protect the rights of the Ainu people to land and natural resources, and foster the implementation of measures aimed at the realization of their right to their culture and language;

- (d) Regularly conduct comprehensive surveys on the situation of the Aino people in order to adjust its programmes and policies;
- (e) As already recommended in paragraph 20 of the Committee's previous concluding observations, consider ratifying the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989).

12. Peru, CERD/C/PER/CO/18-21, 25 September 2014

5. The Committee warmly welcomes the adoption of the Act on the Right of Indigenous or Aboriginal Peoples to Prior Consultation (the Right to Prior Consultation Act) in September 2011 and the Regulations to the Act in April 2012.

Structural discrimination

8. The Committee notes with concern that members of indigenous peoples and Afro-Peruvians continue to be subjected to structural discrimination and are constantly faced with a lack of economic opportunities, poverty and social exclusion (arts. 1, 2 and 5).

In the light of its previous recommendation (CERD/C/PER/CO/14-17, para. 10), the Committee recommends that the State party should adopt a comprehensive national policy against racism and racial discrimination that will promote social inclusion and reduce the high levels of inequality and poverty affecting members of indigenous peoples and Afro-Peruvians.

Institutional measures

12. The Committee takes note of the creation of the National Commission against Discrimination but is concerned at the lack of precise information on the resources allocated to the Commission and on its functions, particularly with regard to the fight against racial discrimination. The Committee also regrets that the National Institute for the Development of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) has been merged with the Ministry of Culture, which will be detrimental to its technical nature and its independence (art. 2, para. 1).

The Committee recommends that the State party should take the necessary legislative and administrative measures to provide a clear definition of the mandate and functions of the National Commission against Discrimination with regard to combating racial discrimination and ensure the allocation of sufficient human and financial resources to enable it to carry out its functions effectively. The Committee reiterates its previous recommendation (CERD/C/PER/CO/14-17, para. 22) and encourages the State party to strengthen INDEPA by ensuring its independence, visibility and effectiveness.

Implementation of the Right to Prior Consultation Act

14. The Committee welcomes the adoption of the Right to Prior Consultation Act and its Regulations, and also the information provided by the State party on the 16 consultation processes currently taking place. However, the Committee is concerned by information received on the lack of resources or a proper methodology for the implementation of the consultation process. The Committee also regrets the exclusion from the consultation process of projects relating to the mining sector and the constraints placed on determining which peoples should be consulted (arts. 2 and 5).

The Committee recommends that the State party should:

- (a) Adopt an appropriate methodology for conducting prior consultation procedures in conformity with international standards and ensure the allocation of sufficient resources;
- (b) Ensure that all projects on the development and exploitation of natural resources, including mining operations, are submitted to the consultation process with a view to obtaining the free, prior and informed consent of communities that may be affected;
- (c) Guarantee that all indigenous communities, either from the Andean or the Amazonian region, that may be affected, directly or indirectly, by the adoption of a legislative or administrative measure should be duly consulted.

Indigenous peoples and exploitation of natural resources

15. Despite the measures adopted to guarantee protection for the rights of indigenous peoples, the Committee is concerned that concessions for the extraction of natural resources continue to infringe the rights

of indigenous peoples over their lands, traditional and ancestral territories and natural resources, including waters, and generate environmental problems, such as the pollution of aquifers. The Committee expresses its concern at the lack of effective implementation of the measures adopted to mitigate environmental impacts (art. 5).

In the light of general recommendation No. 23 (1997) on the rights of indigenous peoples and the recommendations of the Special Rapporteur on the rights of indigenous peoples in his report on the situation of indigenous peoples' rights in Peru with regard to the extractive industries (A/HRC/27/52/Add.3), the Committee urges the State party to:

- (a) Redouble its efforts to strengthen the legislative and administrative framework for the protection of indigenous peoples with regard to the exploitation of natural resources;
- (b) Guarantee the full and effective enjoyment by indigenous peoples of their rights over the lands, territories and natural resources that they occupy or use, by such means as the appropriate issuance of deeds of title;
- (c) Ensure the effective implementation of protection measures and safeguards against environmental impacts;
- (d) Guarantee that indigenous peoples affected by natural resource activities in their territories receive compensation for damage or loss suffered and participate in the benefits arising out of such activities.

Indigenous peoples in a situation of voluntary isolation or initial contact

16. The Committee welcomes the measures taken by the State party to protect indigenous or aboriginal peoples in a situation of voluntary isolation or initial contact but is concerned at the gaps in their implementation. The Committee reiterates its concern about the plan to extend the exploration and extraction of natural gas in the Kugapakori-Nahua-Nanti Reserve, which may put at risk the physical well-being of the indigenous peoples living in the area and infringe their rights (art. 5).

The Committee recommends that the State party should intensify the protection that it provides to indigenous peoples in a situation of voluntary isolation or initial contact and adopt the measures required to ensure their due implementation. The Committee urges the State party to comply with the recommendations of the Special Rapporteur on the rights of indigenous peoples in his report (A/HRC/27/52/Add.3) with regard to indigenous peoples in a situation of voluntary isolation or initial contact, particularly those living in the Kugapakori-Nahua-Nanti Reserve.

Disparity in education

18. The Committee is concerned at the difficulties facing children whose mother tongue is not Spanish as regards access to quality education and also at the high levels of illiteracy among boys and girls belonging to indigenous or Afro-Peruvian communities (art. 5).

The Committee recommends that the State party should adopt the necessary measures to eradicate illiteracy and improve the quality of education in rural areas inhabited by boys and girls belonging to indigenous communities and to ensure effective implementation of the national policy of intercultural bilingual and rural education in order to consolidate the intercultural approach and ensure the use of indigenous languages in primary and secondary education.

Right to identity

19. Despite the efforts by the State party in setting up the National Identity and Civil Status Registry (RENIEC), the Committee is concerned that a significant number of indigenous women and girls continue to face difficulty in gaining access to the birth register and obtaining identity documents, particularly in the indigenous communities of the Amazonian and Andean regions (art. 5 (d)).

The Committee recommends that the State party should redouble its efforts to guarantee access to the birth register for all indigenous peoples, particularly those in remote areas of the Amazonian and Andean regions, and to ensure that they can obtain birth certificates and identity documents.

Forced labour practices

20. The Committee notes with concern that members of indigenous peoples, especially in the Madre de Dios and Ucayali regions, are deceived into engaging in forced labour practices and servitude in the forestry and mining sectors (arts. 2 and 5).

The Committee recommends that the State party should:

- (a) Intensify its efforts to eradicate forced labour by strengthening and allocating sufficient resources to the National Committee against Forced Labour;
- (b) Undertake the immediate investigation and trial of those responsible for such acts and provide victims with assistance, protection and adequate reparation;
- (c) Comply fully with the recommendations of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, following her visit to Peru (A/HRC/18/30/Add.2).

Implementation of the Comprehensive Collective Reparations Plan

22. The Committee is concerned at the delays in the implementation of the Comprehensive Collective Reparations Plan, particularly with regard to members of indigenous peoples who were victims of the armed conflict between 1990 and 2000, and the lack of proper participation by such persons in developing and implementing reparation programmes. The Committee is dismayed to learn of the decision of the Supra-Provincial Criminal Prosecutor's Office of Lima to close the investigation into the case of over 2,000 women, mainly indigenous women, who were subjected to forced sterilization between 1996 and 2000 (arts. 2 and 6).

The Committee urges the State party to:

- (a) Adopt the necessary measures to ensure the speedy and effective implementation of the Comprehensive Collective Reparations Plan, including the allocation of sufficient resources;
- (b) Facilitate the participation of indigenous peoples in developing and implementing reparation programmes;
- (c) Reopen the investigation into the case of victims of forced sterilization and ensure that those responsible are duly punished and that the victims receive appropriate reparation.

Social conflict arising out of projects involving natural resource exploitation

23. The Committee welcomes the action taken by the State party to prevent social conflicts by setting up discussion forums. However, it is sorry to learn that acts of violence arising out of opposition to projects involving natural resource exploitation continue to occur and that, as in the case of the tragic events in Bagua, they are not exhaustively investigated. The Committee notes with concern information received recently about criminal prosecutions and the disproportionate use of force against members of indigenous peoples opposed to extractive projects. The Committee is also concerned by the negative impact that may be felt by indigenous peoples of the adoption of the recent amendments to the Criminal Code (Act No. 30151), exempting law enforcement officials from criminal liability when they cause injury or death as a result of the use of force in the course of their duties (arts. 5 (a) and 6).

The Committee urges the State party to:

- (a) Strengthen mechanisms to prevent social conflict by promoting the effective participation of members or representatives of indigenous peoples to enable them to express freely their opposition to projects involving natural resource exploitation;
- (b) Conduct an exhaustive inquiry into violations of human rights that arise out of opposition to extractive projects;
- (c) Adopt the necessary measures to guarantee respect for the principle of proportionality and strict necessity in the recourse to force against persons belonging to indigenous peoples;
- (d) Consider repealing Act No. 30151 and ensure that those responsible for the excessive use of force, to the detriment of members of indigenous peoples, are brought to trial.

Combating racial stereotypes

24. Despite the measures adopted to combat racial discrimination, including administrative measures directed at the media, the Committee remains concerned by the discriminatory attitudes that are still deeply rooted in Peruvian society and regrets that the media persist in propagating negative stereotypes of indigenous peoples and Afro-Peruvians, as in the case of the television programme *La Paisana Jacinta* (art. 7).

In the light of its earlier recommendation (CERD/C/PER/CO/14-17, para. 19) and its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party should:

- (a) Take appropriate steps in accordance with the general recommendation to prevent the propagation of messages, programmes and advertisements that continue to perpetuate the stigmatization of indigenous peoples and Afro-Peruvian communities through the representation of stereotypes;

- (b) In accordance with the commitment expressed during the interactive dialogue, speed up the preparation and adoption of a code of ethics under which the media will undertake to respect the dignity, identity and cultural diversity of indigenous peoples and Afro-Peruvian communities;
- (c) Conduct extensive awareness-raising and education campaigns among the general public on the negative effects of racial discrimination and promote understanding and tolerance among the various racial and ethnic groups in the country.

13. United States of America, CERD/C/USA/CO/7-9, 25 September 2014

Disparate impact of environmental pollution

10. While welcoming the acknowledgment by the State party that low-income and minority communities are exposed to an unacceptable amount of pollution, as well as the initiatives taken to address the issue, the Committee is concerned that individuals belonging to racial and ethnic minorities, as well as indigenous peoples, continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries. It also reiterates its previous concern regarding the adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in those regions (para. 30) (arts. 2 and 5 (e)).

The Committee calls upon the State party to:

- (a) Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels;
- (b) Undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected communities; bring those responsible to account; and ensure that victims have access to appropriate remedies;
- (c) Clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date;
- (d) Take appropriate measures to prevent the activities of transnational corporations registered in the State party which could have adverse effects on the enjoyment of human rights by local populations, especially indigenous peoples and minorities, in other countries.

Right to vote

11. The Committee is concerned at the obstacles faced by individuals belonging to racial and ethnic minorities and indigenous peoples to effectively exercise their right to vote, due, inter alia, to restrictive voter identification laws, district gerrymandering and state-level felon disenfranchisement laws. It is also concerned at the Supreme Court decision in *Shelby County v. Holder*, which struck down section 4 (b) of the Voting Rights Act and rendered section 5 inoperable, thus invalidating the procedural safeguards to prevent the implementation of voting regulations that may have discriminatory effect. ...

The Committee recommends that the State party take effective measures to:

- (a) Enforce federal voting rights legislation throughout the State party in ways that encourage voter participation, and adopt federal legislation to prevent the implementation of voting regulations which have discriminatory impact, in the light of the Supreme Court decision in *Shelby County v. Holder*;
- (b) Ensure that indigenous peoples can effectively exercise their right to vote and address their specific concerns; ...

Rights of indigenous peoples

24. While acknowledging the steps taken by the State party to recognize the culture and traditions of indigenous peoples, including the support for the United Nations Declaration on the Rights of Indigenous Peoples announced by President Obama on 16 December 2010, the issuance of Executive Orders 13007 and 13175 and the high-level conferences organized by President Obama with tribal leaders, the Committee remains concerned at:

- (a) Lack of concrete progress to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them;

- (b) The ongoing obstacles to the recognition of tribes, including high costs and lengthy and burdensome procedural requirements;
- (c) Insufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities, resulting from, inter alia, resource extraction, industrial development, construction of border fences and walls, tourism and urbanization;
- (d) The ongoing removal of indigenous children from their families and communities through the United States child welfare system;
- (e) The lack of sufficient and adequate information from the State party on the measures taken to implement the recommendations of the Committee in its Decision 1(68) regarding the Western Shoshone peoples (CERD/C/USA/DEC/1), adopted under the Early Warning and Urgent Action Procedure in 2006, as well as the ongoing infringement of the rights of the Western Shoshone peoples (arts. 5 and 6).

Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to:

- (a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them, based on their free, prior and informed consent;
- (b) Take effective measures to eliminate undue obstacles to the recognition of tribes;
- (c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples in the context of the State party's development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable;
- (d) Effectively implement and enforce the Indian Child Welfare Act of 1978 to halt the removal of indigenous children from their families and communities;
- (e) Take immediate action to implement the recommendations contained in Decision 1(68) on the Western Shoshone peoples and provide comprehensive information to the Committee on concrete measures taken in that regard.

B. Early Warning/Urgent Action and Follow Up Procedures

1. Cameroon, 1 March 2013 (EW/UA)

I hereby have the honour to inform you that during its 82nd session, the Committee on the Elimination of Racial Discrimination (CERD) has examined, in the framework of its urgent action procedure and early warning, information concerning the draft Law on Forests, revising law No. 94/01 on the regime of forests and wildlife, adopted on 20 January 1994 by the National Assembly of Cameroon.

According to information received by the Committee, the Minister of Forests and Wildlife of Cameroon intends to submit the draft Law on Forests during the National Assembly, for adoption in March 2013. The organizations that submitted the request have argued that the Government of Cameroon has not informed the indigenous people involved regarding this draft Law, and has not ensured their participation nor their consultation during the development of the mentioned draft Law.

According to the organizations that submitted the request, the draft Law is not in line with international standards for the promotion and protection of indigenous peoples, particularly because it does not guarantee: adequate protection of the rights of indigenous peoples to own, use and control their traditional lands, territories and resources; their right to participate in decision making about their forest lands, territories and resources and to give their free, prior and informed on any decision taken in this regard; and access to justice for indigenous peoples affected by possible violations of their rights to their forest lands, territories and resources.

In this regard, the Committee recalls its General Recommendation No. 23 on the rights of indigenous peoples, which calls on States Parties to the Convention for the Elimination of all Forms of Racial Discrimination, to ensure that indigenous peoples enjoy conditions that allow for sustainable economic and social development compatible with their cultural characteristics. The General Recommendation also calls on States Parties to ensure that no decisions directly relating to their rights and interests are taken without their informed consent.

The Committee also wishes to draw attention to paragraphs 15 and 18 of its concluding observations (CERD/C/CMR/JCO) adopted 30 March 2010 following the consideration of periodic reports of the State

party, in which the Committee recommends to the State party complete the adoption of the draft Law on the rights of indigenous people and to take urgent and adequate measures to protect and strengthen the rights of indigenous peoples to land.

The Committee ask the State party to provide further information regarding the development process of the draft Law on Forest, the current stage and, if possible, to provide the text of draft.

The Committee also requests the State party to provide information on the measures taken to organize meaningful consultations with affected indigenous peoples who recognize and implement the rights of indigenous people for effective participation and prior consent free and informed, including through representatives chosen by the people themselves, according to their decision making process and their customs and in forms and languages accessible to these peoples.

Finally, the Committee requires the State party to return the contents of the draft Law on Forest to determine if it complies with human rights international standards relevant and related to the rights of indigenous peoples, and if necessary, to make amendments.

In accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the Committee urges the State party to submit the information requested before July 31st, 2013, and submit, without delay the nineteenth, twentieth and twenty first periodic reports due on the 14 of July, 2012.

2. Costa Rica, 1 March 2013 (EW/UA)

I hereby have the honour to inform you that during its 82nd session, the Committee on the Elimination of Racial Discrimination (CERD) considered the situation of the indigenous peoples Teribe and Bribri of Salitre, in Costa Rica.

According to the information received by the Committee, during 2012 and early this year, members of the indigenous Teribe and Bribri peoples were subject to acts of violence and physical aggression, death threats and assassination attempts by non-indigenous persons occupying their lands and territories. Some of these acts allegedly took place in February 2012 in the community of Terraba, and they were directed against members of indigenous peoples that claimed their right to education. Other violent acts, including assassination attempts related to illegal logging disputes, allegedly took place in May 2012.

Additional alleged acts of violence including death threats and physical attacks against members of the Bribri indigenous people claiming the repossession of their lands took place in July 2012 and January 2013. In addition, according to reports, the Municipal Council of Buenos Aires may have adopted an official resolution declaring Mr. Sergio Rojas Ortiz, persona non grata for his leadership role in relation to land claims in Salitre. The Ombudsman's office reportedly sent a letter to the Municipal Council requesting the revocation of this resolution on the 18th of October 2012.

The Committee expresses concern about the alleged acts of violence against Teribe and Bribri indigenous peoples, and for the prevailing climate of violence, impunity and racial hostility. The Committee is also currently concerned about the alleged increase in illegal dispossession and occupation of the territories of the Teribe and Bribri peoples and the ongoing destruction of their vital means of livelihood and traditional subsistence way of life, which threatens both their cultural and physical integrity.

The Committee requests that the State party provide information about these alleged abuses and sanctions being taken against those responsible, as well as information on measures taken to protect the physical integrity and security of the members and leaders of the Teribe and Bribri indigenous communities.

3. Guyana, 1 March 2013 (EW/UA)

I write to inform you that in the course of its 82nd session, the Committee considered the situation of the the Kako and Isseneru indigenous communities in Guyana following information received by non-governmental organizations.

As a result of the information received, the Committee is concerned that the Government, through the Amerindian Act, 2006, has denied the Kako and Isseneru indigenous communities any decision-making rights concerning the mining of lands over which those communities have title.

In this context, the Committee has received information suggesting that the High Court of Guyana has, in several recent cases, applied this legislation, and in doing so, upheld the interests of miners while denying any right of the Isseneru and Kako indigenous peoples to prevent mining on its titled land.

The Committee has been made aware of three specific cases. First, in August 2008, the High Court of Guyana reportedly ruled in favour of a non-indigenous miner, named Lalta Narine, who requested an

injunction against the Isseneru indigenous community so that he could mine the lands over which the community held title. The Court held that the community had no authority over mining under a concession that commenced prior to the community obtaining title pursuant to the 2006 Amerindian Act. The Court also enjoined the community from interfering with the miner's operations. The community reportedly appealed against this decision in October 2008, but to date, no ruling has been made on the matter by the Guyana Court of Appeals.

Second, on 17 January 2013 the High Court of Guyana reportedly ruled in favour of a non-indigenous miner named Joan Chang who had requested an injunction to mine on the titled lands of the Isseneru indigenous community. The Court held that the miners had obtained mining permits prior to the entry into force of the Amerindian Act 2006 and consequently did not have to obtain permission from the community before carrying out mining operations on titled lands.

Third, on 20 September 2012, the High Court of Guyana reportedly ruled in favour of a non-indigenous miner named Belina Charlie who had requested access to mine on Kako traditional lands. The Court issued an order restraining the Kako Village Council from preventing the passage of a water dredge and other mining equipment across the Kako River.

The Committee expresses its concern about the limits of the legislation which has allowed mining activities carried out by non-indigenous parties to take place on indigenous traditional territories including indigenous titled lands without the free and prior informed consent of the affected communities and in non-compliance with the Convention and international standards, including its General Recommendation No. 23 on the rights of indigenous peoples.

The Committee would like to recall paragraphs 17 and 19 of its concluding observations (CERD/C/GUY/C0/14) adopted on 4 April 2006, following the consideration of the periodic report of the State party. The Committee would also like to reiterate paragraph 15 of its concluding observations in which it recommended the amendment of the Amerindian Act to remove any discriminatory distinctions in the legislation.

The Committee requests the State party to provide information on steps taken to implement the above paragraphs. Further, the Committee requests the State party to provide updated information on the results of appeal of the Isseneru community in October 2008 referred to above.

The Committee requests the State party to provide information on how the right to free and prior informed consent of the Isseneru and Kako communities is implemented prior to the grant of new mining concessions related to land over which the communities holds title. The Committee also requests that the State party review, where relevant, the practice of granting mining permits and concessions without obtaining the prior and informed consent of the affected indigenous communities.

In accordance with article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive urgently information on all of the issues and concerns as outlined above, before 31 July 2013.

In accordance with article 9(1) of the Convention and article 63 of its Rules of Procedure, the Committee urges the State party to submit its fifteenth and sixteenth periodic reports overdue since 17 March 2008.

4. Peru, 1 March 2013 (EW/UA)

I hereby have the honour to inform you that during its 82nd session, the Committee on the Elimination of Racial Discrimination (CERD) considered the situation of indigenous peoples living in voluntary isolation in the Kugapakori-Nahua-Nanti Reserve located in the department of Cusco and Ucayali in South-East Peru.

According to the information received by the Committee, the Ministry of Energy and Mines took the decision to expand the activities of the Camisea gas project within the Kugapakori-Nahua-Nanti Reserve. This includes the development of three wells and associated infrastructure. A second application which is still being assessed could involve the development of eighteen to twenty one new wells and more infrastructure, including seismic tests in the Reserve (Lot 88 in San Martín East). The information received by the Committee also mentioned that several state institutions are considering the possible creation of a new concession within the Reserve, currently known as the "Fitzcarrald Lot".

The Committee expresses its concern that these decisions could potentially have a discriminatory impact on indigenous peoples that inhabit the Reserve, and in particular on the full enjoyment of their human rights. Given that indigenous peoples living in voluntary isolation in Kugapakori-Nahua-Nanti maintain

economic self-sufficiency based mainly on hunting, fishing and harvesting of provisions like food, medicine and building materials, the degradation of the environment could have a negative impact on their livelihoods, and undermine and weaken the fulfilment and exercise, in equal conditions, of their economic, cultural and social rights.

The Committee refers to its General Recommendation No.23 on the rights of indigenous peoples in which it urged States Parties: to provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics; and to ensure that no decisions directly relating to their rights and interests are taken without their informed consent and the right to be free from racial discrimination in the exercise of their rights. The Committee also wishes to inform the State party about the OHCHR “Guidelines for the protection of indigenous peoples in voluntary isolation and initial contact of the Amazon region, Gran Chaco and Eastern Paraguay”, which have been endorsed by the Peruvian government.

The Committee requests that the State party provide information on the situation of the alleged expansion of the Camisea project in the Kugapakori-Nahua-Nanti Reserve, and to immediately suspend planned extractive activities in the Reserve that may threaten indigenous peoples’ physical survival, culture and well-being and prevent the full enjoyment of their economic, social and cultural rights.

The Committee notes the invitation made to the State party by the Special Rapporteur on the Rights of Indigenous peoples to visit the country to investigate the issue of extractive industries, including its impact on indigenous peoples living in voluntary isolation, and requests the State party to favourably consider this request.

In accordance with Article 9 (1) of the Convention and Article 63 of its Rules of Procedure, the Committee urges the State party to submit the eighteenth and nineteenth periodic reports due on October 29, 2012.

Furthermore, in accordance with Article 9 (1) of the Convention and Article 65 of its Rules of Procedure, the Committee would welcome urgent information on the issues and concerns mentioned above, before July 31st, 2013.

5. Suriname, 1 March 2013 (EW/UA)

I would like to refer to the Committee's letter of 9 March 2012, in which it expressed concern about the situation of the Saramaka people in Suriname, under its early warning and urgent action procedure.

The Committee notes that the State party has not yet replied to its request to provide information on the situation of the Saramaka people as well as on measures taken to implement the Committee's decisions adopted under the Early Warning and Urgent Action Procedures in 2003 (Decision 3/62), 2005 (Decision 1/67) and 2006 (Decision 1/69) requesting the State party to 'ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources'.

The Committee would be grateful to receive information on measures taken by the State party to implement recommendations on issues and concerns referred to in its letter of 9 March 2012 and its decisions of 2003 (Decision 3/62), 2005 (Decision 1/67) and 2006 (Decision 1/69).

In accordance with Article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to urgently receive information on the issues and concerns as outlined above before 31 July 2013. Furthermore, the Committee regrets the State party to submit as soon as possible thirteenth to fifteenth periodic reports due on 14 April 2013.

6. Tanzania, 1 March 2013 (EW/UA)

I write to inform you that in the course of its 82nd session, the Committee further considered the situation of alleged evictions of the pastoralist Maasai community of Soitsambu village in Ngorongoro, District of Arusha Region following updated information received from a non-governmental organization. The Committee would like to remind the State party that it has not yet replied to the Committee's letter of 11 March 2011 on the same situation.

According to information received, your Government has failed to comply with the recommendations previously made by the Committee. Therefore, the Committee is concerned that steps have not been taken to grant unrestricted access to Sukenya and Mondorosi villagers to the Sukenya Farm, preventing them from grazing their cattle, thus potentially violating their rights to use their traditional lands.

The Committee is also concerned at the report that the Tourism Company, Thomson Safaris, continues to develop a safari camp in the disputed land with approval of the authorities but reportedly without consent from members of the Maasai community, potentially violating their right to prior and informed consent for projects carried out in their lands.

The Committee is deeply concerned at information that the situation of the Maasai communities affected by the evictions has worsened, and that they have allegedly suffered intimidation, arrests, physical ill-treatment and arbitrary detentions. The Committee would like to draw the attention of your Government to the fact that such a situation may amount to the violation of article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

The Committee would like to recall recommendations made in paragraphs 14 and 15 of its previous concluding observations (CERD/C/TZA/C0/16) adopted in 2005 regarding the expropriation of ancestral lands belonging to certain ethnic groups.

The Committee would like to reiterate its requests made in its previous letter to provide information on: a) measures taken to ensure the effective participation of the Maasai community in decision affecting them, in particular on the case of Sukenya Farm; b) measures taken to thoroughly investigate allegations of excessive use of force by the security guards of the company occupying the Farm.

The Committee requests that the State party take immediate measures to effectively protect the Maasai community against reported acts of intimidation, harassment, arrests and detentions and requests the State party to take concrete steps to find a peaceful solution to the dispute. Moreover, the State party should take concrete measures to ensure access of Maasai people to their traditional lands and provide adequate compensation, as appropriate, to the villagers of the Mondorosi and Sukenya for the alleged losses suffered.

In accordance with article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee requests that the State party submit information on the above- mentioned issues by 31 July 2013. The Committee also requests the State party to submit as soon as possible its seventeenth to eighteenth periodic reports overdue since 26 November 2007.

7. USA, 1 March 2013 (EW/UA)

I write to inform you that in the course of its 82nd session, the Committee on the Elimination of Racial Discrimination considered, under its early warning and urgent action procedure, the situation of the Kikapoo Traditional Tribe of Texas, the Ysleta del Sur Pueblo (Tigua) and the Lipan Apache (Ndé) indigenous communities in relation to the construction of the Texas-Mexico border wall.

According to the information received by the Committee, as of 2005, the United States Congress began enacting legislation allowing the Government to build a wall along the border between the United States of America and Mexico, with the purported aim of preventing the entrance of alleged terrorists, undocumented immigrants, and drug traffickers. Pursuant to the adoption of the REAL ID Act and the Secure Fence Act in 2005 and 2006 respectively, the Department of Homeland Security has reportedly waived 36 Federal and State laws to proceed with the construction of the wall, including the National Environmental Policy Act, the Endangered Species Act, the Native American Graves Protection and Repatriation Act, the American Indian Freedom Act, and the Administrative Procedure Act. Subsequently, the border wall has allegedly been built on sensitive environmental areas and lands inhabited by indigenous communities, without sufficient and effective prior consultation with the affected population, and apparently continues to damage the land, the ecosystem, and the cultural and traditional way of life of indigenous communities. It has also been reported that while the wall has been built on the lands of indigenous peoples, it has skipped border areas with lucrative properties owned by business, such as the River Bend Golf Resort.

The Committee expresses its concern regarding the potentially discriminatory impact that the construction of the border wall might have on the Kikapoo, Ysleta del Sur Pueblo and Lipan Apache indigenous communities, including their access to tribal lands located north and south of the border and to resources required for traditional ceremonies.

In particular, the Committee is concerned by the situation of the Lipan Apache, a tribe which reportedly remains Federally unrecognized, given the information received that the construction of the wall through its land has allegedly damaged ancestral burial sites, reduced the tribe's access to elders and other knowledge keepers, led to severe decline in biodiversity, and may lead to the disappearance of the tribal identity altogether as the community may be forced to leave the land.

Moreover, the Committee is concerned that, based on the information before it, the border wall has been constructed without the free, prior and informed consent of the affected communities, and that no effective judicial remedies or compensation have been provided to date. With regard to the latter, it has been reported that the Government's use of eminent domain powers cannot be effectively challenged in court, and that courts have not allowed claims to be brought regarding the potentially discriminatory impact of the wall.

In addition to the aforementioned case, the Committee also considered the reply of the State party to its previous cases examined under the early warning and urgent action procedure concerning the impact of the Ski Resort Project in San Francisco Peaks on indigenous peoples' spiritual and cultural beliefs and the situation of the Western Shoshone. The Committee would like to thank the State party for its note verbale of 29 August 2012, in which it provided links to its response to the communication sent by the Special Rapporteur on the rights of indigenous peoples, the Annex to the State party report submitted to the Committee in 2007 regarding the Western Shoshone, as well as the 2009 follow-up report to the Committee reiterating the position of the State party in relation to the Western Shoshone. The Committee notes that further information will be included in the periodic report which is currently under preparation.

While welcoming the responses and clarifications provided, the Committee would like to request that the State party provide updated and detailed information in its periodic report, overdue since 20 November 2011, on the following:

(1) The impact of the Texas-Mexico border wall on the rights of indigenous communities to have access to their land and resources that their own, or traditionally use, and to holy places, in community with people belonging in the same tribe; any recent or future measures envisaged to consult with and consider the requests of the affected communities; information on any compensation provided to affected communities to date; and any measures envisaged to reverse the negative impact of the construction of the border wall;

(2) Information on any further measures envisaged to engage with the operator of the Arizona Snowball Ski area to encourage the use of sources other than reclaimed waste water to produce artificial snow; and information on the outcomes of the appeal submitted to the Ninth Circuit;

(3) Substantive responses to the issues raised by the Committee in its Decision I (68) of II April 2006 concerning the situation of the Western Shoshone, in particular those identified in paragraph 7 of the decision, namely:

- legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;
- destructive activities which are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, including federal efforts to open a nuclear waste repository at the Yucca Mountain, the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon, and the alleged issuance of geothermal energy leases at, or near, hot springs;
- resumption of underground nuclear testing on Western Shoshone ancestral lands;
- conduct and/or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples; and
- difficulties encountered by Western Shoshone peoples in appropriately challenging all such actions before national courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

The Committee looks forward to receiving the information requested above in the State party's periodic reports.

8. Costa Rica, 30 August 2013 (EW/UA)

I have the honour to inform you that in the course of the 83rd session, the Committee on the Elimination of Racial Discrimination (CERD) continued considering the situation of the Teribe and Bribri of Salitre indigenous peoples in Costa Rica under its Early Warning and Urgent Action Procedure.

The Committee regrets not yet receiving the State's response to its letter dated March first of the current year. In the letter, the Committee expressed its concern for facts that, if demonstrated, can result in contraventions of the International Convention on the Elimination of Racial Discrimination. The facts include the following: acts of violence against the Teribe and Bribri peoples; illegal occupation of their territories; and the destruction of their livelihoods and traditional ways of subsistence that threaten their cultural and physical integrity.

The Committee received additional information with allegations that the State party has not carried out any action for the protection of the physical integrity of the leaders and members of the Teribe and Bribri people. Specifically, the information claims that the alleged illegal occupiers of the territories of this people have not been sanctioned and the responsible persons of the acts of violence have not yet been judged. The claims indicate that the State party has not issued measures to protect Mr. Sergio Rojas Ortiz who, after being declared “persona non grata” by the Municipal Council of Buenos Aires, suffered an attack in September 2012.

According to the additional information received, the State party has established a dialogue roundtable comprised of State representatives and representatives of indigenous peoples, which includes, as observers, representatives of the United Nations Country Office of Costa Rica. The Committee appreciates this initiative and encourages the State party to continue the negotiations until a lasting solution is reached.

According to the obligations of the State party under the Convention and ILO Convention 169 on Indigenous and Tribal Peoples, the Committee encourages the State party to adopt the normative framework for the protection of the right to lands, territories and natural resources of all indigenous peoples in Costa Rica, and requests the State party to exhaustively investigate the acts that have occurred against the Teribe and Bribri indigenous peoples, and whenever necessary, punish the responsible persons.

Also, in accordance with article 9(1) of the Convention and article 65 of its internal regulations, the Committee would thank that the State party issues a response to the abovementioned allegations, particularly on the measures adopted to protect the Teribe and Bribri peoples, as to the progress and results of the discussions of the dialogue roundtable. Furthermore, the Committee encourages the State party to, without further delay, submit its nineteenth to twenty-first periodic reports, delayed since January 4, 2010.

9. Indonesia, 30 August 2013 (EW/UA)

I write to inform you that in the course of its 83rd session, under its early warning and urgent action procedure, and in light of further information submitted by non-governmental organizations, the Committee on the Elimination of Racial Discrimination continued the consideration of the situation of the Malind and other indigenous people of the District of Marueke, Papua Province, and the alleged on-going negative effects on their livelihoods due to the reportedly massive and non-consensual alienation of their traditional lands by the Marueke Integrated Food and Energy Estate project (MIFEE).

According to the information received, the MIFEE project continues to inflict irreparable harm on the Maline and other affected indigenous peoples in the District of Marueke due to the reported massive seizures of traditional indigenous lands, use of forced labour, and the alleged failure of the State party to implement the Papua Special Autonomy Law (PSAL).

In addition, according to reports, the Committee notes that the Indonesian Supreme court has ruled on 16 May 2013 that certain provisions of the Forestry Act No. 41/1999 are unconstitutional due to the classification of 'customary forest' as being part of 'state forests'. As a result of the law as currently drafted, indigenous peoples, such as those affected by the MIFEE project, have been denied rights to their lands in favour of an ownership right vested by the State. The Committee also welcomes reports that the President of Indonesia has publicly stated his personal commitment to initiating a process that registers and recognises the collective ownership of customary indigenous territories in Indonesia.

The Committee reiterates its concerns expressed in its previous letter dated on 2 September 2011 to the State party and in paragraphs 17, 18 and 22 of its concluding observations (CERD/C/IDN/C0/3) of 15 August 2007 and requests information on measures taken by the State party to implement the Decision of the Supreme Court of 16 May 2013. Further, the Committee would welcome information on measures taken to involve indigenous peoples in the process of amending PSAL, and on the process for the enactment and implementation of the Law on the Recognition and Protection of the Rights of Indigenous Peoples adopted in 2011, as well as on measures to register and recognise the collective ownership of customary indigenous territories in the State party.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive information on all of the issues and concerns as outlined above, before 31 January 2014.

Finally, the Committee deeply regrets that the State party has not yet submitted its 4th to 6th combined periodic reports that are overdue since 25th July 2010. In this regard, the Committee would like to urge the State party to submit the overdue periodic reports as soon as possible.

10. Kenya, 30 August 2013 (EW/UA)

I write to inform you that in the course of its 83rd session, the Committee on the Elimination of Racial Discrimination, under its early warning and urgent action procedure, considered, on a preliminary basis, the information submitted by non-governmental organisations alleging the forced eviction by the Kenya Forest Services (KFS) of the Sengwer and Ogiek indigenous peoples from their traditional homeland. The Committee also considered, on a preliminary basis, claims that a draft Wildlife Conservation and Management Bill (WCMB, or 'the Wildlife Bill') and its associated National Conservation and Management Policy (NCMP, or 'the Conservation Policy') were discriminatory.

It is alleged that since the 1970s and throughout the past decade and to date, the KFS have repeatedly made attempts to evict the Sengwer people using force, including by burning their houses, possessions and food. These actions have negatively affected the health, livelihood and culture of the Sengwer people as well as their children's education. It is also alleged that Sengwer peoples in Embobut Forest have been significantly affected as a result of their displacement from lands following the burning of their homes by the KFS in May 2013. The alleged actions of the KFS have reportedly also affected the Ogiek peoples in and around Mt. Elgon National Park, Chepkitale National Reserve and Kiptugot Forest Reserve.

In addition, it is alleged that the Forest Act of 2005 has criminalized certain activities traditionally carried out by the Sengwer people such as occupying forest reserves, cultivating, grazing, cutting or taking wood and hunting. According to information received, solutions for resettlement in light of the legislation have been sought without meaningful consultation and consent of the Sengwer people of Embobut Forest.

The Committee also received allegations that certain provisions of the draft Wildlife Bill (WCMB) and the Conservation Policy (NCMP) were discriminatory due to their failure adequately to take into account the rights of indigenous peoples to their lands, territories and natural resources as well as their rights to be adequately consulted on issues related to wildlife conservation and management structures.

The Committee is concerned about these allegations which, if verified, could hinder the full enjoyment of rights under the Convention. In this regard, the Committee refers to its General Recommendation 23 on the rights of indigenous peoples in which the Committee calls upon the State parties "to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and natural resources and, where they have been deprived of their lands and territories traditionally occupied otherwise inhabited or used without their prior, free and informed consent, to take steps to return those lands and territories".

The Committee also recalls the recommendation made in paragraph 17 of the Committee's concluding observations of 2011 relating to the State party (See CERD/C/KEN/C0/1-4, para. 17) where the Committee requested the State party to respond to the decisions of the African Commission of Human and People's Rights regarding the forced evictions of the Ogiek and Endoris indigenous peoples and ensure that marginalised peoples receive appropriate redress.

In accordance with Article 9 (I) of the Convention and article 65 of its Rules of Procedure, the Committee would be grateful to receive urgently information on the situation of the Sengwer and Ogiek indigenous peoples, in particular, on those from the Embobut Forest, as well as on measures taken to avoid that the Wildlife Bill and its Conservation Policy, if adopted, negatively affects the rights of indigenous peoples in Kenya. The Committee would be grateful to receive information on all of the issues and concerns as outlined above, before 31 January 2014.

11. Nepal, 30 August 2013 (EW/UA)

I write to inform you that in the course of its 83rd session, the Committee on the Elimination of Racial Discrimination continued the consideration of the alleged on-going persecution of indigenous leaders in Limbuwan, Nepal. The Committee wishes to acknowledge receipt and to thank the State party for its reply of 20 February 2013 in response to the letter from the Committee of 31 August 2012 concerning the above situation and notes the information contained therein.

In particular, the Committee takes note that a new Constitution is in the process of being drafted and that the State party has expressed its commitment to ensure the meaningful and active participation of all communities, including indigenous peoples, in the Constitution-making process. The Committee also takes note of information indicating that the State party is making all-out efforts for fulfilling the responsibility of carrying out an inclusive democratic and progressive restructuring of the State in order to address the problems related, inter alia, to indigenous peoples and national minorities.

The Committee requests that the State party provide information on any additional measures taken to improve the situation of Limbuwan people as well as on the extent to which the Limbuwan people are involved in the Constitution-making process. The Committee would also welcome information on measures taken to engage in dialogue with them in relation to their rights to political participation, freedom of assembly, and freedom of expression as well as the results of this dialogue.

The Committee appreciates the commitment by the State party to submit its seventeenth, eighteenth and nineteenth periodic reports overdue since 1 March 2008. In accordance with Article 9 (I) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to include the information requested above in these reports and encourages it to submit the reports as soon as possible.

12. Peru, 30 August 2013 (EW/UA)

I hereby have the honour to inform you that during its 83rd session, the Committee on the Elimination of Racial Discrimination (CERD) continued to consider the situation of indigenous peoples living in voluntary isolation in the Kugapakori-Nahua-Nanti Reserve located in the department of Cusco and Ucayali in South-East Peru, under the early warning and urgent action procedure.

The Committee also thanks the State party for the reply letter dated 11 of March 2013, which provides information regarding the expansion involving the extraction of natural gas by the Camisea project within the Kugapakori-Nahua-Nanti Reserve. According to its reply, the State party reiterates that the expansion of exploration and exploitation activities doesn't grant new rights of use to the Camisea Consortium, and therefore does not contravene the protection of indigenous peoples living in the territory of the Reserve.

The Committee is also concerned about allegations related to the exploitation of natural gas in the area, in particular because such activities affect the physical and cultural survival of indigenous peoples living within the Reserve. In particular, and as long as the assertions are true, the Committee is concerned that the indigenous people living in voluntary isolation could face an irreparable challenge as a result of such activities, due to their extreme vulnerability.

The Committee calls on the State party to take all the necessary measures to protect indigenous peoples in voluntary isolation from any irreparable harm resulting from those activities, and to find solutions to this situation, according to its international obligations. The Committee refers the State party to the Convention, and in particular to its General Recommendation No.23 on the rights of indigenous peoples and ILO Convention 169 concerning indigenous and tribal peoples.

The Committee welcomes the acceptance of the invitation made by the Special Rapporteur on the Rights of Indigenous Peoples for the purpose of a visit to the country in November 2013, and notes the presentation of the eighteenth and nineteenth periodic reports by the State party. In this regard, the Committee requests that the State party provide additional information on measures taken to protect indigenous peoples in the Kugapakori-Nahua-Nanti Reserve during the interactive dialogue on the aforementioned periodic reports.

13. Guyana, 7 April 2014 (EW/UA)

I refer to your letter of 30 August 2013 and to the information provided in response to the Committee's letter of 1 March 2013 concerning the grant of mining concessions related to lands over which the Isseneru and Kako indigenous peoples hold title and the measures to implement the right to free, prior and informed consent of these peoples with regard to this grant.

The Committee would like to thank the Government for its response and takes note of its contents.

In accordance with Article 9(1) of the Convention and Article 65 of its Rules of Procedure, the Committee urges the State party to submit its fifteenth to sixteenth periodic reports which are overdue since 17 March 2008. The Committee requests the State party to include further information on the issues mentioned above as well as on steps taken to implement paragraphs 17 and 19 of its concluding observations on Guyana (CERD/C/GUY/C0/14) adopted on 4 April 2006. The Committee would like to inform your Government that it will discuss these issues further in the context of the consideration of these forthcoming periodic reports.

Allow me, Excellency, to reaffirm the wish of the Committee to continue to engage in a constructive dialogue with the Government of the Republic of Guyana, with a view to assisting it with the effective implementation of the Convention.

14. India, 7 April 2014 (EW/UA)

I write to inform you that in the course of its 84th session, the Committee on the Elimination of Racial Discrimination received information on recent developments regarding the situation of indigenous peoples in the North East of India submitted by non-governmental organisations with regard to the continuation of Tipaimukh dam project and the construction of the Lower Subansiri Hydro-electric project.

The Committee deeply regrets that the State party has not replied to its previous requests for information dated 30 August 2013.

New information received alleges that your Government has now approved the construction of the Lower Subansiri Hydro-electric project in spite of the Assam Assembly's House Committee's recommendation to undertake a proper scientific assessment of the project and without the approval of the indigenous peoples of the North East of India. On the basis of the information received, the Committee understands that the construction might negatively impact the livelihoods of the indigenous peoples of Arunachal Pradesh and Assam due to the dam's possible impact on flood management.

The Committee reiterates its concern about these allegations which, if verified, could hinder the full enjoyment of rights under the Convention. In this regard, the Committee refers to its General Recommendation 23 on the rights of indigenous peoples in which the Committee calls upon the State parties "to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and natural resources and, where they have been deprived of their lands and territories traditionally occupied otherwise inhabited or used without their prior, free and informed consent, to take steps to return those lands and territories".

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee urges the State party to submit its combined 20th to 21st periodic report overdue since 2010 and invites the State party to include in the report the responses to all of the issues and concerns outlined above. Specifically, the Committee requests the State party to include information on its implementation of the recommendations made in paragraphs 12 and 19 of its concluding observations of 2007 (CERD/C/IND/C0/19).

15. Kenya, 7 April 2014 (EW/UA)

I write to inform you that in the course of its 84th session, the Committee on the Elimination of Racial Discrimination received information on recent developments regarding the situation of the Sengwer indigenous peoples, submitted by non-governmental organisations. The information alleges that the Kenya Forest Services (KFS) have been carrying out large-scale forced evictions the Sengwer indigenous peoples from their traditional lands in the Cherangany Hills with the support of police units since 10 January 2014.

The Committee regrets that it has not received a reply to its previous letter dated 30 August 2013 on the same matter.

The information received sets out allegations that the Kenya Forest Services (KFS) have burned the houses and possessions in the Embobut Forest affecting an estimated number of 2,500 households, including those in the Lelan/Kamolokon and Kapolet forests. As a consequence, thousands of families have been displaced while some Sengwer indigenous peoples remain in the forest reserve without shelter and others have left the forest to live at the periphery. The information also claims that these actions took place despite an injunction by the Kenyan High Court of 21 November 2013 forbidding any eviction of the Sengwer indigenous peoples as well as an order by the Judge of the Eldoret High Court to the police preventing anyone from breaching the injunction.

The organizations submitting the information claim that the evictions constitute a threat to the physical and cultural survival of the Sengwer indigenous peoples. They also claim that your Government has not consulted the Sengwer peoples to seek alternative solutions and has not provided compensation to those who have been already evicted.

The Committee reiterates its concern that these allegations, if verified, could hinder the full enjoyment of rights under the Convention. In this regard, the Committee refers to its General Recommendation 23 on the rights of indigenous peoples in which the Committee calls upon the State parties "to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and natural resources and, where they have been deprived of their lands and territories traditionally occupied otherwise inhabited or used without their prior, free and informed consent, to take steps to return those lands and territories".

The Committee also recalls the recommendation made in paragraph 17 of the Committee's concluding observations of 2011 relating to the State party (CERD/C/KEN/C0/1-4, para. 17) where the Committee requested the State party to respond to the decisions of the African Commission of Human and People's Rights regarding the forced evictions of the Ogiek and Endoris indigenous peoples and ensure that marginalised peoples receive appropriate redress.

In accordance with Article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee urges Kenya to consult the Sengwer indigenous peoples and to provide adequate compensation for evictions that already took place. The Committee requests that the State party submit information on all of the issues and concerns as outlined above, and in its previous letter dated 30 August 2013, in its combined fifth to seventh periodic reports due on 13 October 2014.

C. General Recommendations

1. General recommendation No. 35, Combating racist hate speech, CERD/C/GC/35, 26 September 2013

6. Racist hate speech addressed in Committee practice has included all the specific speech forms referred to in article 4 directed against groups recognized in article 1 of the Convention — which forbids discrimination on grounds of race, colour, descent, or national or ethnic origin — such as indigenous peoples, descent-based groups, and immigrants or non-citizens, including migrant domestic workers, refugees and asylum seekers, as well as speech directed against women members of these and other vulnerable groups. In the light of the principle of intersectionality, and bearing in mind that “criticism of religious leaders or commentary on religious doctrine or tenets of faith” should not be prohibited or punished,¹⁰ the Committee’s attention has also been engaged by hate speech targeting persons belonging to certain ethnic groups who profess or practice a religion different from the majority, including expressions of Islamophobia, anti-Semitism and other similar manifestations of hatred against ethno-religious groups, as well as extreme manifestations of hatred such as incitement to genocide and to terrorism. Stereotyping and stigmatization of members of protected groups has also been the subject of expressions of concern and recommendations adopted by the Committee.

15. While article 4 requires that certain forms of conduct be declared offences punishable by law, it does not supply detailed guidance for the qualification of forms of conduct as criminal offences. On the qualification of dissemination and incitement as offences punishable by law, the Committee considers that the following contextual factors should be taken into account: ...

- **The economic, social and political climate** prevalent at the time the speech was made and disseminated, including the existence of patterns of discrimination against ethnic and other groups, including indigenous peoples. Discourses which in one context are innocuous or neutral may take on a dangerous significance in another: in its indicators on genocide the Committee emphasized the relevance of locality in appraising the meaning and potential effects of racist hate speech.¹⁶

34. Measures should be adopted in the field of education aimed at encouraging knowledge of the history, culture and traditions of “racial or ethnical”²⁷ groups present in the State party, including indigenous peoples and persons of African descent. Educational materials should, in the interests of promoting mutual respect and understanding, endeavour to highlight the contribution of all groups to the social, economic and cultural enrichment of the national identity and to national, economic and social progress.

40. Media representations of ethnic, indigenous and other groups within the purview of article 1 of the Convention should be based on principles of respect, fairness and the avoidance of stereotyping. Media should avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance.

D. Jurisprudence

1. Moylan v. Australia, Communication No. 47/2010, 27 August 2013

Decision of the Committee on the Elimination of Racial Discrimination under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (eighty-third session)

...

Having concluded its consideration of communication No. 47/2010, submitted to the Committee on the Elimination of Racial Discrimination by Kenneth Moylan under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the petitioner of the communication, its counsel and the State party,

Adopts the following:

Decision on admissibility

1. The petitioner of the communication dated 17 December 2009, completed by a letter dated 19 April 2010, is Kenneth Moylan, of Aboriginal origin, who was born on 2 August 1948 in Australia. He claims to be a victim of violations by Australia of his rights under articles 2 (para. 2), 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. The petitioner is represented by counsel.

Factual background

2.1 The petitioner is an Aboriginal Australian man. He states that he has worked since he was 14 years old and wished to retire at the age of 60, in August 2008. He has no savings and only a small amount of superannuation. Accordingly, he would depend on social security provision in order to be able to retire. The qualification for the Age Pension under the Social Security Act 1991 is between 65 and 67 years of age for Australian males, depending on the year in which they were born. As the petitioner was born on 2 August 1948, he would reach pensionable age under the Social Security Act when he turns 65 years of age.

2.2 In 2007, the Australian Bureau of Statistics reported that Aboriginal men have a life expectancy of 59 years. This life expectancy is approximately 17 years lower than non-Aboriginal Australian males. Despite this lower life expectancy, the qualifying age is the same for all Australian men. The requirements of the Social Security Act do not apply equitably to Aboriginal men and other Australians because Aboriginals do not live as long as other Australians.

2.3 According to the petitioner, the Government of Australia has made it clear that it has no intention of altering the eligibility requirements for the Age Pension for Aboriginal Australians. In April 2008, the petitioner wrote to the Minister for Families, Housing, Community Services and Indigenous Affairs, who replied that there were no plans to introduce a lower age for qualifying for the Age Pension for indigenous Australians, as it was important that the same rules for the Age Pension were applied to all Australians, which promoted equity in the social security system. The letter adds that assistance is available to people who need it before they reach pension age. Depending on an individual's circumstances, they may qualify for the Newstart Allowance if seeking work; the Disability Support Pension if unable to work due to permanent impairment; or Carer Payment if providing constant care for a person who needs care permanently or for an extended period.

2.4 After consulting a lawyer on the matter in October 2009, the petitioner received confirmation that no domestic remedy existed to challenge this situation. Indeed, in its memorandum of advice, counsel mentioned that there were potentially two avenues for the petitioner: a claim under the Racial Discrimination Act 1975 and a claim under the Australian Human Rights Commission Act 1986. With regard to the first avenue, section 10 of the Racial Discrimination Act enables a person to claim his/her right before a court if, because of the operation and effect of a law, he/she does not enjoy a right to the same extent as others on the basis of race. Counsel mentioned that if a person wishes to claim that a law of the Commonwealth (namely the Social Security Act) denies Aboriginal men the same rights as non-Aboriginal men, then proceedings must be commenced in the Federal Court. However, there are substantial filing fees for commencing such a

proceeding. There is also a risk of substantial costs if an applicant fails in his case. Even in the event that proceedings were initiated, the Court could argue that there is no denial of right to social security and that section 10 of the Racial Discrimination Act does not operate with respect to provisions of Commonwealth law which may have an indirect effect on a person's right. Counsel expressed doubts as to whether section 10 of the Act extended to the concept of indirect race discrimination. Any success would be a success on paper as the Court would not have the competence to order that the Social Security Act be amended.

2.5 As for the second avenue, the same counsel advised that, under the Australian Human Rights Commission Act, a person may lodge a complaint to the Australian Human Rights Commission if he/she believes that there has been a breach of human rights. However, under such legislation, a complaint can only be made on this basis in relation to an act or practice (it is not specifically mentioned that this extends to complaints in relation to legislation). Furthermore, the Government would be free to disregard the findings of the Human Rights Commission even if it was to find a breach of human rights. Counsel recalled that the Human Rights Committee had determined that, owing to their lack of binding power, bodies such as the Australian Human Rights Commission did not offer an effective remedy.

The complaint

3.1 The petitioner claims that Australia has violated his rights under articles 5 and 6 of the Convention by applying legislation that has discriminatory effects on Australians of Aboriginal origin and not giving him the opportunity to challenge such legislation before national authorities.

3.2 The petitioner refers to general comment No. 19 (2007) of the Committee on Economic, Social and Cultural Rights on the right to social security, where it is stated that differences in the average life expectancy of men and women can also lead directly or indirectly to discrimination in provision of benefits (particularly in the case of pensions) and thus need to be taken into account in the design of the scheme.

3.3 Despite the general prohibition of discrimination in relation to the provision of social security, a State can and should take into account special circumstances relating to disadvantaged groups when determining eligibility criteria. In certain conditions, States parties are in fact obliged to take such special measures under article 2, paragraph 2, of the Convention. If they do not, indirect discrimination will result, as has been the case here.

3.4 The petitioner contends that domestic remedies to contest the mere existence of domestic legislation are not available in Australia. The High Court of Australia (constitutional court) does not have jurisdiction to hear complaints alleging that Australian legislation breaches international law. Moreover, it does not have jurisdiction to hear complaints about breaches of human rights owing to the lack of a bill/charter of rights. Neither the Racial Discrimination Act nor any other act would enable the Court to amend the Social Security Act. As for the Australian Human Rights Commission, it offers no remedy owing to its power to make recommendations only, which are thus non-binding.

State party's observations on admissibility and merits

4.1 On 16 December 2011, the State party submitted its observations on admissibility and merits where it noted that it was working to close the gap between indigenous and non-indigenous Australians in key health, education and employment outcomes, including life expectancy. The State party had adopted the Council of Australian Governments National Indigenous Reform Agreement and Closing the Gap targets to address the disadvantage experienced by indigenous Australians. The State party added that it took seriously the implementation of these initiatives, including by requiring that the Government of Australia report annually to the Parliament thereon and establishing the new National Congress of Australia's First Peoples. It acknowledges the historical injustices experienced by indigenous Australians. In February 2008, the Parliament formally apologized to the indigenous peoples of Australia for past mistreatment and injustices.

4.2 The State party notes that, in addition to allegations under article 5 (equality before the law in the enjoyment of the right to social security) and article 6 (effective protection and remedies), the petitioner alleges that the State party breached article 2, paragraph 2, of the Convention by failing to take the special

measures necessary to achieve the goal of substantial equality in the provision of social security to indigenous Australians.

4.3 Whilst acknowledging the significant difference in life expectancy between indigenous and non-indigenous Australians, the State party notes a number of inaccuracies in the petitioner's communication which relate to both the statistics provided and the way in which those statistics have been interpreted. In particular, the petitioner states that Aboriginal men have a life expectancy 17 years lower than non-Aboriginal Australian men, relying on data from 2004–2005. However, in 2009, the Australian Bureau of Statistics published revised life expectancy estimates using 2005–2007 as reference period, indicating that the difference was 11.5 years between indigenous and non-indigenous Australians.

4.4 The communication is inadmissible for failing to exhaust domestic remedies and for non-substantiation. With regard to the first ground, the petitioner had a number of domestic remedies available to him. First, he could have made a court claim under section 10 of the Racial Discrimination Act 1975 (which implements the Convention in Australian domestic law) with respect to the effect of the Social Security Act 1991, which governs the Age Pension. Section 10 of the Racial Discrimination Act is concerned with the operation and effect of laws. It can also be extended to a law which indirectly affects the enjoyment of a human right by people of a particular race. To make successful a complaint under section 10, the petitioner would have been required to demonstrate that because of the Social Security Act, Aboriginal people do not enjoy a right or enjoy a right to a more limited extent than people of other races. If the claim was successful, the Federal Court would have had a wide discretion under section 23 of the Federal Court of Australia Act 1976 to make any order it considered appropriate. For instance, the Court could have read down the relevant provisions in a way which allowed both section 10 of the Racial Discrimination Act and the Social Security Act to have effect.

4.5 The State party adds that the petitioner also failed to take the remedy of applying for alternative types of social security, such as the Disability Support Pension and Special Benefit, for which he may be eligible. Had he made an application in this regard, the petitioner would have been in a position to challenge decisions made in relation to his claim through a number of avenues. For instance, certain decisions by government officials on social security matters can be subjected to internal review within the relevant government agency, merits review by the Security Appeals Tribunal and the Administrative Appeals Tribunal, and judicial review by the Federal Court and High Court of Australia.

4.6 With regard to the avenues explored by the petitioner which led to the conclusion that no domestic remedies existed (see para. 2.4 above), the State party replies that writing letters to ministers and seeking legal advice are not sufficient to consider that the petitioner exhausted domestic remedies. The Committee has expressed the view that it is incumbent upon the petitioner to pursue the available remedies and that mere doubts about the effectiveness of such remedies do not absolve a petitioner from pursuing them. It is for a domestic court not for a legal counsel to decide on the avenues available under domestic legislation. The communication contains no evidence that such avenues were explored.

4.7 The State party further considers that the petitioner has not substantiated his claims based on statistical evidence and his personal circumstances. The petitioner was 61 years old at the time of submission of his communication to the Committee. According to figures from the Australian Bureau of Statistics, 60-year-old indigenous males have an average life expectancy of another 17 years approximately (compared to 22 years for non-indigenous males). The petitioner is not the victim of any violation relating to the Age Pension because, based on the statistical information of the State party, it is likely that he will reach a sufficient age to qualify for and enjoy the Age Pension in the coming years.

4.8 In addition, there is no evidence to substantiate the petitioner's claims regarding his state of health and his assumption that he would not be eligible for other types of social security. The State party also considers that the petitioner has failed to articulate how specific special measures could be required under article 2, paragraph 2, of the Convention. While he asserts that indirect discrimination can result from a failure to take special measures, he does not provide any evidence or reasoning to support his allegation.

4.9 On the merits, the State party refers to the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, where it has stated that special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need and grounded in a realistic appraisal of the current situation of the individuals and communities concerned. The State is currently taking a wide range of measures to address differences in life expectancy between indigenous and non-indigenous Australians. For the past two decades, there have been improvements in important aspects of health, for example, in circulatory disease mortality rates, child and infant mortality rates and smoking rates. Indigenous all-cause mortality rates declined and the gap between indigenous and non-indigenous Australians has narrowed. It is for the State party to determine the form that any special measures under the Convention should take and no specific form of special measures can be required by the Convention. In this regard, differentiated social security is not the appropriate mechanism to accelerate the move towards substantive equality in health and mortality outcomes between indigenous and non-indigenous Australians. Rather, improving health outcomes, such as mortality, in the context of long-standing indigenous disadvantage, will require long-term sustainable improvements across a range of aspects of peoples' lives.

4.10 With regard to article 5 (e) (iv), the enjoyment of Age Pension, as distinct from social security more generally, is not required to fulfil the obligations under the Convention. The State party considers that, in any event, Australian social security law, including with respect to the Age Pension, is not discriminatory under international law as the measures are general and therefore do not differentiate directly or indirectly on the basis of race. In the alternative, to the extent that there could be said to be any indirect differential treatment between indigenous and non-indigenous Australians, it is legitimate differential treatment and not discriminatory under international law.

4.11 The right to the non-discriminatory enjoyment of social security does not require States to accord everyone social security, or to accord everyone every type of social security. Given that article 5 (e) (iv) requires the equal and not the universal enjoyment of social security, the State party is entitled to set criteria to determine when social security should be available, in order to target those most in need. The percentage of indigenous Australians who receive social security is representative of the proportion of indigenous people in Australia. The petitioner may be eligible for a number of types of social security, including the Disability Support Pension, Newstart Allowance and the Special Benefit, a social security income support payment for people who are in financial hardship through circumstances beyond their control and who have no other means of support.

4.12 Eligibility criteria under the Social Security Act are based on a range of objective criteria other than race, including age and, for those persons born before 1957 only, sex. The Age Pension provisions apply equally to all Australians and any limitations on the petitioner's ability to access that scheme do not arise by reason of his race. Rather, they arise from the fact that he has not yet reached the eligibility age for the Age Pension. Therefore, the petitioner is treated in the same way as all Australians, without distinction as to his race.

4.13 According to the Australian Bureau of Statistics, indigenous Australians represent 2.5 per cent of the total population. According to the Productivity Commission's 2010 *Indigenous Expenditure Report*, around 2.8 per cent of the population receiving social security payments in 2008 and 2009 self-identified as indigenous, which shows that social security laws do not have the effect of nullifying the enjoyment of the right to social security by indigenous Australians, or the author, on an equal footing with other Australians. Moreover, the Bureau estimates that indigenous Australians represent 0.6 per cent of the population aged 65 and above and, according to the Productivity Commission, they represent 0.9 per cent of Age Pension and Wife Pension (Age) recipients in 2008 and 2009.

4.14 Diseases which most frequently cause the lower life expectancy of indigenous Australians (in 2004–2008, circulatory disease, cancer, injury and poisoning, endocrine, metabolic and nutritional disorders, and respiratory disease) are of such a nature that the people who suffer from them are likely to benefit from other

types of social security than the Age Pension, such as the Disability Support Pension, provided that the relevant income and other requirements are met.

4.15 To the extent that there is differential treatment (based on age), the aim of such differentiation is legitimate, reasonable, objective and proportionate. In particular, its purpose is to support older Australians who have made, through their work, a valuable contribution to Australian society. Moreover, it enables the State party to ensure that older persons have an adequate level of financial support while also requiring individuals to draw on their own financial resources, where they exist, and to productively manage resources to ensure that the pension system remains affordable and sustainable for all Australians.

4.16 As for article 6 of the Convention, without prejudice to the State party's submission that the petitioner's claim in this regard is inadmissible, it is also without merits. Article 6 is accessory in nature and applies consequently to a violation of a specific article of the Convention. Where no substantive right is violated, there can be no claim under article 6. In the light of the above assertion, the State party considers the petitioner's claim under that provision to be without merit. In the alternative, it considers that effective remedies are available in Australia as a range of review and appeal mechanisms were available to the petitioner which he declined to use (see paras. 4.4–4.6 above).

Petitioner's comments on the State party's observations on admissibility and merits

5.1 On 6 November 2012, the petitioner replied that the statistics produced by the Australian Bureau of Statistics indicating a drastically lower life expectancy of indigenous Australians demonstrate that, in effect, indigenous Australians, the petitioner included, do not enjoy the right to social security in their old age as the rest of the population does.

5.2 The petitioner contests the State party's argument that statistics from 2009 prevail over statistics from 2007. The methodology used for the 2009 Bureau statistics, as relied upon by the State party, has been challenged by a number of key organizations, including the Close the Gap Campaign Steering Committee, which counts among its members the Australian Human Rights Commission, Oxfam Australia, the Australian Medical Association, the Australian Indigenous Doctor's Association and Australians for Native Title and Reconciliation. Furthermore, the Bureau has itself warned against comparing earlier statistics relating to life expectancy with later statistics, explaining that differences should not be interpreted as measuring changes in indigenous life expectancy over time. Even accepting the 2009 Bureau statistics, an important gap in life expectancy amounting to 11 and a half years is still evident. The petitioner therefore considers that his arguments with regard to unequal treatment between indigenous and non-indigenous Australians remain valid.

5.3 The petitioner stresses that both sets of statistics relate to life expectancy at birth, meaning that the number of years indicated is the expected length of time that a male boy born in either 2004–2005 (2007 Bureau statistics) or 2005–2007 (2009 Bureau statistics) can be expected to live. Therefore, either reference period is not entirely accurate for the petitioner, who was born in 1948.

5.4 In its observations, the State party states that, according to Bureau figures, 60-year-old indigenous males have an average life expectancy of another 17 years approximately (compared to 22 years for non-indigenous males). The State party does not provide any reference for this assertion nor could any be found, and as such the accuracy or otherwise of this statement is difficult to challenge. However, the 2009 Bureau statistics relied upon by the State party indicate that a 50-year-old indigenous man can expect to live a further 23.8 years compared to 31 years for a non-indigenous male and a 65-year-old indigenous man can expect to live a further 13.4 years compared to 17.9 years for a non-indigenous male. During the period covered by those statistics (2005–2007), the petitioner was between 57 and 59 years old, i.e., covered by the figures referred to above. The gap is therefore sufficient to indicate a significant difference in the potential enjoyment of the Age Pension between indigenous and non-indigenous Australians.

5.5 Although the petitioner acknowledges that some positive steps have been taken by the State party to reduce the gap, there is considerable debate about whether these measures have contributed to any significant improvements. Furthermore, efforts made today cannot address a legacy of decades of ill-treatment that older indigenous Australians have experienced.

5.6 With regard to the admissibility, the petitioner refers to paragraph 5 of the Human Rights Committee's general comment No. 33 (2008) on obligations of States parties under the Optional Protocol to the International Covenant on Civil And Political Rights, where it has considered that it is incumbent to the State party to specify the available and effective remedies that the author of a communication has failed to exhaust. In the present case, the State party has mentioned that the Court could have interpreted the relevant provisions in a way which allowed both section 10 of the Racial Discrimination Act 1975 and the Social Security Act to have effect. The petitioner considers, however, that this would have been impossible due to the obligatory requirements of the Social Security Act, because that law mandates that a person be 65 years (or up to 67 years, depending on the year of birth) in order to be eligible for the Age Pension, and there is no discretion for a Court to interpret such provision, even in the unlikely event that a court would adopt a broad view of section 10 of the Racial Discrimination Act so as to make a finding on discrimination. As already stated in his original complaint, the Court has no legislative role and no power to rewrite Commonwealth laws. The Court could not make an order that would change the qualifications for entitlement to an age pension. Unless and until the legislature amended the Social Security Act, the petitioner would not receive an effective remedy.

5.7 In relation to why alternative types of social security were not available to the petitioner, the latter submits that social security provided during the older years of a person's life is different to that provided to, for example, those who are unemployed but actively looking for work (Newstart Allowance) or those experiencing extreme financial hardship (Special Benefit). To be supported in his old age, the petitioner should not have to satisfy the tests for these other forms of social security, but should rather be entitled to equal enjoyment of the Age Pension. In addition, contrary to the State party's assertions, the petitioner could not have sought a remedy before the Social Security Appeals Tribunal, then a review by the Administrative Appeals Tribunal and then judicial review. The Tribunal cannot take action in relation to changing the law or rewriting it as long as the law has been correctly applied. If one wants to change the law, he/she has to direct his/her request to the relevant Member of Parliament. Furthermore, individuals can only apply to the Tribunal in the event that an incorrect decision was made; or where facts leading to a decision were incorrectly misinterpreted; or if all the information was not taken into account to make the decision; or if a discretionary decision was taken against an individual against his/her own interests. None of the above relate to the petitioner's case. Rather, any decision to refuse to grant the Age Pension to the petitioner would not have been discretionary but mandated by the prescriptive provisions of the Social Security Act.

5.8 With regard to State party's arguments on non-substantiation, the petitioner replies that they relate to the merits. In this regard, he refers to the Committee's general recommendation No. 32, where it has stated that to treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same. The Committee has also observed that the application of the principle of non-discrimination requires that the characteristics of groups be taken into consideration. In contrast to the Committee's reasoning, the State party has adopted a strict interpretation of the concept of discrimination, thereby ignoring the recognition given by the Committee and others (including the European Court of Human Rights) of the concept of indirect discrimination. The drastically lower life expectancy of indigenous Australians means that they are in a situation which is objectively different from the rest of the population.

5.9 With regard to special measures, in line with the Committee's position in general recommendation No. 32 (para. 18), the European Court of Human Rights has found that in certain circumstances, a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The petitioner adds that article 2, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination aims at the achievement of equal enjoyment of human rights and fundamental freedoms and not merely de jure equality. Taking steps to address this indirect discrimination would not constitute universal enjoyment as mentioned by the State party, but merely provide for equal enjoyment as required under the Convention.

5.10 Contrary to its assertion, the State party's choice to set the age requirement at 65 years old seems to be arbitrary and not suitable for all, given the substantial differences between indigenous and non-indigenous

Australians. The State party does not provide any information on the criteria it has used to set the retirement age at 65. In the light of the State party's express recognition of the difference in life expectancies, the petitioner does not see why the State party has set the age requirement at 65 for all Australians, when it is recognized that indigenous Australians are in a different situation.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the Convention, whether or not the communication is admissible.

6.2 Firstly, the Committee wishes to recall that, contrary to the State party's general statement that article 6 would be accessory in nature (see para. 4.16 above), the rights in the Convention are not confined to article 5. In this regard, the Committee refers to its jurisprudence, where it has found a separate violation of article 6 in various instances.

6.3 The Committee notes that the State party has challenged the admissibility of the complaint for failing to exhaust domestic remedies. The State party argues that the petitioner had a number of domestic remedies available to him, including the possibility to lodge a court claim under section 10 of the Racial Discrimination Act 1975 with respect to the effect of the Social Security Act 1991, and that, if the claim was successful, the Federal Court would have had a wide discretion under section 23 of the Federal Court of Australia Act 1976 to make any order it considered appropriate, such as reading down the relevant provisions in a way which allowed both section 10 of the Racial Discrimination Act and the Social Security Act to have effect. The Committee notes that the State party bases its argument on the jurisprudence of the Federal Court itself (see para. 4.4 above).

6.4 The Committee notes that the petitioner does not deny that proceedings could be commenced before the Federal Court pursuant to section 10 of the Racial Discrimination Act. He claims, however, that such proceedings would involve substantial filing fees and costs if the petitioner failed and that, even in the event of a successful outcome, this would remain a success on paper as the Federal Court has no legislative power and only the legislature can change the law.

6.5 The Committee recalls that mere doubts about the effectiveness of domestic remedies, or the belief that the resort to them may incur costs, do not absolve a petitioner from pursuing them. In the light of the information before it, the Committee considers that the petitioner has not advanced sufficient arguments that no avenues exist in Australia to claim that a given piece of legislation has discriminatory effects on a person based on race. Notwithstanding the reservations that the petitioner may have on the effectiveness of the mechanism under section 10 of the Racial Discrimination Act in his particular case, it was incumbent upon him to pursue the remedies available, including a complaint before the High Court. Only after attempting to do so could the petitioner conclude that such a remedy was indeed ineffective or unavailable.

6.6 In the light of the above and without prejudice to the question of the merits regarding the alleged structural discrimination related to pension entitlements, the Committee considers that the petitioner has failed to meet the requirements of article 14, paragraph 7 (a), of the Convention.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

- (a) That the communication is inadmissible;
- (b) That this decision shall be communicated to the State party and the petitioner.

II. HUMAN RIGHTS COMMITTEE

A. Concluding Observations

1. Paraguay, CCPR/C/PRY/CO/3, 29 April 2013

9. The Committee regrets that the State party has not yet adopted the bill submitted to the Senate in May 2007 to outlaw all forms of discrimination, while stereotyping, discrimination and marginalization are still prevalent and are especially detrimental to women, persons with disabilities, indigenous people, people of African descent, and lesbians, gays, bisexuals and transsexuals (arts. 2, 26 and 27).

The State party should adopt comprehensive legislation to combat discrimination, including provisions that provide protection against discrimination on grounds of sexual orientation and gender identity, and should prioritize the implementation of programmes to eliminate stereotyping and discrimination and guarantee tolerance and respect for diversity. The State party should also adopt measures to promote equal opportunities and equal, unrestricted and non-discriminatory access to all services by women, persons with disabilities, indigenous people, people of African descent, and lesbians, gays, bisexuals and transsexuals.

15. The Committee is concerned about the high number of human rights defenders, particularly campesino and indigenous defenders, who have been assaulted, attacked and killed. In this connection, the Committee expresses particular concern at the recent killings of Mr. Vidal Vega, a campesino leader and witness in the Curuguaty case, and Mr. Benjamín Lezcano, secretary-general of the “Dr. Gaspar Rodríguez de Francia” campesino coordinating committee (arts. 6, 7, 9 and 14).

The State party should take immediate steps to provide effective protection for defenders whose safety is at risk because of their professional activities. It should also ensure that perpetrators are punished following prompt, impartial and comprehensive investigations into threats and attacks against human rights defenders and, as a priority, into the killings of Vidal Vega and Benjamín Lezcano.

26. The Committee takes note of the efforts by the State party to register all births, but regrets that a large proportion of children are still not registered, especially in rural areas and in indigenous communities (arts. 16, 24 and 27).

The State party should continue its efforts to ensure that all children born in its territory are registered and receive an official birth certificate. Accordingly, it should amend its legislation to allow teenage mothers to register their children without the need for a court order. It should also carry out campaigns to encourage the registration of all adults who have not yet been registered.

27. The Committee regrets the allegations that the National Institute for Indigenous Affairs (INDI) facilitated the sale of ancestral indigenous lands to private companies, in violation of the right of indigenous peoples to be consulted by the State party about decisions that affect their rights (arts. 2, 26 and 27).

The State party should strengthen the National Institute for Indigenous Affairs and ensure that its activities guarantee the full protection and promotion of the rights of indigenous communities, including the right to prior, informed consultation. At the same time, the State party should legally recognize the right to prior, informed consultation and should take due account of the decisions of indigenous peoples during the consultation process.

2. Peru, CCPR/C/PER/CO/5, 29 April 2013

7. While taking note of the measures adopted by the State Party to combat racial discrimination, the Committee, is concerned that indigenous peoples and Afro-descendants continue to be the victims of discrimination (arts. 2, 26 and 27).

The State party should strengthen its efforts to prevent and eradicate discrimination against indigenous and Afro-descendent persons by, inter alia, carrying out broad education and awareness-raising campaigns that promote tolerance and respect for diversity. The State party should ensure the effective implementation of the legal provisions that reflect the State party's obligations under the Covenant with

regard to the principle of non-discrimination. It should also take appropriate measures to ensure that such acts of discrimination are investigated, and that the victims receive reparation.

24. The Committee welcomes the adoption of the Law on the Right of Indigenous or Original Peoples to Prior Consultation (No. 29785). However, it remains uncertain about which indigenous communities will be entitled to be consulted. While noting that Law No. 29785 requires prior consent before indigenous peoples are transferred from their lands and before storage or handling of dangerous materials occurs, the Committee is concerned that legislation in force does not provide for free, prior and informed consent of indigenous communities concerning all measures which substantially compromise or interfere with their culturally significant economic activities (art. 27).

The State party should ensure that the existing legal framework providing for informed prior consultations with indigenous communities for decisions relating to projects that affect their rights is implemented in a manner compliant with article 27 of the Covenant, including by ensuring that all affected indigenous communities are involved in the relevant consultation processes and that their views are duly taken into account. The State party should also ensure that free, prior and informed consent of indigenous communities is obtained before adopting measures which substantially compromise or interfere with their culturally significant economic activities.

3. Belize, CCPR/C/BLZ/CO/1, 26 April 2013 (without report)

25. The Committee is concerned at reports regarding the refusal by the State party to comply with court orders following the decision of the Inter- American Human Rights Commission of 12 October 2004 and the decisions of the Supreme Court of Belize of 18 October 2007 and 28 June 2010 restraining the State party from issuing concessions for resource exploitation and parcelling for private leasing of Mayan land. The Committee regrets reports that the State party continues to grant concessions to companies involved in logging, oil drilling, seismic surveys and road infrastructure projects in Mayan territories thereby affecting the rights of the Mayan peoples to practice their culture on their traditional lands (arts. 14 and 27).

The State party should provide information on allegations that it has not been complying with decisions of the Supreme Court with regard to Mayan land. The State party should desist from issuing new concessions for logging, parcelling for private leasing, oil drilling, seismic surveys and road infrastructure projects in Mayan territories without the free, prior, and informed consent of the relevant Mayan community.

4. Finland, CCPR/C/FIN/CO/6, 22 August 2013

16. While noting that the State party has committed to ratifying the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and established a working group in August 2012 to strengthen the rights of the Sami to participate in decisions on the use of land and waters, the Committee remains concerned that the Sami people lack participation and decision-making powers over matters of fundamental importance to their culture and way of life, including rights to land and resources. The Committee also notes that there may be insufficient understanding or accommodation of the Sami lifestyle by public authorities and that there is a lack of legal clarity on the use of land in areas traditionally inhabited by the Sami people (arts. 1, 26 and 27).

The State party should advance the implementation of the rights of the Sami by strengthening the decision-making powers of Sami representative institutions, such as the Sami parliament. The State party should increase its efforts to revise its legislation to fully guarantee the rights of the Sami people in their traditional land, ensuring respect for the right of Sami communities to engage in free, prior and informed participation in policy and development processes that affect them. The State party should also take appropriate measures to facilitate, to the extent possible, education in their own language for all Sami children in the territory of the State party.

5. Indonesia, CCPR/C/IDN/CO/1, 21 August 2013

28. While noting that, unlike in other provinces in the State party, protesters in Papua are not required to obtain a permit from the police before holding demonstrations, the Committee remains concerned at undue restrictions of the freedom of assembly and expression by protesters in West Papua (arts. 19 and 21).

In line with the Committee's general comment No. 34, the State party should take the necessary steps to ensure that any restrictions to the freedom of expression comply fully with the strict requirements of article 19, paragraph 3, of the Covenant, as further clarified in general comment No. 34. The State party should ensure the enjoyment by all of the freedom of peaceful assembly and protect protesters from harassment, intimidation and violence. The State party should consistently investigate such cases and prosecute those responsible.

6. Bolivia, CCPR/C/BOL/CO/3, 6 December 2013

8. The Committee welcomes the gradually increasing involvement of women in political life. It nevertheless repeats its previous recommendation (CCPR/C/79/Add.74, para. 21) and notes with concern that the majority of women in political posts are alternates and that indigenous women continue to face obstacles in obtaining decision-making positions. The Committee also notes with particular concern the murder of two female town councillors in 2012 (arts. 2, 3, 25 and 26).

The State party should step up its efforts to eliminate gender stereotypes and conduct awareness-raising campaigns to that end. It should also adopt any temporary special measures necessary to continue to increase women's — and particularly indigenous women's — participation in public life at all levels of the State and their representation in decision-making positions in the private sector. The Committee encourages the State party to take practical steps on an urgent basis to issue implementing regulations for the new Act on Political Harassment and Violence against Women so as to ensure that the perpetrators of political harassment and murders of women are investigated, tried and punished in an appropriate manner and that victims are properly protected.

15. The Committee repeats its previous recommendation (CCPR/C/79/Add.74, para. 24) and takes note with concern of reports of excessive use of force by law enforcement officers during demonstrations, as occurred in Chaparina during the Seventh Indigenous March in 2011 and in Mallku Khota in 2012 (arts. 6, 7 and 9).

The State party should continue taking steps to prevent and put a stop to the excessive use of force by law enforcement officers, strengthen the human rights training that it provides and hold regular human rights courses, and ensure that officers comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The State party should also ensure that all complaints of excessive use of force are investigated promptly, effectively and impartially and that those responsible are brought to justice.

16. The Committee is concerned by the fact that there is no explicit prohibition of corporal punishment as a disciplinary measure in the home or in institutional settings. The Committee is also concerned that corporal punishment continues to be used as a punishment in the community-based justice system (arts. 7, 24 and 27).

The State party should take steps to put an end to corporal punishment in all domains. It should also encourage non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns in the native indigenous campesino and other jurisdictions in order to raise awareness among the general public of the prohibition and harmful effects of corporal punishment.

22. The Committee repeats its previous concluding observations (CCPR/C/79/Add.74, para. 19) and takes note with concern of the continuing reports of widespread political interference and corruption in the judicial system. The Committee is also concerned that the criteria used for the appointment of judges effectively exclude lawyers who have defended anyone convicted of offences against national unity. The Committee is also concerned at the long delays in the administration of justice, the poor geographical coverage of the judicial system and the limited number of public defenders. It is also concerned at the lack of information on

mechanisms for ensuring the compatibility of the native indigenous campesino justice system with the Covenant (art. 14).

The State party should redouble its efforts to provide legal and practical guarantees of judicial independence and pursue its efforts to establish, as a matter of urgency, a system of judicial appointments and judicial service based on objective, transparent criteria that do not conflict with the right to a defence, together with an independent disciplinary regime for the judiciary and the Public Prosecution Service. It should also step up its efforts to combat corruption, particularly in the police force and among officials responsible for the administration of justice, by undertaking prompt, thorough, independent and impartial investigations into all cases of corruption and imposing not only disciplinary sanctions but also criminal penalties on the persons found to be responsible. The State party should also develop, as a matter of priority, a national policy for reducing the backlog of court cases, increasing the number of courts and appointing more judges and public defenders, in particular in rural areas. The Committee urges the State party to set up the necessary mechanisms to ensure that the native indigenous campesino justice system is at all times compliant with due process and other guarantees established in the Covenant.

25. The Committee welcomes the preliminary framework bill on consultation mentioned in the State party's replies, but is concerned by information to the effect that, where extractive projects are concerned, the preliminary bill as yet provides only for consultation with the peoples affected, but not their free, prior and informed consent. The Committee is also concerned at reports of tensions in the Isiboro Securé National Park and Indigenous Territory caused by a road-building project that does not have the support of all the communities concerned (art. 27).

The State party should ensure that the preliminary framework bill on consultation complies with the principles set forth in article 27 of the Covenant and provides guarantees that indigenous communities' free, prior and informed consent will be sought when decisions are to be taken concerning projects that have a bearing on their rights and that, in particular, all the indigenous communities concerned will take part in the consultation process and that their views will be duly taken into account. The State party should also ensure that indigenous communities' free, prior and informed consent is obtained through representative institutions before any measures are adopted that would substantially jeopardize or interfere with culturally significant economic activities of those communities.

7. Nepal, CCPR/C/NPL/CO/2, 15 April 2014

Gender equality

8. While noting the steps taken by the State party to promote gender equality, the Committee expresses concern at the extremely low representation of women, particularly Dalit and indigenous women, in high-level decision-making positions. The Committee regrets the persistence of patriarchal attitudes and deep-rooted stereotypes that perpetrate discrimination against women in all spheres of life, and the prevalence of harmful traditional practices such as child marriage, the dowry system, son preference, witchcraft accusations and *chaupadi* (arts. 2, 3 and 26).

The State party should take all necessary measures to effectively implement and enforce the existing legal and policy frameworks on gender equality and non-discrimination, pursue its efforts to increase the representation of women in decision-making positions, and develop concrete strategies to eliminate gender stereotypes on the role of women, including through public awareness campaigns. It should also take appropriate measures to (a) explicitly prohibit all forms of harmful traditional practices in domestic law and ensure its effective implementation in practice; (b) conduct awareness-raising campaigns on the prohibition and negative effects of such practices, particularly in rural areas; and (c) encourage reporting of such offences, investigate complaints from victims and bring those responsible to justice.

8. United States of America, CCPR/C/USA/CO/4, 23 April 2014

3. The Committee notes with appreciation the many efforts undertaken by the State party and the progress made in protecting civil and political rights. The Committee welcomes in particular the following legislative and institutional steps taken by the State party: ... (d) Support for the United Nations Declaration on the Rights of Indigenous Peoples, announced by President Obama on 16 December 2010; ...

Rights of indigenous peoples

25. The Committee is concerned about the insufficient measures taken to protect the sacred areas of indigenous peoples against desecration, contamination and destruction as a result of urbanization, extractive industries, industrial development, tourism and toxic contamination. It is also concerned about the restriction of access of indigenous peoples to sacred areas that are essential for the preservation of their religious, cultural and spiritual practices, and the insufficiency of consultation with indigenous peoples on matters of interest to their communities (art. 27).

The State party should adopt measures to effectively protect sacred areas of indigenous peoples against desecration, contamination and destruction and ensure that consultations are held with the indigenous communities that might be adversely affected by the State party's development projects and exploitation of natural resources with a view to obtaining their free, prior and informed consent for proposed project activities.

9. Chile, CCPR/C/CHL/CO/6, 13 August 2014

4. The Committee welcomes the State party's ratification of, or accession to, the following international human rights instruments: ... (d) The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), on 15 September 2008....

Indigenous peoples

10. Although the Committee acknowledges the measures adopted by the State party, it remains concerned that indigenous peoples are not consulted when decisions regarding issues related to their rights are taken and that an effective mechanism for ensuring consultations with, and the participation of, indigenous peoples, in keeping with international standards, has yet to be established. The Committee is, furthermore, concerned by the delay in approving the constitutional amendment that would allow for the recognition of indigenous peoples and in adopting the bill on the establishment of a council of indigenous peoples, notwithstanding the issues raised in its previous concluding observations (CCPR/C/CHL/CO/5, para. 19). The Committee is also concerned that the land purchase mechanism for indigenous communities is still not sufficiently robust to guarantee indigenous peoples' right to their ancestral lands (arts. 1 and 27).

The Committee recommends that the State party should:

- (a) Speed up the process for amending the Constitution and include recognition of indigenous peoples;
- (b) Do everything in its power to establish a council of indigenous peoples in consultation with indigenous communities;
- (c) Establish an effective consultation mechanism, in line with the principles set forth in article 27 of the Covenant, with a view to obtaining indigenous communities' free, prior and informed consent to decisions about projects that affect their rights and in particular, ensure that their free, prior and informed consent is obtained before any measures that might jeopardize, or substantially hinder, their culturally significant economic activities are taken;
- (d) Intensify its efforts to guarantee the full enjoyment of the right of indigenous peoples to their ancestral lands.

10. Japan, CCPR/C/JPN/CO/6, 20 August 2014

Rights of indigenous peoples

26. While welcoming the recognition of the Ainu as an indigenous group, the Committee reiterates its concern regarding the lack of recognition of the Ryukyu and Okinawa, as well as of the rights of those groups to their traditional land and resources and the right of their children to be educated in their language (art. 27).

The State party should take further steps to revise its legislation and fully guarantee the rights of Ainu, Ryukyu and Okinawa communities to their traditional land and natural resources, ensuring respect for their right to engage in free, prior and informed participation in policies that affect them and facilitating, to the extent possible, education for their children in their own language.

B. Jurisprudence under Optional Protocol I

1. Paadar et al v. Finland, CCPR/C/110/D/2102/2011, 4 June 2014

1.1 The authors of the communication are Kalevi Paadar, Eero Paadar and his family (his wife Taimi Jetremoff and his three minor children Hannu, Marko and Petri Paadar), Veijo Paadar, and Kari Alatorvinen and his family (his wife Paula Alatorvinen, and his four children, Johanna, born on 13 December 1986; Jennika, born on 22 June 1988; Joonas, born on 21 March 1991; and Juuli Alatorvinen, born on 13 March 2001). All of them except Kari Alatorvinen are indigenous Sami. Mr. Alatorvinen's wife and children are also Sami. The authors allege a violation by Finland of article 14, paragraph 1; article 26; and article 27 read alone and in conjunction with article 1, of the Covenant. The authors are represented. The Optional Protocol entered into force for the State party on 23 March 1976.

1.2 On 23 September 2011, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State party to refrain from any further forced slaughtering of the authors' reindeer while their case was under consideration by the Committee. On 23 March 2012, the State party indicated that it had complied with that request.

The facts as submitted by the authors

2.1 The authors are full-time reindeer herders. They live in the village of Nellim and belong to the Ivalo Reindeer Herding Cooperative ("the Cooperative"), which is divided into two herding groups, one in the north around the village of Nellim and one in the south around the village of Ivalo. The Nellim herding group and Nellim village form a distinct Sami community within the broader area of the Cooperative. The Nellim herding group is made up almost exclusively of Sami and retains traditional methods of herding that are constitutive of the Sami culture. The four authors and their families are the only remaining families whose income is based primarily on reindeer herding. The remaining herders in the Nellim group own smaller numbers of reindeer and do not earn their primary income from herding.

2.2 Reindeer herding is made difficult in the Nellim area by the winter conditions and different pastures, as compared to those of the Ivalo group. In addition to dissimilarities with regard to pastures, predators and snow conditions, the reindeer husbandry of the two groups differs in that the authors' reindeer herding is based solely on the utilization of natural pastures. Whereas the Ivalo group provides its reindeer with significant amounts of feed, the authors give hay to their reindeer in winter only to guide them, and to make them move to pastures of lichen and stay there. Reindeer feeding is not a part of Sami herding, which is based on free pasturage.

2.3 The Cooperative is a public law entity. It is not a private association established freely by its members; nor is it a traditional and voluntary reindeer herding unit established by the indigenous Sami people who used to herd reindeer in natural communities, such as a family or a village. The cooperative system was imposed through legislation in the 1930s and is currently regulated by the Reindeer Husbandry Act ("the Act"), which came into force in 1990.

2.4 The majority of the Cooperative's herders belong to the Ivalo group. The Nellim group has fewer reindeer and is in the minority as far as decision-making is concerned. The Nellim group has unsuccessfully tried to separate itself from the Cooperative to form its own. According to the authors, disagreements within the Cooperative are the result of State interference in Sami reindeer herding via the creation of artificially large units to administer reindeer herding, instead of leaving it to the Sami themselves to determine the kind of natural communities that are the most suitable for their herding. Traditional Sami reindeer husbandry is based on small herding groups comprised of natural communities that have their own traditional pastures.

2.5 Under section 21 of the Act, the Ministry of Agriculture and Forestry determines, for periods of 10 years at a time, the maximum number of live reindeer that a cooperative may keep on its territory and the maximum number of such reindeer that a shareholder of a cooperative may own. When determining the maximum number of live reindeer that a cooperative may keep, the Ministry must ensure that the number of reindeer

grazing on the cooperative's territory during the winter season does not exceed the sustainable production capacity of the cooperative's winter pasture.

2.6 Under section 22 (1) of the Act, if the number of live reindeer of a cooperative or a reindeer owner exceeds the maximum number referred to in section 21, the cooperative must, in the course of the following herding year, decide on reducing the number of reindeer to the maximum allowable number. Under section 22 (2), on special grounds, a cooperative may decide that the number of reindeer belonging to a shareholder will not be reduced, in which case equivalent reductions will be carried out among the other owners in proportion to their number of reindeer. According to section 22 (3), if it becomes clear that reindeer numbers in the following herding year would exceed the maximum allowable number, the cooperative may decide that the number of reindeer must be reduced during the current herding year. The cooperative's decision can be enforced immediately, unless the Administrative Court decides otherwise as a result of a claim. According to section 22 (4), if the owner does not reduce the number of his or her reindeer in accordance with the decision of the cooperative, the chair of the cooperative may decide that the cooperative will carry out the reduction on behalf of the owner.

2.7 At the time of the facts, the highest allowable number of reindeer for the Ivalo cooperative was 6,000. The authors contend that this number had not been exceeded during the four years before 2011. In fact, the number had only been exceeded once during the past decade (in 2004/05).

2.8 According to the authors, for several years the Cooperative's slaughtering plans have been formulated in a way that, in practice, has led to the number of the authors' reindeer decreasing dramatically, much more so than for the Ivalo group. The reason for this is the model used by the Cooperative for reducing reindeer numbers. The model fails to take into account the fact that — in contrast with the practices of the Ivalo herding group — the nature-based herding methods of the Nellim group, which rely on free grazing in natural pastures, amount to an inbuilt control mechanism for the size of the herd. Calf losses are an integral part of traditional Sami herding methods.

2.9 Every year, a large proportion of the newborn calves belonging to the Nellim group disappear in the forest, owing to a range of different natural conditions and, in particular, their exposure to predators. At the time of the round-ups, which take place from October to January, between 30 and 50 per cent of the calves that have been born in spring go missing. In comparison, the calf losses of the Ivalo group are much smaller, because their reindeer are kept closer to human settlements, which reduces their exposure to predators. Furthermore, the herding area of the Nellim group is located in a wide and remote border area on Finnish, Norwegian and Russian territory. According to recent scientific studies, there is a dense population of bears in this area, which is the main reason for the heavy annual calf losses. Current legislation¹ forbids the killing or disturbing of bears and eagles, either entirely, or during the spring and summer, which is when most of the calf losses occur. The only lawful means of combating heavy calf losses would be to stop traditional free grazing on natural pastures and to introduce artificial extra feeding, which would not be economically feasible in Nellim and would amount to a forced change to traditional herding practices.

2.10 The imbalance in predation pressure is not taken into account when the slaughtering plan is decided upon by a majority in the Cooperative. The plan lays down a slaughtering percentage (usually 70 per cent or more), which is based on the number of adult reindeer that the owners had at the end of the previous herding year in May. As a result, the number of animals to be slaughtered is determined without taking into account the losses that have occurred in the intervening months. Even if around 90 per cent of the female adult reindeer have given birth to a calf, up to 50 per cent of the calves are no longer alive at the time of the round-up. In calculating the number of reindeer to be slaughtered, the newborn calves are not taken into account, but they can nevertheless be used to fulfil the slaughter obligation. The Nellim herders, unlike the Ivalo group in the Cooperative, do not have enough calves to fulfil their slaughter quota. As a result, they are forced to kill their adult female reindeer, which they need as a productive base for their herding economy.²

2.11 In 2005, one of the authors, Kalevi Paadar, complained to Rovaniemi Administrative Court about the Cooperative's decision to decrease the number of reindeer in a way that would threaten his occupation and lifestyle as a Sami reindeer herder. His complaint was dismissed on 13 December 2005, as the Court

considered the Cooperative's decision to be legally valid. Kalevi Paadar appealed the dismissal to the Supreme Administrative Court, which, on 10 April 2007, upheld the judgement of the Rovaniemi court.

2.12 In its spring meeting on 31 May 2007, the Cooperative approved the slaughter plan for the 2007/08 herding year. The plan imposed slaughter obligations on all shareholders in the same percentage, on the basis of the number of live reindeer held in the previous herding year. The reindeer not slaughtered in the 2006/07 herding year (the so-called backlog reindeer) were to be slaughtered first.

2.13 At its autumn meeting on 7 October 2007, the Cooperative decided, with regard to the backlog reindeer, that it would carry out the reductions on behalf of the owners. For the authors, this meant that all of their animals taken to the round-up would be slaughtered until the Cooperative's decisions on reducing reindeer numbers that had been taken in the previous years had been implemented. In addition, the authors were requested to slaughter a share corresponding to the current year's slaughter percentage. According to the authors, the total slaughter numbers demanded by the Cooperative exceeded the number of adult reindeer that they had at the end of the previous herding year. Even counting the likely number of calves (equivalent to 50 or 60 per cent of the number of adult female reindeer), the slaughter demands exceeded the total number of reindeer that the authors estimated they would have at the time of the round-ups.³ Almost no animals would be left, and the authors would no longer be able to pursue reindeer husbandry since, according to the law, herders cannot buy new reindeer and continue herding once they have lost all their reindeer.

2.14 The Nellim case is not unique in the Sami areas of Lapland. There are other similar disputes between cooperatives and Sami groups belonging to them with regard to numbers of reindeer to be slaughtered. However, most of the Sami cooperatives in the State party apply slaughter systems that differ from the one used in Ivalo by the way in which they take calf loss into consideration. In those systems, different slaughter percentages apply to adult reindeer and to calves, and heavy calf loss is not punished by the additional killing of adult reindeer as it is under the Ivalo model. The fundamental problem with the Ivalo model is that the reindeer reduction is not carried out in proportion to the actual number of live reindeer found in the round-ups, but in proportion to a number which is severely distorted at the time of slaughter. The other models enable the owner to retain his or her proportionate share of the cooperative's total number of reindeer, regardless of the high number of missing calves.

2.15 The authors filed a complaint against the Cooperative's decision of 7 October 2007, with Rovaniemi Administrative Court, and requested interim protection measures. They claimed that setting the slaughter plan in the same way for all of the Cooperative's shareholders prevented the Sami from practising their livelihood and their culture and was therefore discriminatory against them. On 11 October 2007, the Court ordered the slaughter to be halted. By then, the Cooperative had already slaughtered part of the authors' herd. On 19 October 2007, the Administrative Court dismissed the case without examining the merits. The judgement made no reference to the authors' Sami origin or to the Covenant. On the same date, the authors filed an urgent request for interim measures with the Supreme Administrative Court, mentioning in their application that the slaughtering would continue the next day, which was a Saturday. As there was nobody who could look at the appeal during the weekend, the slaughter continued on 20 October 2007. However, on 23 October 2007, the Supreme Administrative Court ordered it to stop.

2.16 On 4 April 2008, the Supreme Administrative Court reversed the judgement of Rovaniemi Administrative Court and returned the case to it for retrial. In its judgement of 15 August 2008, Rovaniemi Administrative Court rejected the authors' claims. It considered that the shareholders were to be treated equally regardless of their ethnic background. Therefore, the Cooperative's decision of 7 October 2007 could not be considered discriminatory against the Sami people in the light of the Constitution and the international treaties binding upon the State party.

2.17 In September 2008, the authors appealed to the Supreme Administrative Court, arguing that implementation of the Cooperative's decision of 7 October 2007 would mean the end of their reindeer husbandry, as the forced slaughter would include their so-called capital reindeer, that is to say, the female reindeer. It would also mean the disappearance of the Nellim herd as an independent unit, as there would not be a sufficient number of herders or of reindeer left. The livelihood of the Sami in Nellim would therefore

come to an end. These claims, uncontested by the Cooperative, were made with reference to, inter alia, article 27 of the Covenant.

2.18 The Court requested a statement from the Government concerning the implementation of section 22 of the Act and matters related to the position of the Sami as indigenous people. Statements were received from the Ministry of Agriculture and Forestry, the Ministry for Foreign Affairs, the Ministry of Justice, the Finnish Game and Fisheries Research Institute and the Reindeer Herders' Association.

2.19 On 2 February 2011, the Supreme Administrative Court upheld the judgement of Rovaniemi Administrative Court. The Court found that the effects of the Cooperative's decision "on the manner of implementation of reindeer slaughter for specific years are not such that they would constitute an infringement of operational conditions for livelihood and culture, even if the potential differences in the approaches to reindeer herding are taken into account. Further, in the matter, on the one hand general equality needs to be considered, i.e. equality among all reindeer owners, and on the other hand, the realization of equality among the Sami reindeer owners, in particular taking into account the premises for reindeer herding carried out in the traditional manner. In this respect, it has not been shown, taking into account the perspectives presented by both sides, that the reindeer herding cooperative would have superseded requirements concerning equality in deciding, inter alia, on the method of slaughter of the appellants' so-called backlog reindeer. On the above-mentioned grounds, the decision of the Ivalo Reindeer Herding Cooperative dated 7 October 2007 on the method of implementation for reduction of the number of reindeer is not contrary to ... the Constitution of Finland or basic rights and liberties and human rights".

2.20 The Court's judgement is final and cannot be appealed against. Domestic remedies have therefore been exhausted. On 18 September 2011, the board of the Cooperative decided that the authors must slaughter all of their reindeer starting on 26 September 2011.

2.21 The authors add that, in recent years, two issues have caused tension between them and the other members of the Cooperative. One concerns the way that pastures have been divided between the two herding groups by a fence, leading to difficulties for the Nellim group in carrying out traditional Sami reindeer herding and arguably being one reason for the group's higher calf losses. The fence makes it impossible for the Nellim herd to move along their natural migration routes and return to their winter grazing grounds once summer is over. The fact that the Ivalo herding group has a majority vote in the Cooperative keeps the fence closed at that time of the year. The other issue concerns the forestry operations of the Finnish Forest Service. Traditional Sami reindeer herding depends on the natural forest and is adversely affected by forestry, which is why the Nellim group is opposed to logging and other forestry measures in its area. The Ivalo group is the only herding group within the Sami Homeland in Finland that practises extensive reindeer feeding and herds reindeer using non-Sami methods. As a result, this herding group is less vulnerable to forestry activities. The Ivalo group and, hence, the Ivalo cooperative, has been actively against actions by the Nellim group and other Sami herding cooperatives aimed at bringing about a reduction in forestry operations by the Forest Service.

2.22 In 2010, a lawsuit initiated by the Paadars against the Forest Service resulted in a settlement between the two parties whereby most of the remaining forests around Nellim were saved for the purpose of reindeer herding. However, if the Paadars lose their reindeer, the agreement will become void, since, under the terms of the agreement, the forests are exempt from forestry operations only so long as the Paadars or their relatives are reindeer herders.

The complaint

3.1 The authors allege that the State party violated article 14, paragraph 1, of the Covenant when the Supreme Administrative Court rejected the appeal without weighing the legal claims, arguments and facts of the case. Furthermore, by requesting a statement from the Government, the Court subordinated itself to the Executive, thus violating the authors' right to a fair trial.

3.2 The forced slaughtering of their reindeer entails violations of the authors' rights under article 27 of the Covenant to enjoy their own indigenous culture in community with other Sami. The authors and their families cannot continue their way of life after the slaughtering, because the families will no longer have any reindeer

left. This will mean the end of the authors' and their families' Sami livelihood. When taking decisions, the Cooperative is obliged to take into consideration the preservation of the Sami culture, in accordance with section 17, subsection 3, of the Finnish Constitution, and article 27 of the Covenant.

3.3 The decision of the Ivalo Reindeer Herding Cooperative, a public law entity, to slaughter the authors' reindeer is discriminatory both in its purpose and its effects, in violation of article 26 of the Covenant. The authors have been targeted for disproportionate slaughtering of their reindeer because of their Sami way of herding, their Sami ethnicity and their fight against further logging by the Forestry Service on their traditional lands. Even if the discriminatory intent cannot be demonstrated through evidence admissible in court, the effect of the slaughtering would be discriminatory as it affects exclusively those members of the Cooperative who belong to the Sami indigenous people and use the traditional and culturally constitutive Sami herding methods.

3.4 The threat faced by the authors of having their reindeer slaughtered on account of a Reindeer Husbandry Act that does not recognize traditional Sami reindeer herding is the result of a lack of recognition of Sami land rights by the State party. In this respect, the authors recall the concluding observations on the fifth periodic report of Finland, in which the Committee indicated that "the State party should, in conjunction with the Sami people, swiftly take decisive action to arrive at an appropriate solution to the land dispute with due regard for the need to preserve the Sami identity in accordance with article 27 of the Covenant" (CCPR/CO/82/FIN, para. 17). The authors also refer to the report of the Special Rapporteur on the rights of indigenous peoples, in which it is indicated that "Finland should step up its effort to clarify and legally protect Sami rights to land and resources. In particular, Finland should ensure special protections for Sami reindeer husbandry, given the centrality of this means of livelihood to the culture and heritage of the Sami people" (A/HRC/18/35/Add.2, para. 84).

3.5 The authors add that the Anar Sami language is under acute threat, as there are only 300 people who speak it. The survival of the language depends on communities in which the language is used in collective practices. Nellim is one of the most important villages for the language, and the reindeer husbandry of the Nellim herding group is an essential collective practice for Anar Sami language speakers. If the planned slaughters are carried out, the Nellim herding group and reindeer herding as a traditional Sami livelihood in Nellim village will cease to exist, as the village depends on reindeer husbandry and small scale tourism for its survival. Accordingly, the future of the group and of the village as a whole — and therefore of the Anar Sami language — is under threat.

[...]

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not the case is admissible under the Optional Protocol to the Covenant.

6.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee observes that the State party has expressed no objections regarding admissibility and that domestic remedies have been exhausted. As all admissibility criteria have been met, the Committee declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the authors' claim that their right to a fair trial under article 14, paragraph 1, of the Covenant has been violated because the Supreme Administrative Court rejected their appeal without weighing

their legal claims, arguments and facts, and that by requesting a statement from the Government, the Court subordinated itself to the Executive. The Committee considers that the materials made available to it do not suggest that the courts acted arbitrarily in evaluating the facts and evidence in the authors' case or that the proceedings were flawed and amounted to a denial of justice. The Committee therefore does not find that the facts complained of constitute a violation of the authors' rights under article 14, paragraph 1, of the Covenant.

7.3 The authors claim to be victims of violations of articles 26 and 27 of the Covenant, in that the decisions on the forced slaughter of their reindeer taken in 2007 by the Ivalo Reindeer Herding Cooperative, in application of section 22 of the Reindeer Husbandry Act, had discriminatory effects on them. When deciding on the number of reindeer to be slaughtered in order to comply with the maximum permitted number of reindeer for the Cooperative and for each shareholder, the Cooperative did not take into consideration the authors' traditional Sami methods of herding or the fact that such methods involve the loss of greater numbers of calves. As a result, the reduction percentage imposed by the Cooperative on all stakeholders on the basis of their reindeer numbers at the beginning of the herding year had a negative impact on the authors, because at the time of slaughtering in autumn, their herds had been subjected to heavier losses than those of the other stakeholders, caused by predators.

7.4 The State party indicates that, according to the judgement of the Supreme Administrative Court, the Cooperative has Sami members who have fulfilled their slaughtering obligations. It thus appears that the present case does not concern unequal treatment between Sami and non-Sami herders, but rather differences between members of the Cooperative. The judgement shows that there are very different opinions concerning reindeer herding methods.

7.5 For the Committee, it is undisputed that the authors are members of a minority within the meaning of article 27 of the Covenant and, as such, have the right to enjoy their own culture. It is also undisputed that reindeer husbandry is an essential element of their culture. In this context, the Committee recalls its previous jurisprudence that economic activities may come within the ambit of article 27 if they are an essential element of the culture of an ethnic community. The Committee also recalls that, under article 27, members of minorities shall not be denied the right to enjoy their culture and that measures whose impact amounts to a denial of that right will not be compatible with the obligations under article 27.⁸

7.6 The Committee recalls paragraph 6.2 of general comment No. 23 (1994), which states:

Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture ... in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2 (1) and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.

7.7 In the present case, the authors claim that their calf losses are higher than those of the Ivalo group. However, the materials submitted to the Committee do not contain figures in that respect. The authors provide some figures on their reindeer numbers and the reduction imposed by the Cooperative with respect to 2010/11 but not with respect to 2007/08 and earlier years. It is also unclear what the progression was of the reductions

⁸ Communication No. 511/1992, *Ilmari Länsman et al. v. Finland*, Views adopted on 26 October 1994, paras. 9.2 and 9.4; communication No. 671/1995, *Jouni E. Länsman et al. v. Finland*, Views adopted on 30 October 1996, para. 10.2; and communication No. 1023/2001, *Jouni Länsman et al. v. Finland*, Views adopted on 17 March 2005, para. 10.1.

imposed on their herds prior to 2007, how this compared to the reductions imposed on the other members of the Cooperative, and how, in concrete terms, they have come to a situation where all their reindeer have to be slaughtered. In the absence of information in that respect, the Committee is not in a position to conclude, given the limited evidence before it, that the impact of the Ivalo cooperative's reindeer reduction methods upon the authors was such as to amount to a denial of the authors' rights under articles 26 and 27. Despite this conclusion, the Committee deems it important to recall that the State party must bear in mind, when taking steps affecting rights under article 27, that although different activities in themselves may not constitute a violation of this article, such activities, taken together, may erode the rights of Sami people to enjoy their own culture.⁵

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it do not reveal a breach of articles 26 or 27 of the Covenant.

Individual opinion of Committee members Walter Kälin, Víctor Manuel Rodríguez Rescia, Anja Seibert-Fohr and Yuval Shany (dissenting)

We are unable to agree with the view rendered by the Committee that the facts before it do not reveal a breach of article 27 of the Covenant. We regret that the decision of the majority fails to sufficiently take into account the facts of the case. According to undisputed facts submitted by the authors, the board of the Ivalo Reindeer Herding Cooperative decided that the authors — members of the Nellim herding group — must slaughter all of their reindeer starting on 26 September 2011. The decision to slaughter the authors' reindeer results from the cooperative system established by the State under the Reindeer Husbandry Act of 1990.

Pursuant to section 21 (1) of that Act, the Ministry of Agriculture and Forestry determines the maximum number of live reindeer that a reindeer herding cooperative may keep in its territory. Under section 22 (1) of the Act, if the number of live reindeer of a cooperative or a reindeer owner exceeds a maximum number, the cooperative must decide on the reduction of the number of reindeer to the maximum allowable number. If the owner does not reduce the number of his or her reindeer in accordance with the decision of the cooperative, the chair of the cooperative may decide that the cooperative will carry out the reduction on behalf of the owner. In the present case, the authors' complaint against the Cooperative's decision to carry out the reduction on behalf of the owner on the basis of the slaughter plan adopted by the Cooperative for the 2007/08 herding year was dismissed by Rovaniemi Administrative Court and the Supreme Administrative Court. As a result, the authors now face the slaughter of all of their reindeer.

Reindeer husbandry is an essential element of the authors' culture and is thus protected by article 27 of the Covenant, pursuant to which persons belonging to ethnic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture. The Committee's approach in the past has been to inquire whether interference by the State party in that husbandry is so substantial that the State party has failed to properly protect the authors' right to enjoy their culture.⁹

In the present case, the slaughter of all their reindeer constitutes a particularly grave interference with the authors' rights under the Covenant, since it would deprive them of their livelihood which is essential for their ability to continue to enjoy their traditional culture. We recognize that this interference does not result from a direct order by an organ of the State party to slaughter their herds but is a consequence of the decision taken by the Ivalo Reindeer Herding Cooperative. However, under article 27 of the Covenant, a State party is not only under an obligation to refrain from taking measures that amount to a denial of the right of members of a minority to enjoy their culture but is also obliged to take positive measures of protection "against the acts of other persons within the State party"¹⁰.

In this regard, we accept that it is reasonable and consistent with article 27 of the Covenant to allow herding cooperatives to impose slaughtering quotas on its members in order to achieve the purposes of the Reindeer Husbandry Act to restrict the number of reindeer for economic and ecological reasons and to secure the preservation and well-being of the Sami minority.¹¹ However, in cases of an apparent conflict between the legislation, which seems to protect the rights of the minority as a whole, and its application to a single member

⁹ Communication No. 779/1997, *Äärelä and Näkkäljärvi v. Finland*, Views adopted on 24 October 2001, para. 7.5.

¹⁰ General comment No. 23 (1994), para. 6.1.

¹¹ See communication No. 197/1985, *Kitok v. Sweden*, Views adopted on 27 July 1988, para. 9.5.

of that minority, the Committee has been guided by the consideration that restrictions upon the right of individual members of a minority must be shown not only to have a reasonable and objective justification in the particular circumstances of the case but also to be necessary for the continued viability and welfare of the minority as a whole.¹² The State party has not shown that slaughtering all of the authors' animals was necessary in order to achieve this goal, nor does the material in front of the Committee allow us to conclude that in the present case the objective of restricting the number of reindeer could not have been achieved otherwise, and that attaining this objective justifies the decision to slaughter all of the authors' reindeer despite its substantial impact on the right of the authors to enjoy their culture. For these reasons, we conclude that the Committee should have found the State party to be in violation of its obligations under article 27 of the Covenant.

¹² Ibid., para. 9.8; and communication No. 24/1977, *Lovelace v. Canada*, Views adopted on 30 July 1981, para. 16.

III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Concluding Observations

1. Denmark, E/C.12/DNK/CO/5, 6 June 2013,

14. The Committee is concerned that corporal punishment of children is not explicitly prohibited in Greenland regarding the home and other care settings (art. 10).

The Committee recommends that the State party take steps to ensure that corporal punishment is prohibited in all settings in Greenland.

16. The Committee is concerned that certain segments of the population are at an increased risk of living in poverty, in particular single parent families, families living on State welfare as well as immigrant families (art. 11).

The Committee recommends that the State party take steps to introduce a national poverty line, and introduce measures to guarantee targeted support to all those living in poverty, in particular single parent families, families living on State welfare as well as immigrant families. It also recommends that targeted measures be taken, in addition to the existing measures promoting poverty alleviation through education, to address poverty in remote settlements and villages in Greenland. In this regard, the Committee draws the attention of the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001.

21. The Committee is concerned that the State party has not applied the principle of cultural self-identification in relation to the recognition of the Thule Tribe of Greenland as a distinct indigenous community (art. 15).

The Committee recommends that the State party take steps to recognize the Thule Tribe of Greenland as a distinct indigenous community capable of vindicating its traditional rights, including, to maintain its cultural identity and use its own language.

2. Japan, E/C.12/JPN/CO/3, 10 June 2013

6. The Committee notes with appreciation the State party's efforts to promote the implementation of economic, social and cultural rights, which have included: ... (a) The recognition of the Ainu as an indigenous people....

30. The Committee remains concerned that, in spite of the recognition of Ainu people as indigenous people and other progress achieved, Ainu people remain disadvantaged in the enjoyment of economic, social and cultural rights. The Committee is particularly concerned that the Ainu language may be at risk of disappearance (arts. 15 and 2(2)).

The Committee recommends that the State party step up efforts to improve the standard of living of Ainu people and implement additional special measures, in particular in the field of employment and education.

The Committee recommends that these measures be also extended to Ainu persons residing outside the prefecture of Hokkaido. The Committee requests the State party to include in its next periodic report information on the results of measures taken to preserve and promote the Ainu language.

3. Rwanda, E/C.12/RWA/CO/2-4, 10 June 2013

8. The Committee is concerned about the persistence of stereotypes against the "Batwa" population and the discrimination they continue to face preventing them from fully enjoying the rights enshrined in the Covenant, in particular, access to the labour market, adequate housing, education, health-care services and other social services, notwithstanding the anti-discrimination legislation and other measures adopted by the State party.

The Committee recommends that the State party firmly combat stereotypes, stigma and discrimination against and marginalization of Batwa, including by ensuring the effective application of its anti-discrimination legislation. The Committee also recommends that the State party adopt temporary special measures, in order to enable the Batwa to fully enjoy the rights under the Covenant in line with the recommendations of the Special Rapporteur on adequate housing. The Committee draws the State party's

attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

12. The Committee is concerned about the high rate of unemployment which particularly affects women, people living in rural areas and marginalized and disadvantaged groups and peoples, including Batwa and the youth. ...

The Committee recommends that the State party take steps to reduce the rate of unemployment and to reinforce targeted plans and programmes designed to combat unemployment of women, young persons, marginalized and disadvantaged persons and groups as well as persons living in rural areas, in order to achieve concrete results. ...

22. The Committee is concerned at the high rate of poverty in the State party despite measures taken and despite the high economic growth rate, which particularly affects women including those heading households, child-headed households, persons living in rural areas and working in agriculture. The Committee is also concerned at poverty and the inadequate living conditions of marginalized and disadvantaged persons and groups such as Batwa community, asylum seekers and refugees and domestic workers, which prevent them from effectively enjoying their economic, social and cultural rights.

The Committee is further concerned at the higher level of poverty in some rural areas (art. 11).

In line with the Committee's statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VI), the Committee recommends that the State party effectively implement and reinforce measures taken to combat poverty and reduce inequalities that exist between different regions, including by facilitating income generating activities. The Committee also recommends that the State party regularly review its plans and strategies in order to evaluate its weaknesses. It requests the State party to include in its next periodic report comparative data, disaggregated by sex, age and rural/urban populations, on the number of persons living in poverty and on progress made in combating poverty.

23. The Committee is concerned at the housing situation of disadvantaged and marginalized groups and persons both in the surroundings of Kigali and in rural areas. It is also concerned that the State party has not yet adopted legislation on rent control and has not provided information on homelessness. The Committee is further concerned that in the context of governmental housing programmes, such as the "Bye Bye Nyakatsi programme" and the Kigali Master Plan and the villagization policy, displaced persons face worse living conditions than they had in their previous settlements. Moreover, the Committee is concerned that some Batwa people displaced in the context of such programmes continue to live in sub-standard conditions (art. 11).

The Committee recommends that the State party adopt legislation on rent control and strengthen its measures to improve access to adequate housing for all, in particular for disadvantaged and marginalized persons and groups, in particular the Batwa community. The Committee also recommends that the State party conduct inclusive consultation before any displacement of the population and ensure relocation in adequate settlements with conditions comparable to those they previously enjoyed. It requests that the State party include in its next periodic report comparative data on the implementation of the right to housing and the progress made, disaggregated by sex, age and rural/urban populations. The Committee also requests disaggregated information on homelessness in its next periodic report. It draws the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing.

25. The Committee is concerned that access to health-care services is not yet effectively ensured to all, including refugees, asylum seekers, disadvantaged and marginalized individuals as well as to the Batwa community (art. 12).

The Committee recommends that the State party pursue its efforts to ensure access to health-care services to all its population without distinction.

27. The Committee is concerned at the high rate of dropouts among children belonging to disadvantaged and marginalized families, in particular to Batwa families. The Committee is further concerned at the low salaries paid to teachers. Moreover, the Committee is concerned at the lack of information relating to human rights education in school curricula (art. 13).

The Committee recommends that the State party strengthen measures aimed at reducing the dropout rates of children belonging to marginalized and disadvantaged families, in particular the Batwa families, in primary and secondary schools. ...

4. Gabon, E/C.12/GAB/CO/1, 27 December 2013

6. The Committee regrets the absence of any specific regulatory or legislative framework that would make it possible to systematize practice in implementing the right to prior informed consultation of indigenous peoples in decision-making processes concerning the exploitation of natural resources in traditional territories (art. 1).

The Committee recommends that the State party ensure the effective and systematic application of the principle of prior consultation in discussions with indigenous peoples, providing the time and space necessary for reflection and decision-making, and allowing free expression, as well as respecting their consent to the realization of a project.

5. Norway, E/C.12/NOR/CO/5, 13 December 2013

17. The Committee is also concerned about difficulties in access to health-care services by the Sami people, members of minority communities, and non-citizens, due to insufficient professional interpretation services in the health sector (art. 12).

The Committee recommends that the State party strengthen its efforts to improve the availability of professional interpreters specifically for the health sector, so as to ensure accessibility to public health-care services by the Sami people, members of minority communities and non-citizens. It also recommends that the State party take measures to ensure that only qualified interpreters are used in the health sector.

26. The Committee is concerned that the State party's measures for the preservation and promotion of Sami culture do not sufficiently guarantee the right of the Sami people to enjoy their traditional means of livelihood (art. 15).

The Committee recommends that the State party take steps to preserve and promote the traditional means of livelihood of the Sami people, such as reindeer-grazing and fishing.

6. El Salvador, E/C.12/SLV/CO/3-5, 19 June 2014

5. The Committee welcomes the start of the procedure to incorporate the right to water and the right to food, and recognition of the indigenous peoples, in the Constitution. ...

Right of self-determination

7. The Committee welcomes the Legislative Assembly's adoption, in April 2012, of a constitutional amendment giving legal recognition to the indigenous peoples, although it has not yet been ratified. The Committee is concerned that the number of indigenous persons in the State party is not known and that the latest censuses give imprecise figures that are based on inappropriate questions (arts. 1 and 2).

The Committee urges the State party to reinforce its action to guarantee the effective enjoyment of economic, social and cultural rights by the indigenous peoples. The Committee recommends that parliament complete the process of ratification of the amendment to the Constitution giving legal and political recognition to the indigenous peoples. It also urges the State party to conduct an updated census of the indigenous population.

19. The Committee notes that, although the national poverty index has gone down, the percentage of the population living in poverty remains high and the disparity between poverty levels in rural and urban areas is still alarming. The Committee repeats its concern at the highly unequal distribution of wealth in the State party (E/C.12/SLV/CO/2, paras. 17 and 35) (art. 11).

The Committee recommends that, in its anti-poverty programmes, the State party devote due attention to the differentials and shortfalls between urban and rural areas. The Committee recommends that the State party continue to strive to fulfil its commitments with respect to the Millennium Development Goals. It also recommends that the State party step up its measures to combat poverty and extreme poverty among the indigenous communities and monitor progress in this regard by, inter alia, compiling disaggregated statistical data.

25. Notwithstanding the State party's efforts, the Committee is concerned at the high dropout rates in primary education, particularly among girls in rural areas. In addition, despite the progress made, the

Committee notes with concern the high illiteracy rate, primarily in rural areas and among the indigenous communities, in particular among girls and women (arts. 13 and 14).

The Committee recommends that the State party pursue its literacy plan, redoubling its efforts in rural areas and among the indigenous communities. It encourages the State party to develop special programmes to prevent children dropping out of school and to deal with the root causes.

Bilingual intercultural education

26. The Committee notes with concern that the indigenous communities do not always enjoy the right to education in an indigenous language. The Committee is also concerned at the restrictions on access to and retention in secondary and higher education, particularly among indigenous adolescents and young people (arts. 13 and 14).

The Committee recommends that the State party adopt effective measures to guarantee the indigenous peoples access to intercultural education in their own languages, and that it ensure that it meets the specific needs of those peoples. The Committee urges the State party to take urgent steps to preserve the indigenous languages and encourage their use.

Right to land and natural resources

27. The Committee is concerned that the State party has no legal mechanism for recognizing the right of the indigenous peoples as such to acquire collective title to land. It is also concerned that there is no systematic procedure for effective consultation and obtaining the indigenous peoples' free, prior and informed consent in decisions concerning the exploitation of natural resources in their ancestral lands. The Committee is particularly concerned that ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries has still not been ratified (arts. 1, 2 and 15).

The Committee recommends that the State party create mechanisms for recognizing the indigenous peoples' rights to their ancestral lands and natural resources. The Committee also urges the State party to engage in consultations regarding mining and hydrocarbon resource exploration and development that allow the peoples concerned to give their free consent. It also recommends that the State party expedite its accession to ILO Convention No. 169, and encourages the State party to step up its efforts to promote and apply the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

7. Indonesia, E/C.12/IDN/CO/1, 19 June 2014

Economic, social and cultural rights in remote areas

12. Acknowledging the challenges posed by the geographical configuration of the State party, the Committee is concerned that the minimum essential levels of economic, social and cultural rights are not guaranteed in remote islands and areas in Papua and other parts of the country, primarily due to unavailability and poor quality of public services, including in education and health. Furthermore, the Committee expresses concern at the lack of access to remedies for violations of human rights and at the lack of comprehensive knowledge of the human rights situation in those areas (art. 2.2).

Recalling that the exercise of Covenant rights should not be conditional on, or determined by, the place of residence, and referring to Law No. 25/2009 on Public Service, the Committee calls on the State party to adopt a human rights-based approach in the implementation of the National Medium-Term Development Plan (RPJMN) for 2015-2019 and to:

- (a) Accelerate the delivery of quality public services in remote islands and areas in Papua and other parts of the country, by allocating the necessary human and financial resources, by monitoring that they reach the intended beneficiaries, and by clearly defining the responsibilities of the various levels of Government;
- (b) Ensure that judicial remedies and non-judicial institutions, such as the State party's national human rights institutions, are accessible in those areas;
- (c) Undertake to collect information on the situation of economic, social and cultural rights of ethnic groups in highlands, remote and border islands and areas, in collaboration with the national human rights institutions and civil society organizations.

The Committee refers to the State party to its statement on poverty and the Covenant, adopted on 4 May 2001 (E/2002/22-E/C.12/2001/17, annex vii).

Mining and plantations sectors

27. The Committee expresses concern at violations of human rights in the mining and plantations sectors, including the right to livelihood, the right to food, the right to water, labour rights and cultural rights. It is also concerned that the free, prior and informed consent of affected communities is not always sought in these projects, including under Law 25/2007 on Investment. Moreover, even in cases where consultations of affected communities have taken place, their informed decisions have not been guaranteed.

28. The Committee is concerned at the lack of an adequate monitoring of the human rights and environmental impact of extractive projects during their implementation. In many cases, affected communities have not been afforded effective remedies and have, along with human rights defenders working on these cases, been subject to violence and persecution. Furthermore, it is concerned that these projects have not brought about tangible benefits for local communities (art. 1.2, 2.2, 11).

The Committee calls on the State party to review legislation, regulations and practices in the mining and plantations sectors and:

- (a) Guarantee legal assistance to communities during consultations on extractive projects affecting them and their resources with a view to ensuring their free, prior and informed consent;
- (b) Ensure that license agreements are subject to monitoring of human rights and environmental impact during the implementation of extractive projects;
- (c) Guarantee legal assistance to communities lodging complaints about allegations of human rights violations, thoroughly investigate all allegations of breach of license agreements, and revoke licenses, as appropriate;
- (d) Ensure that tangible benefits and their distribution are not left solely to the voluntary policy of corporate social responsibilities of companies, but are also defined in license agreements, in the form of employment creation and improvement of public services for local communities, among others;
- (e) Engage in constant dialogue with human rights defenders, protect them from acts of violence, intimidation and harassment, and thoroughly investigate all allegations of reprisals and abuse so as to bring perpetrators to justice.

Land tenure

29. The Committee expresses concern about the large number of land disputes and cases of land-grabbing in the State party. It is also concerned that regulations such as Presidential Regulation 65/2006 on Procurement of Land for Realizing Development for Public Interest render individuals and communities vulnerable to land-grabbing as only 34 per cent of land in the State party is certified. Similarly, the Committee is concerned that court decisions on land cases have been primarily made on the basis of the existence of titles. Furthermore, the Committee expresses concern at the prohibitive cost of titling that has accompanied the settlement of land disputes (arts. 1.2, 2.2 and 11).

The Committee urges the State party to adopt a land policy which (a) establishes an institution tasked with the oversight of settlement of land disputes; (b) promotes settlement approaches that take into account the fact that land titles are not always available; (c) reviews relevant laws and regulations which make individuals and communities vulnerable to land-grabbing; (d) facilitates the titling of land without prohibitive procedural costs; (e) secures the involvement of the national human rights institutions and the civil society.

Masyarakat Hukum Adat

38. The Committee is concerned at the absence of an effective legal protection framework of the rights of *Masyarakat Hukum Adat* due to inconsistencies in relevant legislative provisions (arts. 15 and 2.1).

Referring to the State party's statement that it would make use of relevant principles contained in the United Nations Declaration on the Rights of Indigenous Peoples, the Committee urges the State party to expedite the adoption of the draft law on the rights of *Masyarakat Hukum Adat* and ensure that it:

- (a) Defines *Masyarakat Hukum Adat* and provides for the principle of self-identification, including the possibility to self-identify as indigenous peoples;
- (b) Effectively guarantees their inalienable right to own, develop, control and use their customary lands and resources;

(c) Define strong mechanisms for ensuring the respect of their free, prior and informed consent on decisions affecting them and their resources, as well as adequate compensation and effective remedies in case of violation.

The Committee also recommends that the State party undertake to harmonize existing laws according to the new law on the rights of *Masyarakat Hukum Adat* and ratify the ILO Convention on Indigenous and Tribal Populations, 1989 (No. 169).

39. The Committee is concerned at provisions of recently adopted Law No. 18/2013 on Prevention and Eradication of Forest Destruction as well as other laws in force in the State party which contravene the Decision 35/PUU-X/2012 of the Constitutional Court on the right of ownership of customary forests by *Masyarakat Hukum Adat*. It is further concerned that, while the State party has granted concessions on forested land to develop palm oil plantations, members of *Masyarakat Hukum Adat* have reportedly been arrested on the basis of the Law No. 18/2013 (arts. 15 and 1.2).

The Committee recommends that, as a priority for the implementation of the Plan of Action of the Joint Agreement for the Acceleration in the Determination of Forest Regions, the State party:

(a) Amend all legislative provisions which are incompatible with the Constitution Court Decision 35/PUU-X/2012, including those contained in the Law 18/2013 on Prevention and Eradication of Forest Destruction, and take steps for the review of decisions against members of *Masyarakat Hukum Adat* based thereon; and

(b) Identify and demarcate customary lands and forests, resolve disputes thereon, in consultation with representatives of *Masyarakat Hukum Adat* and the national human rights institutions.

8. Finland, E/C.12/FIN/CO/6, 28 November 2014

5. The Committee takes note with appreciation of the State party's measures to promote economic, social and cultural rights, which included: ... (d) The adoption of the National programme for revitalization of Sámi language in 2014.

Right to own and dispose of natural wealth and resources

9. Recalling its previous concern (E/C.12/FIN/CO/5, paragraph 11), the Committee regrets the lengthy process in the recognition of the rights of the Sámi people to use their land and to pursue their traditional livelihoods within their homeland. The Committee notes the information provided during the dialogue that ongoing negotiations on the question of the Sámi people's right to land would not alter the current private and State party's land rights, thus the legal uncertainty of the Sámi people's rights to their ancestral territories would not be resolved. The Committee is further concerned about the lack of adequate measures to address the adverse effect of climate change on the Sámi people and to ensure that logging and other activities carried out by private actors do not negatively affect the enjoyment of their economic, social and cultural rights (art.1).

In light of its previous recommendation (E/C.12/FIN/CO/5, paragraph 20) and currently available information, the Committee urges the State party:

(a) To strengthen its efforts to adopt the necessary legislative and administrative measures to fully and effectively guarantee the Sámi people's rights to own their land and to freely dispose of their natural wealth and resources;

(b) To seek the prior, free and informed consent of the Sámi people before granting licences to private companies for economic activities on territories traditionally occupied or used by the Sámi communities;

(c) To ensure that licensing agreements with private entities provide for adequate compensation of the affected communities;

(d) To adopt the appropriate measures to address the adverse effect of climate change on the Sámi people's land and resources; and

(e) To speed up the ratification of the ILO Convention No. 169 concerning Indigenous and Tribal peoples.

Business and economic, social and cultural rights

10. Despite the information provided by the delegation on the national implementation of the United Nation Principles on Business and Human Rights, the Committee is concerned about the lack of a regulatory

framework to ensure that companies operating in the State party, as well as companies under the State party's jurisdiction acting abroad, fully respect economic, social and cultural human rights (art. 2, para.1).

The Committee recommends that the State party:

- (a) Establish a clear regulatory framework for companies operating in the State party to ensure that their activities do not negatively affect the enjoyment of economic, social and cultural human rights; and
- (b) Adopt appropriate legislative and administrative measures to ensure legal liability of companies and their subsidiaries based in or managed from the State party's territory regarding violations of economic, social and cultural rights in their projects abroad.

The Committee draws the attention of the State party to its statement on the obligations of State parties regarding the corporate sector and economic, social and cultural rights (E/2012/22, annex VI, section A).

Revitalization of Sámi languages

29. The Committee notes with concern that the variety of Sámi languages is decreasing and some of them are at risk of extinction. The Committee regrets that Sámi language education outside their Homeland remains unsatisfactory, particularly due to the shortage of teachers (arts. 13 and 15).

The Committee urges the State party to ensure the effective implementation of the National programme for the revitalization of Sámi languages, including by allocating adequate resources and by increasing the number of teachers. It also encourages the State party to guarantee the access of education in Sámi languages inside and outside the Homeland, to preserve, protect and promote their culture as part of cultural diversity and heritage.

9. Guatemala, E/C.12/GTM/CO/3, 9 December 2014

The right to land and to natural resources

6. The Committee finds it regrettable that the State party has not granted legal recognition to indigenous peoples in its Constitution. The Committee is also concerned that the State party has no effective legal mechanism for recognizing the rights of indigenous peoples as such to obtain collective land titles. The Committee regrets the lack of up-to-date statistics on the number of indigenous persons living in the State party (arts. 1, 2 and 15).

The Committee recommends that the State party grant recognition to indigenous peoples in its Constitution. It also recommends that the State party incorporate mechanisms for recognizing the rights of indigenous peoples over their traditional lands and their natural resources. The Committee urges the State party to conduct an up-to-date census of the indigenous population and to continue strengthening measures to ensure their effective enjoyment of their economic, social and cultural rights.

Consultation of indigenous peoples

7. The Committee takes note of the State's intention to establish a legal mechanism to conduct free and informed prior consultation of indigenous peoples in respect of all matters of concern to them, in keeping with the recent decisions of the Constitutional Court, which have reasserted the duty of the State party to consult the indigenous peoples. It is in particular concerned that the indigenous peoples are still not effectively consulted, nor is their free, prior and informed consent obtained in the decision-making process concerning the exploitation of the natural resources within their traditional lands. The Committee is also concerned that the indigenous peoples did not participate in the debate over the reform of the Mining Act (arts. 1, 2 and 15).

The Committee urges the State party, in connection with the exploration and exploitation of mining resources and hydrocarbons, to adopt expeditious measures to carry out consultations to allow free expression of consent to the desirability of such projects, sufficient time and opportunity to reflect and take a decision, together with measures to preserve cultural integrity and provide reparation, where necessary. In this respect, the Committee recommends that the State party urgently establish a legal mechanism for conducting such consultations, in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and with the United Nations Declaration on the Rights of Indigenous Peoples. It also recommends that the State party revise the legislative and institutional provisions relating to projects for the exploitation of natural resources, in

consultation with the indigenous peoples, and that it strengthen its capacity to oversee extractive industries and ensure that they do not have a negative impact on the rights of indigenous peoples, their territory and their natural resources.

Equal treatment for men and women

11. The Committee regrets that in spite of the amendments made to legislation to ensure equality between men and women, in practice inequalities between men and women still persist, in part as a consequence of the deeply rooted stereotypes relating to the role of women in society and the family. The Committee also notes with concern the disadvantaged situation of indigenous women, in particular as regards the right to education, health, employment and landownership (arts. 3 and 7).

The Committee refers to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights (article 3 of the Covenant) and recommends that the State party: ...

(c) Adopt specific measures to eliminate the persistent inequality between men and women, and in particular indigenous women, and promote full access to primary education, health and land.

Malnutrition and the right to food

21. The Committee notes with regret the number of cases of acute malnutrition in children under the age of 5, which, despite the measures taken by the State party, continues to be alarmingly high. The Committee is concerned about reports of the limited impact of the Zero Hunger Plan and allegations of political patronage in the management of food assistance programmes. It also notes with concern the considerable expansion of monocultures and the way that has restricted indigenous peoples' access to land on which to grow their own food (art. 11).

The Committee urges the State party to intensify its efforts to combat and prevent malnutrition among children, in particular those living in rural and remote areas. It also recommends that the State party ensure that sufficient financial and human resources are available and that the necessary measures are adopted to guarantee the effective implementation and sustainability of the Zero Hunger Plan, strengthening the components that address the structural causes of malnutrition. It particularly urges the development, within the framework of the National Policy for Comprehensive Rural Development, of the mechanisms necessary to prevent the expansion of monocultures from exacerbating the food insecurity of rural communities.

The right to health

22. The Committee notes with concern the considerable disparities in the various regions of the country with regard to access to and quality of health-care services, including the concentration of doctors in urban areas, which affects mainly the indigenous population living in poverty and extreme poverty. The Committee finds it regrettable that the health budget is insufficient to provide adequate coverage for the entire population, thereby favouring the private provision of health-care services (art. 12).

The Committee recommends that the State party increase the health-care budget and take the necessary measures to consolidate a national health system accessible to all without discrimination of any kind, in accordance with article 12 of the Covenant and taking into consideration general comment No. 14 (2000) on the right to the highest attainable standard of health (article 12 of the Covenant). The Committee recommends that the State party strengthen measures to ensure the coverage and accessibility of the health-care services provided by the State in rural areas and zones inhabited by the indigenous population.

School dropout

25. Despite the State party's efforts in this regard, the Committee is concerned about the high dropout rates in primary education, in particular among girls in rural areas. The Committee also notes with concern that, despite advances, illiteracy rates remain high, especially in rural areas and among indigenous peoples, and in particular among girls (arts. 13 and 14).

The Committee recommends that the State party continue its efforts to implement its literacy plan and step up its efforts in rural areas and among the indigenous peoples. It encourages the State party to develop targeted programmes aimed at helping to ensure that students do not drop out of school and addressing the reasons why they do so.

Bilingual intercultural education

26. Despite the efforts made by the State party in this regard, the Committee reiterates its concern that indigenous peoples do not always enjoy the right to be educated in indigenous languages. The Committee is further concerned about the existence of factors that limit students' access to secondary and higher education and that make it more difficult for students, once they are in school, to remain there, particularly in the case of indigenous adolescents and young persons (arts. 13 and 14).

The Committee recommends that the State party intensify its efforts to guarantee the access of indigenous peoples to intercultural education in their own languages and to ensure that such education is adapted to their specific needs. The Committee urges the State party to take urgent steps to preserve and promote the use of indigenous languages.

Internet access

27. The Committee is concerned that, despite the State party's efforts in this connection, the access to and use of cyberspace by indigenous peoples remain limited.

The Committee recommends that the State party continue working to expand Internet access and that it redouble its efforts to set up educational and information centres focusing on the use of new technologies and the Internet, in particular for indigenous peoples.

10. Nepal, E/C.12/NPL/CO/3, 12 December 2014

Adoption of the constitution

5. While noting that the interim constitution adopted by the State party in 2007 included a number of guarantees on economic, social and cultural rights, the Committee is concerned that the drafting process of the new constitution has still not been finalized. The Committee is further concerned that the lack of a permanent constitutional framework creates obstacles to the full implementation of economic, social and cultural rights (art. 2).

The Committee urges the State party to complete the drafting process of the new constitution within the previously established time frame and to adopt it as expeditiously as possible. The Committee also recommends that in the new constitution, the State party:

- (a) Ensures the protection of all economic, social and cultural rights enshrined in the Covenant;
- (b) Guarantees the constitutional status of international human rights treaties;
- (c) Ensures that under no circumstances will the enjoyment of rights already acquired by women and disadvantaged and marginalized individuals and groups be restricted.

Rights of indigenous peoples

9. Notwithstanding the progress made by the State party in recognizing indigenous peoples, the Committee notes that the process of consideration of the claims for recognition by some indigenous peoples has not yet been completed. The Committee is also concerned at information that indigenous peoples have been deprived of their traditionally owned lands, territories and resources due to development projects carried out by the State party without seeking their free, prior and informed consent. The Committee is further concerned that, although the State party has ratified International Labour Organization (ILO) Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries, there is no legal provision that recognizes community ownership of lands by indigenous peoples (art. 1).

The Committee recommends that the State party:

- (a) Complete, as soon as possible, the process of recognition of indigenous peoples whose claims are under consideration;
- (b) Ensure that indigenous peoples are represented through their own chosen representatives in the work of the Constituent Assembly and in the decision-making process on all issues that affect them;
- (c) Guarantee the right of indigenous peoples to own, use and develop their ancestral lands, territories and resources, so as to enable them to fully enjoy their economic, social and cultural rights;
- (d) Seek their free, prior and informed consent before launching any development project;
- (e) Continuously monitor the projects being developed so as to take corrective measures, if necessary;
- (f) Provide displaced families and groups with fair and adequate compensation;
- (g) Incorporate the provisions of ILO Convention No. 169 in its domestic law.

Poverty

23. While noting the efforts to reduce poverty, the Committee is concerned that around 25 per cent of the population in the State party lives below the poverty line, in particular in the far east of the country and among the most disadvantaged groups, such as Hill and Terai Dalits, as well as women in rural and remote areas and indigenous peoples. The Committee is also concerned about the fact that the poverty faced by those groups is exacerbated by the lack of their access to, and ownership of, land and related resources, and lack of livelihoods and income-generating activities (art. 11).

The Committee recommends that the State party:

- (a) Adopt a human rights-based approach to poverty eradication;
- (b) Strengthen its efforts to reduce poverty, in particular among the most marginalized and disadvantaged groups, such as Hill and Terai Dalits, as well as women in rural and remote areas and indigenous peoples, including by expanding its programmes under the Poverty Alleviation Fund;
- (c) Facilitate access to, and ownership of, land for those groups and access to income-generating activities.

The Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).

Cultural rights

29. The Committee is concerned that the lack of recognition of some indigenous peoples by the State party prevents them from fully enjoying their cultural rights, which are deeply rooted in their ancestral lands, territories and resources (art. 15).

The Committee recommends that the State party take all necessary measures to ensure that all indigenous peoples fully enjoy their cultural rights.

11. Vietnam, E/C.12/VNM/CO/2-4, 15 December 2014

Poverty among persons living in rural areas and ethnic minorities

28. The Committee notes with concern the regional disparities in the enjoyment of the right to an adequate standard of living: those living in rural areas as well as ethnic minorities in remote and mountainous areas are particularly disadvantaged (art. 11).

The Committee recommends that the State party adopt effective and human rights-based strategies and targeted programmes to address the challenges of regional disparities in poverty and living standards. The Committee refers the State party to its statement on poverty adopted on 4 May 2001. The Committee invites the State party to report on the progress achieved and to provide respective statistical data, disaggregated by year, region and other appropriate factors, in its next periodic report.

Impact of development programmes, such as sedentarization and land revocation

29. The Committee is concerned at the adverse impact of development programmes, such as sedentarization and land revocation, on the enjoyment of economic, social and cultural rights by ethnic minorities. In particular, the Committee is concerned that:

- (a) Laws and regulations governing land revocation and sedentarization fall short of international standards;
- (b) Individuals and communities affected by development programmes have not obtained fair compensation for seized lands, while some have not been adequately resettled;
- (c) Resettled individuals and communities have encountered difficulties in finding an alternative livelihood;
- (d) Sedentarization policies have not taken into account the negative impact on the cultural rights of ethnic minorities (arts. 11 and 15).

The Committee urges the State party to:

- (a) Ensure, in law and in practice, the free, prior and informed consent of ethnic minorities on decisions that affect them, and provide legal assistance in that regard;
- (b) Guarantee transparency of the processes, including by making information on compensation rates, places of resettlement and support policies available well in advance;

- (c) Incorporate age-group-specific and gender-sensitive alternative livelihood strategies in revocation and sedentarization plans and enforce the obligation for enterprises benefiting from revoked lands to recruit landless persons;
- (d) Ensure accessible and effective remedies, including by reviewing complaints received and providing compensation where appropriate;
- (e) Undertake an assessment of the impact of revocation and sedentarization policies on the enjoyment of Covenant rights and involve ethnic minorities in policy-making and the design of plans aimed at addressing identified issues.

The Committee refers the State party to its general comment No. 7 (1997) on forced evictions.

Education for disadvantaged and marginalized groups

32. The Committee notes with concern that access to and the quality of education remains limited in remote and mountainous areas and islands where ethnic minorities live, in spite of the notable achievements in education elsewhere in the State party (art. 15).

The Committee recommends that the State party develop a comprehensive framework and allocate sufficient resources for the provision of quality education for ethnic minority children and children living in remote areas. In that regard, the Committee recommends that the State party:

- (a) Adequately plan educational personnel needs;
- (b) Increase investment in early education for those children;
- (c) Improve the system for tracking children dropouts and their reintegration in school;
- (d) Implement mother tongue-based bilingual education approaches;
- (e) Strengthen the decentralized management of education.

Self-identification

33. The Committee expresses concern at the non-recognition of indigenous peoples in the State party, which has a negative impact on their enjoyment of cultural rights (art. 15).

Recalling that self-identification is a fundamental principle of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party respect the right of everyone, alone or in association with others or as a community, to choose his or her identity, including the right to identify as belonging to an indigenous people. It also recommends that the State party adopt a statutory law governing the recognition of ethnic minorities and indigenous peoples and guaranteeing their rights. The Committee invites the State party to ratify ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Cultural rights of ethnic minorities

34. The Committee expresses concern at the State party's policy of phasing out certain traditional cultural values of ethnic minorities which it considers "obsolete", and attempting to replace them with new cultural policies premised on objectives of socio-economic stability and development. Moreover, the Committee is concerned at the adverse impact of commercial tourism on the cultural activities of ethnic minorities, such as the Bay Nui bull race and the Dragon Boat race (art. 15).

The Committee urges the State party to refrain from submitting cultural policies to development objectives and to fully respect the right of ethnic minorities to take part in their cultural activities and to conserve, promote and develop their own culture. Limitations to this right should be restricted to negative practices which infringe upon other human rights. Moreover, the Committee recommends that the State party ensure that ethnic minorities are fully involved in decision-making processes regarding the economic exploitation of their cultural heritage and that they obtain tangible benefits from these activities. In that regard, the Committee draws the State party's attention to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

IV. COMMITTEE ON THE RIGHTS OF THE CHILD:

A. Concluding Observations

1. Guyana, CRC/C/GUY/CO/2-4, 5 February 2013

5. The Committee also welcomes the following institutional and policy measures: ...

(b) The Indigenous People's Commission Five-Year Strategic Plan for 2012 – 2016....

14. The Committee welcomes the State party's Poverty Reduction Strategy Paper (PRSP) 2008–2012 and the resulting increase in social sector spending, including for education, health, water, sanitation and housing, which contributes to fulfilment of children's rights. However, the Committee remains concerned that the social budget of the State party does not define specific budgetary allocations for the provision of critical social services to children, exacerbating the substantial discrepancies between the urban and hinterland regions.

15. In light of the Committee's recommendations during its day of general discussion in 2007 on "Resources for the Rights of the Child - Responsibility of States", the Committee recommends that the State party: ...

(c) Enact legislation for regulating equitable funding and social benefits for children and their families throughout its territory and with particular attention to the hinterland and rural areas.

23. Noting that the state party's economy is heavily dependent on the extractive and timber industries, the Committee is concerned at the absence of a legislative framework regulating the prevention of, protection against and reparation of the adverse impact of such activities by foreign and national private and State-owned enterprises on human rights, including children's rights. The Committee is especially concerned at the impact of these businesses on the living conditions of children and their families in the regions directly affected, on the health hazards and environmental degradation arising therefrom as well as on child labour.

24. The Committee recommends that the State party:

(a) Establish the necessary regulatory framework and policies for business, in particular with regard to the extractive industry (gold and bauxite) and timber and fisheries projects –whether large or small scale-, to ensure that they respect the rights of children and promote the adoption of effective corporate responsibility models;

(b) Ensure that prior to the negotiation and conclusion of free trade agreements, human rights assessments, including on child rights, are conducted and measures adopted to prevent and prosecute violations, including by ensuring appropriate remedies; and,

(c) Comply with international and domestic standards on business and human rights with a view to protecting local communities, particularly children, from any adverse effects resulting from business operations, in line with the UN "Protect, Respect and Remedy" Framework and the Business and Human Rights Guiding Principles that were adopted by the Human Rights Council in 2008 and 2011, respectively.

24. The Committee welcomes the State party's adoption of the Amerindian Act in 2006, establishment of the Indigenous Peoples Commission to address the discrimination and marginalisation faced by Amerindian children and other measures taken to address discrimination against Amerindians. However, the Committee remains concerned at the prevalence of discrimination against Amerindian children....

25. The Committee urges the State party to ensure that its programmes address the situation of discrimination against Amerindian children, children with disabilities, and children because of their sexual orientation and/or gender identity. The Committee further urges the State party to include information in its next periodic report on measures and programmes relevant to the Convention and undertaken by the State party in follow-up to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.

51. The Committee notes as positive the progress resulting from the State party's National Strategic Plans for HIV/AIDS and increased allocation of funding for HIV/AIDS. However, the Committee remains concerned that the awareness and knowledge about HIV remains low among Amerindian and socio-economically disadvantaged persons as well as in the rural and interior regions of the State party. Furthermore, the Committee is concerned at the significant increase in HIV cases for persons between 15 and 19 years of age.

52. In the light of its General Comment No. 3 on HIV/AIDS and the rights of the child (CRC/GC/2003/4, 2003), the Committee recommends that the State party undertake additional awareness-raising campaigns on HIV in its rural and interior regions, with particular attention to ensuring the accessibility of such information for Amerindian and socio-economically disadvantaged persons. Furthermore, the Committee recommends that the State party undertake targeted programmes for improving access to age appropriate HIV and sexual reproductive health services among adolescents. In undertaking the above, the Committee recommends that the State party seek technical assistance from, inter alia, the United Nations Joint Programme on HIV/AIDS (UNAIDS) and UNICEF.

55. While noting as positive the reduction of poverty over the past two decades, including through programmes to facilitate poverty relief and social assistance measures to vulnerable groups, the Committee is concerned that 36 % of the population still live below the poverty line, with much higher rates of poverty in rural and Amerindian areas.

56. The Committee urges the State party to continue and strengthen its efforts to combat poverty and to provide support and material assistance to economically disadvantaged families, notably those living in rural areas, and to guarantee the right of all children to an adequate standard of living.

2. Congo, CRC/C/COG/CO/2-4, 25 February 2014

3. The Committee welcomes the adoption of the following legislative measures: ...

(c) Law No. 5-2011 on the promotion and protection of the rights of indigenous peoples (25 February 2011)....

Non-discrimination

28. The Committee welcomes measures taken by the State party to strengthen national legislation guaranteeing the principle of non-discrimination, including the law on the promotion and protection of the rights of indigenous peoples. Nevertheless, the Committee is concerned by the slow implementation of such legislation and regrets that the Constitution has yet to be amended to prohibit discrimination on any grounds covered by the Convention (CRC/C/COG/CO/1, para. 27 (a)). The Committee expresses its strong concern about the lack of systematic efforts to combat and change discriminatory attitudes and practices, and is particularly concerned about:

(a) The widespread ethnic-based discrimination against children belonging to indigenous groups, who are often the target of insults, physical violence and bullying....

29. Recalling its previous recommendation (CRC/C/COG/CO/1, para. 27), the Committee recommends that the principle of non-discrimination, as provided for under article 2 of the Convention, be fully and vigorously applied by the State party and integrated into the implementation of all other articles to guarantee, without discrimination, the rights set out in the Convention. The Committee also recommends that the State party make systematic, adequate and effective efforts to address persistent discrimination in the family, in schools and in other settings, in particular concerning indigenous children, children from rural areas, children with albinism, children in street situations and refugee children, especially girls. It further recommends that the State party include in its next periodic report information on measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.

Birth registration

36. The Committee notes with appreciation the birth registration strategic plan for the period 2009–2013 and the abolishment of fees for late birth registration as mentioned by the State party delegation during the dialogue. Nevertheless, the Committee remains concerned about the large number of children that are still not registered, the existence of unofficial payments attached to late birth registration, the insufficient number of civil registry offices in remote areas and the insufficient awareness of the importance of registration. It also notes with concern that the one-month limit for families to register births increases difficulties and costs for families.

37. The Committee reiterates its previous recommendation (CRC/C/COG/CO/1, para. 34), and urges the State party to establish an efficient and accessible birth registration system covering its entire territory, including by empowering chiefs of villages in remote areas to register civil status, so that all children are registered immediately after birth. The Committee also urges the State party to ensure that undue payments are not imposed. It also reiterates its recommendation that the State party: ...

(b) Take appropriate measures to register those who were not registered at birth, including indigenous children and refugee children....

48. The Committee is concerned that, despite the adoption of a national gender policy and plan of action:

...

(c) The State budget allocated to recovery and reintegration programmes for children in situations of vulnerability, including victims of violence (2006–2010), is highly insufficient;

(d) Children in situations of vulnerability, such as indigenous children, children with albinism, children with disabilities, children living and working in the streets, and children living in poverty or from rural areas, are more at risk of violence than others.

Health and health services

58. The Committee welcomes the strategies adopted by the State party to reduce the high maternal and child mortality, to manage childhood illness, to improve the treatment of malnutrition and to reduce malaria. The Committee also notes with appreciation the role of civil society organizations and the media in the national strategy for empowering households and communities for the promotion of good nutritional and health practices. Nevertheless, the Committee expresses its concern that there are a number of constraints on the implementation of those strategies and that preventable and treatable diseases, including diarrhoea, continue to be among the main causes of infant and child mortality. The Committee is also concerned at the limited geographical coverage of health services, the insufficient number of socio-health facilities and staff, and insufficient supplies of medicine.

59. The Committee draws the State party's attention to its general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health. Recalling its previous recommendation (CRC/C/COG/CO/1, para. 59), the Committee urges the State party to overcome the constraints preventing the implementation of existing strategies by, inter alia: ...

(d) Reviewing existing policies and practices, and ensuring that health care is provided free of charge and without discrimination or unequal treatment to all children, especially indigenous children and children of families unable to afford the payment fees....

(g). Increasing the participation of indigenous communities in the development of health policy and the delivery of services, and seeking financial and technical assistance from UNICEF and the World Health Organization, among others, in that regard.

Education, including vocational training and guidance

66. The Committee welcomes ministerial order No. 278/MEFB/METP/MEPSA putting into effect the constitutional provisions on free primary and secondary education, and notes the national plan and the strategy for education. Nevertheless, the Committee is concerned about the absence of information regarding any evaluation of the implementation and impact of those measures. The Committee remains concerned that:

...

(b) Vulnerable groups of children continue to face difficulties in enjoying access to education, in particular indigenous and poor children, girls and children with disabilities; ...

(e) Schools for indigenous children set up with support from religious and international groups as a response to the discrimination faced by indigenous children at school are not yet part of the public system and, as they are dependent on external funding, are unsustainable in the long run....

67. Taking into account its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party: ...

- (d) Provide additional school facilities, particularly in rural areas, and incorporate schools for indigenous children into the national budget, to increase access to education for all children....

Children belonging to minority or indigenous groups

72. While welcoming Law No. 5-2011 on the promotion and protection of indigenous peoples, the Committee is concerned that its implementing decree has not been finalized and that the law remains widely unknown. The Committee also welcomes the introduction of the principle of affirmative measures for indigenous peoples and the relevant national plan of action for the period 2009–2013, but reiterates its concern about the situation of indigenous children, the de facto discrimination that they face and the absence of information on the implementation of any affirmative measures. The Committee is concerned that indigenous children continue to experience exclusion, violence and discriminatory practices in accessing their rights, including their rights to birth registration, education, access to justice and a life free from labour exploitation. The Committee also notes with concern that indigenous girls are at greater risk of abuse, exploitation and trafficking.

73. The Committee urges the State party to implement its previous recommendation (CRC/C/COG/CO/1, para. 89) and:

- (a) Take measures to widely disseminate Law No. 5-2011, adopt its implementing decree, and ensure that the law is effectively applied;
- (b) Seek technical cooperation from, among others, OHCHR, other United Nations agencies and development partners to develop and undertake a comprehensive national sensitization campaign, aimed at Congolese society as a whole, to address deep-rooted discrimination;
- (c) Strengthen efforts to secure the physical integrity of indigenous children;
- (d) Implement affirmative measures and develop a new national plan of action to ensure that indigenous children gain de facto enjoyment of their rights, in particular in the areas of birth registration, health and education;
- (e) Take into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

Economic exploitation, including child labour

74. The Committee is concerned that, despite the existence of legal instruments prohibiting child labour, particularly in its worst forms, the law enforcement mechanisms are rarely implemented. The Committee notes with regret that a comprehensive plan of action to prevent and combat child labour has not yet been developed (CRC/C/COG/CO/1, para. 80) and that child labour and economic exploitation are widespread occurrences in the State party, especially in large cities. The Committee regrets the lack of information on the implementation of the Committee's previous recommendations (*ibid.*). The Committee is also extremely concerned that some forms of slavery and trafficking persist and affect mainly indigenous children.

75. The Committee urges the State party to take immediate and effective measures to eliminate the worst forms of child labour, and recommends that it:

- (a) Implement existing legal instruments to eliminate child labour;
- (b) Carry out a survey to determine the extent of the problem, root causes and patterns of labour and, on the basis of the results, adopt and implement a comprehensive plan of action to prevent and combat child labour;
- (c) Take all the necessary measures to eradicate slavery and trafficking within the State party;
- (d) Consider ratifying International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers;
- (e) Continue to seek technical assistance from the International Programme on the Elimination of Child Labour of the International Labour Organization in this regard.

3. Russian Federation, CRC/C/RUS/CO/4-5, 25 February 2014

Children's rights and the business sector

20. The Committee notes that the State party's legislation provides for compensation to be provided to indigenous persons for damage to the environment by businesses, although no information has been provided about whether claims of indigenous persons for compensation have been met. However, the Committee is concerned that oil- and gas extracting businesses continue to have a negative impact on the traditional lifestyle of persons belonging to small-numbered indigenous groups, including children, through deforestation and pollution and by endangering the species that are crucial to their livelihoods. The Committee is also concerned about the negative impact on the health of children of the extraction of coal and the production of asbestos, especially those living in the Kemerovo and Ural regions.

21. The Committee draws the State party's attention to its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environmental and other standards, with particular regard to children's rights and in the light of Human Rights Council resolutions 8/7 (para. 4 (d)) and 17/4 (para. 6 (f)). In particular, it urges the State party to:

- (a) Establish a clear regulatory framework for the oil and gas industries and coal-extraction businesses operating in the State party to ensure that their activities do not negatively affect human rights or endanger environmental and other standards, especially those relating to indigenous children's rights;
- (b) Curtail the production of asbestos and raise the public's awareness of the toxicity of asbestos and its effect on health;
- (c) Provide timely reparation to limit ongoing and future damage to the health and development of the children affected and repair any damage done;
- (d) Ensure effective implementation by companies, especially industrial companies, of international and national environmental and health standards, and effective monitoring of the implementation of those standards, and appropriately sanction and provide remedies when violations occur, and ensure that appropriate international certification is sought;
- (e) Require companies to undertake assessments, consultations and full public disclosure of the environmental, health-related and human rights impacts of their business activities, and their plans to address such impacts;
- (f) Be guided by the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, endorsed unanimously in 2011 by the Human Rights Council, when implementing those recommendations.

Children belonging to indigenous groups

63. The Committee is deeply concerned that, according to reports, the native languages of some indigenous groups are never used as a language of instruction in schools and are reduced to the status of a minor subject. It is also concerned that indigenous groups, including their children, have been severely affected by the poor state of health care in remote villages and that the increase in certain types of disease among such children is due to the lack of sufficient access to the traditional Northern diet adapted to the "Northern type" of metabolism, which is replaced by Western-style food rich in carbohydrates and sugar.

64. In the light of its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee recommends that the State party take all the necessary measures to preserve the cultural and linguistic identity and heritage of indigenous children by ensuring that they receive basic education in their native language to the extent possible. The Committee urges the State party to improve its health-care facilities and services in remote villages of indigenous groups and facilitate the traditional way of life of those groups, including by ensuring access to the traditional diet.

4. India, CRC/C/IND/CO/3-4, 7 July 2014

Children's rights and the business sector

29. The Committee is concerned about the forced displacement of a large number of children and their families and the loss of their ancestral lands owing to manufacturing operations, in particular families and children living in the area of the POSCO steel plant and port facilities in the state of Odisha. It is also concerned at the lack of information about safeguards to guarantee compliance with the Convention and international human rights standards.

30. In the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and the United Nations Protect, Respect and Remedy Framework, which was unanimously accepted by the Human Rights Council in 2008, the Committee recommends that the State party establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards, particularly with regard to children's rights. The Committee further recommends that the State party:

- (a) Establish a clear regulatory framework for industries operating in the State party to ensure that their activities do not negatively affect human rights or jeopardize environmental and other standards, especially those relating to children's rights;
- (b) Ensure effective implementation by companies, especially industries, of international and national environment and health standards; monitor the implementation of those standards effectively; appropriately sanction and provide remedies for victims when violations occur and ensure that appropriate international certification is sought;
- (c) Require companies to undertake assessments of, consultations in relation to and full public disclosure of the environmental, health-related and human rights impacts of their business activities and their plans to address such impacts.

B. General principles (arts. 2, 3, 6 and 12)

Non-discrimination

31. The Committee is concerned at the disparity among different groups of children in access to education, health care, safe water and sanitation and other social services and to the enjoyment of the rights enshrined in the Convention. It is also concerned at the persisting discrimination against children from scheduled castes and scheduled tribes, children with disabilities, children with HIV/AIDS, as well as asylum-seeking and refugee children.

32. The Committee recommends that the State party:

- (a) Adopt and implement a comprehensive strategy to address all forms of discrimination, including multiple forms of discrimination, against all categories of children in marginalized and disadvantaged situations and ensure adequate human, financial and technical resources to implement it in collaboration with a wide range of stakeholders and involving all sectors of society, with a view to facilitating social and cultural change;
- (b) Ensure that children in marginalized or disadvantaged situations, such as children from scheduled castes and scheduled tribes, children with disabilities, children with HIV/AIDS, and asylum-seeking and refugee children, have access to basic services and enjoy their rights under the Convention, and to that end, adopt adequate programmes and assess their results.

Education, including vocational training and guidance

71. The Committee welcomes the adoption of the Right of Children to Free and Compulsory Education Act, 2009, and the almost-universal enrolment rate of children in Grade 1. However, it is concerned at the high drop-out rates, in particular among children from the scheduled castes and scheduled tribes and girls. The Committee is also concerned about the large number of children who are not in school, the high drop-out rates at Grade 5, poor numeracy and literacy skills, the low quality of education, as well as the shortage of qualified teachers and classrooms.

72. The Committee recommends that the State party: Children belonging to religious minorities, scheduled castes and scheduled tribes

- (a) Strengthen its efforts to fully implement the Right of Children to Free and Compulsory Education Act, 2009, at the federal and state levels, including by, inter alia, drawing up development plans for schools, in compliance with the Act;
- (b) Take the necessary measures to improve the quality of education and provide adequate training for teachers, in particular at the state level and in rural areas;
- (c) Introduce child-rights education in the school curricula nationwide;
- (d) Address various discriminatory practices in the education setting, such as forcing children in marginalized situations to sit at the back of the classroom;
- (e) Improve preparedness for schooling and expansion of programmes on early childhood education;
- (f) Further adopt specific programmes aimed at decreasing the high dropout rates and ensure that out-of-school children, child labourers, children in disadvantaged and marginalized situations, as well as girls, are supported and assisted in exercising their right to education;
- (g) Improve data and information systems to track out-of-school children, measure quality and learning outcomes and correlate education and child protection data for effective planning and response;
- (h) Take measures to increase access by adolescents to secondary education, and develop and promote quality vocational training for children who have dropped out of school to enhance the skills of children.

79. The Committee is seriously concerned that, despite the State party's initiatives aimed at addressing inequalities and improving living conditions and access to education, health and social services of religious minorities, scheduled castes and scheduled tribes, many children belonging to these groups continue to be deprived of a number of their rights under the Convention.

80. The Committee urges the State party to strengthen its efforts to ensure that all children, irrespective of their religious background or whether they are from a scheduled caste or scheduled tribe, enjoy the entire range of rights enshrined in the Convention.

Sale, trafficking and abduction

85. The Committee notes the adoption of the Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation, in December 2007. However, it is concerned at the high levels of internal trafficking of children and that the State party is a source, destination and transit country for trafficking children for labour and sexual exploitation, including sex tourism and child pornography. The Committee is concerned at reports that children are being trafficked in the State party for begging, marriage and illegal adoption. The Committee expresses its concern at the lack of effective measures to address and prevent the sale, trafficking and abduction of children as well as the lack of data on those activities.

86. The Committee recommends that the State party:

- (a) Establish a comprehensive and systematic data collection mechanism on the sale, trafficking and abduction of children, and ensure that the data are disaggregated by, inter alia, sex, age, national and ethnic origin, state or autonomous region, rural or urban residence, indigenous and socioeconomic status, with particular attention to children living in the most vulnerable situations....

5. Indonesia, CRC/C/IDN/CO/3-4, 10 July 2014

Non-discrimination

19. While welcoming the State party's gender mainstreaming programme, the Committee is deeply concerned about discriminatory provisions that still remain in national legislation and the prevalence of de facto discrimination, including:

- (a) Discrimination against girls regarding inheritance rights and the large number of girls still subject to various discriminatory regulations and everyday discrimination;
- (b) Particular discrimination against children with disabilities in access to health care and education;
- (c) Ongoing severe discrimination against children belonging to certain religious minorities and the State party's failure to deter attacks;

(d) Various forms of discrimination against children belonging to indigenous communities, such as insufficient access to education and health care.

20. The Committee urges the State party to vigorously address all forms of de jure and de facto discrimination and to: ...

(d) Take all necessary measures, in particular improving the relevant infrastructure, to provide equal access to public services by children belonging to indigenous communities.

57. The Committee welcomes the measures taken by the State party with regard to poverty eradication and social assistance, in particular the National Community Empowerment Program (PNPM) and Law No. 6 of 2014 on Villages, which are aimed at reducing disparities among regions. However, the Committee is deeply concerned about:

(a) The estimated 13.8 million children living below the national poverty line, and the 8.4 million children living in extreme poverty;

(b) The decentralization process, which has led to the formation of many new provinces and districts and thereby given rise to disparities among regions in access to public services such as birth registration, basic education and clean drinking water;

(c) The urban–rural, ethnic and gender disparities regarding poverty, with children in Papua being particularly disadvantaged;

(d) Social assistance programmes for education not reaching the poorest children who are out of school and therefore unable to access the social protection scheme;

(e) Rural and indigenous women being faced with particular poverty, which leads to poorer outcomes for their children.

58. The Committee recommends that the State party develop a holistic anti-poverty strategy and take all necessary measures to understand and address the root causes of, and eliminate, child poverty. It also recommends that the State party: ...

(c) Establish adequate support programmes to improve the situation of rural and indigenous women in order to keep them and their children out of poverty in a sustainable manner....

Children belonging to minority or indigenous groups

67. The Committee is deeply concerned about the difficulties faced by religious minorities, in particular:

(a) Insufficient protection from and investigation into violent attacks against persons belonging to religious minorities, including children;

(b) Insufficient assistance to victims, many of whom have lost their homes in attacks and have had to stay in temporary shelters for several years, without sufficient access to clean drinking water and sanitation, food or health care;

(c) Children belonging to religious minorities not listed in Law No. 1 of 1965, often being denied legal documents, such as identification, marriage or birth certificates, as well as access to various public services.

68. The Committee urges the State party to take all necessary measures to combat and eliminate all forms of violence against persons belonging to religious minorities, provide them with all the necessary effective protection and reparation, and bring perpetrators to justice. The Committee further urges the State party to amend its legislation and ensure that all children belonging to religious minorities not listed in Law No. 1 of 1965 have access to all public services and legal documents they have previously been denied.

69. The Committee is furthermore concerned about the situation of children belonging to indigenous communities, in particular Papuans, who are subjected to poverty, militarization, extraction of natural resources on their lands, as well as poor access to education and health care.

70. In the light of its general comment No. 11 (2009) on indigenous children and their rights under the Convention, the Committee urges the State party to take all necessary measures to eliminate poverty among indigenous communities and monitor progress in that regard, as well as provide for their equal access to all public services, pursue demilitarization efforts and ensure the prior informed consent of indigenous peoples with regard to exploitation of the natural resources in their traditional territories.

6. Venezuela, CRC/C/VEN/CO/3-5, 13 October 2014

Data collection

19. While noting the initiative to develop the Statistical Information System on Children and Adolescents (SIENNA), the Committee is concerned about the slow progress with regard to establishing it.

20. In the light of its general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, the Committee urges the State party to expeditiously complete and implement its data collection system (SIENNA). The data collected should cover all areas of the Convention and be disaggregated by age, sex, geographic location, urban and rural area, ethnic, indigenous and Afro-descendent origin and socioeconomic background, in order to facilitate analysis of the situation of all children, particularly those in situations of vulnerability. Furthermore, the Committee recommends that the data and indicators be shared among the line ministries and used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention. In that context, the Committee also recommends that the State party strengthen its technical cooperation with, among others, UNICEF and regional bodies.

27. The Committee notes with satisfaction the adoption of the Law against Racial Discrimination, in 2011, and other laws aimed at protecting the rights of indigenous peoples. It also welcomes the adoption of the Education Act, in 2009, which includes a provision on non-discrimination. However, the Committee is concerned at reports that those legal advances have not been translated into greater protection of children from discrimination. ...

28. The Committee recommends that the State party undertake all necessary measures to:

(a) Translate the legal and political advances for combatting racial and ethnic discrimination into greater protection of children's rights, and conduct an evaluation of the implementation of laws, policies and programmes, including indicators, to measure the achievements....

34. The Committee welcomes the development of guidelines to ensure that children's right to be heard is implemented in legal proceedings. However, the Committee is concerned about how the guidelines are translated into practice. Taking note of the legal progress made in allowing children older than 15 years to be part of the Community Councils, the Committee, nonetheless, regrets the lack of information on the actual representation of the elected children, their role and the results achieved. The Committee is further concerned about the lack of a comprehensive strategy to promote the participation of children in all spheres of life.

35. In the light of its general comment No. 12 (2009) on the right of the child to be heard, the Committee recommends that the State party take measures to strengthen that right, in accordance with article 12 of the Convention. To that effect, it recommends that the State party:

(a) Develop a comprehensive strategy to promote the participation of children in all spheres of life, in consultation with children, all civil society organizations, UNICEF and other relevant organizations, and allocate adequate human, technical and financial resources, as well as a monitoring mechanism. The strategy should address the different needs of boys and girls, in terms of participation, and be directed to different groups of children, in particular children with disabilities, indigenous children, Afro-descendants and lesbian, gay, bisexual, transgender and intersex (LGBTI) children;

Civil rights and freedoms (arts. 7, 8, and 13–17)

Birth registration

36. The Committee welcomes the legal and policy measures taken by the State party to ensure the registration of all children, including indigenous children, in particular Decree No. 2890 of 2009, which provides for the registration of new-born children whose parents are undocumented and the establishment of the "Yo soy" and "Misión Identidad" programmes. However, the Committee expresses its concern at the lack of information regarding the approximate number of children who are not registered as well as the reasons and/or causes for that. It also regrets the lack of evaluation of the "Yo soy" and "Misión Identidad" programmes.

37. The Committee recommends that the State party:

(a) Step up its efforts to design a national disaggregated data collection system for birth registrations;

(b) Conduct evaluations of the "Yo soy" and "Misión Identidad" programmes and of similar initiatives and use them as the basis for developing a strategy to ensure universal birth registration, and allocate adequate human, technical and financial resources for the implementation of the strategy;

- (c) Enhance efforts to automatize civil registration processes and digitalize civil certificates;
- (d) Continue seeking technical assistance from UNICEF and the Office of the United Nations High Commissioner for Refugees (UNHCR), among others, for the implementation of these recommendations.

Education, leisure and cultural activities (arts. 28–31)

Education, including vocational training and guidance

64. The Committee notes the progress made by the State party in ensuring the right to education for children and adolescents, including the adoption of the 2009 Law on Education, the expansion and consolidation of school enrolment, including preschool education, and the increase in the number of schools and teachers. However, the Committee remains deeply concerned about:

- (a) The persistent challenges for children from rural areas, indigenous and afro-descendant children, as well as refugee and asylum-seeking children in accessing quality education;
- (b) The high incidence of adolescent mothers not attending school;
- (c) The military approach which permeates the educational programmes of regular schools (See CRC/C/OPAC/VEN/1, paras. 22 and 23).

65. In the light of its general comment No. 1 (2001) on the aims of education, the Committee reiterates its previous recommendations (CRC/C/VEN/CO/2, para. 67) and recommends that the State party:

- (a) Undertake all necessary measures to ensure school enrolment and prevent dropout of children in rural areas, indigenous and Afro-descendant children, children with disabilities, as well as pregnant girls and adolescent mothers....

B. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

1. India, CRC/C/OPAC/IND/CO/1, 7 July 2014

Training

16. The Committee is concerned that relevant professional categories, in particular the military, the police and personnel in the administration of justice, do not receive adequate training on the provisions of the Optional Protocol.

17. The Committee recommends that the State party strengthen its human rights training to all relevant professional groups, in particular the armed forces, including the Central Paramilitary Forces, members of international peacekeeping forces, the Central Armed Police Forces, the State Police Forces, including the Special Police Officers and the Village Defence Committees, judges, social workers, teachers, media professionals and legislators, and provide specific training on the provisions of the Optional Protocol.

Data

18. The Committee notes with concern the lack of data and statistics on most areas covered by the Optional Protocol.

19. The Committee recommends that the State party:

- (a) Develop and implement a comprehensive system of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol;
- (b) Ensure that the data are disaggregated, inter alia, by sex, age, national and ethnic origin, state or autonomous region, rural or urban residence, indigenous, socioeconomic status, with particular attention to the most vulnerable groups of children;
- (c) Analyse and use the data collected as a basis for designing policies to implement the Optional Protocol and assessing progress achieved towards that objective;
- (d) Seek assistance from the relevant United Nations agencies and programmes, including the United Nations Children's Fund (UNICEF), in that regard.

Prevention of recruitment of children by non-State armed groups

22. The Committee is deeply concerned at the phenomena of children under 18 years of age being recruited by various non-State armed groups and their use in hostilities in the disturbed districts in the north-eastern states, in areas where Maoist armed groups are operating and in Jammu and Kashmir. The Committee is further concerned at the practice of forced recruitment of children from families of poor and marginalized segments of society by non-State armed groups in the disturbed districts.

23. The Committee urges the State party to expeditiously enact legislation that prohibits and criminalizes the recruitment and use of children under the age of 18 years in hostilities by non-State armed groups. The Committee further urges the State party to take all necessary measures to prevent and eliminate the root causes of forced recruitment of children from families of poor and marginalized segments of society by non-State armed groups in the disturbed districts. Those measures should include implementing awareness-raising programmes addressing the root causes of forced recruitment, enabling schooling for such children, and establishing a monitoring and reporting system for parents and families to report any forcible recruitment of children.

Attacks on and/or occupation of protected civilian places

28. While welcoming the adoption of an Integrated Action Plan that provides public infrastructure and services in areas where Maoist armed groups are operating, the Committee is concerned at the deliberate attacks on schools by non-State armed groups, as well as the occupation of schools by State armed forces in north-eastern India and in areas where Maoist armed groups are operating.

29. The Committee urges the State party to take all necessary measures to prevent the occupation and use of as well as attacks on places with a significant presence of children, such as schools, in line with international humanitarian law. It also urges the State party to ensure that schools are vacated expeditiously, as appropriate, and to take concrete measures to ensure that cases of unlawful attacks on and/or occupation of schools are promptly investigated and that perpetrators are prosecuted and punished.

Recruitment and use of children by non-State armed groups

32. The Committee expresses deep concern about the ongoing recruitment, kidnapping and use of children, including girls, by various non-State armed groups listed in the Unlawful Activities (Prevention) Act, 1967, or active in the disturbed districts in northeastern India, as well as areas where Maoist armed groups are operating and districts in Jammu and Kashmir. The Committee expresses further concern that children are used for various tasks, including handling weapons and improvised explosive devices, and acting as informants.

33. The Committee reminds the State party of its obligations under the Optional Protocol to take all necessary measures to ensure that children are not recruited by non-State armed groups. It recommends that forcible recruitment of children be defined as an offence in the Penal Code. The Committee further recommends that the State party set up a monitoring system which allows family members to confidentially report missing children and ensure prompt and impartial investigations into such reports. The State party should consider seeking technical assistance from, inter alia, the United Nations Children's Fund (UNICEF).

VI. Protection, recovery and reintegration

36. The Committee welcomes the adoption of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2000, and its subsequent amendment in 2006, that provides protection to children affected by armed conflict in the disturbed districts of the State party. The Committee is nevertheless concerned that the Act is not sufficiently implemented in all disturbed districts in the State party and that Child Welfare Committees and Juvenile Justice Boards provided for in the Act have not been established in those districts.

37. The Committee urges the State party to prioritize the establishment of mechanisms for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act in all disturbed districts in the State party and closely monitor its implementation.

Measures adopted to protect the rights of child victims

38. The Committee is concerned that children under the age of 18 are subject to administrative detention under the Public Safety Act, 1978; the Armed Forces Special Powers Act, 1958; and other security-related

legislation in the disturbed districts. The Committee is particularly concerned that, under these security-related laws, children are treated as, and detained with, adults.

39. The Committee calls upon the State party to review its security-related laws with a view to prohibiting criminal and administrative proceedings against children under the age of 18 as well as prohibiting their detention in military detention centres. It recommends that all children under the age of 18 be handled by the juvenile justice system in all circumstances and that age verification procedures are consistently and effectively applied in that context. In particular, the Committee urges the State party to ensure that:

- (a) Children are not arbitrarily arrested, detained and prosecuted by military courts for their membership in armed groups or for military offences such as desertion;
- (b) Detention of children is only used as a measure of last resort and for the shortest possible period of time;
- (c) Children deprived of their liberty as a consequence of their involvement in hostilities are treated with humanity and with respect for their inherent dignity;
- (d) If criminal charges are brought against children, trials must be held before civilian courts and in compliance with international standards on juvenile justice, including the standards enshrined in the Convention on the Rights of the Child and illustrated in the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice;
- (e) Children are provided with rehabilitation and reintegration services, including reunification with their families and access to psychosocial recovery.

Disarmament, demobilization and reintegration

40. The Committee notes with appreciation that the State party has established surrender-cum-rehabilitation schemes in north-east India, in areas where Maoist armed groups are operating and in the disturbed districts in Jammu and Kashmir, which provide for monetary compensation for those who surrender, as well as vocational training programmes and incentives for the surrender of weapons. However, the Committee is concerned that none of the policies relating to surrender focuses on the recovery and integration of children. In particular, the Committee is concerned that:

- (a) Mechanisms for the systematic identification of former child soldiers among those who surrender to the State security forces are not in place;
- (b) The surrender and rehabilitation policies require a surrendered person to make a public media statement of his or her voluntary surrender;
- (c) Surrendered cadres, including children, are used as informants for security forces, which exposes them to security risks, including subsequent retaliation by non-State armed groups.

41. The Committee urges the State party to develop a programme aimed at the identification, release, recovery and reintegration with their families of all children, including girls, who have been recruited or used in hostilities by non-State armed groups, and immediately ensure their effective and transparent demobilization. In that regard, if families cannot be located or identified, alternative protective accommodation should be provided. In particular, the Committee recommends that the State party:

- (a) Establish an identification mechanism for children who have, or may have, been involved in armed conflict and ensure that the personnel responsible for such identification are trained in child rights, child protection and child-friendly interviewing skills;
- (b) Review its surrender-cum-rehabilitation schemes with a view to protecting surrendered children and other young persons who were minors at the time that they joined or were forcibly recruited by the armed opposition groups from media exposure and, in particular, from identity disclosure, as envisaged under the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006;
- (c) Ensure that children are not used as informants and that any information provided by demobilized children is maintained confidential so as not to expose said children to security risks or potential retaliations;
- (d) Conduct prompt and impartial investigations into reports that children have been interrogated for intelligence purposes and ensure that those responsible in the armed forces are duly sanctioned and that the said children are accorded victim and witness support services;
- (e) Provide further information on measures adopted in that regard in its next report under the Convention on the Rights of the Child.

2. Venezuela, CRC/C/OPAC/VEN/CO/1, 3 November 2014

Prevention of recruitment by non-State groups

18. The Committee notes the information provided by the State party that non-State armed groups are not present on its territory. It is, however, deeply concerned about numerous and consistent reports that children, including girls, have been recruited and/or used by non-State armed groups from a neighbouring State in border areas.

19. The Committee reminds the State party of its obligations under the Optional Protocol to take all necessary measures to prevent effectively the recruitment or use of children by non-State armed groups, in particular refugee, asylum-seeking and indigenous children, as well as those living in poverty or rural areas. In that regard, the Committee urges the State party:

(a) To take any legal, administrative or institutional measures necessary to prevent recruitment of children and to protect them from violence by non-State armed groups. The root causes for recruitment, such as poverty and discrimination, and the particular needs of girls victims must be taken into consideration when designing these measures;

(b) To establish appropriate mechanisms to identify children at risk of being recruited or of being used by non-State armed groups, including children living in poverty and/or in remote or rural areas, as well as refugee, asylum-seeking, indigenous, Afro-descendant and migrant children;

(c) To develop awareness-raising and educational programmes on the negative consequences of participating in armed conflicts, targeting children, parents, teachers and any other relevant stakeholder in border areas.

C. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

1. India, CRC/C/OPSC/IND/CO/1, 7 July 2014

Data collection

7. While noting that the State party has developed a child-tracking system for missing children, the Committee is concerned about the lack of a comprehensive system to collect data on all offences under the Optional Protocol, as envisaged in the Integrated Child Protection Scheme launched in 2009-2010, which would enable the State party to identify the extent and the forms of sale of children, child prostitution and child pornography. The Committee also regrets the very limited statistics available, for instance through the National Crime Records Bureau, on offences covered under the Optional Protocol.

8. The Committee urges the State party to:

(a) Develop and implement a comprehensive and systematic mechanism for data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol;

(b) Pay particular attention to children in vulnerable situations who are at risk of becoming victims of such crimes. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, state or autonomous region, rural or urban residence, indigenous and socioeconomic status, with particular attention to children living in the most vulnerable situations;

(c) Ensure that data are also collected on the number of prosecutions and convictions, disaggregated by the nature of the offence;

(d) Analyse and use the data collected as a basis for designing policies to implement the Optional Protocol, assessing progress achieved towards this objective and for the purposes of prevention;

(e) Establish a system of common indicators for collecting data on the various states and union territories.

Measures adopted to prevent offences prohibited under the Protocol

21. The Committee notes the State party's efforts to prevent offences covered by the Optional Protocol. However, the Committee regrets that preventive measures remain inadequate and fragmentary, in particular in relation to the prevention of child prostitution and child pornography. In particular, the Committee is concerned about:

(a) The inadequacy of the mechanisms in place to detect, identify and monitor children at risk of becoming victims of the offences under the Optional Protocol, such as children from scheduled castes and

scheduled tribes, children deprived of their family environments, children in street situations, children subject to child marriages and children of sex workers....

2. Venezuela, CRC/C/OPSC/VEN/CO/1, 3 November 2014

Sale of children

23. The Committee is concerned about reports that indigenous children are involved in illegal gold mining, in slavery-like conditions, in the upper Orinoco and the Casiquiare and Guainia-Rio Negro basins, and that this may amount to sale of children. In that regard, it is particularly concerned that no case of sale of children has yet been registered by the State party. The Committee is also concerned about reports that those children are also victims of child prostitution and trafficking.

24. The Committee strongly urges the State party to investigate expeditiously all cases involving children working in illegal gold mining, to prosecute alleged perpetrators of crimes covered by the Optional Protocol, to punish those convicted with penalties commensurate with the gravity of the crime, to provide rehabilitation and protect and to compensate child victims.

D. General Comments

1. General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), CRC/C/GC/17, 17 April 2013

[...]

The Committee is particularly concerned about the difficulties faced by particular categories of children in relation to enjoyment and conditions of equality of the rights defined in article 31, especially girls, poor children, children with disabilities, indigenous children, children belonging to minorities, among others.

V. Article 31 in the broader context of the Convention

A. Links with the general principles of the Convention

Article 2 (non-discrimination): The Committee emphasizes that States parties shall take all appropriate measures to ensure that all children have the opportunity to realize their rights under article 31 without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Particular attention should be given to addressing the rights of certain groups of children, including, inter alia, girls, children with disabilities, children living in poor or hazardous environments, children living in poverty, children in penal, health-care or residential institutions, children in situations of conflict or humanitarian disaster, children in rural communities, asylum-seeking and refugee children, children in street situations, nomadic groups, migrant or internally displaced children, children of indigenous origin and from minority groups, working children, children without parents and children subjected to significant pressure for academic attainment.

[...]

B. Links with other relevant rights

[...]

Article 30: Children from ethnic, religious or linguistic minorities should be encouraged to enjoy and participate in their own cultures. States should respect the cultural specificities of children from minority communities as well as children of indigenous origin, and ensure that they are afforded equal rights with children from majority communities to participate in cultural and artistic activities reflecting their own language, religion and culture.

[...]

VII. Children requiring particular attention to realize their rights under article 31

[...]

Children from indigenous and minority communities: Ethnic, religious, racial or caste discrimination can serve to exclude children from realizing their rights under article 31. Hostility, assimilation policies, rejection, violence and discrimination may result in barriers to enjoyment by indigenous and minority children of their

own cultural practices, rituals and celebrations, as well as to their participation in sports, games, cultural activities, play and recreation alongside other children. States have an obligation to recognize, protect and respect the right of minority groups to take part in the cultural and recreational life of the society in which they live, as well as to conserve, promote and develop their own culture. However, children from indigenous communities also have the right to experience and explore cultures beyond the boundaries of their own family traditions. Cultural and artistic programmes must be based on inclusion, participation and non-discrimination. [...]

2. General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013

1. The Committee on the Rights of the Child recognizes that the business sector's impact on children's rights has grown in past decades because of factors such as the globalized nature of economies and of business operations and the ongoing trends of decentralization, and outsourcing and privatizing of State functions that affect the enjoyment of human rights. Business can be an essential driver for societies and economies to advance in ways that strengthen the realization of children's rights through, for example, technological advances, investment and the generation of decent work. However, the realization of children's rights is not an automatic consequence of economic growth and business enterprises can also negatively impact children's rights.

[...]

19. The activities and operations of business enterprises can impact on the realization of article 6 in different ways. For example, environmental degradation and contamination arising from business activities can compromise children's rights to health, food security and access to safe drinking water and sanitation. Selling or leasing land to investors can deprive local populations of access to natural resources linked to their subsistence and cultural heritage; the rights of indigenous children may be particularly at risk in this context.

¹³ The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health. When business employment practices require adults to work long hours, older children, particularly girls, may take on their parent's domestic and childcare obligations, which can negatively impact their right to education and to play; additionally, leaving children alone or in the care of older siblings can have implications for the quality of care and the health of younger children.

[...]

21. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. States should hear children's views regularly – in line with general comment No. 12 – when developing national and local-level business-related laws and policies that may affect them. In particular, States should consult with children who face difficulties in making themselves heard, such as the children of minority and indigenous groups, children with disabilities as stated in articles 4, paragraph 3, and 7 of the Convention on the Rights of Persons with Disabilities, and children in similar situations of vulnerability. Governmental bodies, such as education and labour inspectorates, concerned with regulating and monitoring the activities and operations of business enterprises should ensure that they take into account the views of affected children. States should also hear children when child-rights impact assessments of proposed business-related policy, legislation, regulations, budget or other administrative decisions are undertaken.

¹³ General comment No. 11 (2009) on indigenous children and their rights under the convention, *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 41 (A/65/41)*, annex III, para. 35.

3. General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 29 May 2013

[...]

IV. Legal analysis and links with the general principles of the Convention

A. Legal analysis of article 3, paragraph 1

1. “In all actions concerning children”

[...]

(c) “children” ...

23. However, the term “children” implies that the right to have their best interests duly considered applies to children not only as individuals, but also in general or as a group. Accordingly, States have the obligation to assess and take as a primary consideration the best interests of children as a group or in general in all actions concerning them. This is particularly evident for all implementation measures. The Committee¹⁴ underlines that the child's best interests is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights.

¹⁴ General comment No.11 (2009) on indigenous children and their rights under the Convention, para. 30.

V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

A. Concluding Observations

1. DRC, CEDAW/C/COD/CO/6-7, 30 July 2013

Disadvantaged groups of women

35. The Committee is concerned about the lack of adequate protection and assistance for disadvantaged groups of women such as:

(a) Women belonging to the Pygmy community, many of whom experience discrimination, marginalization and displacement and loss of self-sufficiency as they become unable to make a livelihood for themselves in the forest;...

36. The Committee recommends that the State party:

(a) Ensure that Pygmy women have access, without discrimination, to basic services, including health care and education, and to land, ensure that they have access to self-sufficient livelihoods in the forest and provide compensation when they have been displaced from the forest;...

2. Colombia, CEDAW/C/COL/CO/7-8, 29 October 2013

Stereotypes and harmful practices

13. The Committee is concerned at the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society in the State party. ... It is also concerned that the State party has not taken sufficient sustained and systematic action to eliminate stereotypes, in particular those against indigenous and Afro-Colombian women. It is further concerned at the practice of female genital mutilation in some indigenous communities, including the Embera community, as well as at the insufficient measures taken to eliminate this practice, illustrated by its non-prohibition by law.

14. The Committee recommends that the State party: ...

(b) Disseminate the principles of non-discrimination and gender equality, through its cooperation with civil society and women's organizations, political parties, education professionals, the private sector and the media, to the general public and to specific audiences, such as decision makers, employers and youth, with a view to enhancing a positive and non-stereotypical portrayal of Afro-Colombian and indigenous women;

(c) Undertake joint efforts with the indigenous authorities to eliminate female genital mutilation, including by raising awareness on its harmful effects for girls and women and by ensuring the implementation of the decisions taken by the Regional Council of Risaralda with regard to its practice; and prohibit female genital mutilation in the State party's legislation.

Violence against women

15. The Committee is concerned at the high prevalence of violence against women, in particular domestic and sexual violence, despite the comprehensive legal framework to address violence against women in the State party. ...

16. The Committee recommends that the State party: ...

(c) Ensure that the follow-up mechanism of Law No. 1257 (2008) effectively monitors and assesses the implementation of the Law and its regulatory framework and ensure the participation of women's rights organizations, including indigenous and Afro-Colombian women therein;...

Conflict-related gender-based violence

17. The Committee notes the efforts of the State party to address conflict-related gender-based violence, including sexual violence, such as Law No. 1448 (2011). It also notes the measures taken by the Attorney General's Office to improve the methodology of investigation and treatment of victims of these crimes. However, it expresses its serious concern at the prevalence of sexual violence against women and girls, including rape, by all actors in the armed conflict, including by

post-demobilization armed groups. It is concerned at the significant underreporting of cases and at the widespread impunity with respect to the investigation, prosecution and punishment of perpetrators of conflict-related sexual violence against women and girls, which contribute to the victims' lack of confidence in the State response. In this context, it is particularly concerned at:

(a) The lack of adequate protection measures for women victims of gender-based violence, including sexual violence, as well as for witnesses and their families and communities, and the lack of an effective specific system of protection for Afro-Colombian and indigenous women victims of violence;...

18. The Committee recommends that the State party: ...

(d) Provide women and girls who are victims of conflict-related gender-based violence, in particular sexual violence, with an environment of security and trust during the pre-investigation, investigation, trial and post-trial stages by strengthening protection measures for them and by integrating a differentiated and integral approach that takes into consideration the specific needs of Afro-Colombian and indigenous women....

Participation in political and public life

21. The Committee welcomes the adoption of Law No. 1475 (2011), which establishes a 30 per cent quota for women in the electoral lists by the political parties. However, it is concerned that the implementation of the Law does not translate to an increase in the number of elected women owing to inefficiencies in the composition of electoral lists. It is also concerned at the stagnant low representation of women in the Congress (less than 18 per cent) and at the absence of the representation of Afro-Colombian women therein. It regrets that, despite the allocation of seats for indigenous peoples in the Congress, indigenous women are not represented. It notes the compliance with the 30 per cent representation quota for women in the executive branch; however, it is concerned at women's low representation at high levels of decision-making in other government institutions and the judiciary.

22. The Committee recommends that the State party: ...

(b) Promote the political participation of indigenous and Afro-Colombian women so as to ensure their representation in Congress, by for example the adoption of temporary special measures....

Rural, indigenous and Afro-Colombian women

31. The Committee is concerned about the persistent discrimination experienced by rural women, indigenous women and Afro-Colombian women. It is deeply concerned that the disproportionate impact of the armed conflict in conjunction with the negative impact of agricultural and mining mega-projects on these groups of women are deepening the prevailing discrimination, inequalities and poverty which they have long been experiencing, despite the efforts of the State party to improve their situation. It is particularly concerned at:

(a) The multiple barriers that women face to access to land restitution in the framework of Law No. 1448 (2011), inter alia, institutional, procedural and social barriers, as well as the lack of sustainable solutions for women to whom their land has been returned or who are claiming their land;

(b) The threats and violence, including sexual violence, by armed groups, including post-demobilization armed groups, that women are experiencing when the investment interests of third parties are at odds with their demands for land restitution, which results in the forced displacement of women and their families;

(c) The lack of an effective and coordinated institutional response to the specific risks to which internally displaced women and girls are exposed, as well as the fact that gender-based violence, in particular sexual violence, is a cause of forced displacement.

32. The Committee recommends that the State party:

(a) Translate into practical actions the legal requirement to take into consideration a gender and differentiated approach to address women victims' specific needs, with a view to eliminating the various barriers faced by them during the land restitution process; and enhance the capacity of civil servants, judicial officials and health professionals responsible for implementing Law No. 1448 (2011) with a view to better identifying the specific needs of women victims;

(b) Ensure the effective implementation of Constitutional Court ruling 092 (2008) regarding the situation of internally displaced women, in particular the 13 programmes aimed at addressing the specific needs and risks faced by this group of women;

(c) Take effective protection measures for women who are victims of threats and violence by armed groups, including post-demobilization armed groups, in relation to land restitution;

(d) Fully acknowledge the link between gender-based violence, including sexual violence, and forced displacement and ensure the prompt investigation and prosecution of perpetrators, including post-demobilization armed groups;

(e) Develop sustainable solutions for women to whom their land has been returned which, inter alia, incorporate women's right to have access to productive resources, such as seeds, water and credit, and foster their capacity to earn a living and produce their own food; ensure that the protection of these rights prevails over the profit interests of third parties involved in agricultural and mining mega-projects by, inter alia, promoting public-private partnerships; and ensure that adequate compensation is provided when land is requisitioned.

33. The Committee is concerned at:

(a) The lack of concise information with respect to the implementation of Law No. 731 (2002) on rural women, including a rural census, of policies and programmes in place aimed at advancing the situation of these women, whether affected or not by the armed conflict, and of results achieved;

(b) The lack of adequate protocols to guarantee the participation of indigenous and Afro-Colombian women in decision-making processes which directly affect their economic, social and cultural rights, such as those related to the establishment of development mega-projects in their territories;

(c) The inadequate access to health-care services, education and employment opportunities of indigenous and Afro-Colombian women in urban and rural contexts;

(d) The lack of adequate responses to indigenous women's demands by both the indigenous justice mechanisms and the formal justice system, as well as the persistence of barriers to their effective access to formal justice, such as the absence of interpretation during judicial processes.

34. The Committee recommends that the State party:

(a) Conduct a rural census, as stated in Law No. 731 (2002), and include in it indicators that will facilitate the elaboration of an assessment of the situation of rural women; and develop effective policies and programmes aimed at the advancement of rural women;

(b) Take appropriate measures to guarantee to indigenous and Afro-Colombian women their right to prior consultation, in conformity with international standards, with respect to, inter alia, the establishment of development mega-projects; and promote their increased political participation at the national level and within their communities;

(c) Develop comprehensive and gender-sensitive policies for indigenous peoples and for Afro-Colombians aimed at effectively addressing discrimination against them; and ensure that indigenous and Afro-Colombian women have adequate access to health-care services, education and employment opportunities;

(d) Take measures to ensure that indigenous women have adequate access to justice, both within the indigenous justice mechanisms and within the formal justice system; and sensitize indigenous authorities, prosecutors and judges on the importance of addressing violations of women's rights.

3. Cameroon, CEDAW/C/CMR/CO/4-5, 28 February 2014

Education

26. The Committee welcomes the increase in the enrolment of girls in primary education and the measures taken by the State party to promote girls' education, reduce their dropout rates, improve the quality of teachers and develop its informal educational activities. The Committee remains concerned, however, about:

...

(e) The difficulties faced by indigenous girls and boys in attending school owing to the insufficient flexibility of the school system, which does not adapt to indigenous culture in general and to nomadic culture in particular.

27. **The Committee recommends that the State party: ...**

(d) Allocate adequate resources to education to increase the number of teachers, improve the quality of teacher training and upgrade school facilities, especially in rural areas and for indigenous children;

(e) Pursue efforts to develop special educational projects for indigenous girls, including nomadic girls, such as the adoption of adapted school calendars and instruction in and of indigenous languages.

Rural women

34. The Committee takes note of the measures taken by the State party to address the situation of rural women and to increase their participation in decision-making processes. The Committee remains concerned, however, about: ...

(b) Land grabbing from indigenous people and small-scale farmers, which denies them the means to earn a livelihood, and obstacles to obtaining land titles, including prohibitive land transaction fees, which disproportionately affect women.

35. The Committee recommends that the State party:

(a) Continue and increase its efforts to address the needs of rural women and ensure that they participate in decision-making processes, including at the community level and in development planning;

(b) Ensure that rural women have access to basic services and infrastructure, including health services and education, as well as economic opportunities, on an equal and equitable basis with men and with their urban counterparts, including through the adoption of temporary special measures, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25;

(c) Guarantee the right of indigenous women and women small-scale producers to ancestral and community lands and ensure that they can secure a livelihood for themselves;

(d) Ensure that obstacles to land ownership are removed, including by accelerating land reform, and that domestic courts, including customary courts, apply the Convention, particularly in relation to women's land and property rights disputes.

Disadvantaged groups of women

36. The Committee is concerned about the lack of adequate protection and assistance for disadvantaged groups of women such as:

(a) Women belonging to the Pygmy and Mbororo communities and mountain and island populations....

37. The Committee recommends that the State party ensure that women facing intersectional forms of discrimination have access without discrimination to basic services, including health, education, adequate water and sanitation. In particular, it should:

(a) Ensure that women of marginalized communities such as the Pygmy and Mbororo communities and mountain and island populations have equal access to microcredit facilities for income-generating activities and land....

4. Finland, CEDAW/C/FIN/CO/7, 10 March 2014

Disadvantaged groups of women: Sami women

36. The Committee is concerned about the low representation of Sami women in the Sami parliament and in other political decision-making bodies. It also notes that maternity clinics, hospitals and day-care and educational institutions rarely provide services in Sami languages. The Committee is further concerned at the lack of shelters in northern Finland for Sami women who are victims of domestic violence.

37. The Committee recommends that the State party:

(a) Ensure that a gender perspective is mainstreamed in all policies and programmes regarding the Sami people;

(b) Adopt specific measures with the aim of increasing the representation of Sami women in the political and public life of both their community and the State party's society at large;

(c) Take steps to ensure that all Sami women are provided with adequate social and health services, including maternal health care;

(d) Ensure that Sami women who are victims of domestic violence have access to shelters and services that address their needs.

5. Central African Republic, CEDAW/C/CAF/CO/1-5, 24 July 2014

Disadvantaged and marginalized groups of women

43. The Committee is concerned about the persistence of the practice of enslaving indigenous peoples, including women and girls, and the delay in adopting the bill to promote and protect indigenous peoples against slavery.

44. The Committee recommends that the State party adopt without delay the bill to promote and protect indigenous peoples against slavery and ensure its effective implementation.

6. Peru, CEDAW/C/PER/CO/7-8, 24 July 2014

Access to justice

11. The Committee notes with appreciation the initiatives by the State party to guarantee equal access to justice for women and men, as foreseen in the Act on Equal Opportunities for Women and Men. The Committee remains concerned, however, about the barriers that limit women's access to justice and, in particular, the difficulties, including linguistic and economic barriers, faced mainly by women living in poverty, rural and marginal peri-urban women and women belonging to indigenous, Amazon or Afro-Peruvian communities. It expresses its concern at the delays with which rulings of international and regional court and views of the treaty bodies on individual communications are implemented and, in particular, at the fact that the State party has failed to provide comprehensive reparations and individual compensation....

12. The Committee reiterates its previous recommendations (CEDAW/C/PER/CO/6, para. 23) and encourages the State party:

- (a) To enhance women's awareness of their rights and legal literacy in all areas of the law, including civil and labour law disputes, in particular targeting the groups of women highlighted above, with a view to empowering women to avail themselves of procedures and remedies for violations of their rights under the Convention;
- (b) To strengthen its judicial system, including its structure, to cover all remote and isolated areas, eliminate the impediments that women may face in gaining access to justice and facilitate women's access to legal aid....

Stereotypes, discriminatory practices and violence against women

17. The Committee notes initiatives by the State party to combat gender stereotypes and violence against women, but remains concerned about the: ...

- (c) Fact, as identified by the State party in its report and during the dialogue, that some groups of women, such as women living in poverty, women belonging to indigenous or Afro-Peruvian communities and women with disabilities, in addition to being affected by gender stereotypes, face multiple forms of discrimination and violence, including on grounds of sexual orientation and gender identity....

18. The Committee urges the State party to adopt, as a matter of urgency, a comprehensive law to combat violence against women that prevents violence, protects victims, prosecutes and punishes perpetrators and includes reparations, sanctions and access to effective justice and to increase available mechanisms of protection and service provision to victims, taking an intercultural approach. It reiterates its recommendation (*ibid.*, para. 19) that the State party should design and implement a comprehensive strategy to combat discriminatory gender-based stereotypes, with a view to combating violence against women. It also recommends that the State party:

- (a) Intensify awareness-raising programmes and education campaigns to support equality of women and men at all levels of society, modify stereotypical attitudes, eliminate discrimination against women on such grounds as poverty, indigenous origin or ethnicity, disability or sexual orientation or gender identity, thereby removing obstacles to the full exercise of the right to equality in accordance with the National Plan for Gender Equality, and adopt a policy of zero tolerance towards all forms of violence against women;

Trafficking in women and exploitation of prostitution

23. The Committee notes the initiatives by the State party to combat trafficking in and sexual exploitation of women and girls. ... The Committee is particularly concerned about trafficking in adolescent girls for sexual or labour exploitation, in particular in the mining and logging industries. The Committee regrets the insufficient information on the extent of internal trafficking and on exploitation of prostitution in the State party.

24. The Committee reiterates its previous recommendation (*ibid.*, para. 31) and calls upon the State party:

- (a) To fully enforce its legislation on trafficking and to increase the amount of resources allocated to the implementation of the national action plan and other measures to combat trafficking;

- (b) To build the capacity of the judiciary, law enforcement and border officials and social workers on gender-sensitive ways to deal with victims of trafficking;
- (c) To address the root causes of trafficking by stepping up efforts to improve educational and economic opportunities for girls, women and their families, thereby reducing their vulnerability to exploitation by traffickers;
- (d) To take measures for the rehabilitation and social integration of women and girls who are victims of trafficking and to ensure that their protection includes the establishment of special shelters for victims;
- (e) To provide in its next periodic report comprehensive information and data on trafficking in girls and women and on prosecutions and convictions of traffickers.

Nationality

27. The Committee notes the efforts by the State party to issue identity documents, in particular to rural and indigenous women and children, with a view to enabling them to claim nationality, citizenship and social benefits. The Committee is concerned, however, about the: ...

- (b) Lack of birth registration and access to documentation of children in indigenous communities, especially in isolated communities in the Amazonian region....

28. The Committee encourages the State party to continue facilitating access to personal identity documents for undocumented women and girls, including those living in extreme poverty and/or in remote and isolated communities. The Committee also urges the State party to ensure universal birth registration and access to personal documentation for all children born in the State party.

Education

29. The Committee welcomes the equal access of women and men to regular education. It is concerned, however, about the disparities in access to high-quality education among rural girls, in particular those whose mother tongue is not Spanish, and the fact that illiteracy rates among rural and indigenous women and girls and girls with disabilities continue to be high owing to their lack of educational opportunities. ...

30. The Committee recommends that the State party:

- (a) Allocate sufficient human and financial resources for the implementation and monitoring of laws and public policies designed to combat discrimination in access to education and to include the use of temporary special measures in promoting the education of girls and women, in particular in rural areas and indigenous communities and among girls with disabilities....

Employment

31. The Committee is concerned that inequalities persist in the labour market. It notes in particular the significant gender wage gap and the poor working conditions and lack of social protection and benefits for women employed in the informal sector, mainly in domestic work, especially outside Lima, and in the farming and agricultural export sector in rural areas. The Committee remains concerned about the persistence of forced and child labour of girls, especially in the mining sector.

Health

33. The Committee notes initiatives by the State party to include an intercultural perspective in access to sexual and reproductive health. It is concerned, however, about the linguistic, cultural and economic barriers faced by indigenous women and women living in poverty in gaining access to health services and coverage by the universal health system, in addition to the discrimination against and degrading treatment of such women by medical personnel.

34. The Committee recommends that the State party step up its efforts to ensure that indigenous women and women living in poverty have access to public health schemes. It also recommends that the State party allocate sufficient human and financial resources to ensure that basic health services are provided throughout its territory, in particular in isolated indigenous communities. The Committee encourages the State party to strengthen its gender-sensitive and intercultural approach to the provision of health services, including by adequately developing the capacity of health personnel.

Rural women

37. The Committee is concerned that rural women and women in the Andean highlands and the Amazon face particular challenges in exercising their rights. It notes with concern major constraints faced by those women, including the absence of a gender-sensitive rural development policy, which has the effect of leaving women unable to participate fully in and equally benefit from rural and agricultural policies. The Committee is also concerned about the lack of a gender dimension in land ownership and tenure and the fact that women are affected by land and resource acquisition by multinational corporations but often receive no compensation and are not consulted regarding alternative livelihoods. The Committee also notes with concern the differentiated gender impact of climate change and recurring natural disasters, including severe drought, landslides and earthquakes, on women.

38. The Committee recommends that the State party guarantee the equal participation of women in rural and agricultural policies. It also recommends that the State party integrate a gender dimension into land acquisition and changes in land use and ensure that adequate compensation is provided to women for large-scale land and other resource acquisitions. The Committee also encourages the State party to step up its efforts to empower rural women and women living in remote areas to cope with and adapt to climate change.

Disadvantaged groups of women

39. The Committee regrets the lack of specific information on the measures to address the discrimination and violence faced by disadvantaged groups of women, such as women living in economic duress, indigenous and Afro-Peruvian women, migrant women, older women, women with disabilities, women detainees, lesbian, bisexual and transgender women and other women facing multiple and intersecting forms of discrimination. The Committee reiterates its concern that rural and indigenous women in particular continue to face barriers in the exercise of their rights and in access to basic services, land tenure and credit facilities.

40. The Committee recommends that the State party provide comprehensive information and statistical data in its next periodic report on the situation of disadvantaged groups of women and the implementation of the existing policy instruments to address their specificities. It urges the State party to pay special attention to the needs of rural, indigenous and minority women and to ensure that they participate in decision-making processes and have full access to justice, basic services, land tenure and credit facilities.

7. India, CEDAW/C/IND/CO/4-5, 24 July 2014

Equality and non-discrimination

8. The Committee notes that article 15 of the Constitution guarantees equal protection under the law for women and men and prohibits discrimination on the ground of sex. The Committee is concerned, however, at the absence of a comprehensive anti-discrimination law addressing all aspects of direct and indirect discrimination against women and all the forms of intersectional discrimination, as explicitly listed in paragraph 18 of the Committee's general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention.

9. The Committee recommends that the State party:

- (a) Adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds referred to in general recommendation No. 28;
- (b) Protect women from multiple or intersectional forms of discrimination and other grounds referred to in general recommendation No. 28;
- (c) Include a comprehensive definition of discrimination against women, in accordance with articles 1 and 2 of the Convention and the principle of equality between women and men.

Violence against women

10. The Committee notes the State party's efforts to enact a legal framework to prevent and respond to violence against women, including women from the marginalized castes and communities, such as Dalit and Adivasi women, and the establishment in 2013 of the Justice Verma Committee on Amendments to Criminal Law to review existing normative gaps. The Committee is concerned, however, about the:

- (d) Poor implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and the impunity of perpetrators of serious crimes against women;

Violence against women in border areas and conflict zones

12. The Committee is deeply concerned about the reported high level of violence, including rape and other forms of sexual violence, enforced disappearance, killings and acts of torture and ill-treatment, against women in conflict-affected regions (Kashmir, the north-east, Chhattisgarh, Odisha and Andhra Pradesh). It is particularly concerned about the:

(a) Provisions of the Armed Forces (Special Powers) Act requiring prior authorization by the Government to prosecute a member of the security forces and the reportedly high risk of reprisals against women who complain about the conduct of the security forces;

(b) Significant number of displaced women and girls, in particular in the north-east, including as a result of sporadic communal violence, their precarious living conditions and exposure to serious human rights violations and the lack of gender-sensitive interventions at all stages of the displacement cycle; ...

13. The Committee calls upon the State party:

(a) To, in accordance with the recommendations of the Justice Verma Committee, promptly review the continued application of the Armed Forces (Special Powers) Act and related legal protocols and to enforce special powers protocols in conflict areas and assess the appropriateness of their application in those areas;

(b) To amend and/or repeal the Armed Forces (Special Powers) Act so that sexual violence against women perpetrated by members of the armed forces or uniformed personnel is brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces or uniformed personnel accused of crimes of violence against women or other abuses of the human rights of women and to grant permission to enable prosecution in all pending cases;

(c) To amend section 19 of the Protection of Human Rights Act and confer powers to the National Human Rights Commission to investigate cases against armed forces personnel, in particular cases of violence against women;

(d) To ensure that the security sector is subject to effective oversight and that accountability mechanisms, with adequate sanctions, are in place, to provide systematic training on women's rights to the military and other armed forces involved in security operations and to adopt and enforce a code of conduct for members of the armed forces to effectively guarantee respect for women's rights; ...

(g) To ensure that women in the north-eastern states participate in peace negotiations and in the prevention, management and resolution of conflicts in line with Security Council resolution 1325 (2000) and the Committee's general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations;

(h) To remove restrictions on the work of human rights defenders, such as restrictions on their funding and by not placing them under surveillance.

Extraterritorial State obligations

14. While commending the State party's cooperation programme in post-conflict areas such as a housing project in the north-east of Sri Lanka, the Committee expresses concern at the lack of a gender perspective in and consultations with women on this project. The Committee is also concerned about the impact on women, including in Nepal, of infrastructure projects such as the Lakshmanpur dam project, including with regard to displacement and loss of livelihood, housing and food security as a result of the subsequent floods.

15. The Committee reaffirms that the State party must ensure that the acts of persons under its effective control, including those of national corporations operating extraterritorially, do not result in violations of the Convention and that its extraterritorial obligations extend to actions affecting human rights, regardless of whether the affected persons are located on its territory, as indicated in the Committee's general recommendation Nos. 28 and 30. Accordingly, it recommends that the State party: ...

(b) Adopt all necessary measures, including an assessment of the impact of the Lakshmanpur dam project on women in Nepal, so as to, among other things, prevent or remedy women's loss of livelihood, housing and food security, and provide adequate compensation whenever their rights have been violated.

Temporary special measures

18. The Committee is concerned that the State party may not have full understanding of the purpose of temporary special measures in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 on the subject. It is also concerned that no temporary special measures have been or

are being applied as part of a necessary strategy to accelerate the achievement of substantive equality of women and men in areas in which women are disadvantaged, such as education or in the judiciary, and for promoting the participation of women from religious minorities and scheduled castes and scheduled tribes in various areas under the Convention.

19. The Committee calls upon the State party to ensure that all relevant officials are familiar with the concept of temporary special measures and to encourage their application in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25, especially measures aimed at increasing the:

- (a) Number of girls, including from disadvantaged groups, enrolled in secondary and tertiary education in all states....

Rural women

32. The Committee is concerned at the prevalence of customs and traditional practices that prevent rural women, especially women from scheduled castes and scheduled tribes, from inheriting or acquiring land and other property. It is also concerned at the difficulties faced by rural women and women living in remote areas in gaining access to health and social services and in participating in decision-making processes at the community level, in addition to the fact that rural women are particularly affected by poverty and food insecurity, lack of access to natural resources, safe water and credit facilities.

33. The Committee recommends that the State party:

- (a) Abolish traditional practices and customs that prevent rural women from inheriting and acquiring land and from fully enjoying their rights and guarantee land ownership rights to women;
- (b) Strengthen its efforts to address the needs of rural women and provide them with enhanced access to health services, education, safe water and sanitation services, fertile land, natural resources, credit and income-generating opportunities.

Women from scheduled castes and scheduled tribes

34. The Committee is concerned that Dalit women and women from scheduled tribes face multiple barriers in gaining access to justice, owing to legal illiteracy, lack of awareness of their rights and limited accessibility of legal aid. It notes with concern the financial, cultural and physical barriers faced by Dalit women and women from scheduled tribes in gaining access to gynaecological and maternal health services, their limited knowledge of birth registration procedures and the existence of bureaucratic obstacles and financial barriers that prevent them from registering births and obtaining birth certificates for their children.

35. The Committee recommends that the State party:

- (a) Monitor the availability and efficiency of the legal services authorities, implement legal literacy programmes, raise the awareness of Dalit women and women and girls from scheduled tribes of all legal remedies available to them and monitor the results of such efforts;
- (b) Strengthen public awareness-raising campaigns and take specific measures to ensure that Dalit women and women from scheduled tribes are aware of the procedures for registering births and obtaining birth certificates and ensure their access to those facilities;
- (c) Provide training to medical and health professionals in order to ensure that Dalit women and women from scheduled tribes are attended by trained health-care personnel.

8. Venezuela, CEDAW/C/VEN/CO/7-8, 14 November 2014

Temporary special measures

14. The Committee remains concerned that the State party does not use temporary special measures as part of a necessary strategy to accelerate the achievement of substantive or de facto equality of women and men in all areas where women are disadvantaged or underrepresented, as prescribed by article 21 (2) of its Constitution and article 4 (1) of the Convention. The Committee reiterates its concern at the lack of understanding by the State party's authorities of the purpose and scope of temporary special measures, in accordance with article 4 (1) of the Convention and the Committee's general recommendation No. 25 on the subject.

15. In the light of its previous concluding observations on the combined fourth to sixth periodic reports of the State party (CEDAW/C/VEN/CO/6), the Committee recommends that the State party:

(a) Use temporary special measures, including quotas, with specific targets and time frames, as a systematic component of a strategy to accelerate the achievement of substantive gender equality in all areas in which women are underrepresented or disadvantaged, such as participation in political, public, economic, social and cultural life, education and employment. To this end, the State party should pay particular attention to indigenous and Afro-descendant women, women with disabilities, rural women, older women and migrant women....

Education

26. The Committee welcomes the fact that illiteracy among young people has been eradicated. It also notes the measures taken by the State party to ensure equal access to education for girls and women at all levels of education. It is concerned, however, about the poor quality of education, the lack of qualified teachers in areas such as science and the emphasis on military-related subjects in education. It is also concerned at reports about the rate of dropout from education among adolescent mothers and about the absence of age-appropriate education on sexual and reproductive health and rights in school curricula. The Committee is further concerned about the persistent feminization of certain fields of education.

27. The Committee recommends that the State party: ...

(b) Use temporary special measures to promote the education of indigenous and Afro-descendant girls and women, girls and women living in poverty and in rural areas and girls with disabilities....

Economic empowerment of women

32. The Committee commends the State party's system of microcredits for women and the social programmes to involve women in income-generating projects. It is nonetheless concerned about the lack of information provided on the results achieved with those programmes and on their sustainability. It is also concerned at reports that those programmes, which aim to empower women, may create dependency among some women.

33. The Committee recommends that the State party continue to strengthen the financial schemes available to women, paying special attention to women in rural areas, indigenous and Afro-descendant women, women with disabilities and older women. It also recommends that the State party review its social programmes to ensure that they produce sustainable results, empower women and do not increase dependency.

Disadvantaged groups of women

36. The Committee regrets the lack of effective measures taken to address discrimination and violence faced by disadvantaged groups of women, such as indigenous and Afro-descendant women, migrant women, older women and women with disabilities, as well as lesbian, bisexual, transgender and intersex women, and other women facing multiple and intersecting forms of discrimination.

37. The Committee recommends that the State party adopt appropriate measures to address the particular needs of disadvantaged groups of women. The State party should provide comprehensive information and disaggregated data in its next periodic report on the situation of those women and the measures adopted to address their specific needs.

VI. COMMITTEE AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

A. Concluding Observations

1. Bolivia, CAT/C/BOL/CO/2, 14 June 2013

6. The Committee welcomes the amendments made in the State party's legislation, in particular: ... (i) Act No. 3760 of 7 November 2007, which incorporates the United Nations Declaration on the Rights of Indigenous Peoples into Bolivian law....

Violence against women

15. While taking note of recent advances in the development of laws and regulations, the Committee is concerned by reports regarding the persistence of gender violence in the State party, particularly domestic and sexual violence, which in many cases goes unreported. The Committee regrets that, while information has been provided concerning numerous acts of gender violence, including cases of femicide, the State party has not furnished the requested statistics on the number of complaints filed, convictions handed down or penalties imposed during the reporting period or on the prevalence of such violence in respect of indigenous and Afro-Bolivian women (arts. 1, 2, 4, 12, 13 and 16).

The Committee urges the State party to: ... (f) Provide detailed information on the incidents of violence against women that have occurred during the reporting period, including disaggregated data on the number of complaints, investigations, trials, sentences and measures instituted to provide victims with redress.

Forced labour and servitude

24. The Committee regrets that it has received very little information on the implementation of the transitional interministerial plan to defend the rights of the Guaraní people or on progress in eradicating forced labour and servitude in Guaraní communities (arts. 2 and 16).

The Committee urges the State party to redouble its efforts to eradicate forced labour and servitude and to continue its efforts to implement the agreements reached between government authorities and representatives of the Guaraní people in this regard.

2. Guatemala, CAT/C/GTM/CO/5-6, 21 June 2013

Human rights defenders

14. The Committee remains concerned about the persistently high number of threats and attacks, including murders, targeting human rights defenders, particularly those defending the rights of indigenous peoples and those working on issues related to the right to land, labour rights and the environment, despite the recommendations of numerous human rights monitoring bodies. In this connection, the Committee takes note with concern of the report that 15 human rights defenders were murdered between January and October 2012. It is also concerned about reports that only a limited number of convictions have been obtained for crimes against human rights defenders. Furthermore, the Committee notes with concern the reports that campaigns have been waged, including in the media, to discredit their activities and that the criminal justice system has been used to persecute them (arts. 2, 12, 13 and 16).

The Committee urges the State party to recognize publicly the essential role played by human rights defenders in helping it fulfil its obligations under the Convention, and to take the necessary steps to facilitate their work. Recalling its earlier recommendation (para. 12), the Committee urges the State party to:

(a) Redouble its efforts to guarantee the effective protection, safety and physical integrity of human rights defenders in face of the threats and attacks to which they are vulnerable on account of their activities;

(b) Ensure the prompt, thorough and effective investigation of all threats and attacks targeting human rights defenders, and ensure that those responsible are tried and punished in accordance with the seriousness of their acts;

- (c) Guarantee the continued existence of the Unit for the Analysis of Attacks on Human Rights Defenders.

Internal security

16. The Committee notes with concern that, despite its previous recommendations and the State party's efforts to strengthen the National Civil Police, the latter still does not have sufficient resources to perform its duties effectively. The Committee is also concerned about reports that the army is playing a greater role in civil security tasks, that it has even been called on in social conflicts related to, for example, the complaints of indigenous communities, and that its intervention has in some cases led to deaths or injuries. In this connection, the Committee deplors the events of October 2012 in Totonicapán, when soldiers fired on a group of indigenous demonstrators who had blocked a road, killing six of them and wounding more than 30, and hopes that progress is being made in identifying those responsible for these acts and bringing them to trial. The Committee takes note of the delegation's statement that cooperation between the army and the National Civil Police will continue until the latter has the number of officers it needs. The Committee is also concerned about the growing number of private security officers, who reportedly outnumber National Civil Police officers (art. 2).

The Committee:

- (a) Reiterating its previous recommendation (para. 11), urges the State party to redouble its efforts to strengthen the National Civil Police as soon as possible, in particular by allocating adequate human and financial resources to it, with a view to ensuring a prompt end to army intervention in public security activities; to ensure that there are no longer any legal provisions that allow the army to be involved in activities of law enforcement or the prevention of ordinary crime, which should be carried out exclusively by the National Civil Police;
- (b) Recommends that the State party ensure that all private security firms are registered, as required by law, and that their activities are properly monitored and they are held accountable;
- (c) Urges the State party to ensure that any cases where public servants or private security staff infringe or violate human rights are investigated promptly, independently and effectively; that the perpetrators are tried and punished in accordance with the seriousness of their acts; and that the victims receive appropriate redress, including the means for their physical and psychological rehabilitation.

Training

24. The Committee takes note of the information supplied by the State party on training activities in the field of human rights and the prohibition of torture for staff of the National Civil Police and the prison service, but regrets that it has received no detailed information about programmes for other State employees related to the prohibition and prevention of torture. It also observes that no information has been provided about the impact of training activities on the incidence of torture and ill-treatment (art. 10).

The State party should strengthen existing training programmes and ensure that all public servants, particularly police, army and prison officers, migration officials and members of the judiciary and the Public Prosecution Service, attend regular, suitable and compulsory training courses on the Convention, which include strategies for dealing with violence against children, women, indigenous peoples, human rights defenders and the lesbian, gay, bisexual and transgender community. ...

3. Australia, CAT/C/AUS/CO/4-5, 23 December 2014

Violence against women

9. While welcoming the legislative and other measures adopted by the State party to prevent and combat violence against women, the Committee notes with concern reports on the persistence of violence against women, which disproportionately affects indigenous women and women with disabilities. The Committee is also concerned at information received that over 50 per cent of the cases of violence against women are not reported (arts. 2, 12, 13, 14 and 16). ...

Arrangements for the custody and treatment of persons deprived of liberty

11. The Committee is concerned at reports that, despite remedial measures taken by authorities, overcrowding remains a problem in many places of deprivation of liberty. It is also concerned at reports that, in a number of places of deprivation of liberty, the material conditions, including at Roebourne Regional Prison, and health-care services, in particular mental health services, are inadequate. The Committee, while taking note of the information provided by the delegation, is also concerned that, during the reporting period, the reported number of deaths in custody, including of indigenous people, is high. In that respect, the Committee takes note of the information provided by the delegation that all deaths in custody must be referred to a coroner for investigation (arts. 2, 11 and 16).

The State party should strengthen its efforts to bring the conditions of detention in all places of deprivation of liberty into line with relevant international norms and standards, including the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), in particular by: (a) continuing to reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules); and (b) ensuring that adequate somatic and mental health care is provided for all persons deprived of their liberty, including those in immigration detention. It should also increase its efforts to prevent deaths in custody and further strengthen its efforts to ensure that all incidents of death in custody are promptly, effectively and impartially investigated and, on a finding of criminal responsibility, lead to a penalty proportional to the gravity of the offence.

Indigenous people in the criminal justice system

12. Noting with satisfaction the measures taken by the State party to address the situation of indigenous people, including the Indigenous Advancement Strategy, the Committee is concerned at information received that indigenous people continue to be disproportionately affected by incarceration, reportedly representing around 27 per cent of the total prisoner population while constituting between 2 and 3 per cent of the total population. In that respect, the Committee notes with concern the reports indicating that overrepresentation of indigenous people in prisons has a serious impact on indigenous young people and indigenous women. The Committee is also concerned at reports that mandatory sentencing, still in force in several jurisdictions, continues to disproportionately affect indigenous people. Furthermore, and while welcoming the information concerning the legal assistance services available for indigenous people, the Committee is concerned at reports that these services are not adequately funded (arts. 2, 11 and 16).

The State party should increase its efforts to address the overrepresentation of indigenous people in prisons, in particular its underlying causes. It should also review mandatory sentencing laws with a view to abolishing them, giving judges the necessary discretion to determine relevant individual circumstances. The State party should also guarantee that adequately funded, specific, qualified and free-of-charge legal and interpretation services are provided from the outset of deprivation of liberty.

VII. COMMITTEE ON THE RIGHTS OF PERSONS WITH DISABILITIES

A. Concluding Observations

1. Australia, CRPD/C/AUS/CO/1, 21 October 2013

Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

14. The Committee is concerned that the scope of the protected rights and grounds of discrimination in the Disability Discrimination Act 1992 is narrower than that provided for under the Convention and does not provide the same level of legal protection to all persons with disabilities.

15. The Committee recommends that the State party strengthen anti-discrimination laws to address intersectional discrimination and to guarantee protection from discrimination on the grounds of disability so as to explicitly cover all persons with disabilities, including children, indigenous people, women and girls, the hearing impaired, the deaf and persons with psychosocial disabilities.

Specific obligations (arts. 31-33)

Statistics and data collection (art. 31)

53. The Committee regrets the low level of disaggregated data collected on persons with disabilities and reported publicly. It further regrets that there is little data on the specific situation of women and girls with disability, in particular indigenous women and girls with disabilities.

54. The Committee recommends that the State party develop nationally consistent measures for data collection and public reporting of disaggregated data across the full range of obligations provided for in the Convention, and that all data be disaggregated by age, gender, type of disability, place of residence and cultural background. The Committee further recommends that the State party commission and fund a comprehensive assessment of the situation of girls and women with disabilities, in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.

55. The Committee regrets that the situation of children with disabilities is not reflected in data on the protection of children. It further regrets the paucity of information on children with disabilities, in particular indigenous children, alternative care for children with disabilities and children with disabilities living in remote or rural areas.

56. The Committee recommends that the State party systematically collect, analyse and disseminate data, disaggregated by gender, age and disability, on the status of children, including any form of abuse and violence against children. It further recommends that the State party commission and fund a comprehensive assessment of the situation of children with disabilities in order to establish a baseline of disaggregated data against which future progress towards the implementation of the Convention can be measured.

2. Paraguay, CRPD/C/PRY/CO/1, 15 May 2013

9. The Committee is concerned that the State party has not established mechanisms for consultation with disabled persons' organizations, when adopting legislation and policies on persons with disabilities or in decision-making forums such as the National Commission on the Rights of Persons with Disabilities (CONADIS).

10. The Committee recommends that the State party establish a mechanism for ongoing consultation with disabled persons' organizations, in accordance with article 4, paragraph 3, of the Convention, taking into account the range of disabilities represented, in accordance with article 1 of the Convention, and including children with disabilities, women with disabilities and Paraguay's indigenous population.

19. The Committee notes with concern that the National Programme of Comprehensive Care for Children and Adolescents with Disabilities is limited solely to the prevention and early detection of disability characteristic of the medical model, and does not take account of the full range of rights recognized to children with disabilities. The Committee is also concerned that the resources for implementation of a public policy on inclusion of children with disabilities are inadequate. The Committee regrets the lack of information

on children with disabilities who are at risk of ill-treatment and abuse, including indigenous children with disabilities.

20. The Committee urges the State party to allocate sufficient resources as required to implement a broad policy on inclusion of children with disabilities in all areas of life, including family life and community life, by developing inclusive community-based rehabilitation programmes for children with disabilities as recommended by the Committee on the Rights of the Child in its concluding observations on the third periodic report of Paraguay (CRC/C/PRY/CO/3, para. 49). The Committee also asks the State party to investigate and document the situation of children with disabilities in rural areas and indigenous communities, with a view to providing protection from abuse and ill-treatment.

3. El Salvador, CRPD/C/SLV/CO/1, 8 October 2013

19. The Committee is concerned that the Child and Adolescent Protection Act does not include specific actions to ensure the protection of children with disabilities, aside from a few regarding health care. The Committee is concerned that children with disabilities living in poverty are more vulnerable to abandonment or placement in institutional care.

20. The Committee recommends that the State party strengthen its legislation and set up specific programmes to guarantee the rights of children with disabilities on equal terms, paying particular attention to children with disabilities living in rural areas and indigenous communities and to children with hearing, visual and intellectual impairments, ensuring their social inclusion and preventing abandonment and institutionalization, with priority for actions for underprivileged families.

4. Costa Rica, CRPD/C/CRI/CO/1, 12 May 2014

9. The Committee expresses its concern that the State party has not established permanent mechanisms for consulting organizations of persons with disabilities, in accordance with article 4, paragraph 3, of the Convention, when adopting plans, policies and legislation to give effect to the Convention.

10. The Committee recommends that the State party establish permanent consultation mechanisms with organizations of persons with disabilities, in accordance with article 4, paragraph 3, of the Convention, respecting their autonomy and taking into account the diversity of persons with disabilities, including children and women with disabilities, and the country's indigenous population.

Children with disabilities (art. 7)

15. The Committee notes with concern that the State party has conducted no survey on the situation of children with disabilities, including indigenous children, who are placed in institutions, abandoned, victims of abuse or living in poverty or in rural settings. Furthermore, the Committee regrets that the National Child Welfare Agency reflects the assistance-based and irregular situation model, disregarding the rights of children with disabilities. The Committee is also concerned at the fact that disability is not mainstreamed in Act No. 7739, the Children and Adolescents Code, and that article 62 of the Code, on the right to special education, is not in line with article 24 of the Convention.

16. The Committee recommends that the State party take urgent measures to protect children with disabilities from abuse and abandonment, and to prevent institutionalization. It also urges the State party to guarantee freedom of expression and opinion for children with disabilities. The Committee also urges the State party to amend the Children and Adolescents Code to include disability as a cross-cutting theme, and to amend article 62 of the Code, on the right to special education, to guarantee children with disabilities inclusive education of quality.

47. The Committee is concerned about the lack of indicators on the educational inclusion of children, young people and adults with disabilities. It is particularly concerned to note that exclusion is greater among adults with disabilities, women and girls with disabilities, persons with multiple disabilities, indigenous persons and those living in rural areas.

48. The Committee recommends that the State party ensure access to inclusive education for all persons with disabilities, at all levels of education including adult education and throughout the country, and guarantee

that this education model covers the most remote areas, incorporates the gender perspective and is ethnically and culturally relevant.

Adequate standard of living and social protection (art. 28)

57. The Committee is concerned that housing allowances and medicine subsidies for persons with disabilities are disbursed only to those who meet poverty criteria and do not take account of the socioeconomic factors that aggravate disabilities.

58. The Committee recommends that the State party adopt a public policy of inclusive development based on the human rights model for persons with disabilities, which incorporates the gender perspective and gives specific consideration to indigenous persons and those living in rural areas. It also recommends that, as part of its social protection and anti-poverty policies, it provides assistance in alleviating the severe socioeconomic disadvantages that result from the exclusion experienced by persons with disabilities.

5. Sweden, CRPD/C/SWE/CO/1, 12 May 2014

Specific obligations (arts. 31–33)

Statistics and data collection (art. 31)

57. The Committee is concerned that data is scarce on matters affecting girls, boys and women with disabilities, including those belonging to indigenous groups

58. The Committee recommends that the State party systematically collect, analyse and disseminate data on girls, boys and women with disabilities, including those belonging to indigenous groups.

6. Ecuador, CRPD/C/ECU/CO/1, 27 October 2014

12. The Committee notes with concern the fact that organizations of persons with disabilities, including organizations representing women and children with disabilities, did not participate, through submission of independent contributions, in the Committee's consideration of the State party's initial report. It also notes with concern the absence of mechanisms in the State party for the independent participation of organizations of persons with disabilities outside the governmental structure.

13. The Committee calls on the State party to adopt measures promoting the effective participation of organizations representing women with disabilities, children with disabilities, persons from indigenous nations and peoples, and Afro-Ecuadorian and Montubio people in decision-making processes in matters relating to disability. It urges the State party to guarantee the independence and autonomy of organizations of persons with disabilities in their participation in, and contributions to, the adoption of legislation, policies and programmes for the implementation and monitoring of the Convention.

Statistics and data collection (art. 31)

52. The Committee is concerned that the national system for classifying disabilities does not include disaggregated data on indigenous children, Afro-Ecuadorian children and Montubio people. The situation of these sectors of the population may be aggravated by multiple discrimination and it is necessary to have reliable information to meet their specific requirements.

53. The Committee recommends that specific surveys be conducted and that the national population census include information on the number of persons with disabilities, especially Montubio or Afro-Ecuadorian women and children living in rural areas, in order to devise programmes on access to rights especially tailored to their situation.

7. Mexico, CRPD/C/MEX/CO/1, 27 October 2014

Equality and non-discrimination (art. 5)

9. The Committee is concerned at discrimination against persons with disabilities, which is compounded by other factors of social exclusion, such as age, gender, ethnicity and rural isolation. It is also concerned that, in some states, action is still pending on the adoption of laws prohibiting discrimination on grounds of disability and recognizing the denial of reasonable accommodation as a form of discrimination based on disability.

10. The Committee recommends that the State party establish specific budget lines to meet its targets in respect of equality, as well as specific actions to combat cases of intersectional discrimination based on disability, age, gender, indigenous background and rural isolation, among other factors of exclusion. The Committee also encourages the State party to step up its efforts, by developing strategies for dissemination, awareness-raising and dialogue with local authorities, to ensure that all the states issue laws prohibiting discrimination based on disability and recognize the denial of reasonable accommodation as a form of discrimination.

11. The Committee is concerned at the low number of complaints and rulings regarding cases of discrimination on grounds of disability, the lack of regulations under the Federal Act on the Prevention and Elimination of Discrimination and the dearth of information on its dissemination in accessible formats, including in different indigenous languages.

12. The Committee recommends that the State party allocate resources to have the Federal Act on the Prevention and Elimination of Discrimination translated into all indigenous languages in accessible formats (including Braille, sign language, easy-read and electronic formats). The Committee encourages the State party to conduct campaigns to fight discrimination against persons with disabilities, targeting the legal profession, including officials of the judiciary and lawyers.

Children with disabilities (art. 7)

15. The Committee is concerned at the high rate of child abandonment and the institutionalization of children with disabilities, at the prevalence of the welfare approach to their care and at the limited scope of specific measures taken for them in rural areas and indigenous communities. The Committee is also concerned that children with disabilities are not systematically involved in decisions that affect their lives and that they do not have the opportunity to express their views regarding matters of direct interest to them.

16. The Committee recommends that the State party:

- (a) Ensure that children with disabilities, especially those in rural areas and indigenous communities, are taken into account in laws, policies and measures regarding children, on an equal basis with their peers and based on the principle of inclusion in the community;
- (b) Put in place safeguards to protect the right of children with disabilities to be consulted in all matters of concern to them and to ensure that they receive assistance appropriate to their disability and age.

Access to justice (art. 13)

25. The Committee is concerned at the limited access to justice of persons with disabilities from indigenous communities, of women and girls with disabilities who are the victims of violence and abuse, of persons with disabilities living in institutions and of children with disabilities.

26. The Committee recommends that the State party:

- (a) Adopt priority corrective measures to ensure that the groups of persons with disabilities who are particularly discriminated against also have access to justice;
- (b) Provide legal aid to persons with disabilities who live in poverty or in institutions;
- (c) Ensure that all children with disabilities have access to justice and may express their opinion in the course of the determination of the best interests of the child, through procedural accommodations appropriate to their age and specific disability-related needs.

Education (art. 24)

47. The Committee is particularly concerned at:

- (a) The persistence of the special education model;
- (b) The fact that not all children with disabilities receive an education; and
- (c) The lack of accessible schools and didactic materials, including textbooks in Braille and sign-language interpreters.

48. The Committee calls on the State party to:

- (a) Establish, in law and policy, an inclusive education system at all levels — primary, secondary and post-secondary — along with provisions for reasonable accommodations, adequate funding and training for regular teachers;
- (b) Adopt measures to ensure that all children with disabilities receive an education, especially those with intellectual and psychosocial disabilities, blind-deaf children and those from indigenous communities; and

(c) Urgently implement measures for the accessibility of schools and didactic materials, including Braille and sign language, and ensure their use from the start of education.

Adequate standard of living and social protection (art. 28)

53. The Committee is deeply concerned at the exclusion, poverty, lack of access to drinking water, sanitation and decent housing, and the overall conditions of poverty experienced by indigenous persons with disabilities and at the lack of information in this regard. It is further concerned that the National Commission for the Development of Indigenous Peoples does not have a work programme for persons with disabilities and that its own premises and services are not accessible.

54. The Committee urges the State party to:

(a) Step up efforts to include indigenous persons with disabilities in post-2015 development policies, with a community and rural focus, and ensure that their needs, perspectives and views are taken into account in these policies;

(b) Set up a system to periodically monitor initiatives for indigenous peoples under the National Programme for the Development and Inclusion of Persons with Disabilities; and

(c) Take special measures to eliminate the particular disadvantages faced by indigenous women, children and older persons with disabilities who have been abandoned or live in extreme poverty.

Statistics and data collection (art. 31)

59. The Committee notes that the State party has set up a specialized technical committee for information on disability. However, it is concerned that there are no up-to-date statistics on the situation of persons with disabilities.

60. The Committee recommends that the State party ensure the effective participation of disabled persons' organizations in the specialized technical committee for information on disability. The Committee enjoins the State party to urgently establish a system for the compilation, analysis and publication of statistical data on persons with disabilities — disaggregated by urban and rural place of residence, state and indigenous community — taking into account the situation of all marginalized groups and the Committee's recommendations contained in paragraphs 14 and 34 and the concerns expressed in paragraphs 43 and 47 above.

8. New Zealand, CRPD/C/NZL/CO/1, 31 October 2014

Children with disabilities (art. 7)

17. The Committee is concerned that it is still the case that some children with disabilities, especially Maori children with disabilities, have difficulty in accessing some government services, including health and education services. The Committee notes the recent work undertaken as part of the Disability Action Plan 2014–2018 to make services more accessible.

18. The Committee recommends that this work be increased to ensure that all children with disabilities are able to access government and related services, including to receive support to express their views.

Freedom of expression and opinion, and access to information (art. 21)

43. The Committee is concerned that it is still the case that Maori people with disabilities find it more difficult to access information in their own language. Maori people who are deaf find accessing information in New Zealand Sign Language even more difficult, owing to the lack of interpreters from Maori into New Zealand Sign Language.

44. The Committee recommends that greater efforts be made to enable Maori and Pacific people with disabilities, and especially those who are deaf and deaf-blind, to access information.

Health (art. 25)

53. The Committee is concerned that Maori people have the poorest health outcomes in New Zealand. The Committee is also concerned that the prevalence of disability is higher in the Maori population as a result of poverty and disadvantages.

54. The Committee recommends that measures be strengthened to enhance the health outcomes of Maori and Pacific persons with disabilities.

Work and employment (art. 27)

55. The Committee is concerned that the employment levels in New Zealand for persons with disabilities, and especially for Maori and Pacific people with disabilities, are still low.

56. The Committee recommends that further steps be taken to increase the employment levels of persons with disabilities.

75. The Committee requests the State party to disseminate these concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in English, Maori and New Zealand Sign Language, and in accessible formats, and to make them available on the government website on human rights.

VIII. HUMAN RIGHTS COUNCIL

A. Resolutions

1. Human rights and indigenous peoples, A/HRC/RES/24/10, 8 October 2013

The Human Rights Council,

Recalling all Commission on Human Rights and Human Rights Council resolutions on human rights and indigenous peoples,

Bearing in mind that the General Assembly, in its resolution 59/174 of 20 December 2004, proclaimed the Second International Decade of the World's Indigenous People,

Recalling the adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly in its resolution 61/295 of 13 September 2007,

Welcoming General Assembly resolution 65/198 of 21 December 2010, in which the Assembly expanded the mandate of the United Nations Voluntary Fund for Indigenous Populations so that it could assist representatives of indigenous peoples' organizations and communities to participate in sessions of the Human Rights Council, the Expert Mechanism on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues and of the human rights treaty bodies, based on diverse and renewed participation and in accordance with relevant rules and regulations, including Economic and Social Council resolution 1996/31 of 25 July 1996, and also welcoming Assembly resolution 66/296 of 17 September 2012, in which the Assembly further expanded the mandate of the Voluntary Fund so that it could assist, in an equitable manner, representatives of indigenous peoples, organizations and communities to participate in the World Conference on Indigenous Peoples, including in the preparatory process, in accordance with the relevant rules and regulations, and urged States to contribute to the Voluntary Fund,

Recognizing the importance to indigenous peoples of revitalizing, using, developing and transmitting their histories, languages, oral traditions, philosophies, writing systems and literatures to future generations, and designating and retaining their own names for communities, places and persons,

Welcoming the completion by the Expert Mechanism on the Rights of Indigenous Peoples of its study on access to justice in the promotion and protection of the rights of indigenous peoples submitted to the Human Rights Council at its twenty-fourth session, and encouraging all parties to consider the examples of good practices and recommendations included in that study as practical advice on how to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples,

Stressing the need to pay particular attention to the rights and special needs of indigenous women, children, youth and persons with disabilities, as set out in the United Nations Declaration on the Rights of Indigenous Peoples, including in the process of protecting and promoting access to justice by indigenous peoples, indigenous women, children, youth and persons with disabilities,

Recognizing the need to find ways and means of promoting the participation of recognized indigenous peoples' representatives within the United Nations system on issues affecting them, as they are not always organized as non-governmental organizations,

Taking note of the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, in which the Working Group addressed the impact of business-related activities on the rights of indigenous peoples through the lens of the Guiding Principles on Business and Human Rights,

1. *Welcomes* the report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples,⁴ and requests the High Commissioner to continue to submit to the Human Rights Council an annual report on the rights of indigenous peoples containing information on relevant developments in human rights bodies and mechanisms and activities undertaken by the Office of the High Commissioner at Headquarters and in the field that contribute to the promotion of, respect for and the full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and to the follow-up on the effectiveness of the Declaration;

2. *Also welcomes* the work of the Special Rapporteur on the rights of indigenous peoples and the official visits he has made in the past year, takes note with appreciation of his report,⁵ and encourages all Governments to respond favourably to his requests for visits;

3. *Requests* the Special Rapporteur to report on the implementation of his or her mandate to the General Assembly at its sixty-ninth session;

4. *Welcomes* the work of the Expert Mechanism on the Rights of Indigenous Peoples, takes note with appreciation of the report on its sixth session,⁶ and encourages States to continue to participate in and contribute to its discussions, including by their national specialized bodies and institutions;

5. *Requests* the Expert Mechanism to continue its study on access to justice in the promotion and protection of the rights of indigenous peoples, with a focus on restorative justice and indigenous juridical systems, particularly as they relate to achieving peace and reconciliation, including an examination of access to justice related to indigenous women, children and youth and persons with disabilities, and to present it to the Human Rights Council at its twenty-seventh session;

6. *Also requests* the Expert Mechanism to prepare a study on the promotion and protection of the rights of indigenous peoples in natural disaster risk reduction and prevention and preparedness initiatives, including consultation and cooperation with the indigenous peoples concerned in elaboration of national plans for natural disaster risk reduction, and to present it to the Human Rights Council at its twenty-seventh session;

7. *Further requests* the Expert Mechanism to continue to undertake, with the assistance of the Office of the High Commissioner, the questionnaire survey to seek the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples, with a view to completing a final summary of responses for presentation to the Human Rights Council at its twenty-seventh session, and encourages States that have not yet provided their responses to do so, as well as those States that have already responded to the questionnaire survey to update their responses as appropriate;

8. *Welcomes* the adoption by the General Assembly of its resolutions 65/198 and 66/296 on the organization of the high-level plenary meeting of the General Assembly, known as the World Conference on Indigenous Peoples, to be held on 22 and 23 September 2014, and takes note of its inclusive preparatory process, including the meeting to be held in Mexico, and, in this regard,

(a) Encourages States, in accordance with the provisions contained in General Assembly resolution 66/296, to continue to promote the participation of indigenous peoples during the preparatory process of the World Conference and to support it, in particular by means of technical and financial contributions;

(b) Recommends that the studies and advice of the Expert Mechanism be considered in the formulation of the agendas of the preparatory process;

9. *Welcomes* the decision of the General Assembly, in its resolution 67/153 of 20 December 2012, to continue, at its sixty-ninth session, its consideration of the ways and means of promoting the participation of representatives of indigenous peoples at meetings of relevant United Nations bodies and other relevant United Nations meetings and processes on issues affecting indigenous peoples, on the basis of the rules of procedure of such bodies and existing United Nations procedural rules and regulations, taking into account the report of the Secretary-General,⁷ existing practices for the accreditation of representatives of indigenous peoples at the United Nations and the objectives of the United Nations Declaration on the Rights of Indigenous Peoples;

10. *Recommends* that the General Assembly consider changing the title of the United Nations Voluntary Fund for Indigenous Populations to the United Nations Voluntary Fund for Indigenous Peoples;

11. *Decides* to hold, at its twenty-seventh session, a half-day panel discussion on the promotion and protection of the rights of indigenous peoples in natural disaster risk reduction, and prevention and preparedness initiatives, including consultation and cooperation with the indigenous peoples concerned in the elaboration of national plans for natural disaster risk reduction;

12. *Welcomes* the ongoing cooperation and coordination among the Special Rapporteur, the Permanent Forum on Indigenous Issues and the Expert Mechanism, and requests them to continue to carry out their tasks in a coordinated manner, and welcomes in that regard their permanent effort to promote the United Nations Declaration on the Rights of Indigenous Peoples;

13. *Reaffirms* that the universal periodic review, together with the United Nations treaty bodies, are important mechanisms for the promotion and protection of human rights and, in that regard, encourages effective follow-up to accepted universal periodic review recommendations concerning indigenous peoples, as well as serious consideration to follow up on treaty body recommendations on the matter;

14. *Encourages* those States that have not yet ratified or acceded to the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization to consider doing so and to consider

supporting the United Nations Declaration on the Rights of Indigenous Peoples, and welcomes the increased support by States for that Declaration;

15. *Welcomes* the sixth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and encourages States that have endorsed it to adopt measures to pursue the objectives of the Declaration in consultation and cooperation with indigenous peoples, where appropriate;

16. *Encourages* States to consider the rights of indigenous peoples in the discussion of the United Nations development agenda beyond 2015;

17. *Welcomes* the role of national human rights institutions established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) in advancing indigenous issues, and encourages such institutions to develop and strengthen their capacities to fulfil that role effectively, including with the support of the Office of the High Commissioner;

18. *Takes note* of the outcome document of the Global Indigenous Preparatory Conference for the World Conference on Indigenous Peoples held in Alta, Norway, in June 2013, and other proposals made by indigenous peoples, and recommends that the four themes identified in the outcome document be taken into account when considering the specific themes for the round tables and interactive panel for the World Conference;

19. *Welcomes* the study on the situation of indigenous persons with disabilities presented to the Permanent Forum on Indigenous Issues at its twelfth session,⁸ stresses the need to focus on challenges to indigenous persons with disabilities regarding full enjoyment of their human rights and to include them in all aspects of development, including by enhancing their access to goods and services to improve their standard of living, and encourages all stakeholders to increase consultations on these topics with indigenous persons with disabilities;

20. *Takes note* of the activity of the United Nations Indigenous Peoples' Partnership, and invites States and other potential donors to support it;

21. Decides to continue the consideration of this question at a future session, in conformity with its annual programme of work.

2. Human rights and indigenous peoples, A/HRC/RES/27/13, 3 October 2014

The Human Rights Council,

Recalling all Commission on Human Rights and Human Rights Council resolutions on human rights and indigenous peoples,

Bearing in mind that the General Assembly, in its resolution 59/174 of 20 December 2004, proclaimed the Second International Decade of the World's Indigenous People,

Recalling the adoption by the General Assembly of the United Nations Declaration on the Rights of Indigenous Peoples in its resolution 61/295 on 13 September 2007,

Welcoming the forthcoming thirtieth anniversary of the United Nations Voluntary Fund for Indigenous Peoples in 2015, and acknowledging the decades of its substantive work to facilitate the direct and meaningful participation of indigenous peoples within the United Nations, the Human Rights Council and the human rights treaty bodies, also in the light of this important anniversary,

Recognizing the importance to indigenous peoples of revitalizing, using, developing and transmitting their histories, languages, oral traditions, philosophies, writing systems and literatures to future generations, and designating and retaining their own names for communities, places and persons,

Welcoming the completion of the studies by the Expert Mechanism on the Rights of Indigenous Peoples on access to justice in the promotion and protection of the rights of indigenous peoples: restorative justice, indigenous juridical systems and access to justice for indigenous women, children and persons with disabilities¹ and on the promotion and protection of the rights of indigenous peoples in disaster risk reduction, prevention and preparedness initiatives submitted to the Human Rights Council at its twenty-seventh session, and encouraging all parties to consider the examples of good practices and recommendations included in these studies as practical advice on how to attain the end goals of the United Nations Declaration on the Rights of Indigenous Peoples,

Stressing the need to pay particular attention to the rights and special needs of indigenous women, children, youth and persons with disabilities, as set out in the United Nations Declaration on the Rights of Indigenous Peoples,

Recognizing the need to find ways and means of promoting the participation of indigenous peoples' representatives and institutions within the United Nations system on issues affecting them, as they are not always organized as non-governmental organizations,

Recognizing also the twenty-fifth anniversary of the adoption by the International Labour Organization of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and its contribution to the promotion and protection of the rights of indigenous peoples,

1. Welcomes the report of the United Nations High Commissioner for Human Rights on the rights of indigenous peoples, and requests the High Commissioner to continue to submit to the Human Rights Council an annual report on the rights of indigenous peoples containing information on relevant developments in human rights bodies and mechanisms and activities undertaken by the Office of the High Commissioner at headquarters and in the field that contribute to the promotion of, respect for and the full application of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and follow-up on the effectiveness of the Declaration;

2. Also welcomes the work of the Special Rapporteur on the rights of indigenous peoples, including the official visits made and her reports, and encourages all Governments to respond favourably to her requests for visits;

3. Requests the Special Rapporteur to report on the implementation of her mandate to the General Assembly at its seventieth session;

4. Welcomes the work of the Expert Mechanism on the Rights of Indigenous Peoples, takes note with appreciation of the report on its seventh session,⁴ and encourages States to continue to participate in and contribute to its discussions, including by their national specialized bodies and institutions;

5. Requests the Expert Mechanism to prepare a study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, including through their participation in political and public life, and to present it to the Human Rights Council at its thirtieth session;

6. Also requests the Expert Mechanism to continue to undertake, with the assistance of the Office of the High Commissioner, the questionnaire survey to seek the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the end goals of the United Nations Declaration on the Rights of Indigenous Peoples, with a view to completing a final summary of responses for presentation to the Human Rights Council at its thirtieth session, and encourages States and indigenous peoples that have not yet provided their responses to do so, as well as those States and indigenous peoples that have already responded to the questionnaire survey to update their responses as appropriate;

7. Welcomes the adoption by the General Assembly of its resolutions 65/198 of 21 December 2010 and 66/296 of 17 September 2012 on the organization of the high-level plenary meeting of the General Assembly, known as the World Conference on Indigenous Peoples, held on 22 and 23 September 2014, and takes note of the preparatory process, including the meetings that took place in Tiquipaya, Cochabamba, Plurinational State of Bolivia, and Chiang Mai, Thailand, as well as the previous meetings in Alta, Norway, and in Guatemala City;

8. Also welcomes the report of the Secretary-General on ways and means of promoting participation in the United Nations of indigenous peoples' representatives on the issues affecting them,⁵ and invites the Secretary-General, taking into account the views expressed by indigenous peoples, to present options, including recommendations regarding concrete proposals, to the General Assembly at its seventieth session in this regard;

9. Decides to hold, at its thirtieth session, a half-day panel discussion on the follow-up to and implementation of the outcome of the World Conference on Indigenous Peoples, and its implications for the achievement of the ends of the United Nations Declaration on the Rights of Indigenous Peoples;

10. Welcomes the ongoing cooperation and coordination among the Special Rapporteur, the Permanent Forum on Indigenous Issues and the Expert Mechanism, and their permanent effort to promote the United Nations Declaration on the Rights of Indigenous People, including the follow-up to the World Conference of Indigenous Peoples, and invites them to continue to work in close cooperation with all Human Rights Council mechanisms, within their respective mandates;

11. Reaffirms that the United Nations treaty bodies are important mechanisms for the promotion and protection of human rights, and encourages States to give serious consideration to their recommendations regarding indigenous peoples;

12. Welcomes the contribution of the universal periodic review to the realization of the rights of indigenous peoples, and encourages the effective follow-up to accepted universal periodic review recommendations concerning indigenous peoples;

13. Encourages those States that have not yet ratified or acceded to the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization or that have not yet supported the United Nations Declaration on the Rights of Indigenous Peoples to consider doing so;

14. Welcomes the increased support by States for the United Nations Declaration on the Rights of Indigenous Peoples and the commemoration of the seventh anniversary of its adoption, and encourages States that have endorsed it to adopt measures to pursue its objectives in consultation and cooperation with indigenous peoples;

15. Encourages States to give due consideration to all the rights of indigenous peoples in the process of the elaboration of the post-2015 development agenda and to take measures to ensure the participation of indigenous peoples, and in particular indigenous youth, in national processes for the implementation of the new development goals;

16. Welcomes the role of national human rights institutions established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) in advancing indigenous issues, and encourages such institutions to develop and strengthen their capacities to fulfil that role effectively, including with the support of the Office of the High Commissioner;

17. Takes note of the activity of the United Nations Indigenous Peoples' Partnership, and invites States and other potential donors to support it;

18. Invites States and other public or private actors or institutions to contribute to the United Nations Voluntary Fund for Indigenous Peoples as an important means of promoting the rights of indigenous peoples worldwide and within the United Nations system;

19. Decides to continue its consideration of this question at a future session in conformity with its annual programme of work.

IX. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

A. Advice

1. Expert Mechanism advice No. 5 (2013): Access to justice in the promotion and protection of the rights of indigenous peoples, 29 April 2013

A. General

1. The United Nations Declaration on the Rights of Indigenous Peoples should be the basis of all action, including at the legislative and policy levels, on the protection and promotion of indigenous peoples' right to access to justice. The implementation of the Declaration should be seen as a framework for reconciliation and as a means of implementing indigenous peoples' access to justice.
2. Respect for the right to self-determination requires both recognition of indigenous peoples' systems and the need to overcome historic factors and related contemporary factors that negatively affect indigenous peoples in the operation of State systems. At the national and regional levels, strategic litigation, complemented by outreach and advocacy, can help to expand access to justice and protections for other indigenous peoples' rights.
3. Indigenous peoples' understanding of access to justice might differ from that of States, in some cases informed by their own understandings of, and practices associated with, justice. This means that, at the outset, before undertaking activities to respect, promote and protect indigenous peoples' access to justice, common understandings of the best means to attain access to justice should be sought, in line with indigenous peoples' rights to participate in decision-making affecting them.
4. Historical injustices contribute to multiple contemporary disadvantages for indigenous peoples, which in turn increase the likelihood of indigenous peoples coming into contact with the justice system. The relationship of indigenous peoples with domestic criminal justice systems cannot, therefore, be considered in isolation from historical factors or the current economic, social and cultural status of indigenous peoples. Moreover, there are other areas of law, including family law, child protection law and civil law that have an impact this relationship. Solutions include not only reforms to criminal justice systems themselves but also measures addressing the socioeconomic situation of indigenous peoples.

B. States

5. Consistent with indigenous peoples' right to self-determination and self-government, States should recognize and provide support for indigenous peoples' own justice systems and should consult with indigenous peoples on the best means for dialogue and cooperation between indigenous and State systems.
6. States should work with indigenous peoples to address the underlying issues that prevent indigenous peoples from having access to justice on an equal basis with others.
7. States should work in partnership with indigenous peoples, particularly indigenous women, to determine the most effective strategies for overcoming barriers to access to justice.
8. Moreover, States should facilitate and provide access to legal remedies for indigenous peoples and should support capacity development of indigenous communities to help them to understand and make use of legal systems.
9. States should consider the impact of law and policy on indigenous peoples' access to human rights processes and institute reform where such law and policy interferes with indigenous peoples' enjoyment of substantive equality in this regard.
10. States should recognize indigenous peoples' rights to their lands, territories and resources in laws and should harmonize laws in accordance with indigenous peoples' customs on possession and use of lands. Where indigenous peoples have won land rights and other cases in courts, States must implement these decisions. The private sector and government must not collude to deprive indigenous peoples of access to justice.
11. Training and sensitization for law enforcement and judicial officials on indigenous peoples' rights is recommended.
12. In relation to criminal justice, State authorities should consult and cooperate with indigenous peoples and their representative institutions to:

- Ensure that the criminal justice system does not become a self-promoting industry benefiting from the overrepresentation of indigenous peoples.
 - Formulate plans of action to address both the high levels of indigenous victimization and the treatment of indigenous peoples in domestic criminal justice systems.
 - Develop appropriate methodologies to obtain comprehensive data on (a) victimization of indigenous peoples, including information on the number of cases prosecuted, and (b) the situation of indigenous peoples in detention, disaggregated by age, gender and disability.
 - Reduce the number of indigenous individuals in prison, including through the pursuit of non-custodial options, such as, inter alia, use of traditional restorative and rehabilitative approaches.
13. In relation to transitional justice mechanisms:
- Indigenous peoples and indigenous peoples' representative institutions should be consulted and involved in all stages of the establishment and implementation of transitional justice mechanisms.
 - Truth commissions should be guided by and should make explicit reference to the United Nations Declaration on the Rights of Indigenous Peoples.
 - Truth commissions should recognize and address the historical injustices experienced by indigenous peoples, as well as how failures to recognize indigenous peoples' self-determination historically and today have created conditions for human rights violations.
 - Truth processes should be linked to larger outreach and education efforts. These efforts should include explaining important justice issues, such as self-determination, to the broader public.
 - Truth processes and reparations programmes should be designed in a way that respects the cultures and values of indigenous peoples.

C. Indigenous peoples

14. Indigenous peoples should strengthen advocacy for the recognition of their justice systems.
15. Indigenous peoples' justice systems should ensure that indigenous women and children are free from all forms of discrimination and should ensure accessibility to indigenous persons with disabilities.
16. Indigenous peoples should explore the organization and running of their own truth-seeking processes.
17. Indigenous peoples should strive for explicit inclusion of their particular interests in transitional justice initiatives in those cases where indigenous peoples are one among many groups that suffered human rights abuse.
18. Indigenous peoples should ensure that all persons are effectively represented in transitional justice processes, especially women.

D. International institutions

19. The Declaration should guide the efforts of United Nations system entities and mandates, including the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.
20. The United Nations should dedicate resources to the development and carrying out, in cooperation with indigenous peoples, of training on indigenous peoples' rights in relation to access to justice for law enforcement officials and members and staff of the judiciary.
21. The United Nations system should seek to expand programmes designed to support indigenous peoples to carry out strategic litigation to advance their rights and expand their access to justice.
22. The United Nations should work with indigenous peoples to contribute to further reflection on and capacity-building regarding truth and reconciliation procedures for indigenous peoples.
23. Relevant United Nations special procedures should monitor implementation of transitional justice processes to ensure that they respect the principles of the Declaration, and that States act in a timely way on truth commission recommendations and the implementation of reparations programmes for indigenous peoples.

E. National human rights institutions

24. National human rights institutions, in partnership with indigenous peoples, can play an important role in ensuring improved access to justice for indigenous peoples, including by encouraging recognition of and providing support for indigenous justice systems and promoting the implementation of the Declaration at the

national level. National human rights institutions, in partnership with indigenous peoples, have the opportunity to provide training on indigenous peoples' rights in relation to access to justice for judiciaries.

2. Expert Mechanism Advice No. 6 (2014): Restorative justice, indigenous juridical systems and access to justice for indigenous women, children and youth and persons with disabilities, 7 August 2014

A. General

1. The United Nations Declaration on the Rights of Indigenous Peoples constitutes a principled framework for justice, reconciliation, healing and peace. It affirms that the United Nations, its bodies and specialized agencies, and States have a duty to promote respect for and full application of the provisions of the Declaration and follow up on its effectiveness. Full implementation of the Declaration necessarily entails the protection and promotion of indigenous peoples' right to access to justice and to effective remedies.

2. Indigenous juridical systems can play a crucial role in facilitating access to justice for indigenous peoples. The Declaration affirms indigenous peoples' right to promote, develop and maintain their juridical systems or customs, in accordance with international human rights standards (article 34). The Declaration also upholds indigenous peoples' right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining the right to participate fully in the political, economic, social and cultural life of the State (article 5).

3. Access to justice, in addition to being a right in itself, is of paramount importance to indigenous women, children and youth, and persons with disabilities, as a means of obtaining timely and effective remedies. It must be viewed holistically, since access to justice is inextricably linked to other human rights challenges faced by indigenous peoples, including their status in society as indigenous women, children and youth, and persons with disabilities, as well as poverty, lack of access to health and education, and lack of recognition of their lands, territories and resources.

4. In this regard, several recent judicial decisions highlight the role that access to justice can play in asserting indigenous peoples' rights over their lands, territories and resources.^[15]

B. Advice for States

5. In accordance with the Declaration, States must recognize indigenous peoples' right to maintain, develop and strengthen their own juridical systems, and must value the contribution that these systems can make to facilitating indigenous peoples' access to justice. In this regard, States must allocate resources to support the adequate functioning and sustainability of indigenous juridical systems and help ensure that they meet the needs of communities, in accordance with article 39 of the Declaration.

6. In States in which legal pluralism is recognized, the jurisdiction of indigenous juridical systems should be adequately clarified, recognizing that indigenous justice systems are highly diverse and context-specific. State justice systems should demonstrate respect for customary laws (which can be a means to increasing access to justice) and customary laws should respect international human rights norms.

7. States have an obligation to protect and support the work of indigenous human rights defenders in the promotion of access to justice for indigenous peoples, in accordance with Human Rights Council resolution 22/6.

8. States should adopt a holistic approach to access to justice for indigenous women, children and youth, and persons with disabilities, and take measures to address the root causes of multiple forms of discrimination facing these groups, including systemic biased use of discretionary powers, poverty, marginalization and violence against indigenous women.

9. States should make greater effort to disaggregate data regarding their criminal justice systems so that a clearer picture of indigenous women, children and youth, and persons with disabilities currently in detention can emerge. Such data would permit the improved development and implementation of policies to better address the situation of indigenous women, children and youth, and persons with disabilities deprived of their liberty.

¹⁵ See for example *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (Supreme Court of Canada), which relates to indigenous peoples' title to land and resources based on a territorial approach, and Decision Number 35/PUU-X/2012 of the Constitutional Court of Indonesia, which recognizes the rights of the Indigenous Peoples of the Archipelago over their customary forests.

10. States should ensure that indigenous women, children and youth, and persons with disabilities have access to an interpreter where required, in all legal and administrative proceedings. In the case of indigenous persons with disabilities, States should take measures to ensure all forms of accessibility.

11. States should work with indigenous peoples to develop alternatives for indigenous children in conflict with the law, including the design and implementation of culturally appropriate juvenile justice services and the use of restorative justice approaches. Arrest, detention or imprisonment should only be used as a measure of last resort.

12. Together with indigenous peoples, States should promote human rights education and training among indigenous women, children and youth, and persons with disabilities as a means for empowerment. Furthermore, links between indigenous and State legal institutions can benefit from dialogue on rights based notions of equality, centring on awareness of the rights of indigenous women and persons with disabilities. This can lead to improved gender balance and participation of indigenous persons with disabilities in juridical systems and indigenous peoples' juridical systems.

13. States should work in partnership with indigenous peoples so as to ensure harmonious and cooperative relations in the implementation of the Declaration's provisions regarding access to justice.

14. There cannot be a rule of law without access. States have an obligation to ensure access to justice so that the right of indigenous peoples to effective remedies is fully realized.

15. States have a duty to protect against corporate violations of the human rights of indigenous peoples, especially in view of their vulnerability. Particular attention is required for indigenous women, children and youth, and persons with disabilities.

16. States should take measures to increase appointments of indigenous women to the judiciary. It is also important to promote a greater representation of indigenous women in international legal systems, such as the human rights treaty bodies.

C. Advice for indigenous peoples

17. Indigenous peoples should strengthen advocacy for the recognition of their juridical systems; increased development of such systems can improve access to justice. Together with States, indigenous peoples should in particular raise awareness about their right to administer their own justice among policymakers and judicial and law enforcement officials.

18. Indigenous peoples must also ensure that these systems respond to the needs of the community, in particular indigenous women, children and youth, and persons with disabilities.

19. Reforms and strategies are critical to ensure traditional indigenous juridical systems and leadership are efficient and independent. This includes making more resources available to the indigenous leadership, supporting indigenous juridical systems and ensuring they perform their duties with independence and integrity. The participation of indigenous women as leaders within traditional indigenous juridical systems should be facilitated through targeted efforts, based on holistic and healing-based approaches.

20. Indigenous juridical systems should ensure that indigenous women, children and youth, and persons with disabilities are free from all forms of discrimination. The participation of indigenous women, children and youth, and persons with disabilities in indigenous justice institutions should be respected and promoted. Accessibility should be ensured for indigenous persons with disabilities.

21. Indigenous peoples should ensure that knowledge regarding their juridical systems and customary laws is transferred across generations, enabling every member of the community to understand indigenous concepts of justice.

D. Advice for international organizations

22. The United Nations and its bodies and specialized agencies have an essential role in the promotion and protection of indigenous peoples' human rights, including their right to promote, develop and maintain their juridical systems. The work of international entities should be inclusive of indigenous peoples in both developing and developed States. Particular attention is required for indigenous women, children and youth, and persons with disabilities.

23. The United Nations should dedicate resources to the development and implementation, in cooperation with indigenous peoples, of training on the rights of indigenous peoples, and particularly indigenous women, children and youth, and persons with disabilities, for law enforcement officials and members and staff of the judiciary. In addition to indigenous peoples' rights, training should also address cultural sensitivity issues and trauma.

E. Advice for national human rights institutions

24. National human rights institutions can play a catalytic role in the promotion of access to justice for indigenous peoples. Jointly with indigenous peoples, they can encourage recognition of and provide support to indigenous juridical systems. They can also provide training on human rights to both State and indigenous judicial authorities and disseminate and promote the advice of the Expert Mechanism among the judiciary and the legal profession, so that it can be used to inform legal cases and opinions. National human rights institutions can bring together indigenous peoples and States, acting as facilitators in restorative justice processes.

3. Expert Mechanism Advice No. 7 (2014): Promotion and protection of the rights of indigenous peoples in disaster risk reduction initiatives, 7 August 2014

A. General

1. The United Nations Declaration on the Rights of Indigenous Peoples provides the legal framework for the promotion and protection of the rights of indigenous peoples in disaster risk reduction, prevention and preparedness initiatives. In particular, article 29 calls for “the conservation and protection of the environment and the productive capacity of their lands or territories and resources.” Reducing the risk of natural hazards on indigenous peoples’ lands, territories and livelihoods can be seen as contributing to the fulfilment of other rights of indigenous peoples, including the right to life, the right to health and the right to food. In order for disaster risk reduction initiatives to truly have a positive impact on the rights of indigenous peoples, their full and effective participation in these initiatives is essential. Furthermore, disaster risk reduction initiatives should respect indigenous peoples’ right to self-determination, their rights related to lands, territories and resources, and their right to participate in decision-making.

2. Natural hazards are not disasters, in and of themselves. Whether or not they become disasters depends on a community’s exposure to the hazard and its vulnerability and resilience — all factors that can be addressed by human (including State) action. A failure by governments and others to take reasonable preventive action to reduce exposure and vulnerability and to enhance resilience, as well as to provide effective mitigation, is a human rights concern.

3. The following Advice is offered to promote and protect the rights of indigenous peoples in the context of disaster risk reduction, prevention and preparedness initiatives.

B. Advice for States

4. States should take every opportunity to secure the input of indigenous peoples in the development and implementation of disaster risk reduction initiatives so as to ensure their full and effective participation and the specific inclusion of indigenous peoples’ knowledge and unique needs or circumstances. States, and in particular agencies responsible for national development, should be committed to ensuring the full and effective participation of indigenous peoples, partnering with indigenous peoples in national strategies for disaster risk reduction.

5. National policies should integrate indigenous perspectives that reflect the changing climate in the context of disaster risk reduction in order to provide a strategic framework for action that empowers indigenous peoples to build resilience while respecting their right to self-determination with regard to their lands, territories and natural resources, their right to participate in decision-making, and their right to protect their cultural knowledge.

6. Disaster risk management efforts should be scaled up to reach the many risk-prone indigenous peoples and other vulnerable groups.⁴⁸ States should take measures, in cooperation with indigenous peoples, to promote sustainable land use and ensure the security of water resources.

7. The design and implementation of early warning systems should be carried out with the participation of indigenous peoples in order to ensure the linguistic and cultural relevance of the systems.

8. States should consider the possible impact of infrastructure development and of resource extraction policies and activities on the rights of indigenous peoples in general, and on their vulnerability to disasters in particular.

9. States should take measures to promote the participation of indigenous peoples in regional and international disaster risk reduction forums, including the global post-2015 framework for disaster risk reduction (HFA2).

10. Existing treaty relationships and partnerships between relevant government agencies working on disaster risk reduction and indigenous peoples should be pursued in all regions of the world in order to develop disaster risk reduction strategies at the national and local levels that reflect the voices of indigenous peoples.

11. The collection and disaggregation of data on disaster risk reduction should be improved in order to develop a clearer picture of indigenous peoples' vulnerability to disasters.

12. States should consult with indigenous peoples and seek to obtain their free, prior and informed consent when implementing disaster risk reduction measures that may affect their lands, territories and natural resources.

13. It is important for States to develop and implement resource extraction policies that aim to measure and reduce risk. This may include prohibiting resource extraction development where such development could lead to an increase in disaster risk.

14. As suggested in the Hyogo Framework for Action, States should "provide easily understandable information on disaster risks and protection options, especially to citizens in high-risk areas, to encourage and enable people to take action to reduce risks and build resilience."⁴⁹ This recommendation is particularly relevant for indigenous peoples. The Hyogo Framework for Action also calls for the information to incorporate indigenous knowledge and to be tailored to the target audiences, taking cultural and social factors into account.

C. Advice for indigenous peoples

15. Indigenous peoples should ensure their greater participation in disaster risk reduction initiatives at the local, national and international levels. In advocating for increased participation, indigenous peoples should draw upon the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, including the right to self-determination, rights related to lands, territories and resources, the right to participate in decision-making, and respect for and protection of traditional knowledge.

16. Indigenous peoples should develop community-level preparedness and risk reduction plans and strategies, with the participation of the entire community, that include actionable contingency plans to protect lives, livelihoods and critical infrastructure.

17. Indigenous peoples should disseminate and promote the elements included in these plans and strategies, which represent an indigenous perspective, in order to heighten awareness at the national and global levels.

18. Indigenous peoples should consider investing in training for youth on new technologies that are a part of current early warning and Geographic Information System mapping applications, which may include training by elders on how to adapt traditional knowledge in this contemporary context.

19. Traditional indigenous knowledge, values and cultures are, in themselves, important risk reduction tools and should be incorporated into national and international disaster risk reduction strategies, in conformity with the United Nations Declaration on the Rights of Indigenous Peoples. Indigenous knowledge should be valued and widely shared among the communities of indigenous peoples and with States and international institutions.

D. Advice for the global and regional disaster risk reduction communities

20. International agencies and organizations working on disaster risk reduction should exchange good practices and experiences in working with indigenous peoples at the regional and international levels.

21. As indigenous peoples continue to take steps to manage and reduce disaster risk, they will require information on common principles and concepts in a language that is easily understood and culturally appropriate.

22. In all disaster risk reduction initiatives, measures should be taken to ensure the full and effective participation of indigenous peoples and the recognition and promotion of the rights of indigenous peoples, including the right to self-determination, rights related to lands, territories and resources, the right to participate in decision-making, and respect for and protection of traditional knowledge, consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Such initiatives should recognize indigenous peoples' participation as distinct from that of civil society organizations.

23. HFA2 should continue to highlight the inclusion of indigenous perspectives and traditional knowledge of risk reduction, particularly on issues related to climate change, and to advocate for a human rights–based approach to be integrated into disaster risk reduction policies and programmes, as recommended in the report of the fourth Global Platform for Disaster Risk Reduction.
24. Existing gaps in human rights–relevant elements of the Hyogo Framework of Action should be addressed, including discrimination and inequalities; economic and social rights in general; the rights to food, housing, health and property; and the need for full and effective participation by indigenous peoples.
25. International and regional organizations should strive to identify appropriate spaces and opportunities to move forward a productive dialogue that reflects and builds upon potential synergies between disaster risk reduction, human rights and indigenous issues.
26. International and regional organizations, in cooperation with indigenous peoples, should develop training programmes on disaster risk reduction aimed at strengthening the participation of indigenous peoples in disaster risk reduction and improving indigenous peoples’ resilience to disaster risk.
27. International organizations can play a crucial role in promoting dialogue between indigenous peoples and States with regard to the promotion and protection of the rights of indigenous peoples in the context of disaster risk reduction strategies.

X. SELECTED SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

A. Reports of the Special Rapporteur on the Rights of Indigenous Peoples

1. Country Reports 2013-14¹⁶

- The status of indigenous peoples' rights in Panama A/HRC/27/52/Add.1
- The situation of indigenous peoples in Canada A/HRC/27/52/Add.2
- The situation of indigenous peoples' rights in Peru with regard to the extractive industries A/HRC/27/52/Add.3
- The situation of indigenous peoples in Namibia A/HRC/24/41/Add.1
- La situación de los pueblos indígenas en El Salvador A/HRC/24/41/Add.2
- Consultations on the situation of indigenous peoples in Asia, A/HRC/24/41/Add.3

2. Annual Reports 2013-14¹⁷

- Report of the Special Rapporteur on the rights of indigenous peoples A/HRC/27/52
- Extractive Industries and Indigenous Peoples, A/HRC/24/41

B. Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

1. Indonesia, A/HRC/25/54/Add.1, 26 December 2013

Security of tenure and land issues

42. A complex, unresolved, inequitable and exclusionary land tenure system exists in Indonesia, exemplified by the fact that approximately 69 per cent of the land is owned by 16 per cent of the population.

43. Indonesia's land legislation is based on colonial norms and practices, over which post-colonial reforms have been imposed. All land in Indonesia falls into one of two categories, forest estate (about 70 per cent of the land) and non-forest estate (the remaining 30 per cent). Forest estate is under the responsibility of the Ministry of Forestry, regulated by the Basic Forest Law of 1967. Non-forest estate is managed and administered by BPN, according to the Basic Agrarian Law of 1960. As such, land is administered under a dual system through two different Government agencies responsible for forestry and non-forestry lands, respectively. This dual system, together with colonial legacies and lack of integration of customary rights, have all generated numerous challenges, including widespread tenure insecurity, limited recognition of the customary rights of individuals and communities, and the unsustainable management of natural resources.

47. The overall tenure insecurity is compounded by the parallel sets of customary adat laws and State law in Indonesia, causing confusion, land conflicts, problems for adat communities, evictions and forest destruction. Neither the Basic Agrarian Law nor the Basic Forestry Law provide adequate recognition to customary land practices or allow for registration of collective tenure.

48. Although article 56 of the Basic Agrarian Law (BAL) recognizes the continuing validity of rights derived from adat, or customary law, the right-holder cannot register the right or have it fully recognized by the State until he or she purchases a certification from BPN confirming that the land is not State land. Adat land can only be registered and certified after having been rendered into one of seven private law land rights recognized in article 16 of the BAL. Thus, although in many cases the land right originates in adat law since well before the creation of the Indonesian State in 1945, BPN officials impose a presumption that all unregistered land is State land until proven otherwise. Moreover, Hak ulayat (which can be translated as "a communal right of allocation") cannot be registered. This deters communities from applying collectively for land certificates.

49. The 1967 Basic Forestry Law and the 1967 Law on Mining essentially rendered all forest land the property of the State and eliminated the adat rights of communities living in these areas, depicting them as

¹⁶ These reports are available at:
<http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/CountryReports.aspx>.

¹⁷ These reports are available at:
<http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/AnnualReports.aspx>.

illegal “squatters”. However, according to the Ministry of Forestry, only 14 per cent of forest lands have been legally defined (gazetted), which further creates tenure insecurity. Confusion and disagreement over forest land and its use have led to uncertainty over which entity owns or controls the forests. Unrecognized private rights, including adat communal land, within the forest estate continue to create conflicts, since there are about 33,000 villages (approximately 48 million people) located within or around the forest estate that have been living there for generations, even centuries, but their claims to the land are not recognized by the State.

50. Conversion of land uses has had significant impact on natural resources and land rights of forest-dependent communities. Between 2004 and 2009, the Forestry Ministry allocated 1.2 million hectares of forests for mining activities, and plans to allocate a further 2.2 million hectares of forests between 2010 and 2020. Palm oil production is also a main factor in changes in forest land uses, as Indonesia now controls 14.3 per cent of the world’s vegetable oil market. It is estimated that the establishment of 66 per cent of all currently productive oil-palm plantations involved forest conversion.

51. Due to the decentralization process, district and municipal Governments now manage land, determine resource use and spatial planning, and manage revenues and budgets. The Special Rapporteur was informed that in many cases developers acquire permits for plantation, mining or development activities from local Governments, without prior knowledge of the residents actually living on the land and sometimes in contradiction to spatial plan or zoning regulations. Indonesia has witnessed nearly 2,000 cases of conflicts which involved 600,000 households regarding 10 million hectares of forest land.

52. In this context, the Special Rapporteur welcomes recent decisions of the Constitutional Court recognizing customary rights over forest land and coastal area to communities traditionally living there, and calls on the Government to adjust legislation and policy in order to implement these decisions as soon as possible. She also calls attention to the Guidelines on large-scale land acquisitions and leases developed by the Special Rapporteur on the right to food. The Government of Indonesia may find these guidelines useful when considering the revision of the 1967 Basic Forestry Law and the 1967 Law on Mining.

Forced evictions

55. The combination of fast development, a complex and exclusionary tenure system and the ambiguous presence of informal settlements in urban centres is causing widespread forced evictions and forced resettlement all over the country, in contradiction to international human rights obligations and standards. During her visit, the Special Rapporteur heard numerous testimonies of communities that have been forcibly evicted from rural or urban areas, by both private actors and various Government authorities. In her view, this is one of the most serious issues in Indonesia.

56. Forced evictions are a gross violation of a wide range of internationally recognized human rights. The term “forced eviction” refers to any eviction that is not carried out in accordance with international law and standards, regardless of whether the evicted persons hold legal title to the land and regardless of whether the eviction took place with the use of force. This is the case even when the eviction is to serve legitimate public interests, such as preventing risks.

57. Mass forced evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law, which includes a number of strict conditions, such as (a) the obligation to provide full information on the purpose of the evictions; (b) legal remedies and legal aid to persons who are in need of seeking redress from courts; and (c) the taking of all appropriate measures to ensure adequate compensation and/or adequate alternative housing or resettlement. Evictions should not involve the use of force and should not result in individuals being rendered homeless. The solution should be reached by meaningful consultation with the affected communities to ensure that relocation results in the improvement of their standard of living or at least does not result in its deterioration.

58. Despite these international standards, a myriad of national, provincial and municipal laws and regulations authorizes local Government to conduct evictions of settlements from privately owned land or from areas which are not intended for habitation according to the regional master plan.

63. Recently, amendments have been promoted to clarify the legal framework of evictions and land acquisition. In January 2012, the Indonesian Parliament adopted Law No. 2 on Acquisition of Land for Development for Public Purposes and subsequently Presidential Regulation no. 71/2012 was adopted. The 2012 legislation revised the legislative framework underlying land acquisition, applicable to all land acquisition for public-interest projects that can be carried out by Government institutions after 7 August 2012. The Special Rapporteur welcomes the inclusion of urban slum planning, land consolidation and rental housing for low-income households under the definition of “public interest”. She also welcomes the mandatory

consultation and participation procedure with affected communities and the broad definition of “affected communities” under article 15. She calls on both central and regional Government to guarantee access to full information on both development and acquisition plans to potentially affected communities in order to enable their meaningful consultation and participation in the development process. The Special Rapporteur is concerned, however, that the provisions about compensation and resettlement fall short of international human rights standards and obligations, as they exclude affected communities and individuals residing on State land in violation of spatial planning or zoning regulation. She is also concerned that unregistered right holders occupying land according to customary law may also be denied compensation in the absence of registered evidence.

Conclusions and recommendations

80. The coming years offer a window of opportunity for the Government of Indonesia to proactively manage the urbanization and development processes in order to ensure inclusive growth and poverty reduction and to rectify past distortions of the housing and land sectors. Legislation, policies and programmes, both at the national and regional levels, should encourage efficient urban spatial structures for all, sustainable land use planning, investments in critical infrastructure, strengthened tenure security and the provision of basic services including for those in informal settlements.

81. To this end, the Special Rapporteur offered specific recommendations throughout the report. She also calls on the Government to consider the following: ...

Land management and administration

(f) Land policy should protect the interests of low-income households, indigenous communities and communities occupying land based on customary (adat) law;

(g) The Government should ensure security of tenure – legal recognition of possession, communal land rights, forest land ownership. To this end, land regime should be revised so as to resolve ambiguities between customary (adat) and formal land laws;

(k) Existing regulations on land title and registration should be reformed in order to simplify the process, reduce the costs to individuals, permit collective and communal rights, provide flexible requirements on the forms of title evidence required, increase efficiency and diminish delays;

Forced evictions

(m) The Government of Indonesia should bring its national and municipal legislation and regulations regarding forced evictions, land acquisition and land concessions in line with international human rights law and standards....

C. Special Rapporteur in the Field of Cultural Rights

1. Preliminary conclusions and observations by the Special Rapporteur in the field of cultural rights at the end of her visit to Botswana – 14 / 26 November 2014

I am pleased to share my preliminary observations at the end of the 13-day official visit I carried out in my capacity of UN Special Rapporteur in the field of cultural rights, at the invitation of the government of Botswana.

The purpose of my visit was to identify, in a spirit of co-operation and constructive dialogue, good practices in and possible obstacles to the promotion and protection of cultural rights in Botswana. I addressed a number of key-issues, in particular the rights of individuals and communities to participate in cultural life: that is, to access, take part in, and contribute to cultural life in all its facets, to enjoy and have recognised their cultural heritage, including through participating in the identification, interpretation, classification, and stewardship of cultural heritage, as well as to express their creativity in the arena of artistic expressions, sports and culture.

I chose these points with a particular focus on Botswana’s policies in the fields of culture, language, education and tourism. During my visit, I sought to discuss with all stakeholders their views on the impact, positive and negative, as well as the potential of policies, programs and initiatives to promote and further protect the cultural rights of all groups.

I will develop my assessment in a written report, in which I will also formulate recommendations. I intend to present this report at the 28th session of the United Nations Human Rights Council in March 2015 in Geneva.

...

Efforts to include and enable people to benefit from the development processes have been rolled out in parallel with policies geared towards nation-building. While the use of Setswana as the national language has largely succeeded in enabling citizens to communicate with each other, it seems that it is time for a second phase of nation-building that reflects, builds on and celebrates the rich cultural diversity of the country. There is a need for a serious national dialogue, at various levels and with all stakeholders, on the way forward.

From a cultural rights based perspective, this implies equal recognition and acknowledgement of the various communities in the country, and of the diverse ways in which people relate to their environment and natural resources, as well as their land. I am therefore happy to note that one important aim of the Vision 2016 is to build a united and proud nation, with a diverse mix of cultures, languages, traditions and peoples sharing a common destiny.

...

Many people feel excluded from the main society and lack recognition of their cultural heritage and distinct ways of life, including of their own historical narratives.

In particular, issues relating to the recognition of tribal communities as tribes under the Bogosi Act of 2008 need to be addressed. Unlike the eight Tswana tribes who have an automatic seat in the House of Chiefs, other communities do not. Six years after the Act was adopted, some groups which have requested to be recognized as tribes, such as the Wayeyi, still await a decision.

I recognize that the Kgotla system, which many consider an important institution for consultations at the local level, has enabled communities to remain the guardians of their own cultural heritages. I am concerned, however, that the adjudication system based on the Kgosis (chiefs) leads to the dominant tribe mainly imposing its customary law on all groups in a tribal territory in civil matters.

...

I wish to congratulate Botswana for its success in having the Okavango Delta included on the World Heritage List of UNESCO. I particularly welcome the consultative process engaged in by the government before the listing as well as the recognition that the Delta has been inhabited for centuries by small numbers of people with no significant impact on the ecological integrity of the area. I am also pleased that the nomination dossier mentions sites of specific cultural significance for local communities. The government has assured me that there will be no fencing of the area, no eviction of local communities, and no disruption of their rights of access to natural resources. I encourage the government to continue implementing the UNESCO recommendations for the Okavango Delta, in particular, to reinforce the recognition of the local inhabitants' cultural heritage, effectively and clearly communicate all matters concerning the implications of the listing to the affected indigenous peoples, to respect and integrate their views into management, planning and implementation, and to ensure they have access to benefits derived from tourism. I hope that such steps will help to establish good practices in this area, including for other parts of the country.

In many of the places I visited, I heard the frustration, anger, and fears expressed by people, in particular the San, the Hambukushu and the Wayeyi, which stem from the lack of clear information about and understanding of the policies in place as well as future plans, and from memories of past violations of rights. The legacy of past violations of human rights in the distant and more recent past needs to be acknowledged and addressed. I would encourage the government to facilitate memorialisation processes, understood as providing the necessary space for those affected to articulate their diverse narratives in culturally meaningful ways, so as to engage in meaningful consultations with communities for the future. One area that needs further consideration and research in this respect is how best to deal with the "wildlife-human conflicts".

The Central Kalahari Games Reserve, established in 1961 to protect wildlife as well as the San people living in the area, has been at the centre of considerable controversy since the government's decision in 1985 to relocate all people residing in the Reserve to settlements outside the Reserve. The forced relocation of all local populations in 2002 following the closure of all services by the government resulted in a certain number of residents approaching the court to claim their right to continue to live in the land of their forefathers. In 2006, the High Court ruled that the eviction was unlawful and unconstitutional. Today, concerns remain regarding the restrictive interpretation of the right of off-spring to remain on the Reserve upon attaining majority at 18 years of age. The fear amongst affected people is that once the elders have passed away, nobody will be entitled to live in the Reserve. Furthermore, insisting that people relocate outside the Reserve

for wildlife conservation purposes is at odds with allowing the continuation of mining and tourism activities. Past attempts to enter into consultations seem to be a deadlock. I encourage the government and the affected communities to engage in meaningful consultations to find viable ways forward.

I was pleased to see that in the Tsodilo Hills, also listed as a World Heritage by UNESCO, the government has taken steps to include communities in the related tourism trade. A good relationship exists between the Museum and the local Community Trust, which now allows both communities, San and Hambukushu, to participate and benefit. The government has put into place many tools for developing community-based initiatives to ensure that the local people participate in the management and benefits of their local natural and cultural resources. I appreciate the work of civil society in this area and welcome the development of partnerships of civil society, the government and the private sector in taking this forward. I encourage the government to continue and expand its community-based approach and to further develop capacity in the tourism industry.

In most of the meetings I have held, the issue of land was a recurring theme. While I understand the complexities of the issue, my main understanding is that there is clearly a lack of understanding by people, of the legal framework in place, their rights, as well as procedures to be followed. There is a need to conduct massive information campaigns to explain the option available, including through proactively engaging with communities.

D. Special Rapporteur on the Right to Food

1. Malaysia, A/HRC/25/57/Add.2, 3 February 2014

1. The Special Rapporteur on the right to food, Olivier De Schutter, conducted a visit to Malaysia from 9 to 18 December 2013, at the invitation of the Government. ...

2. Moreover, the Special Rapporteur met with members of the Parliament of Malaysia and of the Sabah State Legislative Assembly, as well as with members of the United Nations country team. He also convened five round-table discussions with representatives of non-governmental organizations, indigenous communities of West and East Malaysia, trade unions, farmers associations and academics, held in the Federal Territory of Kuala Lumpur and the States of Selangor and Sabah. In Petaling Jaya, Selangor, the Special Rapporteur met with residents of a low-cost flats neighbourhood (Desa Mentari); and in the village of Terian, Sabah, he met with residents of seven villages of the Ulu Papar region.

Food insecurity and nutrition

Situation

8. The number of households living in hard-core poverty, unable to meet their basic food needs, decreased from 0.7 per cent in 2009 to 0.2 per cent in 2012, while the incidence of hard-core poverty for urban and rural areas dropped from 0.2 per cent and 1.8 per cent in 2009 to 0.1 per cent and 0.6 per cent in 2012, respectively. Given these numbers, the Government considers that food insecurity and malnutrition related to poverty to have been practically abolished. Nevertheless, there are still pockets of poverty to be tackled, and the obstacles still faced by vulnerable communities in their access to an adequate diet must be removed.

9. Two groups stand out as particularly vulnerable. The first is the population of indigenous communities, accounting for some 12 per cent of the national population. The second is the non-citizen population, which, according to the International Labour Organization, comprises some 3.8 million migrant workers (around 14 per cent of the total population) and about 200,000 refugees and asylum seekers. Notably, national poverty statistics do not include the large number of unskilled migrant workers, who are among the poorest in the country. Similarly, while the Government recognizes the particularly vulnerable situation of indigenous communities and specifically targets poverty alleviation efforts at these groups, the migrant population is conspicuous by its absence in social policies.

10. While national statistics and household surveys do not provide disaggregated data on the poverty and food insecurity situation of specific indigenous communities in Sabah and Sarawak, official statistics show

higher levels of poverty among the Orang Asli, the indigenous communities of peninsular Malaysia. Although poverty levels among the Orang Asli have been reduced in recent decades, in 2010, 31.16 per cent still lived below the income poverty line, around 10 times more than the national average. Furthermore, monetary income may not be an adequate gauge of vulnerability of indigenous communities whose livelihoods depend to a significant extent on their surrounding national resources. The distinct challenges affecting the right to food of indigenous populations is discussed below (see sect. VI).

Food accessibility

34. Accessibility requires that individuals are able to either produce food for their own consumption or to purchase food without compromising other basic needs. Food should also be physically accessible to all people, including those living in remote areas and the physically vulnerable, such as older persons or persons with disabilities.

A. Own production

35. The number of people relying on their own agricultural production, foraging or fishing to meet their food needs in Malaysia is declining, due to the agrarian transition and changing lifestyles, as well as to the emphasis on commodity agriculture and the conversion of farmland into palm oil and rubber plantations.

36. While some communities practice subsistence agriculture, particularly indigenous communities living in remote areas, smallholder agriculture is dominated by the cultivation of commercial crops and commodities (mainly palm oil and rubber) rather than food crops. The Special Rapporteur encourages the Government to increase efforts to support smallholders in the production of food crops as a means to improve access to adequate diets in rural communities.

37. The fishing sector provides direct employment to some 136,500. Many are small-scale fishers, coexisting with large-scale commercial operators. The Special Rapporteur notes with interest several initiatives undertaken to support small-scale fishers and promote sustainable fishing practices, including the regulation of fishing of different types of vessels within designated fishing zones, reserving the coastal zones (within five nautical miles off-shore) to artisanal small-scale fishers.

Indigenous communities, their land and livelihoods

62. Indigenous peoples in Malaysia, also referred to as the Orang Asal (“original people”), comprise the Negrito, Senoi and Proto Malay in peninsular Malaysia, collectively known to as the Orang Asli, and around 100 ethnic and sub-ethnic groups in East Malaysia, collectively called Orang Uluor or Dayak in Sarawak, and Anak Negeri in Sabah. The Orang Asli number some 178,000 people, about 0.6 per cent of the population. The number of indigenous peoples in East Malaysia is estimated at around 2.8 million people, about 50 per cent of the populations of Sabah and Sarawak.

63. A significant number of Orang Asal live in rural areas and have a special relationship to their lands and the ecosystems, which serve as a source of livelihood and cultural identity. While there is a lack of specific statistics on the situation of individual ethnic groups in Sabah and Sarawak, it is generally recognized that these indigenous rural communities are among the poorest and most vulnerable groups in the country.

A. Land rights of indigenous peoples

64. During his visit, the Special Rapporteur heard a range of testimonies of indigenous peoples from peninsular Malaysia, Sabah and Sarawak. While the legal and policy framework to protect the rights of indigenous peoples presents differences across States, the concerns expressed by indigenous communities were very similar. They related, in particular, to problems faced in their access to traditional sources of livelihood as a result of encroachment on their lands and the degradation of ecosystems caused by development projects, logging and the expansion of palm oil plantations. Closely related to such concerns were the problems faced by communities in acquiring official recognition of native customary land rights and in participating in the decision-making processes related to major development projects affecting their lands and livelihood.

65. As noted elsewhere by the Special Rapporteur, and as highlighted in the report of the National Inquiry into the Land Rights of Indigenous Peoples, released by SUHAKAM on 5 August 2013, access to land presents a direct relationship to the right to food: where indigenous communities have lost access to the forests and land that they depend on for their livelihood, they can fall into a situation of food insecurity and extreme poverty.

66. The Special Rapporteur commends SUHAKAM for conducting the Inquiry. The recommendations made in its report are in line with international human rights norms and standards, including the United Nations Declaration on the Rights of Indigenous Peoples, and jurisprudence from Malaysian courts. In this regard, the Special Rapporteur welcomes the fact that a task force has been set up by the Government to consider ways to implement the recommendations made in the report.

67. Indigenous peoples of Malaysia have clear systems of land tenure, whether individual or collective, based on adat (customary systems). Their customary land rights are recognized in different laws and policies, such as the Sabah Land Ordinance (1930) and the Sabah Land Use Policy (2010); the Sarawak Land Code (1958); the Aboriginal Peoples Act (1954) and the National Land Code (1965). Yet, as demonstrated by SUHAKAM, the statutory laws relating to land in Sabah, Sarawak and peninsular Malaysia that give recognition to traditional land tenure systems fall short for three main reasons: (a) a lack of recognition by the authorities of the concept of customary land, or what constitutes customary land, resulting in considerable land not being registered as customary land with the relevant government departments; (b) inefficiency on the part of the government agencies concerned in “processing” land ownership claims; and (c) a lack of consultation with the indigenous peoples. In particular, the Special Rapporteur is concerned that customary land rights are being defined too narrowly by all governments as land that has been actively and productively used since a given point in time; this results in effectively excluding land used by indigenous groups for foraging, hunting and fishing, or land used in rotational agriculture, whereby land is left fallow for a number of years before people are allowed to return to it. As a result, the indigenous communities not only lose their access to this land, but when land is developed for commercial uses, indigenous groups are not consulted and are not given any compensation.

68. In this regard, the Special Rapporteur recalls the obligation of the Government to ensure the demarcation and protection of native customary land rights, as underlined in the United Nations Declaration on the Rights of Indigenous Peoples. Under the Declaration, States are required to give legal recognition and protection to the lands, territories and resources that indigenous peoples have traditionally owned, occupied or otherwise used or acquired. They are also required to recognize the right of indigenous peoples to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

B. Development projects

69. During his visit, the Special Rapporteur met with indigenous communities affected by large-scale development projects and the expansion of commercial plantations. He heard, inter alia, concerns about the relocation and resettlement of communities for development projects and the need to find ways to improve dialogue between the Government and the communities affected. In Sabah, he visited communities in the Ulu Papar region, where the proposed construction of a dam would require the displacement of nine villages, which would have an impact on the communities’ agricultural land and sources of livelihood.

70. The allocation of competences between the Federation and the States leads to differing, though broadly similar, requirements for environmental impact assessments in Sabah, Sarawak and peninsular Malaysia for resource-based projects (namely, for land development). While environmental impact assessments are required for all major development projects in Malaysia, however, social impact assessments are not systematically required, and are in fact only made where large-scale development projects lead to the resettlement of communities. Although social impact assessments include some elements that would overlap with human rights impact assessments, the latter, which would rely on the normative requirements of human rights and be prepared with the participation of the people affected, are not made.

71. The Special Rapporteur recommends that all levels of government begin to institute social impact and/or human rights impact assessments with environmental impact assessments. They should be conceived as a means to build trust between the authorities in charge of development projects and the communities affected. The process would have to be conducted transparently, with the provision of adequate information to communities affected; include the full consideration of all alternatives; and be undertaken prior to the launch of any project (rather than as a means to validate a project already commenced). The Special Rapporteur also recommends that follow-up assessments be conducted throughout and after the conclusion of any project to address ongoing or arising concerns, and that any human rights violations that have occurred be remedied.

72. In the above regard, the Special Rapporteur also stresses the importance of the principle of free, prior and informed consent for any change to the lands and territories of the indigenous peoples, as also provided for in the United Nations Declaration on the Rights of Indigenous Peoples. Article 19 of the Declaration requires States “to consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources”. Similarly, consultations should allow for discussion about alternatives and serve to ensure that, consistent with the right to development, development projects will “aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”.

73. Free, prior and informed consent requires that any option proposed to the indigenous communities be part of a range of alternative options from which they should be able to make a genuine choice, and that the said communities be fully informed of the long-term consequences of such a choice on their livelihoods. It is not enough to consult the communities about the consequences of development choices made on their behalf without their involvement; instead, they must have a right to oppose the project proposed.

2. Canada, A/HRC/22/50/Add.1, 25 December 2012 (late publication)

1. The Special Rapporteur on the right to food undertook an official visit to Canada from 6 to 16 May 2012, at the invitation of the Government. The purpose of the mission was to examine the way in which the human right to adequate food is being realized in Canada. ...

Indigenous peoples

53. In Canada, indigenous peoples (the term used in international law) are referred to as Aboriginal peoples, and include all original inhabitants of Canada as recognized by section 35 of the Constitution Act (1982) and comprise First Nations, Inuit and Métis. The 2006 Census numbers indicate that there are about 1.1 million Aboriginal people in Canada: 750,000 First Nations, of which over 600,000 are Registered Indians, about 50,000 Inuit across 53 communities, and over 350,000 Métis. In this context, the Special Rapporteur recalls that in human rights terms, indigenous existence and identity do not depend on State recognition or acknowledgment.

54. Like others, the Special Rapporteur welcomes the decision by Canada in November 2010 to support the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration affirms fundamental human rights in relation to the particular historical and contemporary circumstances of indigenous peoples.

55. A long history of political and economic marginalization has left many indigenous peoples living in poverty with considerably lower levels of access to adequate food relative to the general population. Though the percentage of low income among Aboriginals living off-reserve declined in recent years, 21.7 per cent of Aboriginals fall below the low income cut-off after tax as defined by Statistics Canada, compared to 11.1 per cent for the non-Aboriginal population. Despite programmes such as the Canada Prenatal Nutrition Program (including a First Nations and Inuit component); Aboriginal Head Start (includes on-reserve and urban and northern component); the Aboriginal Diabetes Initiative; and Nutrition North Canada, discussed in greater detail below, research conducted by the University of Manitoba noted that in 2008-2009, nearly 60 per cent of First Nations children in northern Manitoba households were food insecure. The Inuit Health Survey reported that 70 per cent of adults living in Nunavut were food insecure. This is six times higher than the national

average and represents the highest documented food insecurity rate for any aboriginal population in a developed country. Among off-reserve aboriginal severely food insecure. These rates are three times higher than among non-aboriginal households, where 7.7 per cent were food insecure, including 2.5 per cent with severe food insecurity. In March 2011, one in ten of the 851,014 who relied on food banks across Canada self-identified as an aboriginal person.

A. Nutrition North Canada

56. Families in remote and isolated indigenous communities frequently lack access to affordable nutritious foods, particularly perishables such as fruits, vegetables and meats, due to limited food selections, high food prices and poor quality of fresh produce. Expensive transport costs and difficult logistics (e.g. airfreight charges, and uncertainty of travel on winter roads, where they exist, or air travel subject to weather conditions), high poverty rates and a continuing decline in the use of traditional foods result in few healthy food choices.

57. Recognizing the importance of access to nutritious food in isolated communities in the North, the Government launched the Food Mail Program in the 1960s, providing federal subsidies to Canada Post for its direct costs of supplying food and other necessities through the mail service to Northern communities without year-round surface transportation. Concerns regarding the escalating costs of the Food Mail Program, as well as the programme's lack of transparency and the absence of any incentive for efficiency and innovation along the supply chain in the North, led to a series of reviews that resulted in its replacement with a programme called Nutrition North Canada in April 2011.

58. The objective of Nutrition North Canada is to improve access to perishable healthy foods in isolated Northern communities, which the Special Rapporteur welcomes. Yet, based on his observation of and information received about the programme, the Special Rapporteur also has concerns about its design and implementation. The Special Rapporteur visited God's River, Manto Sipi Cree and Wasagamack First Nations in Manitoba. He had the opportunity to visit a Northern Store (operated by the North West Company) to see first-hand the Nutrition North Canada programme in action.

59. Nutrition North Canada provides subsidies to retailers operating in NNC-eligible communities and to food suppliers operating in southern Canada. The subsidies are intended to be passed on to consumers through lower retail prices for eligible items. However, in the absence of adequate monitoring by those it is intended to benefit, it is unclear whether the programme is achieving its desired outcome. The Government of Nunavut is currently taking measures to address this deficiency by designing a monitoring programme that should be operational in 2013, and involving Nunavummiut. The Special Rapporteur welcomes this development, as he considers the current arrangements inadequate. Nutrition North Canada currently publishes the subsidy per kilogram for each eligible community, but it does not require retailers to inform Aboriginal Affairs and Northern Development Canada or the public of their airfreight costs. As such, the federal Government has no way of verifying if the subsidy is being passed on, despite the obligation imposed on subsidy recipients to attest that they have complied with this requirement every time that they submit a subsidy claim, and the compliance reviews performed by independent auditors.

60. Questions were also raised regarding the eligibility criteria on which communities fall within the scope of the programme and which items are subsidized. Under Nutrition North Canada, 31 isolated northern communities that had been eligible under the Food Mail Program, allegedly became ineligible though they had not been relying on the programme in recent years. The Special Rapporteur is concerned that Nutrition North Canada was designed and is being implemented without an inclusive and transparent process that provides Northern communities with an opportunity to exercise their right to active and meaningful participation.

61. The Special Rapporteur recognizes that neither Nutrition North Canada nor the Food Mail Program could address other factors responsible for the high food costs in northern communities, such as the high cost of energy for heating and refrigeration, electricity generation, building construction, equipment maintenance, etc. Food costs remain higher in the North than elsewhere in Canada for legitimate reasons, but more needs to be done to improve the effectiveness of Nutrition North Canada. The Special Rapporteur welcomes the progress made in this direction. Aboriginal Affairs and Northern Development Canada recently released information showing that, on average, in communities eligible for a full subsidy, the cost of a healthy diet for a family of four was 8 per cent lower in March 2012 under NNC than one year prior to the launch of the programme; on average, in communities eligible for the partial subsidy, the cost decreased by 2 per cent (in comparison, food prices elsewhere in Canada increased 2.2 per cent between March 2011 and March 2012).

B. Access to traditional/country foods

62. Indigenous peoples are also uniquely positioned with respect to food by virtue of their relationship with traditional lands and the natural resources therein, which is a central component of their identity. Accordingly, indigenous peoples are generally recognized as having broader rights to natural resources under international human rights law. They have the right to use natural resources as a means of supporting their cultural integrity through traditional economic activities, such as subsistence agriculture, hunting and fishing, as well as religious or spiritual activities.

63. Historically, indigenous peoples have had their own food systems, relying on traditional knowledge of hunting, fishing, trapping and gathering. According to the Manitoba First Nations Regional Health Survey (2008), approximately 85 per cent of First Nations adults sometimes or often had someone who shared traditional food (also known as “country” food) with their household. In 2006, 65 per cent of Inuit residing in Northern Canada were reported to live in households where at least half of the meat and fish consumed was country foods. A study involving Inuit adults found that diets contained significantly more vitamins A, D, E and B6, riboflavin, iron zinc, potassium and selenium, important relationship between access to country foods and health.

64. Although communities can, and often do, pursue a diet based on traditional/country foods, obtaining this is not without cost. Issues with accessing traditional foods include the impacts of climate change on migratory patterns of animals and on the mobility of those hunting them; limited availability of food flora and fauna; environmental contamination of species; flooding and development of traditional hunting and trapping territories; lack of equipment and resourcing to purchase equipment or inputs necessary for hunting, fishing and harvesting; and lack of requisite skills and time.

65. Many Aboriginal communities expressed concerns regarding federal government policies that have disrupted and, in some cases, devastated the traditional practices of indigenous people, including through removing control over land and natural resources. Access to country foods represents more than increased nutrition and physical accessibility; it also has significant cultural importance.

C. Access to land

66. Aboriginal and treaty rights are protected by section 35 of the Constitution Act (1982). The expression of those rights is outlined in various treaties and other agreements so as to clarify rights and responsibilities. But concerns have been expressed that the Government has sought to extinguish existing titles through negotiations and terms of modern land claims and self-government agreements, as well as through a narrow and reductionist reading of historical treaties, agreements and other constructive arrangements. Ongoing land claims across the country have implications for the right to food and access to country foods among aboriginal Canadians. Yet, under international law, indigenous peoples have the right to possess and control their traditional lands and resources. The Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples have the right to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired (art. 26, para. 1); the right to develop priorities and strategies for the development or use of their lands or territories and other resources (art. 31, para. 1); the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned lands, territories, water and coastal seas (art. 25).⁵⁹ It also provides for States to provide effective mechanisms “for prevention of, and redress for...[a]ny action which has the aim or effect of dispossessing them of their lands, territories or resources” (art.8, para. 2 (b)).

67. The Special Rapporteur notes the existence of the Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfill the Duty to Consult, a Government policy document on aboriginal consultation and accommodation. In this context, he recalls that the Declaration establishes that, in general, consultations with indigenous peoples are to be carried out in “good faith ... in order to obtain their free, prior and informed consent” (art. 19). He believes that continued and concerted measures are needed to develop new initiatives and reform existing ones, in consultation and in real partnership with indigenous peoples with the goal towards strengthening indigenous peoples’ own self-determination and decision-making over their affairs at all levels.

68. The broad range of indigenous rights to possess and use natural resources as stated in the Declaration, extend beyond the scope of the mandate of the Special Rapporteur. Nevertheless, these rights do provide a point of reference for evaluating questions related to the availability, accessibility and adequacy (including cultural appropriateness) of food as well as non-discrimination.

Conclusions and recommendations

69. By recognizing access to sufficient and adequate food as a legal entitlement, the right to food provides an important tool for combating hunger and malnutrition. It protects the rights of people to live with dignity and ensures that all have either the resources required to produce enough food for themselves or a purchasing power sufficient to procure food from the market. It imposes obligations on the State, requiring that individuals and communities have access to recourse mechanisms when these obligations are not met. The right to food also requires that States identify the hungry and malnourished by adequate food insecurity and vulnerability mapping, and that they adopt policies that remove the obstacles to its enjoyment by each individual. Consistent with this understanding of the right to food as a human right, the Special Rapporteur offers the following recommendations: ...

(d) Accord status to those Aboriginal peoples unrecognized as such under the Indian Act in order to enable all Aboriginal peoples to have access to land and water rights to which they are entitled; encourage the federal, provincial and territorial governments to meet, in good faith, with indigenous groups to discuss arrangements to ensure access to land, natural resources, Nutrition North Canada and the right to food, among others; accept the request of the Special Rapporteur on the rights of indigenous peoples to undertake an official country visit....

3. Cameroon, A/HRC/22/50/Add.2, 18 December 2012 (late publication)

1. The Special Rapporteur on the right to food undertook an official visit to Cameroon between 16 and 23 July 2012, at the invitation of the Government. ...

Indigenous peoples

15. The indigenous communities of Cameroon comprise the indigenous forest people, or “Pygmies”, who live from hunting, fishing and gathering (the Bagyeli or Bakola, Baka and Bedzan); the nomadic Mbororo herders (the Wodaabe, Jafun, and Galegi); and the people of the Kirdi mountain communities. The total number of Pygmies is estimated at 40,000–50,000, representing approximately 0.25 per cent of the total population. The Mbororo are a larger group, consisting of approximately 1.85 million persons (about 9 per cent of the total population), and include the Wodaabe (in the North), the Jafun (all regions) and the Galegi (the East, Adamaoua, West and North-West regions). The Kirdi, whose numbers are unknown, live in the Mandara mountains in the North.

16. There are no reliable national statistics on the socioeconomic situation of indigenous peoples. However, several studies have shown that indigenous communities in Cameroon are particularly at risk when it comes to the enjoyment of the right to adequate food. The Special Rapporteur welcomes the various efforts undertaken to combat discrimination against indigenous peoples and to ensure that particular attention is afforded to them in public policymaking. He encourages the Government to build on its efforts by giving specific recognition to indigenous groups in accordance with international law. As has been noted by the United Nations human rights treaty bodies and the African Commission on Human and Peoples’ Rights, the terminology currently used to designate indigenous peoples is not in line with the United Nations Declaration on the Rights of Indigenous Peoples. This situation should be remedied in the bill on marginal groups that is currently being drafted.

17. According to the Declaration on the Rights of Indigenous Peoples, indigenous peoples “shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return” (art. 10). Furthermore, States should take “effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means” (art. 13).

18. Pygmies rely for their livelihood on hunting and gathering, as well as non-timber forest products (honey, wild yams, caterpillars, fruit, snails, etc.). They therefore rely directly on access to forests for their food, and forests are an integral part of their cultural identity. However, from his meetings with various groups of Pygmies, the Special Rapporteur has concluded that, to date, the views of these communities have not been taken into account in decisions concerning the concession of territory on which they rely for their

subsistence. Furthermore, these groups do not generally benefit in any way from the exploitation of their land by the forest industry.

19. If appropriate measures are not taken to protect their rights, development projects such as forest exploitation and large-scale plantations will further marginalize the Pygmies, instead of improving their situation. Therefore, particularly when it comes to regulating protection for users of the land, account must be taken of the fact that Pygmies have a nomadic existence and do not practise agriculture. Thus, they cannot prove that they rely on a given zone. As for the distribution of forest royalties, it must be borne in mind that the sedentary Bantu communities do not represent the interests of all the local communities that may be affected by exploitation activities. The interests of the Pygmies deserve and require specific representation.

Elements of the right to food

Accessibility

Access to productive resources

43. Given current rural poverty levels, the proportion of the population employed in agriculture, and the commercial pressure on land resulting from demand among foreign investors, the issue of protecting the right of access to land has assumed particular importance. The Committee on Economic, Social and Cultural Rights recalls that “the obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access”.¹⁹ Currently, the criteria for recognizing private ownership of land are set out in Order No. 74-1 of 6 July 1974, on the establishment of the landownership system, and in one of the implementing laws, namely, Decree No. 76-165 of 27 April 1976, on the conditions for obtaining a land deed. However, this legal framework has a number of shortcomings.

44. Firstly, communities that depend for their living on shifting agriculture or hunting or gathering are not sufficiently protected. Article 14 of Order No. 74-1 provides that unregistered land that is neither State-owned public or private property nor the property of other public bodies is national State property. This land may be ceded by the State, notably in the form of a concession or a lease. However, while, in principle, protection is provided for land that is occupied under the customary tenure system and effectively developed, the same does not apply to land considered to be “free of any form of effective occupation”, including land used for hunting and gathering by certain groups. This explains why the groups concerned, namely, the Mbororo and the Pygmies, are faced with relentless encroachment on the land on which they depend for their livelihood, in violation of both the Declaration on the Rights of Indigenous Peoples and the right to food.

45. Secondly, the Special Rapporteur has been informed that traditional chiefs sometimes cede land occupied by communities according to customary law without any compensation being given to individual members of the community or the community as a whole.

46. Thirdly, article 12 of Order No. 74-1 and Act No. 85-09 of 4 July 1985, on expropriations carried out in the public interest and compensation arrangements, should, in principle, provide a guarantee that expropriations will not be carried out unless they are “in the public interest” and unless compensation is provided to the occupants. The Special Rapporteur has received reports, however, that land not registered by those who occupy it is sometimes expropriated without compensation being provided. Moreover, according to Order No. 74-2 of 6 July 1974, on State land, the State can grant private investors long leases, of up to 99 years, on land that has been expropriated in the public interest (art. 10, para. 3). This can have the effect of nullifying the requirement that expropriation should only take place in the public interest.

47. Lastly, the conditions under which concessions are granted by different ministries will cause major difficulties in the future. Concessions are granted for agro-industrial plantations and mineral exploration, but there is no register to ensure against duplication of concessions. Thus investors are facing a situation of real legal uncertainty. Cameroon risks being presented, in the coming years, with claims from investors that come to the conclusion that they cannot make a profit from exploration activities because of competing claims to a given piece of land.

48. The Special Rapporteur recommends that a full review be conducted of the land tenure system with a view both to guaranteeing the rights of land users, including indigenous groups, and creating a legal framework to avert the possibility of multiple land disputes in the future. Such a review would ensure that the system is brought into line with the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, endorsed by the Committee on World Food Security on 11 May 2012, and that due account is taken of the principles put forward by the Special Rapporteur to make sure that large-scale investments in agriculture are made with due respect for all human

rights, including the right to development (A/HRC/13/33/Add.2). It would also provide an opportunity to hold a transparent and participatory debate on the opportunity costs of granting land to investors that plan to develop agro-industrial plantations, when strengthening small local farmers' access to land, by means of adequate State support, could do more to improve local food security and reduce rural poverty. In this regard, the Special Rapporteur recalls that smaller plots are generally more productive per hectare and contribute to local food security and rural development, because they are used for a more labour-intensive form of agriculture that combines food and cash crops. He also recalls the possible benefits of combining the development of large-scale agro-industrial plantations with the use of contract farming on village plantations. These formulas afford small producers with land bordering on large plantations better access to markets and the opportunity to receive technical support from buyers (A/66/262). The Special Rapporteur points out that oil palm production is particularly suited to this model.

Using the “maximum available resources”

55. According to article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, every State should take steps towards the progressive realization of the right to food “to the maximum of its available resources”. Cameroon has abundant natural resources, including minerals (gold, diamonds, bauxite, copper, tin, and uranium), oil, fisheries, fertile agricultural land in accessible locations, and a large forested area rich in high-value species.

59. Steps have been taken to improve this state of affairs so that the population can profit from the country's natural resources in accordance with the requirements of the right to development. A joint order issued on 26 June 2012 fills a gap in the system that was first introduced in 1994 by providing for the establishment of an additional mechanism to monitor allocated funds, verify how they are being used and help to shape decisions on how this revenue should be spent. The Special Rapporteur encourages Cameroon to continue on this path by: (a) guaranteeing the transparency of transfers, for example by requiring councils and local committees to publish figures on the royalties paid to villages, informing citizens in radio broadcasts about how the money has been used and publishing a list of expenditures at the end of the budget year; (b) building the capacities of local communities, especially women and indigenous communities, to participate in taking decisions about the use of tax revenue; (c) encouraging investment of this revenue; and (d) strengthening monitoring, appeals and sanctions mechanisms. The Special Rapporteur also encourages the Government to issue a joint ministerial order for the mining sector, equivalent to the one issued in 2012 on the distribution of forest revenue in which the modalities for allocating royalties to local communities are defined in line with the decree of 2002 on the implementation of the 2001 Mining Code.

66. Lastly, the Special Rapporteur notes that the Government is willing to take advantage of the opportunities presented by the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), which offers compensation for forest conservation. He encourages the Government to explore the possibilities for funding forest conservation activities, and stresses the importance, in the implementation of the mechanism, of providing guarantees for indigenous populations that depend on the forests in accordance with articles 25 to 27 of the Declaration on the Rights of Indigenous Peoples.

Recommendations

73. The Special Rapporteur recommends that the Government should: ...

(b) Adopt measures to improve the situation of marginalized and vulnerable groups in respect to food, and, in particular:

- Ensure that the definition of indigenous peoples set out in the United Nations Declaration on the Rights of Indigenous Peoples is incorporated into the laws of Cameroon;
- Ensure that the views of communities are taken into account in decisions concerning the concessions of the land on which they depend for their livelihood; ...

(h) Review the tenure systems with a view to the implementation, in the context of national food security, of voluntary guidelines on responsible governance of tenure systems as they apply to land, fisheries and forests. In this process, take due account of the minimum principles and measures proposed to ensure that large-scale investments are made with due respect for all human rights (A/HRC/13/33/Add.2), so that the rights of land users, including indigenous communities, are better protected and a legal framework is established to avert the possibility of multiple land disputes in the future....

E. Special Rapporteur on the rights to freedom of peaceful assembly and of association

1. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/26/29, 14 April 2014

Threats to the rights to freedom of peaceful assembly and of association for groups most at risk

9. The Special Rapporteur is mindful that the State is not the only perpetrator of violations relating to peaceful assembly and association. The actions of non-State actors play a significant role in denying groups most at risk the space to exercise their rights, often through prevailing patriarchal attitudes, stereotypes, assumptions and social constructions that keep those groups at the margins of society. In that respect, the Special Rapporteur also recalls that the obligations of States extend beyond respecting and fulfilling rights, to protecting rights holders from violations and abuses by others.

10. As a starting point, the Special Rapporteur acknowledges that groups most at risk share the experience of discrimination, unequal treatment and harassment. He describes those groups based on their level of marginalization in the exercise of the rights to freedom of peaceful assembly and of association. Some of the groups that are considered in the present report to be most at risk are persons with disabilities; youth, including children; women; lesbian, gay, bisexual, transgender and intersex (LGBTI) people; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals, including refugees, asylum seekers and migrant workers.

International human rights law

18. Various international law instruments point to particular principles and measures that States should adopt in order to achieve non-discrimination and equality. For example, States should: ...

- Combat prejudice, eliminate discrimination and promote tolerance, understanding and good relations among indigenous peoples and all other segments of society....

20. International human rights instruments that protect the rights of particular groups specifically recognize directly or indirectly the rights to freedom of peaceful assembly and of association for those groups:

...

- Indigenous peoples are entitled, inter alia, to the right to participate fully in the political, economic, social and cultural life of the State, and to determine their own identity or membership in accordance with their customs and traditions.

General legal provisions on freedom of peaceful assembly that have a disproportionately negative impact on certain groups

34. Individuals with disabilities frequently face difficulty in staging peaceful assemblies due to limitations related to their disabilities. Those obstacles include the inability to gain access to the forms and notification procedures (for example, due to a lack of regulations or forms in Braille or other accessible formats) and to Government offices where a notification of assembly may be lodged. In that respect, the Special Rapporteur urges States to strive for implementation of article 19 of the Convention on the Rights of Persons with Disabilities, which called for States to recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and to take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of that right and their full inclusion and participation in the community. Similarly, a lack of multilingual forms may also pose an obstacle to indigenous and minority groups and any other individuals or groups not fluent in the primary language of the local jurisdiction.

Practices that threaten or impede the enjoyment of the right to freedom of peaceful assembly

45. Surveillance tactics ostensibly designed to prevent criminal activity are also often used selectively to target certain groups who plan to stage peaceful public assemblies. In Canada, for example, the Government formed a special police unit to produce intelligence updates on potential protests by indigenous peoples, primarily those fighting outside development on their ancestral land. Similarly, disproportionate force (including armed police, snipers and roadblocks) is often deployed at disfavoured protests as an intimidation tactic. Such practices should be vigorously discouraged. As the Special Rapporteur has previously noted, public assemblies should be presumed to be peaceful and lawful, until proven otherwise (A/HRC/20/27, para.

25) Surveillance tactics and disproportionate shows of force attest that authorities in some Member States often presume the opposite, and have a chilling effect on peaceful protestors, such as in the United Kingdom of Great Britain and Northern Ireland (A/HRC/23/39/Add.1, para. 32).

Challenges to the enjoyment of the right to freedom of association by groups most at risk

1. Legislation governing freedom of association that contains explicitly discriminatory provisions

51. The Special Rapporteur is concerned at the increasing incidents of racism and incitement to racism in various regions of the world. He further notes the absence, in several States, of laws prohibiting and criminalizing the formation of associations that promote racism and discrimination as required by article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. This constitutes a serious omission in the protection of the right to freedom of association. The Special Rapporteur emphasizes that this provision is a key protection against organizations that target groups most at risk of discrimination, such as minorities, indigenous peoples and non-citizens. While noting that the involuntary dissolution of associations should be a measure of last resort, he agrees with the European Court of Human Rights that the dissolution of an association that engages in racist activities constitutes a justifiable limitation of the freedom of association. Moreover, the Special Rapporteur endorses the view that the criminalization of the dissemination of racism, xenophobia or ethnic intolerance, and the dissolution of every group, organization, association or party that promotes them, are peremptory norms from which no derogation is allowed.

2. Legal provisions on freedom of association that are stated generally but have a disproportionately negative impact on certain groups

56. Nevertheless, where a registration regime exists, requirements should be framed such that no one is disadvantaged in the formation of her or his association, either by burdensome procedural requirements or unjustifiable limitations to substantive activities of associations. The State has an obligation to take positive measures to overcome specific challenges that confront marginalized groups, such as indigenous peoples, minorities, persons with disabilities, women and youth, in their efforts to form associations.

58. Legislation that provides broad discretion to authorities to monitor or oversee the activities of associations poses a grave risk to the continued existence of organizations that engage in activities perceived to be threatening to the State. Groups that advocate against the unsustainable use of natural resources or the use of those resources contrary to the rights of indigenous peoples are often targeted and risk closure, as happened to Fundación Pachamama in Ecuador pursuant to Presidential Decree No. 16. The Special Rapporteur emphasizes that associations are entitled to operational autonomy, which includes the freedom to choose which activities they engage in to achieve organizational goals.

3. Other legal provisions that have a disproportionate impact on the right to freedom of association of some groups

59. The use of national security or counter-terrorism legislation to restrict or prohibit the formation or registration of associations is often detrimental to the right to freedom of association of minority groups. Under the guise of fighting terrorism or extremism, associations comprised of minorities, including religious, linguistic or ethnic minorities, may be subjected to delays in registration, denial of registration, harassment and interference. Such associations may be seen as promoting or propagating views or beliefs not shared by the majority of the population or that are unfavourable to the authorities. The Special Rapporteur recognizes that States have a legitimate obligation to protect their national security and public safety. However, this legitimate interest should never be used as an excuse to silence critical or diverse voices. States must treat all associations equitably, regardless of their views, and this treatment must be guided by objective criteria that comply with international human rights law, where a registration regime exists. In Chile, members of the Mapuche indigenous community have been targeted under counter-terrorism legislation when advocating for the rights of their community. In Turkey, peaceful Kurdish activists advocating for the rights of their community have been arrested and sentenced to prison for allegedly belonging to an association considered to be a terrorist group.

61. The right to freedom of association extends to cross-border or international collaboration between associations and their membership. Indeed, the United Nations Declaration on the Rights of Indigenous

Peoples acknowledges the right of indigenous peoples divided by international borders to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders (art. 36). That right can, however, be in tension with laws regulating cross-border activities such as immigration and trade. For example, pastoralist communities whose territories or means of livelihood straddle international borders often do not use formal border crossing points or possess the necessary administrative documentation such as passports. The Special Rapporteur is unconvinced that border control laws should automatically trump their ability to maintain their cultural lifestyles. He believes that States have an obligation to facilitate the free movement of such communities, including by adopting special measures recognizing cross-border movements in the context of transhumance.

F. Special Rapporteur on contemporary forms of slavery, including its causes and consequences

1. Thematic report on challenges and lessons in combating contemporary forms of slavery, A/HRC/24/43, 1 July 2013

Challenges and lessons in combating contemporary forms of slavery

15. Discrimination based on race, ethnicity and caste also plays a role in increasing vulnerability to contemporary forms of slavery. Bonded labour in Asia, for example, disproportionately affects people with disadvantaged social statuses such as a low caste and the majority of forced labour victims in South America were from indigenous cultures, while strict social hierarchies in West Africa can dictate a person's status as a slave. In many societies, racism is very common and typically the darker the skin, the more abuse that follows.

Institutional and implementation challenges

38. In many countries in which slavery occurs, victims are poor, have few political connections and have little power to voice their grievances. These communities are normally marginalized and discriminated against as a result of their caste, race, gender and/or their origin as migrants or indigenous populations. In contrast, perpetrators may be wealthy, well-connected individuals who are able to influence policy and enforcement. This can result in corruption and a system in which there is little pressure on authorities to take action to combat exploitation. In Peru, gold generates tremendous profits and breeds corruption at every level, making it extremely difficult to combat labour abuses in illegal gold mining, including significant indicators of slavery. Such corruption facilitates the continued operation of illegal mines and gold-laundering and frustrates government enforcement efforts. In many cases, even when authorities have the will to carry out enforcement, they lack the training and resources to adequately do so.

39. A lack of resources and low levels of awareness and understanding often manifest themselves in deficiencies in labour inspectorates and other public enforcement institutions, severely limiting Governments' ability to detect victims of contemporary forms of slavery. For example, one of the biggest factors impeding the ability of the Government of Guatemala to protect agricultural workers from exploitation is its deficient labour inspection system. Problems facing the Labour Inspectorate include a lack of staff and funding, the inability of inspectors to set fines and labour inspectors' fear of carrying out inspections in the agricultural sector due to high levels of violence in the country.³⁰

Conclusions and recommendations

82. Slavery and slavery-like practices are often clandestine. The majority of those affected are from the poorest, most vulnerable and marginalized social groups in society such as indigenous and caste-based groups. In order to effectively eradicate such exploitation in all its forms, Governments and other stakeholders must address the root causes of poverty, social exclusion and all forms of discrimination. At the heart of these campaigns, poverty reduction, the promotion of the Millennium Development Goals, the protection of human dignity and the establishment of robust protections against human and labour rights abuses, including effective access to remedy, should guide national and international strategies.

G. Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises

1. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/68/279, 6 August 2013¹⁸

Summary

This report explores the challenges faced in addressing adverse impacts of business-related activities on the rights of indigenous peoples through the lens of the United Nations Guiding Principles on Business and Human Rights. The focus is how the Guiding Principles can bring clarity to the roles and responsibilities of States, business enterprises and indigenous peoples when addressing these impacts. It identifies implementation gaps and challenges with regard to the State duty to protect against business related human rights abuses and the corporate responsibility to respect human rights, and the corresponding obligations relating to access to effective remedy. Finally, the Working Group makes recommendations to States, business enterprises and indigenous peoples for the effective operationalization of the Guiding Principles with regard to the rights of indigenous peoples.

Introduction

1. The issue of business-related impacts on the rights of indigenous peoples has been addressed by a number of United Nations mechanisms, including United Nations treaty bodies, the Expert Mechanism on Indigenous Peoples and the Special rapporteur on the rights of indigenous peoples. Such studies have highlighted the specific features of indigenous cultures, namely their deeply rooted spiritual and cultural special relationship to lands, territories and resources which indigenous peoples traditionally occupy or use. They have noted their overall social and economic marginalisation, which limits their ability to successfully assert their rights. It has also been documented that indigenous peoples are among the groups most severely affected by the activities of the extractive sector, the agro-industrial and the energy sectors. Reported adverse impacts range from impacts on indigenous peoples' right to maintain their chosen traditional way of life, with their distinct cultural identity; to discrimination in employment and accessing goods and services (including financial services); access to land and security of land tenure; to displacement through forced or economic resettlement and associated serious abuses of civil and political rights, including impacts on human rights defenders, right to life and bodily integrity.

2. As indigenous peoples face a heightened risk of overall social and economic marginalisation, some are even more vulnerable to human rights abuses connected to business activities and are excluded from agreement processes and other consultations that irrevocably influence their lives. These include indigenous women being described as "third class citizens" and often subject to multiple forms of discrimination, based on gender and ethnicity. While economic development may offer opportunities for indigenous women, it can deprive them of their existing livelihood, increase their vulnerability to abuse and violence and undermine their social status. Further groups at risk of multiple discrimination include indigenous children, older persons, youth, people with disabilities as well as LGBT

3. Additionally, indigenous peoples feel the cumulative effect of vulnerabilities which individually affect other groups who face increased risk of human rights violations, such as peasants, seasonal workers, the landless and ethnic minorities. They are often targets of racial discrimination, are politically and economically marginalized, lack formal titles over their land and are often excluded from the regular labour market. Indigenous women often suffer specific forms of discrimination or abuse, such as sexual violence.

The United Nations Guiding Principles on Business and Human Rights

4. The Human Rights Council unanimously endorsed the United Nations Guiding Principles on Business and Human Rights in 2011 (the "Guiding Principles"), the first comprehensive global standard on business and human rights, which have received widespread political support.

¹⁸ The full report is available at: <http://www.ohchr.org/Documents/Issues/Business/A-68-279.pdf>.

5. Within its mandate to “give special attention to persons living in vulnerable situations”, the Working Group decided to highlight the impact of business operations on the rights of indigenous peoples, and to demonstrate the value of using the Guiding Principles in this specific context. The Working Group held an open consultation during its 4th session and received a number of submissions and suggestions from all stakeholders. Particular attention was paid to exchange and dialogue with indigenous peoples and their organizations, as well as seeking the views of the business community and individual business representatives, through meetings and workshops at various international fora. Reports produced by United Nations bodies mandated with the protection of indigenous peoples’ rights were examined as primary sources of interpretation and application of those rights. The Working Group wishes to express its sincere appreciation to all those who engaged with it throughout the development of this report.

Conclusions and recommendations

A. Conclusions

54. The Guiding Principles provide an authoritative guide for States, business enterprises and indigenous peoples to meet international standards and enhance practices with regard to preventing and addressing adverse business-related impacts on the human rights of indigenous peoples, so as to achieve tangible results. As highlighted in the Guiding Principles, particular attention should be paid throughout to the rights, needs and challenges faced by those at heightened risk of becoming vulnerable or marginalised. This is crucial for indigenous peoples, who are often disproportionately adversely impacted by business activities: States and business enterprises should therefore address indigenous peoples’ rights when meeting their respective State duty to protect against human rights abuses; and the corporate responsibility to respect human rights. The Working Group urges relevant bodies and stakeholders to conduct further studies into the effectiveness of existing remedy mechanisms available to indigenous peoples, including judicial and non-judicial mechanisms, extraterritorial remedies, as well as indigenous dispute resolution for States, international institutions, business enterprises and indigenous peoples.

B. Recommendations

55. Recommendations to States:

- (a) Consider ratification of International Labour Organization Convention 169 and pursue a range of measures to fully implement the United Nations Declaration on the Rights of Indigenous Peoples; particularly for home states of transnational corporations operating in territories used or inhabited by indigenous peoples, even if no indigenous populations reside within their borders;
- (b) Use the Guiding Principles to clarify the duties and responsibilities of actors in preventing and addressing the human rights impacts of businesses on indigenous peoples’ rights;
- (c) State the expectation that all business enterprises domiciled in its territory respect human rights throughout their operations; set expectations and obligations of business enterprises and other actors in addressing business-related impacts on indigenous people’s human rights, particularly in conflict-affected areas; encourage business enterprises to communicate and engage on their policies and procedures for addressing their human rights impacts and be accessible to all, including both men and women;
- (d) Ensure that strengthened monitoring and enforcement mechanisms are put in place to prevent and address any adverse human rights impacts of businesses, including integrating and applying gender sensitive human rights considerations into relevant domestic laws, policies, regulations and contracts such as bi-lateral investment treaties and host-government agreements, and the granting of concessions for the exploration or extraction of natural resources;
- (e) Ensure that they maintain adequate policy space to meet their human rights obligations relating to the rights of indigenous peoples when pursuing investment treaties or contracts, by taking into account the specific needs and vulnerabilities of indigenous peoples;
- (f) Ensure that indigenous peoples who are actually or potentially impacted by business activities have complete and timely access to all relevant information to ensure they are able to participate effectively in key decisions that affect them; and that meaningful gender sensitive consultations with indigenous peoples become an essential component of all contracts entered into with international investors;

- (g) When developing a national action plan for the implementation of the Guiding Principles, consider the particular impacts of business activities on indigenous peoples and the necessary remedy measures;
- (h) Refer to United Nations Conference on Trade and Development Investment Policy Framework for Sustainable Development and the Principles for Responsible Contracts for guidance on investment contracts, and integrate the management of human rights risks into State-investor contract negotiations, particularly as relevant to the rights of indigenous peoples;
- (i) Members of the Organization for Economic Cooperation and Development should ensure that National Contact Points are independent, impartial and fully resourced to address indigenous peoples' grievances. This includes knowledge of indigenous peoples' rights including FPIC, and familiarity with indigenous modes of decision-making and customary laws, traditions and practices; as well as making appropriate recommendations on implementation of the OECD Guidelines in cases involving indigenous peoples;
- (j) Home States of multinational enterprises consider ways to ensure that indigenous peoples affected by the operations of those enterprises abroad have access to effective remedy;
- (k) Develop a comprehensive policy framework prior to the planning and development of projects involving business enterprises owned or controlled by the State, or receiving substantial support from State agencies, laying out the additional steps to protect the rights of indigenous peoples;
- (l) Consider ways to ensure that policies and regulations in place enable the effective implementation of FPIC requirements in the context of business activities;
- (m) Review and amend existing remedial mechanisms, as appropriate, to ensure alignment with the Guiding Principles, and assess their appropriateness and effectiveness for protecting the rights of indigenous peoples;
- (n) Reinforce the capacity of judges, lawyers and prosecutors to address grievances brought by indigenous peoples related to business activities; ensure that mandatory training for judges and lawyers includes gender sensitive international human rights obligations, including standards relating to business and human rights and indigenous peoples;
- (o) Devote adequate human, financial and technical resources to national human rights institutions, and increase their capacity to effectively monitor and address impacts on indigenous peoples' rights;
- (p) Carry out awareness-raising campaigns, together with relevant stakeholders, to allow indigenous peoples within its jurisdiction to avail themselves of the legal and non-legal remedies available to assist them;
- (q) Carry out capacity-building for indigenous peoples to develop their own representative structures, to ensure they are able to participate effectively in key decisions that affect them.

56. Recommendations to business enterprises:

- (a) Comply with their responsibility to respect human rights, including by adopting a gender sensitive human rights policy, carrying out human rights impact assessments with regard to their current and planned operations, and addressing any adverse human rights impacts that they cause, contribute to or are linked to, including through exercising leverage in their business relationships to address the adverse impact; and paying particular attention to any operations in indigenous peoples territories and lands;
- (b) Commit to respecting the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention 169 in their policy commitments; human rights due diligence process; and remediation processes;
- (c) Ensure that operational-level grievance mechanisms reflect the criteria in Guiding Principle 31; that they are based on gender sensitive engagement and dialogue, by consulting indigenous peoples and focusing on dialogue as a means to address and resolve grievances;
- (d) Consult and engage regularly and directly with men and women in the communities where their operations take place, and inform them as to the way their lifestyles, livelihoods and human rights may be affected, giving due attention to the different methods of informing and consulting that may be required, due to culture and language, as distinct from the rest of the population;
- (e) Share their experiences broadly in meeting their responsibility to respect indigenous peoples' rights with other enterprises within and across sectors; and encourage all sectors to develop guidance within their industries.

57. Recommendations to indigenous peoples

- (a) Ensure that their decision-making protocols with regard to any FPIC process are developed, described, strengthened through their own representative institutions and in accordance with their own procedures and where possible codified, in a way that brings greater specificity to assist in their application; that such law(s) are understandable and accessible to business enterprises and States; and that the processes and laws are fully in conformity with international human rights law;
- (b) Consider strengthening their institutions, through their own decision-making procedures, in order to set up representative structures, including both men and women, that facilitate their relationship with business activities, in particular in relation to processes of consultation and of FPIC when these activities may have an impact or directly affect them or their lands and resources, as well as those dealing with their right to redress or compensation and/or benefit sharing from the same activities.

2. United States of America, A/HRC/26/25/Add.4, 6 May 2014

Business impacts and Native Americans

77. In 2010, the United States declared support for the United Nations Declaration on the Rights of Indigenous Peoples. The Working Group draws attention to the recommendations made by the Special Rapporteur on the rights of indigenous peoples, who visited the United States in 2012, (A/HRC/21/47/Add.1) and those of the Committee on the Elimination of Racial Discrimination with respect to business impacts on indigenous peoples (CERD/C/USA/CO/6).

78. The Working Group held meetings in Washington, D.C. and Arizona with representatives of indigenous peoples, who highlighted the adverse impacts on indigenous peoples from past and present business activities, in particular the extractive industries. In submissions to the Working Group, the National Congress of American Indians, the International Indian Treaty Council, the Navajo Nation Human Rights Commission, and the San Carlos Apache Tribe noted impacts on the environment, land and water and on sites of economic, cultural and religious significance to Native Americans, leading to displacement, and adverse impacts on, inter alia, the rights of individuals to the enjoyment of the highest attainable standard of health; to an adequate standard of living, including food; to safe drinking water and sanitation; and to the right of self-determination for indigenous peoples. Native American representatives further highlighted the imperative that federal authorities consult with Native American Governments when taking decisions in relation to business activities that may impact on indigenous peoples and welcomed recent federal Government initiatives in this regard. However, they also highlighted continuing obstacles to ensuring effective protection by state authorities from present potential impacts and to accessing effective remedy for past impacts.

79. The Working Group received information from extractive companies based in the United States on initiatives they had taken to carry out due diligence in accordance with the Guiding Principles. The Working Group welcomes such efforts, which should take place in close coordination and consultation with indigenous peoples.

80. The Working Group draws attention to its thematic report on addressing the adverse impacts of business-related activities on the rights of indigenous peoples through the lens of the Guiding Principles (A/68/279), in which it makes recommendations to both Governments and business enterprises that are relevant to the United States.

Recommendations

102. The Working Group would like to make the following more specific recommendations: ...

(n) The Working Group encourages the United States authorities to address potential impacts on the rights of indigenous peoples in both awareness-raising with business enterprises and regulatory and policy programmes, to encourage and/or require companies to respect their rights throughout their global operations....

3. Report from an Expert Workshop entitled “Business Impacts and Non-judicial Access to Remedy: Emerging Global Experience” held in Toronto in 2013, A/HRC/26/25/Add.3, 28 April 2014¹⁹

1. Pursuant to Human Rights Council resolution 17/4, the Working Group on the issue of human rights and transnational corporations and other business enterprises (hereafter “the Working Group”) is mandated by the Council to “continue to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas”. To that end, the Working Group organized an expert workshop on access to non-judicial remedy in the context of adverse human rights impacts related to business, with a focus on current initiatives and examples and how to ensure better outcomes. The workshop was convened as part of the efforts of the Working Group to draw lessons from experts and practitioners on access to effective judicial and non-judicial remedy.

Types of non-judicial grievance mechanisms

9. Non-judicial grievance mechanisms come in many forms and may differ widely from each other. The types of non-judicial grievance mechanisms include:

(a) Operational-level mechanisms, including company-level and site/project-level mechanisms. Those mechanisms may be designed to deal with anything from low-level complaints that may not constitute human rights abuses, but which may deteriorate into human rights abuses if left unaddressed, to large-scale adverse human rights impacts or legacies of past abuses. Such mechanisms may be operated directly by the business enterprise or be established as a separate function with third-party oversight and operational responsibility, with funding provided by the enterprise. Company-level mechanisms can also encompass complaints mechanisms established through collective bargaining processes;

(b) Mechanisms linked to industry and multi-stakeholder initiatives, such as the Fair Labor Association, the Ethical Trading Initiative and the Voluntary Principles on Security and Human Rights. Those mechanisms operate in a variety of ways, often linked to a code of conduct. Affected stakeholders, other participants in the initiative or third parties may be able to lodge complaints, depending on the specific mechanism. Some mechanisms may offer dispute resolution and facilitate mediated outcomes. Others may conduct independent reviews or investigations and offer so-called “global framework agreements” between companies. Global trade union federations may also provide a complaints mechanism;

(c) National-level mechanisms that are either based in Government or operate within a particular State. Those mechanisms include State-based dispute resolution mechanisms, OECD National Contact Points, and national human rights institutions (NHRIs). While the latter vary widely between countries, some NHRIs can hear complaints by individuals or groups against corporate actors, and may be able to offer mediation, dialogue and independent investigation or adjudication. Some 43 Governments plus the European Commission adhere to the OECD Declaration on International Investment and Multinational Enterprises, are subject to the OECD Guidelines for Multinational Enterprises and have established a National Contact Point (NCP). NCPs can hear complaints through the specific instance mechanism. NGOs, trade unions and other parties can submit cases of alleged non-observance of the Guidelines by companies. The relevant NCP conducts an initial assessment of whether the issue merits further consideration and can decide to undertake further investigation and offer its offices for mediating a resolution. If a solution cannot be found, the NCP can issue a final statement on the case, in which it may indicate whether it considers that the enterprise has complied with the Guidelines;

(d) Regional and international mechanisms, such as the Compliance Advisor Ombudsman of the World Bank Group, and other regional or international development bank mechanisms, such as the Independent Review Mechanism of the African Development Bank Group. For example, the Office of the Compliance Advisor Ombudsman (CAO) is the grievance mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). CAO hears complaints from stakeholders affected by projects funded by IFC and MIGA, based on the parameters of the IFC Performance Standards. Human rights issues, including labour and indigenous peoples’ rights, have been integrated into the IFC Performance Standards. The Ombudsman function of CAO works with affected stakeholders to resolve grievances using a flexible problem-solving approach, including dialogue, negotiation and

¹⁹ Full report is available at: <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>.

mediation. The Compliance function monitors whether IFC and MIGA have complied with the Performance Standards. Complaints lodged with the Ombudsman function can be transferred to the Compliance function if dispute resolution is not successful.

Are all adverse human rights impacts solvable through non-judicial remedy?

16. Workshop participants also discussed the fact that some impacts might not be solvable through non-judicial mechanisms, such as where certain outcomes are unacceptable for the parties involved. For example, if an indigenous community considers that mining activities prevent them from exercising their culture, religion and traditional way of life, it may conclude that the only possible way to redress those impacts would be for the mining activities to cease completely. If a project is in the early planning stages, there may still be a role for mediation between the enterprise and the affected community. However, if either party is fundamentally opposed to compromise, or if the project is already under way, there may not be a non-judicial outcome that would be acceptable to either party. In such cases, judicial mechanisms may be the only appropriate option for addressing the grievance. Some experts at the workshop also pointed to the need for a mechanism that falls between a mediation process and litigation in situations in which the positions of communities and business enterprises are too divergent for mediated outcomes to be achieved.

Emerging lessons

33. The current trends across a number of multi-stakeholder, national and international non-judicial grievance mechanisms are considered below. ...

(e) Increasing stakeholder capacity: while there is increasing training and education being offered to stakeholders on human rights and grievance mechanisms, often financed or supported by companies, it is not yet widespread. More needs to be done on conflict analysis and dispute resolution in order to ensure that practitioners know how to build a grievance mechanism that is sensitive to complex cultural issues. Furthermore, affected communities and individuals often arrive at operational-level grievance mechanisms with very little bargaining power. Processes and outcomes that take into account local contexts are also necessary, such as recognizing indigenous peoples' traditional processes for settling conflicts....

H. Independent Expert on the right to water and sanitation

1. Thailand, A/HRC/24/44/Add.3, 16 July 2013

Summary

Thailand made enormous achievements in the last decades to ensure access to water and sanitation, particularly in the challenging area of basic rural sanitation. At the same time, striking contrasts in access to safe drinking water and sanitation continue between those who have benefited from the rapid development the country has achieved and those groups of people who have been left behind from improvements including migrants, indigenous peoples, informal settlement dwellers and prisoners. ...

Indigenous peoples

27. In Thailand, there are no comprehensive data available on the indigenous population and the term "indigenous peoples" is not officially recognized under the Thai Constitution and relevant legislation, but it is estimated that between 600,000 and 1.2 million indigenous peoples (approximately 1-2 per cent of the total population) live in Thailand, especially in forests, mountains or on the sea coast. The Department of Welfare and Social Development has recorded 3,429 hill tribe villages with 93,257 villagers.

28. Over 60 per cent of Thailand was forested 60 years ago, but today forests represent only 28.4 per cent of the land.⁹ As economic and industrial development in the country advances and forest areas are reduced, indigenous peoples have faced eviction, including forced eviction, as well as limitations in access to and availability of natural resources upon which they depend, including water. The indigenous peoples' right to the conservation and protection of the environment recognized under the United Nations Declaration on the Rights of Indigenous Peoples is of particular importance to them because of the "special ties" that they "maintain with the natural habits of the territories in which they live".¹⁰ In this connection, the Government has announced that it is pushing forward with passing a Community Rights Act to protect the management of natural resources (land, water, forests and sea) by communities themselves,¹¹ which is a positive policy. The

implementation of such an act, if adopted, will be key, and its implementation should include awareness-raising among indigenous peoples on the law and on their rights, overcoming the language barrier so that they fully understand their rights.

29. The lack of citizenship of many indigenous peoples bars their access to water and sanitation as well to other basic services like health care and education. Approximately 30 per cent (296,000) of indigenous peoples lacked citizenship as at 2011,12 due to a complex process which requires them to produce birth certificates or other registration which they usually do not have, as well as money and time. Indigenous peoples often live in remote areas which makes access to water more difficult. The Committee on the Elimination of Discrimination against Women (CEDAW) noted that access to sanitation and water by rural and hill tribes, in particular women, is a concern.¹³ In one of the hill tribes near the border with Myanmar, for instance, the Special Rapporteur was informed that stateless people and people without Thai nationality had not even been counted during the national census survey. This fact contributes to a higher coverage rate of access to water and sanitation in the records than in reality. In their village, women and girls fetch water from three reservoirs and need to queue for three hours during the dry season because there is not enough water available. This restricts their access to other rights including education and work. Schools also run out of water during the dry season, and a teacher shared the view that toilets would be kept cleaner if enough water were available. In addition, there has reportedly been a stigma attached to some hill tribes labelled as “drug addicts”, and such stigma has justified denial of their access to basic services. Some of the villagers, for instance, still go to the forest to defecate in the open, while others dig big holes in which they relieve themselves.

Conclusion and recommendations

66. The Special Rapporteur reiterates that everyone is entitled to the human rights to water and sanitation, and status cannot exempt the State from its obligations to ensure access to water and sanitation. Non-discrimination and equality is a State’s immediate human rights obligation. In this regard, the Government is urged to take affirmative action to reach “invisible” individuals caught in a protection gap, including migrants, indigenous populations, informal settlement dwellers and prisoners.

2. Brazil, A/HRC/27/55/Add.1, 30 June 2014

Non-discrimination and access for vulnerable and marginalized groups

88. Brazil continues to be a country marked by major inequalities. The Constitution prohibits any form of discrimination while also calling for the eradication of poverty and the reduction of social inequalities. Among the goals of the Basic Sanitation Law is the prioritization of projects aimed at implementing and expanding basic sanitation services and action in areas inhabited by low-income populations, and providing adequate environmental health conditions for indigenous peoples and other traditional populations.

89. Beyond the legal framework, many groups are marginalized from the water supply and sanitation, including the black population, and the indigenous and maroon communities. The proportion of black persons living in households with piped water climbed from 80.4 per cent in 2004 to 90.1 per cent in 2011, and, for those living in homes with a toilet connected to a sewage network or septic tank, rose from 62 to 72.3 per cent. However, the percentage of black and maroon persons without access to those services is practically twice the percentage of white persons in the same situation.

J. Independent Expert on Minority Issues

1. Cameroon, A/HRC/25/56/Add.1, 31 January 2014

Introduction

3. In its report submitted to the Committee on the Elimination of Racial Discrimination in 1997,1 Cameroon stated that the population comprised ethnic groups defined on the basis of dialect, in five major groups: the Bantu, in the South, Littoral, South-West, Centre and South-East provinces (now regions), comprising the Beti, Bassa, Douala, Yambassa, Maka, Kaka, Bakweri, Bali and others; the semi-Bantu, in the West and North-West, including the Bamileke, Bamoun, Tikar and Bali; the Sudanese, in the Adamawa, North and Far North, including the Mundang, Toupouri, Kotoko, Kapsiki, Mandara, Haoussa, Matakam,

Bornouam and Massa; the Peulh, inhabiting the same regions as the Sudanese; and the Choa Arab people in the Lake Chad basin. Several ethnic and linguistic groups spread across neighbouring countries and therefore bring a regional dimension to the country's diversity.

4. Forest hunter-gatherer peoples (commonly referred to as Pygmies) include the Baka and Bakola in the East and the South and Bagyeli and Bedzam on the Tikar plain. Estimates suggest that Pygmies constitute about 0.4 per cent of the population. Montagnards, also referred to as "Highlanders" or "Kirdi" ("pagan" in Fulfulde), are made up of various ethnic groups; their exact numbers are unknown. They commonly practice forms of animism and ancestor worship, and have historically been socially, educationally and economically disadvantaged when compared with the more dominant Muslim Fulani population in the three northern provinces.

5. Although the Constitution uses both the terms "indigenous" and "minorities", it is unclear to whom they are applied. In the above-mentioned report, the Pygmy population was referred to as "authentic indigenous inhabitants". A number of other groups, however, self-identify as indigenous or indigenous minorities, including the Mbororo pastoralists. According to the International Work Group for Indigenous Affairs, the questions over indigenous status prompted the Ministry of External Relations to conduct a study in 2009 to identify and characterize indigenous peoples and their problems. The study, completed in 2011, proposed that the groups to be considered indigenous include the Mbororo pastoralists and the hunter-gatherers (Pygmies). Cameroon officially celebrates the annual International Day of the World's Indigenous Peoples and the Government involved communities in celebratory events.

Minority rights: legal and institutional framework

10. Cameroon is a party to international treaties relevant to minority rights, including the Convention on the Elimination of Racial Discrimination, the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, as well as the African Charter on Human and Peoples' Rights. Under the Constitution, international law has primacy over national laws. Cameroon was one of the few African countries to vote in favour of the United Nations Declaration on the Rights of Indigenous Peoples in 2007 and to adopt the notion of "indigenous peoples" in its Constitution. To date, Cameroon has not ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO). The Committee on the Elimination of Racial Discrimination recommended that Cameroon adopt a bill on the rights of indigenous people, ensuring their participation in the drafting process.

11. The Ministry of Social Affairs has responsibility for combating social exclusion and promoting the integration of "marginalized people". Its Department of National Solidarity promotes the rights of indigenous populations, which encompass Pygmy hunter-gatherers, Mbororo nomadic herders, mountain dwellers, island and creek populations and crossborder populations. Although a bill on marginal populations has been drafted, rights groups consider that it does not address minority and indigenous issues comprehensively. In the Ministry of Justice, the Directorate for Human Rights and International Cooperation, established by Decree No. 2005/122 of 15 April 2005, has responsibilities that include monitoring human rights issues generally and the application of the international human rights conventions to which Cameroon is a party.

12. The Independent Expert met with the National Commission on Human Rights and Freedoms. The functions of the Commission, whose members are appointed by the Government, include addressing all claims concerning violations of human rights and freedoms, considering questions pertaining to the promotion and protection of human rights, bringing instruments pertaining to human rights to wider public attention, and maintaining contacts with the United Nations and other institutions. In performing its functions, it may summon the parties concerned to a hearing. Its four working groups include one focused on vulnerable groups and another on religious issues. The Commission includes civil society actors in its activities and provides reports and recommendations to the authorities.

13. Civil society groups working for the rights of minority and indigenous peoples highlight the important role of the National Commission in the protection of their rights. They pointed out that, while minority and indigenous groups are considered by the Commission, there is limited focus on their issues and few complaints are received by groups such as Pygmies. They suggested that the establishment of a separate unit for minority and indigenous peoples, employing staff from these communities, would significantly enhance its role. There has reportedly never been a Mbororo, Pygmy or Montagnard Commissioner or staff member since the establishment of the body. The Commission's role could be further enhanced to include training on minority and indigenous rights for authorities, including the police, gendarmes and judicial authorities.

General and cross-cutting minority rights concerns

14. In the sections below, the Independent Expert briefly considers key thematic minority rights issues brought to her attention during her mission.

Land rights

15. Land issues were frequently cited as being a core concern of minority and indigenous peoples that have extremely strong and long-standing connections to land and territory, which they occupy and govern according to their customary practices, culture and traditions. Consequently, issues relating to access to and the use, occupation or ownership of land and displacement from lands featured prominently in consultations with the Independent Expert. The right to land is fundamental to the preservation of the identity, lifestyles, livelihoods and well-being of many minority and indigenous communities and to the enjoyment of a wide range of other human rights.

16. Under the primary land law, the State is the guardian of all lands and has the right to intervene in land use on issues of national economic or defence policy. Lands that are not privately registered are classified as national lands controlled by the State. Communities may privately register land and therefore claim ownership thereof only if they develop it by building houses or farms. The Government retains the right to stop communities from using unoccupied or unexploited national land, and may either use the land itself or grant it to another party for use or temporary concession. Where land is granted to a private company, plantation or a logging concession, for example, an environmental impact study must be conducted and a clearly established community consultation process be respected with those who use the land concerned. Human rights groups claim that this requirement is rarely fully respected in practice.

17. Some non-governmental organizations and media reports refer to an unprecedented degree of land grabbing that affects thousands of people displaced to make way for largescale agribusiness and other projects. Reportedly, the current legal and administrative regulations relating to land strongly disadvantage some communities and are frequently abused; for instance, those who use the land only for the purposes of hunter-gathering or grazing do not officially own the lands and their rights are consequently limited under the law. Some Mbororo communities have historically used certain routes for livestock grazing and therefore require essential seasonal access to them and nearby water sources. In 2010, the Ministry of Livestock, Fisheries and Animal Husbandry began consultations with civil society to revise the 1974 land tenure ordinance to address some community concerns.

Customary law and leadership structures

32. Customary law is legally recognized and enforceable, and remains in force in rural areas. It is valid only when it is not “repugnant to natural justice, equity, and good conscience” Customary law is based on the traditions of the ethnic group predominant in the region and administered by the authorities of that group. Many citizens in rural areas are unaware of their rights under civil law and refer instead to customary laws. Some communities are remote from civil courts and have little practical option other than to rely on customary law. In practice there may be negative effects of customary law and leadership structures on persons belonging to a particular ethnic or religious minority who fall under the customary practices of another, more dominant ethnic or religious group.

33. Cameroon maintains a system of chiefs, headed by paramount chiefs who hold considerable powers at the local level. While the system generally allows for a degree of autonomy over their affairs for ethnic and religious groups, the Independent Expert was informed of cases of alleged favouritism or abuse of power by paramount chiefs. In one locality near Maroua in the Far North, some Christian community members complained that, despite good relations in the past, a Muslim paramount chief had begun to charge them rent on land that belonged to them, and expressed their concern that it was an attempt to remove them from their lands. Community representatives stated that it was impossible for members of some minority groups to be appointed paramount chiefs, so they were consistently under the authority of leaders from other ethnic or religious groups.

34. Community representatives expressed their concern at the power wielded by paramount chiefs over community affairs and the lack of effective redress for those who object to decisions they find unfair or in violation of their rights. It was also reported that regional government officials, including governors and senior divisional officers, exercise little authority over or have a negligible oversight role in the activities of paramount chiefs, and take little if any action to resolve local disputes falling within the jurisdiction of a paramount chief.

Situation of Pygmy communities

35. Pygmy communities have traditionally lived in the forests, conducting huntergatherer lifestyles in harmony with their forest environment. Many have historically had little interaction with wider society and had a self-sufficient, subsistence livelihood. These communities have, however, been deeply affected by the logging industry and other natural resource and economic development projects in the areas that they traditionally inhabit. Logging activities are estimated to cut down 2,000 km² of forest every year. The loss of forestland and the removal of the Pygmies to make way for logging and development projects have had a major impact on Pygmy communities, which are poorly equipped for life outside the forest.

36. Non-governmental organizations estimate that as many as 75,000 Baka Pygmies live in Cameroon, although their exact number is unknown. The logging industry has led to the resettlement of many Baka to villages and roadside camps outside the forest, where they face discrimination, marginalization and numerous social problems. They lack education and employment; alcoholism and teenage pregnancy are reportedly common in displaced Pygmy communities. Deprived of forest-based food sources and lacking sustainable income-generating activities, the displaced Pygmy communities suffer from poor nutrition, which has a direct impact on health, child development and life expectancy.

37. The Independent Expert visited a displaced Bagyeli Pygmy community in Kribi, in the South. The people live in very basic accommodation and extreme poverty. One community leader requested the Independent Expert to “help bring us out of this misery”. While economic development projects are necessary for the country’s development, nongovernmental organizations working with Bagyeli communities commented that many Pygmy communities have been displaced by major projects, including a deep-sea port, gas plants, the Chad-Cameroon oil pipeline, and forestry and logging projects. Palm and rubber plantations have also displaced the Bagyeli, and their former forest habitats have become “no-go” areas for them. They rarely receive compensation for their land, jobs, health care or other benefits.

38. The national land tenure laws are particularly problematic for Pygmies, since they recognize those who develop the land as eligible for land concessions or compensation if they are required to be relocated for development projects. The Pygmies, however, are only considered to occupy the forest and have consequently not been granted rights of ownership or given compensation when they have been relocated. The Government pointed out that the 1994 law on the rules governing the forests authorizes the reassignment to the local Pygmy and Bantou peoples of a share of annual forest and faunal royalties that amounts to 12 per cent. It is unclear whether this has been honoured in practice and how such an allocation has been provided or used to assist communities.

39. Pygmies commonly lack education and skills, and have no access to employment or any form of income-generating activities. They frequently lack agricultural skills and training. In some cases, they face exploitation for their labour or are subject to abuse by others who see them as backwards and undeveloped. Some Bantu communities reportedly treat Pygmies as their property, and use them in what amounts to conditions of forced labour. There are few avenues for Pygmies to take up their issues, since they are almost totally excluded from political and decision-making bodies at all levels.

40. A number of government-supported programmes are aimed at improving the living conditions of Pygmy groups. In July 2013, the Ministry of Social Affairs announced the second phase of its development plan for Pygmy peoples, implemented by the National Participatory Development Programme. Under the plan, some 800 million CFA francs have been allocated to activities for Pygmy peoples in 31 municipalities in the Centre, East and South regions. Components of the plan focus on key areas of concern, including citizenship, education, agriculture, health, inter-community dialogue and land security.

41. Cameroon adopted a plan for the development of the Pygmy peoples within the framework of its poverty reduction strategy paper. A plan for indigenous and vulnerable peoples has also been developed in the context of the oil pipeline carrying oil from Chad to the Cameroonian port of Kribi. The international non-governmental organization Plan International is working with the Ministry of Basic Education to pilot the use of the Baka language in some primary schools, and hopes to demonstrate an improvement in education outcomes for the Baka who undertake the programme compared to those who attend schools using only the official languages. School books and teaching materials appropriate for use by Baka children have been developed, and children attending pilot schools have been provided with school kits.

42. The Independent Expert was informed that, despite the above-mentioned efforts, many governmental initiatives achieve limited results because they are often ad hoc in nature, not permanent or sustainable, and not based on specialist knowledge of the communities and their needs, or on the expertise of non-

governmental organizations working with them. Some projects provide money to communities, although many are not used to receiving and managing money; it could indeed be counterproductive, and lead to problems, including alcohol abuse.

Situation of Mbororo pastoralists

43. Mbororo pastoralist communities are estimated to number more than 1 million people, which would account for some 12 per cent of the total population. The Independent Expert met numerous community representatives, including the Mbororo Social and Cultural Development Association in Yaoundé and Bamenda (North-West), and visited Mbororo communities near Bamenda. Some described a problem of general discrimination against the Mbororo owing to a perception that they are a foreign presence or strangers who do not fully belong, and are consequently treated as second-class citizens.

44. While in certain regions, such as the North-West, the Mbororo are now largely settled communities, in other regions, such as the Far North, the Mbororo continue their nomadic, pastoralist lifestyle. Land issues may therefore differ from one region to another, and for different pastoralist communities. Cases of tensions and conflict over land ownership, occupation and use were frequently raised by representatives of Mbororo communities. They stated that conflicts between farmers, ranchers and herders are a major issue for the Mbororo throughout the country, and that some conflicts have continued for generations.

45. The Mbororo claim that agro-industrial companies, including some foreign-owned companies, are taking over large areas of historic grazing lands (such as in Kadey and Lom and Djerem Divisions) in order to establish sugar plantations and other forms of agrobusiness. This is allegedly done without the free, prior and informed consultation with or consent of the Mbororo communities. Concerns also exist over the impact of the establishment of national parks, including Ntakamanda National Park in the South-West, and the threat of expulsion of Mbororo families and their livestock from newly protected areas. The Mbororo have reportedly occupied these lands for more than a century. Ranching operations in the Adamawa region is a major concern for the Mbororo, who claim that their traditional herding is being threatened.

46. Some land rights cases demonstrate that the current system of land categorization, tenure or ownership may leave some communities vulnerable to eviction from their homes and lands, and may be open to abuse. Poor, rural and poorly educated communities may be particularly vulnerable to attempts to obtain their lands by parties that do not compensate them adequately or make clear the nature of agreements proposed and that may ultimately lead to their eviction. It is imperative that any such transactions are fully transparent and, where necessary, subject to judicial review.

47. The Independent Expert visited the community of Wumse Ndzah, Bamenda III Subdivision (North-West), the scene of a long-term land dispute between the Mbororo community and the Catholic University. The University claims to have paid compensation to community members to acquire and build on the site. Community members countered that they had not been fully aware of what the payments were for and would not voluntarily have agreed to quit their homes and land that they have occupied since 1904. Community representatives claimed that their land had been falsely classified as Category 2 land, namely, unoccupied and available for concession. The community added that, had this been the case, however, no payment would have been made to the community by the University.

48. The Independent Expert visited the neighbouring Bambili Tubah Sub Division, where houses belonging to the ethnic Bambili community had been demolished, reportedly by bulldozers sent by the administration of Mezam Division. Community members stated that they had not been consulted or given prior warning, and that lives may have been endangered. They did not know why their homes had been destroyed. Those affected remain homeless or live with neighbours, and were clearly distressed. The authorities reportedly claim that prior warning had been given and that the land had been designated as a resettlement site for the Mbororo due to be expelled from their homes on the neighbouring Mamada Estates (see paragraph 47).

49. High-profile land disputes involving Mbororo communities have drawn much media attention, including a long-standing dispute with Baba Ahmadu Danpullo, a prominent and wealthy individual rancher, in the North-West. The Government has taken steps to settle this and other disputes; for example, in 2003, it created a special interministerial commission to investigate the conflict between the landholder and the Mbororo. The recommendations made by the commission - including restoration of the original ranch boundaries and compensation for displaced victims - have not, however, been implemented, leading to a protracted dispute that now threatens to undermine new initiatives to resolve it.

50. Mbororo representatives made serious allegations relating to ongoing land disputes, including the shooting and serious injury of a Mbororo human rights defender and the alleged harassment, including judicial harassment, of others. Representatives of the Mbororo Social and Cultural Development Association (see paragraph 43 above) alleged that they had been subject to harassment and unfounded charges because of their legitimate activities to protect and promote the rights of the Mbororo and ongoing land disputes. They alleged that investigative and judicial procedures had been flawed and discriminatory, and called into question the independence of law enforcement bodies and the judiciary.

51. In the Far North, local authorities stated that there were few tensions between pastoralists and farmers or other local inhabitants over land and resources. Unlike in other regions, most pastoralists are nomadic and continue to follow a traditional lifestyle and traditional grazing routes, which are well known to farmers and accepted by them. Many Mbororo cross national borders and do not have identification cards. They may stay to graze for weeks at a time, but then move on to find food for their cattle; they thus have little impact on local communities and there is little cause for tensions or conflict, because land is plentiful in the region.

52. Civil society representatives nevertheless highlighted the fact that the Mbororo face numerous challenges relating to their nomadic lifestyles, and emphasized that conflicts over land are common in all regions. In the far North, vast areas of grazing lands normally used by pastoralists have reportedly been leased to foreign companies, including as hunting zones for the foreign tourist market. Mbororo cattle have been killed because they allegedly “trespassed” into these zones.

53. In consultation with civil society, a pastoral code has been drafted, which includes provisions for the demarcation of boundaries between pastoral land and farmland, which is a major source of conflict. If adopted, the code would open corridors for cattle grazing, facilitate access to water sources, and outline procedures for the establishment and management of community pastures. While civil society groups consider the code a very positive development, they point out that it still does not affirm the collective customary ownership rights of the Mbororo over lands they have been using for generations or address the issue of grazing lands being “national lands” under the current land laws.

54. The Mbororo are subject to a long-standing tax on their livestock (cattle and horses) that they consider to be discriminatory. The Jangali tax is reportedly levied – above and beyond regular purchase and sales taxes for livestock – on all livestock, even animals kept for subsistence or cultural reasons and not purely for economic profit. The tax, which is reportedly levied annually on each animal, disproportionately affects the Mbororo because of their strong cultural and everyday association with livestock.

55. Mbororo communities in the far North reported cases of violence and kidnapping by armed bandits or coupeurs de route, a phenomenon that has reportedly increased significantly in recent years. Armed persons steal cattle or kidnap family members who are held hostage for ransom. The perpetrators are aware that families have livestock, which they can sell to pay ransom demands, although this may impoverish the herders’ families. Local authorities in Maroua stated that a special police rapid intervention force (BIR) was established in 2011 to prevent armed robbery and kidnapping, and that the situation had improved.

56. In Bamenda, Mbororo representatives acknowledged the progress made in the 2013 council elections, in which 48 Mbororo councillors had been elected, reflecting a significant increase. The Mbororo attributed the increase to, inter alia, awareness-raising initiatives on minority indigenous, civil and political rights by non-governmental organizations and efforts by political parties to gain the Mbororo vote. While the number of councillors was the highest in more than a century, the representatives pointed out that there had never been a Mbororo Member of Parliament, and that much remained to be done at the regional and national levels to achieve appropriate representation. The Mbororo now account for 4.8 per cent of councillors in the region; according to ILO, however, the Mbororo number some 130,000, or 7 per cent of the total regional population.²⁴ While four of the councillors are women, targeted efforts are needed to increase female representation.

Conclusions and recommendations

75. It has been frequently said that Cameroon is “Africa in miniature”. It is indeed evident that the diversity in the country is valued, and that persons belonging to many different ethnic, religious and linguistic groups feel that they are equal stakeholders in society. Cameroon is rightly proud of its record of stability and peaceful coexistence of its diverse communities. While an emphasis is placed on creating unity in diversity, most people are free to practice their religion, use their language and maintain and express unique aspects of their identity, culture, traditions and lifestyles without hindrance. In many respects, Cameroon is a positive example of managing a highly diverse society in the region.

76. As in all countries in the region, however, challenges involving specific minorities with unique circumstances remain to be resolved. Those belonging to the Mbororo, Pygmy and Montagnard communities face challenges specific to their lifestyles, livelihoods and relationship to the lands that they own, occupy or historically use. The Independent Expert welcomes the Government's openness to discuss these remaining and ongoing concerns, and to work with minorities and national and international partners to overcome them. Importantly, adequate financial, human and development resources must be allocated and targeted at protecting and promoting the rights of minorities.

77. Communities, such as the Mbororo, the Pygmies and the Montagnards, with their unique lifestyles, cultures, traditions and languages, constitute a rich and irreplaceable part of the country's national and cultural heritage. Parts of that valuable heritage are, however, under clear and immediate threat from development projects and the activities of private companies and other actors. While economic and development goals are legitimate and necessary for the benefit of all, they should not be pursued at the cost of the loss of distinct communities and cultures. In the planning, design and implementation of national projects, due regard must be given to minimizing their impact on vulnerable communities, whose interests must be accorded a high priority.

80. The current legal and administrative regulations governing land use, occupation and ownership do not offer certain minority and indigenous communities adequate protection of their land rights, and should be reviewed and amended to provide stronger legal protection against land grabbing, illegal eviction, forced displacement and ongoing land disputes. Specific legal and policy measures are required to protect the land rights of those who practice nomadic, transhumance and hunter-gatherer lifestyles, including their right to have access to traditional forest habitats and to use land seasonally for grazing.

81. The Government is urged to ratify ILO Convention No. 169. Importantly, the Convention requires that indigenous and tribal peoples be consulted on issues that affect them and be able to engage in policy and development processes that affect them. It also requires their free, prior and informed consent for projects implemented on their lands and territories. A specific national law on the rights of minority and indigenous peoples should be drafted in consultation with the communities concerned.

82. Local disputes, including over land and inter-community affairs, are commonplace and must be effectively settled and prevented to avoid tensions emerging and growing between communities. It is essential that Government leaders at the local and national levels consult and involve grass-roots community representatives in decision-making processes in order to maintain the peaceful coexistence of the various ethnic and religious groups. National human rights commitments must be better implemented and monitored at the local level.

83. Mechanisms should be established, in consultation with communities, to ensure that local leadership structures and chiefdoms function in the interests of all communities without discrimination. Effective oversight mechanisms and complaint procedures should be put in place to ensure that paramount chiefs and others with lower-level authority are subject to appropriate review and that community members from all groups have channels through which to challenge decisions or register complaints.

85. The State should strengthen legislative and policy measures to ensure the political participation of groups that are currently underrepresented in political and decision-making bodies at the local, regional and national levels, including the Pygmy, Mbororo and other communities. Existing measures, including those relating to electoral processes, should be reviewed and, where necessary, revised or clarified and their implementation evaluated to ensure that they are fit for their intended purpose. The Independent Expert urges the State to consider the recommendations made at the second Forum on Minority Issues in this regard.

86. The customary leadership structures and practices of minority and indigenous communities, including in the appointment of chiefs and the resolution of communitybased disputes, should be fully respected and allowed to function according to traditional practices with no undue interference by other communities, individuals or the State. Where a complaint is made that there has been undue interference or disputes exist, an independent review should be conducted with the full participation of the parties and community members concerned, both men and women.

87. Mbororo pastoralists are facing pressure to settle as well as loss of access to traditional lands. In addition to measures to protect their rights to land and water and to urgently resolve ongoing land disputes, initiatives should be continued and intensified to ensure their access to basic services, education and health care appropriate to their needs, culture and traditions and, where necessary, their nomadic lifestyle. The draft pastoral code provides essential guarantees for pastoralist communities, and should be adopted into law.

88. The Pygmies are the guardians of the forest, in which they have always lived in harmony. The Government should respect the rights of Pygmy communities to continue to live in their traditional forest habitats and to have full access to the forests and their traditional hunter-gatherer lifestyles wherever possible, and find solutions, in consultation with communities, to enable them to do so.

89. Where displacement of Pygmy communities has taken place or is unavoidable following full review of available options, communities should be consulted fully regarding relocation, with priority given to options allowing them to continue their traditional forest-based lifestyle. Communities should be fully supported in the short, medium and long term to ensure their access to services, food security, their safety and secure, non-exploitative interaction with neighbouring communities, and their access to income-generating activities. Compensation for their displacement must be appropriate to their situation, culture and traditions.

K. Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

1. Costa Rica, A/HRC/25/53/Add.1, 8 April 2014

11. Other environmental laws include the 1996 Forestry Act No. 7575, which generally applies to protected areas, and the 1998 Biodiversity Act No. 7788, the objective of which is the conservation and sustainable use of biodiverse resources and the equitable distribution of their benefits (art. 1). The Biodiversity Act provides special protections for indigenous communities, including a requirement that their prior informed consent is necessary in order for others to have access to components of biodiversity resources or associated knowledge in indigenous peoples' territories (art. 65).

Issues of concern

42. The following list is not intended to identify all issues of environmental concern. Rather, it focuses on three issues that particularly implicate human rights, as they were raised during the visit: (a) the rights of people living in and near protected areas; (b) the potential conflicts between the development of a hydroelectric project and the rights of indigenous people; and (c) threats to environmental human rights defenders. In addition, the Independent Expert followed up on the recommendations made by the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation during her visit to Costa Rica in 2009.

A. Rights of people living in and near protected areas

43. As noted above, more than one quarter of the territory of Costa Rica is included in its system of protected areas. This commitment to conservation has many benefits, but it also requires Costa Rica to consider how best to reconcile its interest in preventing environmental degradation of those areas with the interests of the people who continue to live in and near them.

44. At its best, the relationship between those who live in and near protected areas and the government agencies responsible for administering them should be, and has been, one of mutual support. Representatives of civil society uniformly expressed to the Independent Expert their strong support for the protection of the environment and their firm belief that, given the opportunity, Costa Ricans want to participate actively in efforts to protect it. When the Independent Expert met with citizens in the Bijagual community, for example, he was impressed not only by their commitment to sustainable living, but also by their willingness to help monitor environmental threats and illegal conduct in the neighbouring protected areas. However, they expressed concern that their efforts to notify the Government of potential problems were not always met with due attention, and that government surveillance of the protected areas seemed to be declining.

45. Even more troubling than failures to take advantage of local interest in helping to support environmental protection are instances of conflicts between policies promoting conservation, on the one hand, and the rights of those living in protected areas, on the other. During his visit, the Independent Expert learned of several such conflicts, including in particular one arising from a strict interpretation of laws banning structures within a certain distance from the coast. As a result of the interpretation, some long-standing buildings, including hotels, along the Caribbean coast had been destroyed, and entire communities were being put at risk of expulsion from places where they had lived for generations.

46. The affected communities are predominantly of Afro-Caribbean origin, a minority group in Costa Rica that has traditionally been somewhat isolated from the majority culture. Understandably, members of these communities feel that the strict interpretation of the law fails to take into account their rights and interests, and even reflects a degree of invidious discrimination against them. Everyone with whom the Independent Expert spoke about the issue, inside and outside the Government, recognized that this situation, as well as others involving similar conflicts elsewhere in Costa Rica, needs to be resolved in a way that respects the rights of those whose history in these places goes back generations. In September 2012, the Legislative Assembly passed a two-year moratorium on the eviction of coastal communities living in protected areas, in the hope that it would be possible to find a permanent solution to the problem before the moratorium expires. At the time of writing the present report, however, Costa Rica had not been able to find such a solution.

B. Hydroelectric projects and indigenous peoples

47. As part of its effort to rely on renewable energy, Costa Rica has established a system of hydroelectric plants. The Costa Rican Electricity Institute (Instituto Costarricense de Electricidad, or ICE), the State-owned electric utility company, has proposed a new hydroelectric dam and plant on the Río Grande de Térraba, in the south-east of the country, for the purposes of large-scale electricity generation. As explained in the 2011 report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the situation of the indigenous peoples affected by the El Diquís hydroelectric project in Costa Rica, the project would affect indigenous and non-indigenous communities. As he indicated, the reservoir and part of the dam would cover about 10 per cent of the territory of the indigenous Teribe people, and the reservoir would also flood a portion of the China Kichá indigenous territory of the Cabecar people. Furthermore, the Rey Curré and Boruca indigenous territories, which belong to the Brunca people, are located downstream of the proposed dam and therefore could be affected by changes in the course of the river. The project could also affect indigenous areas upstream, including the Cabagra and Salitre indigenous territories of the Bribri people, the Ujarrás territory of the Cabecar people, and the Coto Brus territory of the Ngobe people. The project would also displace, in whole or part, a number of non-indigenous communities (A/HRC/18/35/Add.8, para. 2).

48. The indigenous communities opposed the project, arguing that the Government had not adequately consulted them before moving forward with the design and development of the project. In 2011, the Government of Costa Rica invited the Special Rapporteur on the rights of indigenous peoples to visit the country to assist in the resolution of the conflict. In his subsequent report, the Special Rapporteur emphasized that “all parties agree on the need to undertake consultations with the indigenous peoples of the territories affected by the project before it is approved, and that the consultation process should be consistent with international standards” (ibid., para. 11). To that end, he made a number of recommendations designed to ensure adequate consultation with the affected indigenous peoples. He underlined that “according to the applicable international instruments, consultation with indigenous peoples who may be affected by the El Diquís hydroelectric project should be undertaken with the goal of obtaining their free, prior and informed consent” (ibid., para. 14). The Special Rapporteur emphasized that the consent should be “explicitly framed in an agreement or agreements which contain commitments by the Government or ICE” and that the agreements “must take into account all the rights affected by the project in relation to each of the indigenous peoples affected, including their rights to land and natural resources, any rights that could underpin claims for compensation, any mitigation measures and sharing the project’s profits” (ibid., para. 14). He urged the State to allow time for the indigenous peoples to decide on their representation, and to take steps that would allow them to recover the land in their territories that is being occupied by non-indigenous individuals (ibid., paras. 33 and 44).

49. During his visit, the Independent Expert followed up on those recommendations. He was advised that the Government had set up a permanent round table to bring together indigenous leaders and government authorities to seek a dialogued resolution. The United Nations country team has played a mediatory role during the confrontations that still occasionally occur between the indigenous and non-indigenous groups over the land tenure issue. The Independent Expert was advised that there had been significant developments in the discourse, including reports from the Government of progress on resolving the issue of land tenure, the preparation of development plans for the indigenous territories and the establishment of a monthly permanent

round table. He understood further that efforts were under way to articulate substitutes for the prevailing modality of representation of the indigenous communities, which many consider inadequate and not in consonance with traditional indigenous customs. The Independent Expert encourages the United Nations presence in Costa Rica to continue the critical bridging role it plays aimed at fostering the trust and transparency that are essential for consensus on key issues.

50. The Independent Expert met with officials from ICE, who told him that as a result of the separate dialogue with indigenous peoples, communities potentially affected by the proposal were being treated differently. ICE was continuing to meet with non-indigenous communities as part of its EIA process, but was not meeting with indigenous communities, as a separate consultation with them was continuing. The Independent Expert made it clear that, while he understood the concern that rights such as the constitutional right to a healthy environment should be applied consistently, indigenous peoples have special protections under human rights law precisely because their rights are more often vulnerable to violation. As the Inter-American Commission on Human Rights has indicated, “within international law generally, and inter-American law specifically, special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population”. Their special vulnerability stems from their historical, cultural and physical dependence on access to their traditional lands and the use and enjoyment of the natural resources on those lands. As a result, the Inter-American Court of Human Rights has held that States must consult with communities regarding any proposed concessions or other activities that may affect their lands and natural resources, ensure that no concession is issued without a prior assessment of its environmental and social impacts, and guarantee that the community receives a reasonable benefit from any such plan if approved. With respect to “large-scale development or investment projects that would have a major impact”, the State must do more than consult; it must obtain the community’s “free, prior, and informed consent in accordance with their customs and traditions”.

51. ICE also shared some of the challenges it faces in translating complex scientific and technical information in the EIA process into lay terms, and into different languages when required. It stated that there is a need both for guidelines for effective consultation that are more clearly understood by all stakeholders and for more resources to support experts in making scientific and technical information intelligible to the people affected by projects.

Conclusions and recommendations

63. Although Costa Rica has a strong record of protecting and promoting environmentally related human rights, it does face several challenges. First, it is highly troubling that communities, including minority communities, are being threatened with expulsion from homes that they have occupied for generations, as a result of strict interpretations of laws governing protected areas. Conservation should not impose an undue cost on communities that have deep historical roots in areas of environmental importance. The right to a healthy environment need not conflict with other fundamental rights. The Independent Expert therefore recommends that Costa Rica move with greater expedition to resolve this situation before the expiration in 2014 of the two-year moratorium on the eviction of coastal communities living in protected areas, in a manner that:

- (a) Safeguards both the right to a healthy and ecologically balanced environment and the rights of those who have lived in and near the protected areas for many years;
- (b) Takes into account that many of those affected are members of minority groups that have been historically on the margins of Costa Rican political life, and ensures that the resolution of the situation is free from discrimination on any prohibited grounds;
- (c) Does not regard the absence of formal legal title as necessarily dispositive, in the light of the fact that rights may arise in relation to long-occupied property even in the absence of such title;
- (d) Provides for the full and informed participation of those affected in the process of reaching a resolution.

64. Second, with respect to all of its citizens, the Independent Expert recommends that Costa Rica continue to build on its efforts to engage those individuals and communities that are most directly concerned with the protection of particular areas in order to draw on their abilities and interests. Perhaps its greatest

strength in relation to human rights and the environment is the broad-based commitment of its people to environmental protection and sustainable development.

65. Third, with respect to the El Diquís hydroelectric project, the Independent Expert recommends that the State continue to engage in consultations with the indigenous peoples that may be affected, taking advantage of the facilitation of the United Nations country team and bearing in mind that the consultation should be undertaken with the goal of obtaining the free, prior and informed consent of the indigenous peoples affected.

66. Fourth, the Independent Expert recommends that Costa Rica develop clearer guidelines for effective consultation with all stakeholders in respect of such projects, and that it provide the resources necessary to help the Electricity Institute translate complex scientific and technical information into language that is easily accessible and comprehensible to non-experts.

67. Fifth, with respect to the risk of harassment and violence directed against environmental human rights defenders, the Independent Expert recommends that Costa Rica strengthen further its efforts not only to respond to threats and acts of violence, but also to prevent the situations that lead to such problems. He suggests that Costa Rica seriously consider establishing a commission or equivalent body, with representatives from a range of stakeholders, which would have a mandate to examine the history and current situation of environmental human rights defenders in Costa Rica and to make recommendations about how best to improve their protection. Such an initiative could be a model for many other States of how to address this issue. It would also further demonstrate the country's willingness to take innovative steps towards the protection of environmental human rights.

68. Sixth, the Independent Expert recommends that the Government not treat social protests against large-scale development projects as criminal behaviour, but rather as expressions of the human rights to freedom of expression and association, in accordance with the recommendations of the Special Rapporteur on the situation of human rights defenders (see A/68/262).

2. Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mapping Report, A/HRC/25/53, 30 December 2013

Human rights threatened by environmental harm

17. In his first report, the Independent Expert stated that one “firmly established” aspect of the relationship between human rights and the environment is that “environmental degradation can and does adversely affect the enjoyment of a broad range of human rights” (A/HRC/22/43, para. 34). As the Human Rights Council itself has stated, “environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights” (resolution 16/11). The mapping project provides overwhelming support for this statement. Virtually every source reviewed identifies rights whose enjoyment is infringed or threatened by environmental harm.

23. The Human Rights Council has recognized that “environmental damage is felt most acutely by those segments of the population already in vulnerable situations” (resolution 16/11). The sources reviewed provide examples of environmental harm that particularly affects such groups. ...

25. Because of the close relationship that indigenous peoples have with nature, they can be uniquely vulnerable to environmental degradation. The Special Rapporteur on the rights of indigenous peoples has emphasized that “extractive industry activities generate effects that often infringe upon indigenous peoples' rights” (A/HRC/18/35, para. 26), and has detailed many examples of such infringement, including on their rights to life, health and property.

Human rights obligations relating to the environment

Duties to facilitate public participation in environmental decision-making

40. States have obligations not only to refrain from violating the rights of free expression and association directly, but also to protect the life, liberty and security of individuals exercising those rights. There can be no doubt that these obligations apply to those exercising their rights in connection with environmental concerns. The Special Rapporteur on the situation of human rights defenders has underlined these obligations in that context (A/68/262, paras. 16 and 30), as has the Special Rapporteur on the rights of indigenous peoples (A/HRC/24/41, para. 21), the Committee on Economic, Social and Cultural Rights, the Inter-American Court of Human Rights, and the Commission on Human Rights, which called upon States “to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development” (resolution 2003/71).

Duty to provide access to legal remedies

41. From the Universal Declaration of Human Rights onward, human rights agreements have established the principle that States should provide for an “effective remedy” for violations of their protected rights. Human rights bodies have applied that principle to human rights infringed by environmental harm. For example, the Committee on Economic, Social and Cultural Rights has urged States to provide for “adequate compensation and/or alternative accommodation and land for cultivation” to indigenous communities and local farmers whose land is flooded by large infrastructure projects, and “just compensation [to] and resettlement” of indigenous peoples displaced by forestation. The Special Rapporteur on the situation of human rights defenders has stated that States must implement mechanisms that allow defenders to communicate their grievances, claim responsibilities, and obtain effective redress for violations, without fear of intimidation (A/68/262, paras. 70–73). Other special rapporteurs, including those for housing, education, and hazardous substances and wastes, have also emphasized the importance of access to remedies within the scope of their mandates.

Obligations relating to members of groups in vulnerable situations

69. The human rights obligations relating to the environment include a general obligation of non-discrimination in their application. In particular, the right to equal protection under the law, which is protected by the Universal Declaration of Human Rights (art. 7) and many human rights agreements, includes equal protection under environmental law. States have additional obligations with respect to groups particularly vulnerable to environmental harm. The following sections describe obligations specific to three groups in particular: women, children and indigenous peoples.

Indigenous peoples

76. Because of their close relationship with the environment, indigenous peoples are particularly vulnerable to impairment of their rights through environmental harm. As the Special Rapporteur on the rights of indigenous peoples has stated, “the implementation of natural resource extraction and other development projects on or near indigenous territories has become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights” (A/HRC/18/35, para. 57).

77. International Labour Organization convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples are designed to protect the rights of indigenous peoples, but human rights bodies have also interpreted other human rights agreements to protect those rights. The interpretations have reached generally congruent conclusions about the obligations of States to protect against environmental harm to the rights of indigenous peoples. In his reports, the Special Rapporteur on the rights of indigenous peoples has described in detail the duties of States to protect those rights. This section therefore only outlines certain main points.

78. Firstly, States have a duty to recognize the rights of indigenous peoples with respect to the territory that they have traditionally occupied, including the natural resources on which they rely. Secondly, States are obliged to facilitate the participation of indigenous peoples in decisions that concern them. The Special Rapporteur has stated that the general rule is that “extractive activities should not take place within the

territories of indigenous peoples without their free, prior and informed consent,” subject only to narrowly defined exceptions (A/HRC/24/41, para. 27). Thirdly, before development activities on indigenous lands are allowed to proceed, States must provide for an assessment of the activities’ environmental impacts. Fourthly, States must guarantee that the indigenous community affected receives a reasonable benefit from any such development. Finally, States must provide access to remedies, including compensation, for harm caused by the activities.

Conclusions and recommendations

79. Human rights law includes obligations relating to the environment. Those obligations include procedural obligations of States to assess environmental impacts on human rights and to make environmental information public, to facilitate participation in environmental decision-making, and to provide access to remedies. The obligation to facilitate public participation includes obligations to safeguard the rights of freedom of expression and association against threats, harassment and violence.

80. The human rights obligations relating to the environment also include substantive obligations to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors. The obligation to protect human rights from environmental harm does not require States to prohibit all activities that may cause any environmental degradation; States have discretion to strike a balance between environmental protection and other legitimate societal interests. But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights. In assessing whether a balance is reasonable, national and international health standards may be particularly relevant. In addition, there is a strong presumption against retrogressive measures.

81. In addition to a general requirement of non-discrimination in the application of environmental laws, States may have additional obligations to members of groups particularly vulnerable to environmental harm. Such obligations have been developed in some detail with respect to women, children and indigenous peoples, but work remains to be done to clarify the obligations pertaining to other groups.

L. Special Rapporteur on extreme poverty and human rights

1. Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, A/HRC/23/36, 11 March 2013²⁰

Summary

In the present report, the Special Rapporteur on extreme poverty and human rights focuses on the right to participation of people living in poverty. Participation is a basic human right in itself, a precondition or catalyst for the realization and enjoyment of other human rights, and of fundamental importance in empowering people living in poverty to tackle inequalities and asymmetries of power in society. The report presents the human rights approach to participation and a framework based on human rights for how to include people living in poverty in the design, implementation and evaluation of policies and programmes in a meaningful and effective way, taking into account the obstacles they face.

Introduction

6. The issue of participation is at the core of the Special Rapporteur’s mandate: through its resolutions 8/11 and 17/13, the Human Rights Council requested her to, *inter alia*, make recommendations on how persons living in extreme poverty can participate in the definition of measures affecting them. The Special Rapporteur has emphasized the importance of participation in all her reports, including the conceptual framework outlined at the start of her mandate (A/63/274).

7. In order to respond to the Human Rights Council’s request, the present report examines the key human rights principles and standards that determine the content of the right to participation with regard to the

²⁰ Full report available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/117/94/PDF/G1311794.pdf?OpenElement>.

poorest and most marginalized members of society. After examining these norms and standards, the report presents a human rights-based framework for meaningful, empowering participation and elucidates the necessary actions and enabling factors to support and enable such participation for people living in poverty.

8. While the issue of participation of people living in poverty is a common theme in the literature on development and humanitarian aid, there has been little discussion of this topic from a human rights perspective. Therefore, the Special Rapporteur welcomes the decision of the Human Rights Council to bring the discussion to human rights forums.

Participation, power and poverty

12. Lack of power is a universal and basic characteristic of poverty. Poverty is not solely a lack of income, but rather is characterized by a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce each other. Powerlessness manifests itself in many ways, but at its core is an inability to participate in or influence decisions that profoundly affect one's life, while decisions are made by more powerful actors who neither understand the situation of people living in poverty, nor necessarily have their interests at heart.

13. The right of people living in poverty to participate fully in society and in decisionmaking is blocked by multiple compounding obstacles – economic, social, structural, legal and systemic. All of these relate to their lack of financial, social and political power. Discrimination and stigma, disempowerment, lack of income, mistrust and fear of authorities all limit the possibilities and incentives for people living in poverty to participate. Due to their lack of status and power, people living in poverty are also particularly vulnerable to corruption, clientelism or co-optation. At the most extreme level, poor or marginalized individuals may face reprisal (emanating from State or non-State actors such as corrupt community leaders of business enterprises) if they speak out in participatory spaces, in the form of violence or threats to them, their families, property or livelihoods. Often, the economic dependency of people living in poverty on more powerful absence of concrete threats, for fear of losing their livelihoods. This is a problem particularly in very hierarchical or caste-based societies.

14. Material deprivation and disempowerment create a vicious circle: the greater the inequality, the less the participation; the less the participation, the greater the inequality.⁴ When the participation of people living in poverty is not actively sought and facilitated, they are not able to participate in decision-making and their needs and interests are not taken into account when policy is designed and implemented. This exacerbates their exclusion and often perpetuates the privilege of elites who are able to influence policy directly, or of groups such as the middle class who have a considerable voice in the media or other public spaces. Lack of participation in decision-making and in civil, social and cultural life is thus recognized by the international community as a defining feature and cause of poverty, rather than just its consequence.

15. Arguably, the main aim of human rights is transforming power dynamics between individuals in society, in order to challenge oppression, subvert the subordination and marginalization of certain groups and individuals, and promote individual agency, autonomy and respect of the inherent dignity of every human being. The theory and practice of human rights is deeply concerned with preventing powerful actors from imposing their will or interests at the expense of others through coercion, force or manipulation. Thus, participatory processes based on human rights do not accept power dynamics as they are. Rather, they start from the premise that power differentials must be eliminated and seek to explicitly recognize and challenge inequality, including structural and systemic power imbalances in social and economic life. In order to do so, it is necessary to understand the way that power plays out in a particular context, to diagnose asymmetrical power relations and understand how power is exercised both within and between communities to control and exclude disadvantaged groups.

16. Through meaningful and effective participation, people can exercise their agency, autonomy and self-determination. Participation also limits the capacity of elites to impose their will on individuals and groups who may not have the means to defend their interests. Conceived as a right, participation is a means of challenging forms of domination that restrict people's agency and self-determination. It gives people living in

poverty power over decisions that affect their lives, transforming power structures in society and creating a greater and more widely shared enjoyment of human rights.

17. Rights-based participation is particularly necessary in order to ensure that the poorest and most marginalized people can make their voices heard, because of its principled foundations of dignity, non-discrimination and equality. Therefore, in contrast to some supposedly “participatory” processes that are pro forma, tokenistic or undertaken to give predetermined policies a veneer of legitimacy, rights-based participation aims to be transformative rather than superficial or instrumental. It promotes and requires the active, free, informed and meaningful participation of persons living in poverty at all stages of the design, implementation and evaluation of policies that affect them, based on a comprehensive analysis of their rights, capacity and vulnerabilities, power relations, gender relations and the roles of different actors and institutions.

18. Participation has been associated with a range of positive effects in development cooperation, humanitarian aid and poverty reduction programmes, such as better assessment of needs and capacities, and improvements in implementation and sustainability. However, the degree of positive impact that participation can have on poverty reduction is debated, and depends on what type of participation is being studied and in what arena. Nevertheless, evidence shows that in many cases participatory processes have shown positive outcomes in terms of tackling poverty and social exclusion, particularly in building organization and capacity, strengthening social cohesion and democratic governance and creating better development outcomes (such as improved services). Participation in processes like budget formulation or service monitoring has brought tangible benefits to persons living in poverty in specific cases. However, participation on its own is not a silver bullet for poverty reduction, and must be combined with other inputs such as improvements in public services, education and accountability mechanisms to achieve this end.

19. Moreover, as participation is not merely a means to an end (e.g. poverty reduction) but rather a fundamental human right and valuable in and of itself, the most important outcomes – such as exercising self-determination, rights consciousness, assertiveness and empowerment, increased capacity and social capital – may be intangible or difficult to measure. While acknowledging the instrumental benefits participation may have, this report focuses on participation as an inherent right that aims to empower those living in poverty, and seeks to identify the conduct and actions that States must undertake to respect, protect and promote this right for people living in poverty.

20. This report focuses on the intrinsic value of participation as a fundamental right to which individuals are inherently entitled by virtue of their humanity. This right to take part and exert influence in decision-making processes that affect one’s life is inextricably linked to the most fundamental understanding of being human and the purpose of rights: respect of dignity and the exercise of agency, autonomy and self-determination. The right to participation imposes concrete obligations on States voluntarily assumed in several binding human rights instruments.

21. Participation, when undertaken with a rights foundation, provides an opportunity for people living in poverty to be active agents in their own destiny; thus, it is fundamentally important to reclaiming dignity. Testimony from people living in poverty confirms that meaningful and effective participation can have important effects: building self-respect and gaining the respect of others; creating a sense of belonging; becoming part of a network where they can recount their experience and feel they are listened to and supported by others; regaining self-confidence and developing a plan for the future; being recognized as a human being.

22. The right to participation is strongly linked with empowerment, which is a key human rights goal and principle. Effective participation can build capacity and rights awareness. It allows those living in poverty to see themselves as full members of society and autonomous agents rather than subjects of decisions taken by others who see them as objects of assistance or mere statistics. As stated by a Peruvian activist, “[f]or us, participating means leaving our isolation, breaking our silence and overcoming our fear... Before I was afraid, but now I’m strong, not humbled”. It can also provide people living in poverty with the chance to speak out against and challenge injustice, discrimination and stigma. It can give them confidence in dealing with

government officials and bureaucracy. Indeed, exercising their right to participation can be a springboard to fully claiming other rights.

23. Ultimately, the enjoyment of the right to participation can benefit society as a whole, building trust and solidarity, creating better social cohesion and contributing to more inclusive and pluralistic societies, and bringing new issues and voices into the public arena.

24. There is no doubt that initiating and sustaining meaningful and effective participatory processes requires time, patience, resources and planning. However, it is not a simple policy option that policymakers can choose not to implement. States (all branches at the local, national and international levels) have a legal obligation to implement inclusive, meaningful and non-discriminatory participatory processes and mechanisms, and to engage constructively with the outcomes. With political will, all States are in a position to improve the enjoyment of this right. The practices of some States, United Nations agencies and civil society organizations has shown that it is possible for States to create or support participatory mechanisms that succeed in empowering disadvantaged members of the public and improving policy. Experience shows that the benefits and opportunities outweigh the risks and challenges.

Normative framework

[...]

26. These norms have been further developed by human rights monitoring bodies, who have emphasized that participation should be understood broadly and requires concrete political, legal and institutional actions. Electoral participation is just one specific expression of the right to participation (A/HRC/18/42, para. 5); although free and fair elections are a crucial component, they are not enough to ensure that those living in poverty enjoy the right to participation in key decisions affecting their lives (E/C.12/2001/10, para.12). According to the Human Rights Committee, the right to participation in the conduct of public affairs covers “all aspects of public administration, including the formulation and implementation of policy at international, national, regional and local levels” (CCPR/C/21/Rev.1/Add.7, para. 5). The right to participation necessitates participatory mechanisms with a legal basis, providing for “access to appropriate information, adequate support, feedback ... and procedures for complaints, remedies or redress” (CRC/C/GC/12, para. 48). Participation should not be a one-off event, but requires a long process of intensive dialogue regarding the development of policies, programmes and measures in all relevant contexts (ibid., para. 13). For example, the Committee on Economic, Social and Cultural Rights has said that participation in decision-making processes must be an integral component of any policy, programme or strategy related to the rights to health and water (E/C.12/2000/4, para. 54, and E/C.12/2002/11, para. 48). The right is not limited to participation in formal political institutions, but also in civil, cultural and social activities (A/HRC/18/42, Annex, para. 5); for example, the right to take part in cultural life is also an essential element of the right to participation, and States must adopt concrete measures to ensure enjoyment of this right (E/C.12/GC/21, para. 39).

28. Regarding the right to information, States have to make every effort to ensure easy, prompt, effective and practical access to information which might be of public interest, including by proactively making this information available and putting in place necessary procedures which enable prompt, effective, practical and easy access to information. Fees charged should not constitute an unreasonable impediment to access to information, and an appeals system should be in place to challenge failures to provide information (CCPR/C/CG/34).

32. The Indigenous and Tribal Peoples Convention of the International Labour Organization (1989) (ILO Convention No. 169) is focused on participation of indigenous people in decision-making, and is the only international convention to assign governments the duty of face-to-face consultation with communities. It states that consultation with indigenous peoples should be undertaken through appropriate procedures, in good faith and through the representative institutions of these peoples; the peoples involved should have the opportunity to participate freely at all levels in the formulation, implementation and evaluation of measures and programmes that affect them directly. ILO Convention No. 169 also specifies individual circumstances in which consultation with indigenous and tribal peoples is an obligation. In particular, relocation/displacement of the community should take place only with their “free and informed consent”.

33. If not developed with the indigenous and tribal institutions or organizations that are truly representative of the peoples in question, consultations will not comply with the requirements of the Convention. Notably, in applying the Convention, several judgments of national and regional tribunals have found that the non-participation of indigenous groups in consultation or decision-making processes violated their rights and, as such, a broad set of measures have been judicially ordered, from the invalidation of approval of government projects especially in the mining, forestry and energy sectors, to remedies for those affected.

34. The United Nations Declaration on the Rights of Indigenous Peoples, although not legally binding, developed further the importance of free, prior and informed consent in matters of fundamental importance for the rights, survival and dignity of indigenous peoples,¹⁶ based on their right to self-determination. “Free” means without coercion, intimidation or manipulation; “prior” implies in advance of the activity or decision being made, with sufficient time for indigenous peoples to undertake their own decision-making processes; “informed” necessitates provision of objective, accurate and complete information relating to the activity, presented in a manner and form understandable to indigenous peoples (A/HRC/18/42, Annex, para. 25).

Recommendations to States: an operational framework to ensure meaningful participation of people living in poverty

80. People living in poverty are entitled to participate in the design, implementation and monitoring of poverty interventions and other policies, programmes and interventions that affect their lives, and to hold duty bearers accountable. Looking at participation through the prism of human rights norms and principles, it is possible to elucidate the approach and actions necessary to ensure the effective and meaningful participation of people living in poverty.

81. Building on the human rights framework above, this section will give practical guidance to States on how to operationalize the right to participation of people living in poverty. It is neither possible nor desirable to formulate detailed universal guidelines, as participation is always embedded in a specific sociocultural context and set of power dynamics. The appropriate formats and design are thus context-dependent and moreover should emerge from the ground up, in consultation with communities. However, it is important to move towards a common understanding of what an acceptably participatory mechanism or process looks like and the appropriate minimum standards by which to measure the adequacy and quality of participation with regard to people living in poverty. Human rights provide a way to do so.

82. While the recommendations below are primarily addressed to States, many are also relevant for participatory processes established by other actors such as international financial institutions and donor agencies. Recommendations to national human rights institutions are also included due to their potentially crucial role.

83. States have three levels of obligations with regard to human rights: to respect; to protect; and to fulfil (E/C.12/GC/21, para. 48). In terms of the right to participation, the obligation to respect requires States to refrain from interfering, directly or indirectly, with the enjoyment of the right. For example, States must not close down participatory spaces, impose censorship, repress public deliberation or retaliate against those who speak out (e.g. through violence, confiscation of property or incarceration). The obligation to protect requires States to take steps to prevent third parties (including business enterprises or private individuals) from interfering in the right to participation. This would include safeguarding participatory spaces, protecting freedom of expression through law and policy, and protecting individuals from reprisal from non-State actors. It also requires States to protect social movements, community organizers and human rights defenders. Lastly, the obligation to fulfil requires States to facilitate, promote and provide for the full realization of the right to participation, through appropriate legislative, administrative, judicial, budgetary and other measures. This includes strengthening skills and capacity of the public and officials, presenting meaningful decisions for public deliberation and devoting resources to long-term, sustainable participatory mechanisms to influence national priorities, programmes and decisions.

84. Government agencies and policymakers must be prepared to give value to the findings of participatory processes, critically examine their own practices and attitudes, and allow the necessary resources

and time to enable people living in poverty to participate effectively. Instituting meaningful participation will require the State to relinquish unilateral control over some areas of policy traditionally seen as government prerogative, for example budgets. Similarly, while successful participation is frequently dependent on some form of State engagement, States should not seek to “own” all spaces of participation, and must protect and promote the role of NGOs and civil society.

85. Promising participatory practices have been implemented in a wide variety of contexts by actors including States, bilateral development agencies, United Nations agencies, civil society organizations and others. Prominent examples include participatory budgeting, environmental decision-making, slum surveys, citizen juries, social monitors and community scorecards. Much can be learned from such practices. Meaningful participation requires resources, time and planning, and should be seen as a process rather than an event, with multiple entry points through which members of the public can engage. However, evidence shows that it is possible, even in the most challenging of situations.

86. In order to comply with their human rights obligations regarding the right to participation, the Special Rapporteur recommends States undertake the following actions:

(a) Legal and institutional framework:

(i) Adopt a legal framework that includes the explicit right of individuals and groups to participate in the design, implementation and evaluation of any policy, programme or strategy that affects their rights, at the local, national and international levels. This should include:

- a. Putting in place operational guidelines, policies and capacity-strengthening measures to enable public officials to apply these laws, and ensuring that these are adaptable to different contexts and allow innovation based on feedback from the ground.
- b. Requiring the establishment of inclusive participatory mechanisms at the local and national levels.
- c. Explicitly including the duty of policymakers and public officials to actively seek and support the meaningful participation of people living in poverty.
- d. Setting and enforcing minimum standards for participatory processes, including thresholds for participation of people living in poverty and disadvantaged groups such as women, minorities and persons with disabilities.

(ii) Strengthen decentralization of power, responsibilities and resources from central to local governments, with adequate accountability mechanisms.

(iii) Promulgate and enforce legislation to prohibit discrimination of any kind, including on the basis of economic and social status.

(iv) Create meaningful opportunities for active public participation in budget formulation and monitoring, including by:

- a. Prioritizing areas of national or local budgets that most affect people living in poverty.
- b. Requiring the supreme audit institution to maintain mechanisms for public participation in auditing budgets.

(v) Incorporate participatory mechanisms in national development plans, including people living in poverty from the start of the planning process.

(vi) Respect the right to participation in the implementation of any international assistance and cooperation programme.

(vii) Strengthen laws relating to freedoms of association, assembly and speech; media freedom; anti-corruption; access to information; and whistle-blower protection.

(viii) Strengthen protection of individuals and non-governmental organizations that work with and advocate for those living in poverty; recognizing the right to act collectively; and prevent and punish any reprisal against those who exercise their right to participation.

(ix) Regulate the involvement of powerful non-State actors (such as business enterprises) in participatory processes; ensure that they cannot exert undue influence; and provide mechanisms for redress in cases of abuses.

(x) Create an independent national council on poverty and social exclusion, including people living in poverty, to represent this group to political decision-makers.

(b) Resources:

(i) Allocate sufficient resources to support the participation of people living in poverty in any decision-making process that affects their rights, including earmarked funds to compensate participants for opportunity costs such as travel and to provide on-site childcare.

(ii) Improve official capacity to facilitate public participation and access to information, including through adequate staff, equipment and training.

(iii) Provide long-term funding for capacity-building in disadvantaged communities, including by granting resources to community-based organizations.

(iv) Grant the national human rights institution adequate resources to promote the right to participation and pursue accountability and remedies.

(c) Equality and non-discrimination:

(i) Undertake an audit of barriers to participation and identify those communities and groups who face the most obstacles in enjoying their right to participation.

(ii) Set up a task force of people with experience of living in poverty to make recommendations on how people living in poverty can effectively participate in decision-making.

(iii) Use these recommendations and audits to issue guidance to all relevant government departments on how to ensure non-discrimination and equality regarding the right to participation.

(iv) Design participatory mechanisms, taking into account the inequalities and asymmetries of power in a given context, and take all necessary measures to counteract them, including through affirmative action.

(v) Ensure that conditions for participation do not unfairly exclude certain categories of people, for example those without identity documents or with mobility restrictions.

(vi) Take positive action to promote the inclusion of disadvantaged groups including ethnic minorities and persons with disabilities in decision-making bodies, including by allocating resources and designing mechanisms tailored for their use.

(vii) Undertake an analysis of barriers to women's participation, particularly in poor communities, and take proactive measures to tackle these barriers, for example implementing women-only participatory spaces or providing childcare facilities.

(d) Access to information:

(i) Enact a comprehensive right to information law, ensuring that the department designated to deal with requests is properly resourced, Promote effective and widespread use of the law including by:

a. Adopting policies, programmes and proactive measures that promote its use by people living in poverty.

b. Training public officials on the importance of access to information and the need to protect information solicitors.

(ii) Take specific measures to provide State data to the public, in accessible formats and via appropriate channels for people living in poverty, in particular by:

a. Publishing and disseminating regular information related to budgets (at local and national levels) and the quality of public services, including disaggregated data, in a non-technical and simplified form.

b. Proactively disseminating legal information and other key documents for decision-making (e.g. environmental impact assessments), in all relevant languages.

(iii) Communicate information through accessible channels and in appropriate forms, taking into account the technical understanding, literacy levels and languages of people living in poverty.

(iv) Improve communications infrastructure and the accessibility and affordability of information and communication technologies in rural areas and poor communities, including by providing training to people living in poverty, in particular women.

(v) Require prompt public notification of decisions following participatory processes, including the reasons and considerations on which it is based.

(e) Accountability:

(i) Ensure that participatory mechanisms have built-in complaint and grievance procedures, which establish clear lines of responsibility at the national, regional and local levels. Mechanisms must be confidential, accessible even in remote rural areas and provide diverse and cost-free means of access in all relevant languages.

(ii) Provide an accessible way for the public to hold public officials accountable for violation of the right to participation, as well as for any abuse during participatory processes.

(iii) Institute effective systems of monitoring and evaluation of participatory processes ensuring the involvement of people living in poverty.

(iv) Require public officials to publicly justify their eventual decisions or actions in light of public participation.

(v) Train judges, lawyers and law enforcement officials to enhance judicial oversight and to prosecute any infringement of the right to participation.

(f) Empowerment:

(i) Involve people living in poverty in setting the agenda and goals for participatory processes.

(ii) Take all appropriate steps to enhance the capacity of people living in poverty to participate in public life, including by:

a. Improving the accessibility and quality of education services provided to the poorest sectors of the population.

b. Ensuring educational programmes transmit the necessary knowledge, including human rights education, to enable everyone to participate fully and on an equal footing at the local and national levels.

c. Launching public education campaigns on issues that affect people living in poverty, such as the environment, human rights, development and budgeting processes.

(iii) Include capacity-building activities in participatory processes.

(iv) Respond to demands for participation emanating from communities living in poverty, and enable participatory processes to be promoted from below.

(g) Supporting the role of civil society:

(i) Recognize the rights of civil society organizations to participate in the design, implementation and evaluation of public policy.

(ii) Grant financial and logistical assistance to civil society groups, giving preference to those that have long-term partnerships with people living in poverty, to facilitate participation and build capacity of public officials.

(iii) Protect organizations that promote participation from retaliation or interference by State agents or non-State actors.

(h) Recommendations to national human rights institutions:

(i) Undertake educational and information programmes on the right to participation, both within the general population and among particular groups such as public service providers and the private sector.

(ii) Scrutinize existing laws, administrative acts, draft bills and other proposals to ensure consistency with obligations related to the right to participation under international and national human rights instruments.

(iii) Conduct research to ascertain the extent to which the right to participation is being realized within the State as a whole and in relation to communities particularly vulnerable to poverty and social exclusion.

(iv) Monitor compliance with the right to participation and provide reports thereon to public authorities, civil society and United Nations human rights mechanisms.